

# EXHIBIT A

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**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

JOHN DOE, individually and on behalf  
of all the members of the Class of  
persons similarly situated,

Plaintiff,

v.

PROJECT FAIR BID, INC., d/b/a  
BIGDEAL.COM, a Delaware  
corporation, MAYFIELD FUND,  
FOUNDATION CAPITAL and FIRST  
ROUND CAPITAL, AND DOES 1 –  
20,

Defendants

NO. 11-2-06859-5

CLASS ACTION

COMPLAINT FOR:  
RICO VIOLATIONS  
DECLARATORY RELIEF  
STATUTORY DAMAGES  
RESTITUTION  
CONSUMER PROTECTION ACT  
GIFT CERTIFICATE STATUTES

**DEMAND FOR JURY**

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1 Plaintiff, by and through his counsel, upon personal knowledge as to his own acts and  
2 beliefs, and upon information and belief as to all matters based upon investigation of counsel,  
3 alleges as follows:  
4

5 **I. JURISDICTION AND VENUE**

6 1. This Court has jurisdiction pursuant to RCW 2.08.010 and RCW 4.28.185.  
7  
8 2. Project Fair Bid, Inc. transacts business in King County over the internet.  
9  
10 3. Pursuant to RCW 4.12.025, venue is proper in King County Superior Court.  
11  
12 4. This Court has personal jurisdiction over the parties because Plaintiff submits to  
13 the jurisdiction of the Court, and Defendants systematically and continually conducts business  
14 throughout Washington, including online marketing, advertising, and sales directed to  
15 Washington residents. Mayfield Fund, Foundation Capital and First Round Capital provide  
16 management support and advice, financial support and management directions and control over  
17 the operations of Project Fair Bid, Inc., including matters that relate to their conducting business  
18 in the State of Washington. The subject matter of any writing or alleged contract between Plaintiff  
19 and Defendants involve illegal gambling which precludes contract formation and renders any  
20 contract void, including any matters relating to jurisdiction, choice of law, forum non conveniens  
21 and venue.

22 5. Washington state courts have concurrent subject-matter jurisdiction over civil  
23 RICO actions under 18 U.S.C.A. § 1964(c).

24 **1. Defendants**

25 6. Defendant Project Fair Bid, Inc. is a Delaware corporation whose principal place  
26 of business is California. It conducts internet auctions under the name BigDeal.com. Mayfield

1 Fund, Foundation Capital and First Round Capital are Venture Capital firms (VC's) who provide  
2 funding and management expertise to Project Fair Bid, Inc. Does 1-20 include managers,  
3 directors and investors in the Enterprise whose names have not yet been discovered.

## 4 2. Plaintiff

5 7. Plaintiff is a resident of King County Washington. Plaintiff unwittingly purchased  
6 a minimum bid pack from Defendant for \$22.50. Plaintiff should be allowed to proceed  
7 anonymously since the threat of prosecution outweighs the need to have his name revealed.  
8

## 9 II. INTRODUCTION AND FACTS

10 8. This action alleges that Project Fair Bid, Inc., doing business as BigDeal.com,  
11 (BigDeal) in conjunction with Mayfield Fund, Foundation Capital, First Round Capital and Does  
12 1-20 (Defendants), operate an illegal online bookmaking, professional gambling and/or lottery  
13 enterprise, by charging an entry fee and bidding fees (consideration) for the chance to win  
14 "auction" merchandise (prizes) such as camcorders, cameras, notebook computers, kitchenware,  
15 Nintendo's, iPod's etc. Defendants operate an online gambling website where players place bets  
16 to win prizes.  
17

18 9. This complaint alleges that Defendants violated and continue to violate all 50  
19 states laws prohibiting all form of unauthorized gambling activities, including internet gambling.  
20 The State of Washington laws prohibiting gambling that Plaintiff alleges Defendants violate are  
21 described in RCW § 9.46 *et. seq.* Defendants' violations include but are not limited to the laws  
22 prohibiting "Gambling," RCW § 9.46.0237; "Professional gambling" RCW §  
23 9.46.0269(1)(a)(c)(d)(e); "Bookmaking," RCW § 9.46.0213; providing "Gambling information"  
24 as defined by RCW § 9.46.0245; maintaining "Gambling records" as defined by RCW §  
25 9.46.0253; "Lottery" RCW § 9.46.0257 and "Gambling device" RCW § 9.46.0241.  
26

1           10.     Hereinafter, all violations of RCW § 9.46 *et. seq.* are referred to as “gambling”,  
2 except where each violation is specifically referenced by name, such as “lottery”, “bookmaking”  
3 “Professional gambling”, etc.

4           11.     This complaint also alleges that in addition to engaging in illegal gambling,  
5 Defendants engaged in a fraudulent scheme to obtain money by means of false or fraudulent  
6 pretenses, representations or promises from the Plaintiff and Class Members in violation of  
7 federal bank and wire fraud statutes and the Washington Consumer Protection Act.

8           12.     Defendants advertise “HUGE SAVINGS. UP TO 98% OFF! “It’s as easy as 1-2-  
9 3”. Defendants business was founded in 2009 and the website runs 24 hours a day. Its internet site  
10 is [www.BigDeal.com](http://www.BigDeal.com) and its past and present webpages are incorporated by reference into this  
11 complaint. Defendants gambling activities and scheme to defraud has operated continuously since  
12 it was founded in 2009.

13           13.     Defendants “penny auction” is an imitation of a new form of gambling first  
14 implemented in Germany in 2005 and imported to the U.S. in 2008 by Entertainment Shopping,  
15 Inc. under the trade name of Swoopo. Other European imitators, such as Madbid and Quick2bid,  
16 do not allow U.S. players to participate, because they recognize that paying consideration for the  
17 chance to win a prize violates U.S. gambling laws.

18           14.     Unlike a normal auction, where there are no bidding fees, i.e. consideration,  
19 BigDeal charges an entry fee and a bidding fee for each chance to win a prize. Bids are \$0.75  
20 each. When a player bids, the price of the auction increases by a few pennies (\$.01—\$.15) and  
21 the auction clock goes up by a few seconds (10 — 30 seconds in most auctions). The winner is  
22 not the highest bidder or the bidder who bets the most. The winner is the last bid before time runs  
23 out.

1           15.     An element of chance exists because no one can predict or control whether  
2 someone else will bid (bet).

3           16.     Defendants admit on their website that “*chance*” is involved with every bid by  
4 stating, “[W] guarantee you a fair chance to win a great deal on brand-new merchandise[.]”  
5 “What is more fun than the chance to get a very Big Deal on a highly coveted item?” “Each bid  
6 raises the price on the auction and adds a few seconds to the countdown timer, giving others the  
7 chance to match your bid if they dare.” “Each bid raises the price of the item by \$0.15 (less in  
8 some auctions) and adds a few seconds to the clock to give everyone a fair chance to bid.”  
9

10           17.     In a normal auction there is no consideration paid for the chance to win. In a  
11 BigDeal “auction,” participants must pay money for the right to play. Like a lottery, a participant  
12 buys chances to win and, winning is based on chance. Like gambling, a participant is betting on  
13 the outcome of a future contingent event, a contest of chance, in the hopes of being the winner.  
14

15           18.     BigDeal is like an online slot machine where the players feed \$.75 into a virtual  
16 slot machine for the chance to win a prize.

17           19.     BigDeal is also like a poker game where players are betting \$.75 that no one else  
18 will place a subsequent bet. Rather than betting on who has the best hand; BigDeal players are  
19 betting on the future contingency (or chance) that no other player will place a subsequent bid  
20 (bet).  
21

22           20.     BigDeal does not give the odds of winning or losing because the odds cannot be  
23 calculated, since anyone can place another bet.

24           21.     Defendants’ business model is no different than a casino’s, where they make their  
25 money by accepting bets on the outcome of future contingent events.  
26



1           **A. Defendants Conducts Illegal Bookmaking**

2           22. Defendants are guilty of “bookmaking” under Washington Gambling Act, Wash.  
3 Rev. Code § 9.46.0213.

4           23. Bookmaking requires “either accepting bets as a business or charging a fee for the  
5 opportunity to place a bet.” *Internet Cmty. & Entm't Corp. v. Wash. State Gambling Comm'n*,  
6 169 Wn.2d 687, 694; 238 P.3d 1163, 1167 (Wash. 2010). RCW § 9.46.0213 defines  
7 “bookmaking” as “accepting bets, upon the outcome of future contingent events, as a business *or*  
8 in which the bettor is charged a fee or ‘vigorish’ for the opportunity to place a bet.” Defendants  
9 are guilty of bookmaking because they accept bets upon the outcome of future contingent events  
10 as a business *and* because they charge a fee for the opportunity to place a bet.

11           24. Defendants accept bets because they charges \$.75 for each bid (bet) on the  
12 outcome of a future contingent event. The bet is that no one else will place a bid (bet) after them  
13 and they will win the prize. The future contingent event is: who will place the last bid (bet) when  
14 time runs out.  
15

16           25. With each bid, Defendants are accepting a bet on the outcome of the future  
17 contingent event — who will place the last bid (bet) when time runs out.  
18

19           26. Defendants take a position in the bet because they retain all \$.75 bets. *Internet*  
20 *Cmty.*, 169 Wash. 2d at 692-93. In addition, since they retain the \$.75 for each bet, from which  
21 they makes their profits, Defendants are accepting bets as a business. *See State v. Postema*, 46  
22 Wash. App. 512, 731 P.2d 13 (Wash. Ct. App. 1987).  
23

24           27. The \$.75 bidding fees are bets because each time they are placed, \$.75 is risked on  
25 the outcome of the future contingent event. The Oxford Dictionary defines “bet” as: an act of  
26 risking a sum of money on the outcome of a future event. Oxford University Press 2010.

1           28.     In Defendants' "auction," the bet is that 30 seconds will lapse before someone else  
2 places a subsequent bid (bet). Since the "auction" is extended by 30 seconds with each bid, a new  
3 wager (bet) begins with each new bid.

4           29.     There is no way to determine when an auction will end or whether a subsequent  
5 bid will be placed because the clock is reset to 30 seconds with every bid.

6           30.     With every new bid, Defendants is accepting another \$.75 from a player, who is  
7 placing a new bet that time will run out before another player bids. Therefore, Defendants is  
8 guilty of bookmaking because with every new bid, they is "accepting bets as a business" and  
9 "charging fees to place a bet."

10           31.     If winning did not depend on a future contingent event, i.e., no one else could  
11 place a subsequent bid before time runs out, then each bid would be a winning bid and  
12 Defendants would have to deliver the merchandise (prize) for each \$.75 bid.

13           32.     For example, Amazon.com does not have any contingency and must deliver the  
14 merchandise at the listed price. Defendants have a contingency, (being the last bid). If Defendants  
15 did not have a contingency, it would have to deliver the merchandise for \$.75 to anyone who  
16 places a bid, just like Amazon.

17           33.     Defendants' "auction" is no different than any other form of gambling, whether it  
18 is betting on the next play in a football game, a lottery drawing, a poker hand, or a turn on a slot  
19 machine. They are all bets on a future contingent event and the winner is determined by the  
20 outcome of that event. Like other forms of gambling, Defendants accept bets as a business and  
21 charge a fee or "vigorous" for the opportunity to place a bet."  
22  
23  
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1           34.     Within the plain meaning of Wash. Rev. Code § 9.46.0213, bookmaking is  
2 charging a fee for the opportunity to place a bet and the term "bet" does not require that the bet be  
3 honored or betting losses be paid. *Internet Cmty.*, 169 Wash. 2d at 692-93.

4           35.     Because Defendants charge a fee to players of their auctions for the opportunity to  
5 bet on the outcome of being the final bidder they are guilty of "bookmaking."

6           36.     Bookmaking alone constitutes "professional gambling" under the statute.

7           37.     Therefore, BigDeal.com is an illegal online "professional gambling" website.  
8

9           **B. Defendants Conduct an Unauthorized Lottery**

10           38.     In a normal auction, you do not lose the amount you bid. In Defendants auction, all  
11 bids are lost money; "consideration" for the right to play. Like a lottery, a participant buys  
12 chances to win and winning is based on the element of chance.

13           39.     Defendants' "auctions" meet the three elements that make up the definition of  
14 "Lotteries" as defined by RCW 9.46.0257. The auctions involve (1) "valuable consideration" i.e.,  
15 the payment of cash to purchase bids and bid packs, (2) for the "chance" to win, and (3)  
16 "property," i.e. the merchandise. See, Lottery: "a scheme for the *distribution of money or*  
17 *property by chance*, among persons who have paid or agreed to pay a *valuable consideration* for  
18 *the chance.*" RCW 9.46.0257.  
19

20           40.     In order to participate in Defendants' auction, registered users must first pay  
21 valuable consideration to buy "bids". Bids are sold in lots (called packs) of 30, 50, 100, 250, and  
22 500 and each bid is worth \$0.75. Electronic payments must be made via the Internet with a credit  
23 card before the participant is allowed to bid on merchandise.  
24  
25  
26

1 41. Defendants' scheme requires Plaintiff and Class Members to use credit cards to  
2 purchase bid packs in the minimum amount of \$22.50.

3 42. The credit card transactions involve money in the custody and control of federally  
4 insured banks and financial institutions being transferred to Defendants in furtherance of their  
5 illegal gambling operations, in violation of 18 U.S.C., 1344(2), Bank Fraud.

6 43. The purchase of Bid packs and the participant's total "bids" on the merchandise  
7 are the "valuable consideration," element of a lottery as defined by RCW 9.46.0257.

8 44. Losing bidders must buy more bid packs if they wish to continue bidding (betting).

9 45. Each \$0.75 bid is good for one bid. Participants can only make one \$0.75 bid at a  
10 time. All \$0.75 bids are lost money and the money becomes the property of Defendants.

11 46. If the \$0.75 bid is not the winning bid, a new lottery begins and the player must  
12 decide whether to risk another \$.75 for the chance to be the last to bid.

13 47. Each \$.75 bid is consideration for a new chance to win a prize just like a slot  
14 machine.

15 48. A player can spend an unlimited amount of money and still not be the winning  
16 bidder; they lose when someone else makes a single \$0.75 bid after their bid. Each time someone  
17 bids \$0.75, they are betting on the chance that no one else will place the same bet after them.

18 49. No matter how many times someone bids, his or her *chance* of winning does not  
19 increase because any other participant can always place another bid.

20 50. The participant's total bids do not matter in winning the prize. Only the final  
21 bidder wins; it does not matter whether the final bidder only made a single \$0.75 bid. A  
22 participant could spend \$1,000.00, by making 1,250 separate bids at \$0.75 for each bid, and still  
23 lose to the final bidder who makes a single \$.75 bet. Thus, no matter how many times a  
24  
25  
26

1 participant bets \$0.75, there is always an *element of chance* as to who will place the final \$0.75  
2 bet.

3 51. There is little or no skill involved in winning, since any of thousands of players  
4 can bid after the previous bidder. Time is added to the clock with each bid, so the process could  
5 theoretically continue indefinitely. It is impossible to predict which bid will be the last; therefore,  
6 the *element of chance* exists with every bid.  
7

8 52. As stated above, Defendants admit on their website that chance is involved with  
9 every bid by stating, "Each bid raises the price on the auction and adds a few seconds to the  
10 countdown timer, giving others the chance to match your bid if they dare." "Each bid raises the  
11 price of the item by \$0.15 (less in some auctions) and adds a few seconds to the clock to give  
12 everyone a fair chance to bid." Defendants also state, "we guarantee you a fair chance to win a  
13 great deal". "What is more fun than the chance to get a very Big Deal on a highly coveted item?"  
14

15 53. The element of "chance" as alleged in paragraphs above meets the definition of  
16 "chance," as defined by RCW 9.46.0257, RCW 9.46.0225 and Washington case law. RCW  
17 9.46.0225 defines "Contest of chance," as "any contest, game, gambling scheme, or gambling  
18 device in which the outcome depends in a material degree upon an element of chance,  
19 notwithstanding that skill of the contestants may also be a factor therein."  
20

21 54. If the participant "wins" the "lottery" by placing the last bid, the participant must  
22 purchase the lottery merchandise. The final purchase price for the winning participant is the  
23 amount of his or her unsuccessful bids plus the final auction price. The money collected by  
24 Defendants consists of the cost of bids placed by all unsuccessful bidders plus the final auction  
25 price.  
26

1           55. Defendants' penny auction scheme is based on gambling theory that, once  
2 someone is already "on the hook" for a certain amount of money, they will continue to bid, even  
3 though their chances of winning do not increase. Bidders continue to bid in the hopes of  
4 recovering their sunk costs, even though with each bid their odds of winning do not increase.

5           56. Wash. Rev. Code Ann. § 9.46.0257 defines "Lottery," as a scheme for the  
6 distribution of money or property by chance, among persons who have paid or agreed to pay a  
7 valuable consideration for the chance. Defendants' scheme satisfies all three elements of a lottery:  
8 (1) a prize, (2) chance, and (3) consideration. The consideration is the entry fee (Bid Packs) and  
9 the \$0.75 per bid fee; the prize is the right to purchase the lottery merchandise. Chance exists  
10 because the winner is indeterminate, since no one can predict or control whether someone else  
11 will bid after them. Each time someone bids, they are betting \$0.75 for the chance to be the last  
12 bidder; and no matter how many times they bid, their chance of winning does not increase.

13           57. Washington courts have consistently held that games of chance are lotteries or  
14 gambling and prohibited by the Gambling Act. For example:  
15

16           58. Game of "quarters" in which participant places bet with the "banker" on whether  
17 second quarter in stack of quarters will have head or tail facing up when top coin is removed is a  
18 lottery within prohibition of 1973 Gambling Act. *State v. Langford* 29 Wash.App. 455, 628  
19 P.2d 829, (1980) review denied.  
20

21           59. Elements of lottery are consideration, prize, and chance. *State ex rel. Schillberg*  
22 *v. Safeway Stores, Inc.* 75 Wash.2d 339, 450 P.2d 949 (1969).  
23

24           60. A weekly newspaper football pool was a lottery even though the Defendants  
25 argued that skill was involved. The court stated that the element of chance is measured by  
26 qualitative test; it is not measured by quantitative proportion of skill and chance in viewing

1 | scheme as whole; fact that skill alone eliminates many of contestants does not make contest any  
2 | less lottery if chance proximately influences final result. *Seattle Times Co. v. Tielsch*, 80  
3 | Wash.2d 502, 495 P.2d 1366 (1972).

4 |         61.     “Even assuming that buyer used skill or judgment in selecting referrals, chance  
5 | permeated entire scheme of referral selling, under which buyer agreed to pay for equipment in an  
6 | effort to get commissions on sales made to customers referred to seller and had no control over  
7 | general operation after furnishing names of prospective buyers, and referral selling scheme was a  
8 | lottery.” *Sherwood & Roberts-Yakima, Inc. v. Leach*, 67 Wash. 2d 630, 409 P.2d 175 (1965).

10 |         62.     When ascertaining whether method or scheme of advertising constitutes lottery,  
11 | actual conduct of advertiser, when promoting his products, will override his intentions however  
12 | well meant. *State ex rel. Schillberg v. Safeway Stores, Inc.* 75 Wash.2d 339, 450 P.2d 949  
13 | (1969).

15 |         63.     Lotteries are illegal gambling under Washington law unless there is no  
16 | consideration paid or the lottery is operated by the state or licensed charities. RCW § 9.46, et seq.  
17 | Defendants charge consideration and they are not a state agency and they do not have the  
18 | requisite licenses to conduct lotteries in the State of Washington. Defendants violate Washington  
19 | gambling laws by operating unlicensed lotteries for consideration.

21 |         64.     If Defendants claim that no chance is involved with their auctions i.e., no other  
22 | players can place a subsequent bid — then each bid would be a winner and Defendants must  
23 | deliver the merchandise (prize) for each \$.75 bid.

24 |         65.     The essence of Defendants scheme is that it operates an internet lottery website  
25 | that allows participants to place bets for the chance to win prizes.

1           **C. Defendants Conduct an Internet “Professional Gambling” Website**

2           66. Defendants are also guilty of “Professional gambling” in violation of RCW §  
3 9.46.0269 because they (a) acted, other than as a player, and knowingly engages in conduct which  
4 materially aids any form of gambling activity; and/or (c) acted other than as a player and  
5 knowingly accepts or receives money or other property pursuant to an agreement and/or  
6 understanding with any other person whereby it participates in the proceeds of gambling activity;  
7 and/or (d) it engages in bookmaking; and/or (e) it conducts a lottery. See, *Internet Cmty. & Entm't*  
8 *Corp. v. Wash. State Gambling Comm'n*, 238 P.3d 1163 (2010). And, internet gambling in the  
9 state of Washington is illegal. *Rouso v. State*, 239 P.3d 1084 (2010).

11           67. Defendants conduct of organizing the gambling and/or lottery activities as  
12 described above, constitutes “Professional gambling” as defined by RCW § 9.46.0269(a).  
13 Furthermore, Defendants receipt of money from the sale of bid pack to participants in exchange  
14 for the chance to win a prize constitutes “Professional gambling” as defined by RCW §  
15 9.46.0269(c). The fact that Defendants are conducting a lottery is a violation of RCW §  
16 9.46.0269(e).  
17

18           **D. Defendants Conduct an Internet Gambling Website**

19           68. RCWA 9.46.0237 defines gambling as: “Gambling,” as: staking or *risking*  
20 *something of value* upon the outcome of a *contest of chance or a future contingent event* not under  
21 the person's control or influence, upon an agreement or understanding that the person or someone  
22 else will *receive something of value* in the event of a certain outcome.  
23

24           69. Thus, in addition to satisfying all of the elements of bookmaking, professional  
25 gambling and lottery, Defendants’ scheme satisfies all the elements of gambling: (1) risking  
26 money (\$0.75 bids), (2) on a contest of chance or future contingent event (the chance or future



1 contingent event of being the last bidder), (3) for the chance to win something of value (the  
2 merchandise).

3 70. Gambling operations are illegal under Washington law and Defendants do not have  
4 the requisite exemptions to conduct gambling operations in the State of Washington. RCW § 9.46,  
5 et seq. Defendants is not a state agency and do not have the requisite licenses to conduct gambling  
6 activities in the State of Washington. Defendants violate Washington gambling laws by operating  
7 unlicensed gambling activities.  
8

9 **E. Defendants Unlawfully Provides Gambling Information over the Internet**

10 71. During the course of the bidding on auctions, Defendants LLC provides  
11 “Gambling information” as defined by RCW § 9.46.0245, by providing information on other  
12 wagers, the bid amounts, the time remaining, etc.  
13

14 72. Because Defendants engaged in professional gambling, it follows that they are  
15 engaged in transmitting “gambling information” over the Internet in violation of Wash. Rev. Code  
16 § 9.46.240.  
17

18 **F. Defendants Unlawfully Maintains Gambling Records**

19 73. “Gambling record” means any record, receipt, ticket, certificate, token, slip or  
20 notation given, made, used or intended to be used in connection with professional gambling.  
21 Wash. Rev. Code § 9.46.0253. Defendants’ conduct of accepting bids, maintaining the records of  
22 the bidding, the timing of bids, the records of the winners and losers, etc., means that they are also  
23 guilty of using gambling records as part of their business in violation of Wash. Rev. Code §  
24 9.46.0253.  
25  
26

1           **G. Defendants Operates an Illegal “Gambling Device”**

2           74.     “Gambling device,” means: (1) Any device or mechanism the operation of which a  
3 right to money, credits, deposits or other things of value may be created, in return for a  
4 consideration, as the result of the operation of an element of chance, including, but not limited to  
5 slot machines, video pull-tabs, video poker, and other electronic games of chance; (2) any device  
6 or mechanism which, when operated for a consideration, does not return the same value or thing  
7 of value for the same consideration upon each operation thereof; (3) any device, mechanism,  
8 furniture, fixture, construction or installation designed primarily for use in connection with  
9 professional gambling; [.] Wash. Rev. Code Ann. § 9.46.0241. Ownership, interest in, or  
10 possession of a gambling device is violation of Wash. Rev. Code Ann. § 9.46.  
11

12           75.     Defendants own, maintain and possesses an illegal gambling device under all three  
13 definitions above. (1) Defendants’ internet website is a device or mechanism, the operation of  
14 which, the right to money, credits or things of value (merchandise), are created, in return for  
15 consideration (Bid Pack fees and \$.75 bids), as a result of the operation of an element of chance  
16 (the chance to be the last bid). Defendants’ device is like slot machine, video pull-tabs, video  
17 poker, and other electronic games of chance for money or merchandise. (2) Defendants’ device  
18 or mechanism is operated for consideration (bid packs and \$.75 bids) and when the player clicks  
19 on “bid” the device does not return the same value for the same consideration upon each  
20 operation (each click) thereof. And, (3) Defendants internet website device or mechanism is  
21 designed primarily for use in connection with professional gambling.  
22  
23

24           76.     To prove a violation of possession of an illegal gambling device, Wash. Rev. Code  
25 Ann. § 9.46.0241, Plaintiff and Class Members need only prove a violation of one of the three  
26 provisions.

1 77. All three provisions are violated. The website is a gambling device the use of  
2 which the right to win merchandise is created in return for consideration. The device does not  
3 return the same value for the same consideration upon each operation thereof. The website device  
4 is designed primarily for use in connection with professional gambling, as defined above.

5 78. Therefore, Defendants are guilty of having an ownership interest in and possession  
6 of a “gambling device in violation of RCW § 9.46.0241.  
7

#### 8 **H. A Typical BigDeal.com Auction**

9 79. A typical BigDeal.com auction for an iPad 3G 64GB, which retails for \$829.00 at  
10 an Apple Store, was won for a final price of \$227.91. (BigDeal.com deceptively displays the retail  
11 price as \$899.00, plus \$10.00 shipping. (Apple.com has free shipping)). This means that players  
12 bet 22,791 times on the chance that their bet would be the final \$.75 bet. BigDeal’s  
13 “bookmaking” revenues for this iPad were \$17,093.25 (22,791 x \$.75). Ironically, the winner of  
14 this auction (the last person to bet before time ran out) only placed one \$.75 bet. Another auction  
15 for an iPad 3G 64GB was won for a final price of \$231.72. BigDeal “bookmaking” revenues for  
16 this iPad were \$17,379.00 (23,172 x \$.75). The winner of this iPad placed 645 bets to win.  
17  
18

#### 19 **I. BigDeal.com’s Website Admits to All of the Elements of Gambling —** 20 **Consideration, Chance and a Prize.**

21 80. BigDeal.com operates an Internet website that charges consideration that allows a  
22 person to play a game of chance to win prizes. BigDeal.com admits that it engages in gambling  
23 and/or lottery because its website admits all of the elements of gambling, e.g., consideration,  
24 chance and a prize.

25 81. **Consideration:** BigDeal.com admits that payment of consideration is  
26 required in order to signup and to bid on merchandise (prizes). “Buy bids for just \$.75 and start

1 bidding on auctions.” “Buy bid tokens to compete for prizes. All prizes start at \$0. Each bid raises  
2 the auction price by a few cents and adds up to 30 seconds to the countdown timer.” “How do I  
3 started? Buy bid tokens. They cost \$0.75 each and are sold in packs. For instance, a pack of 30  
4 bid tokens costs \$22.50.”

5           82.     **Chance:**        BigDeal.com admits that it operates an Internet website that permits  
6 a person to play a game of *chance* to win prizes, “What is more fun than the chance to get a very  
7 Big Deal on a highly coveted item?” “[W] guarantee you a fair chance to win a great deal on  
8 brand-new merchandise[.]” “The last bidder before time expires, wins!” “Each bid raises the price  
9 of the item by \$0.15 (less in some auctions) and adds a few seconds to the clock to give everyone  
10 a fair chance to bid.” “Bid to win. Click on the Bid button to place a bid. Each bid raises the  
11 price on the auction and adds a few seconds to the countdown timer, giving others the chance to  
12 match your bid if they dare.”

13           **Prize:** BigDeal.com admits on its website that the object of the bidding is to win  
14 merchandise at greatly reduced prices. . “Bid & Win! Brand New Products Save up to 90% OFF  
15 retail prices!” BigDeal.com-Official Site — Up to 99% off on Hot New Products.” “BigDeal.com  
16 – Save up to 99%! Bid to Win Unbeatable Deals”. BigDeal.com: Bid to win unbeatable deals on  
17 hundreds of new products every day.” “Buy bid tokens to compete for prizes. All prizes start at  
18 \$0.” “Choose your auction. From iPods to diamond earrings, BigDeal is all about new, name-  
19 brand, in-the-box, blow-your-mind products. Pick the prize you want and start bidding!”

20  
21  
22  
23           **J. Conclusion to Introduction**

24           83.     Defendants operated and continue to operate, a gambling enterprise.  
25  
26

1 84. Plaintiff represents a proposed class of consumers who have lost money as a direct  
2 and proximate result of the unfair and deceptive conduct and gambling activities of Defendants.

3 85. This lawsuit, among other things, seeks to vindicate Class Members' rights by  
4 forcing Defendants to end their unfair and deceptive conduct and their illegal Gambling  
5 Enterprise and implement auctions that comply with federal and state law, and to secure a full  
6 refund of entry fees, disgorgement of all ill-gotten gains, statutory damages, treble damages, and  
7 attorneys' fees and costs.  
8

9  
10 **III. CLASS ALLEGATIONS**

11 86. Plaintiff brings this action pursuant to Rule 23 of the Rules of Civil Procedure, on  
12 behalf of himself and the Class comprised of:

13 87. All persons who in the United States, from the date six years prior to the filing of  
14 the complaint to the date of judgment in this case, suffered damages as a result of BigDeal  
15 Mayfield Fund, Foundation Capital, First Round Capital and Does 1-20s' fraudulent scheme and  
16 gambling enterprise.

17 88. Excluded from the Class are Defendants, any entity in which the Defendants have  
18 a controlling interest, any employees, officers or directors of the Defendants, the legal  
19 representatives, heirs, successors, and assigns of Defendants, any judge or employee of the Court  
20 assigned to work on this lawsuit, and Plaintiff s attorneys and staff.  
21

22 **A. NUMEROSITY**

23 89. Although the exact size of the Class is unknown, Plaintiff believes the Class  
24 numbers in the thousands. Discovery is necessary to reveal the exact size, but Defendants'  
25  
26

1 computer records of class members will identify the class size. Given the Class size is believed to  
2 be in the tens of thousands, numerosity is satisfied.

3  
4 **B. COMMONALITY**

5 90. There are numerous questions of law and fact common to the Class, including, but  
6 not limited to:

7 91. Whether Project Fair Bid, Inc., Mayfield Fund, Foundation Capital and First  
8 Round Capital created and operated a gambling enterprise;

9 92. Whether Project Fair Bid, Inc., Mayfield Fund, Foundation Capital and First  
10 Round Capital lotteries and gambling are illegal under state and/or federal law;

11 93. Whether Project Fair Bid, Inc., Mayfield Fund, Foundation Capital and First  
12 Round Capital engaged in "bookmaking" in violation of Wash. Rev. Code § 9.46.0213;

13 94. Whether Project Fair Bid, Inc., Mayfield Fund, Foundation Capital and First  
14 Round Capital are guilty of "Professional gambling" in violation of RCW § 9.46.0269;

15 95. Whether Project Fair Bid, Inc., Mayfield Fund, Foundation Capital and First  
16 Round Capital are guilty of using "gambling records" as part of their business in violation of  
17 Wash. Rev. Code § 9.46.0253;

18 96. Whether Project Fair Bid, Inc., Mayfield Fund, Foundation Capital and First  
19 Round Capital engaged in transmitting "gambling information" over the Internet in violation of  
20 Wash. Rev. Code § 9.46.240.

21 97. Whether Defendants own, possess or operate illegal gambling devices in violation  
22 of Wash. Rev. Code Ann. § 9.46.0241.  
23  
24  
25  
26

1 98. Whether the subject matter of the contract between Project Fair Bid, Inc., and  
2 Class Members precludes contract formation and renders the contract void;

3 99. Whether Project Fair Bid, Inc., Mayfield Fund, Foundation Capital and First  
4 Round Capital were unjustly enriched because of their illegal conduct;

5 100. Whether Project Fair Bid, Inc., Mayfield Fund, Foundation Capital and First  
6 Round Capital violated 18 U.S.C. § 1962(c) (RICO Act) by creating, funding, implementing and  
7 operating an illegal gambling site; or the Washington state counterpart statute (RCW § 9.46, et  
8 seq.);

9 101. Whether Project Fair Bid, Inc., Mayfield Fund, Foundation Capital and First  
10 Round Capital violated 18 U.S.C. § 1962(c) (RICO Act) by committing bank fraud under 18  
11 U.S.C., 1344(2) by unlawfully obtaining, money, funds and credits, under the custody or control  
12 of financial institutions in furtherance of their fraudulent scheme and/or illegal gambling  
13 enterprise.

14 102. Whether Project Fair Bid, Inc., Mayfield Fund, Foundation Capital and First  
15 Round Capital violated 18 U.S.C. § 1962(c) (RICO Act) by committing wire fraud under 18  
16 U.S.C., 1343 by unlawfully obtaining, money, funds and credits in furtherance of their fraudulent  
17 scheme and/or illegal gambling enterprise.

18 103. Whether Project Fair Bid, Inc., Mayfield Fund, Foundation Capital and First  
19 Round Capital formed an enterprise to carry out the illegal activities.

20 104. Whether Project Fair Bid, Inc., Mayfield Fund, Foundation Capital and First  
21 Round Capital violated various states laws regarding the expiration of gift cards.  
22  
23  
24  
25  
26

1           **C. TYPICALITY**

2           105. Plaintiff's claims are typical of the claims of the Class as a whole. Plaintiff has the  
3 same interests in this matter as all other Class Members, and his claims are typical of all Class  
4 Members. Plaintiff and all Class Members have sustained damages arising out of Project Fair Bid,  
5 Inc., Mayfield Fund, Foundation Capital and First Round Capital's common course of conduct as  
6 outlined above, and the damages of each class member were caused by the same misconduct.  
7

8           **D. ADEQUACY**

9           106. Plaintiff will fairly and adequately protect the interests of the Class. The interests  
10 of Plaintiff are coincident with, and not antagonistic to, those of the remainder of the Class.  
11 Plaintiff is committed to pursuing the action and has obtained counsel experienced and qualified  
12 to prosecute this action.  
13

14           **E. COMMON QUESTIONS PREDOMINATE, AND THE CLASS ACTION**  
15 **DEVICE IS SUPERIOR**

16           107. Prosecution as a class action will eliminate the possibility of repetitious litigation,  
17 while also providing redress of claims too small to support the expense of individual claims.

18           108. Class treatment is also appropriate because Project Fair Bid, Inc., Mayfield Fund,  
19 Foundation Capital and First Round Capital have acted uniformly with respect to all Class  
20 Members.  
21

22           109. The questions of law and fact common to the members of the Class predominate  
23 over any questions affecting any individual member, and a class action is superior to other  
24 available methods for the fair and efficient adjudication of the controversy. Further, even if this  
25 were not the case, numerous claims or issues are appropriate for class treatment.  
26



1 110. Joinder of all Class Members who are geographically dispersed and number, upon  
2 information and belief, in the hundreds of thousands is impracticable. Furthermore, the expense  
3 and burden of individual litigation makes it impractical to adjudicate their claims on an  
4 individual-by-individual basis. Upon information and belief, Class Members are not already  
5 engaged in litigation concerning this controversy. This is a desirable forum, as it is home to a  
6 large number of Class Members, it is geographically convenient to a majority of the parties, and  
7 Defendants are subject to the personal jurisdiction of this Court.  
8

9  
10 **F. THE PREREQUISITES TO MAINTAINING A CLASS ACTION FOR  
DECLARATORY RELIEF ARE READILY APPARENT**

11 111. The prerequisites to maintaining a class action for injunctive relief pursuant to Civ.  
12 Rule 23(b)(2) exist as Defendants have acted or refused to act on grounds generally applicable to  
13 the class.  
14

15 112. The subject matter of the contracts between Defendants and Class Members is  
16 illegal- *i.e.*, the implementation of an illegal lottery or gambling enterprise.

17 113. Plaintiff and Class Members, therefore, seek an order declaring the contracts void.

18 114. Plaintiff and Class Members have no adequate remedy at law for the injuries that  
19 are likely to recur, in that, absent action from this Court, Defendants will continue their illegal  
20 conduct.  
21

22 115. The prosecution of separate actions by members of the Class would create a risk of  
23 establishing incompatible standards of conduct for Defendants.

24 116. Defendants' actions are applicable to the Class as a whole, and therefore,  
25 declaratory relief with respect to the class as a whole is appropriate.

26 117. Unless this Court enjoins Defendants, their illegal conduct will continue.

1 118. Wherefore, Plaintiff and Class Members seek a declaration that any alleged  
2 contracts between them and Defendants are void, that their money should be returned and that  
3 Defendants illegal conduct be enjoined.  
4

#### 5 IV. CAUSES OF ACTION

##### 6 A. COUNT I — Violations of 18 U.S.C. § 1962(c) (As to all Defendants)

7 119. Plaintiff alleges and incorporates by reference each of the allegations contained in  
8 the preceding and subsequent paragraphs.

9 120. Plaintiff, Class Members, and Defendants are all "persons," as that term is defined  
10 in 18 U.S.C. § 1961(3).

11 121. At all relevant times, in violation of 18 U.S.C. § 1962(c), Defendants conducted  
12 the affairs of a certain association-in-fact enterprise identified herein, the affairs of which affected  
13 interstate commerce through a pattern of racketeering activity.  
14

15 122. For purposes of this claim, the RICO enterprise is an association-in fact consisting  
16 of (a) Project Fair Bid, Inc., including its officers, directors, and agents, and (b) Mayfield Fund,  
17 Foundation Capital First Round Capital, and unknown Does (the "Enterprise"), including their  
18 officers' directors, and agents, who together operate various gambling activities, engage in bank  
19 fraud and wire fraud. The Enterprise is an ongoing and continuing business organization  
20 consisting of both entities and individuals that are and have been associated for the common or  
21 shared purposes of creating, implementing and conducting an illegal Enterprise and deriving  
22 profits from the activities of the Enterprise.  
23

24 123. The Enterprise has a systemic linkage because there are contractual relationships,  
25 financial ties, and continuing coordination of activities between Project Fair Bid, Inc., Mayfield  
26 Fund, Foundation Capital, First Round Capital and Does. Project Fair Bid, Inc., Mayfield Fund,

1 Foundation Capital and First Round Capital share information on a regular basis. Typically, this  
2 communication occurred and continues to occur by use of wires and mails in which Project Fair  
3 Bid, Inc., Mayfield Fund, Foundation Capital and First Round Capital will discuss and agree on  
4 marketing campaigns, business operations, management, investments and the structure of the  
5 Enterprise. Project Fair Bid, Inc., Mayfield Fund, Foundation Capital and First Round Capital  
6 function as a continuing unit for the purposes of implementing the unlawful Enterprise.  
7

8 124. At all relevant times, Mayfield Fund, Foundation Capital, First Round Capital and  
9 Does were aware of Project Fair Bid, Inc. conduct, were knowing and willing participants in that  
10 conduct, and reaped profits or intend to reap profits from that conduct. Project Fair Bid, Inc.,  
11 Mayfield Fund, Foundation Capital and First Round Capital were aware or should have been  
12 aware that the Enterprise was and is illegal under state and federal law. Among other things,  
13 Project Fair Bid, Inc., Mayfield Fund, Foundation Capital and First Round Capital researched and  
14 included lengthy legal requirements and conditions in the agreement between Defendants and  
15 Class Members. Thus, Project Fair Bid, Inc., Mayfield Fund, Foundation Capital and First Round  
16 Capital clearly contemplated the legal ramifications of conducting the Enterprise and knew or  
17 should have known that they were illegal.  
18

19 125. Project Fair Bid, Inc., Mayfield Fund, Foundation Capital and First Round Capital,  
20 moreover, are sophisticated entities operating in all 50 states.  
21

22 126. The Enterprise is still operating; Defendants are currently accepting applications,  
23 selling bid packs, making false representations, conducting gambling operations, accepting bets  
24 and reaping profits based on their continued illegal conduct.  
25  
26

1                   **1. DEFENDANTS' VIOLATION OF STATE AND FEDERAL GAMBLING**  
2                   **STATUTES**

3                   127.    The Enterprise engaged in and affected commerce because it engaged in the  
4 following activities across state boundaries: The creation, use, and furtherance of an illegal  
5 gambling operation in violation of state and federal law.

6                   128.    18 U.S.C. §1955 prohibits gambling activity that violates state law, involves five  
7 or more persons, and has been in continuous operation for more than 30 days or has gross  
8 revenues of \$2,000 in any single day.

9                   129.    The Enterprise violates 18 U.S.C. § 1301, "Importing or Transporting Lottery  
10 Tickets". The enterprise advertises and lists prizes drawn or awarded by means of a lottery, gift,  
11 enterprise or similar scheme. Defendants using the Internet knowingly transmit information to be  
12 used for purposes of procuring lottery check tickets, chance, share or interest.

13                   130.    The Enterprise violates 18 U.S.C. § 1084, "Transmission of Wagering  
14 Information". The Enterprise is engaged in the business of betting or wagering and knowingly  
15 uses wire communication for the transmission in interstate commerce, bets or wagers or  
16 information assisting in the placing of bets or wagers, which entitles the recipient to receive  
17 money or credit as a result of those wagers. 18 U.S.C. § 1084 (1994) makes it illegal to operate a  
18 betting or wagering business using telephone lines or other "wire communication facility."  
19

20                   131.    The Enterprise violates Washington RCW § 9.46, et seq. Under Washington law,  
21 gambling is illegal unless authorized by the state Gambling Commission. Defendants' scheme is  
22 simple. Defendants solicit unwitting consumers to pay money for entry into auctions for the  
23 chance to win prizes. The last person to bid is the one and only winner. This is the essence of a  
24 lottery and gambling: (1) a prize, (2) an element of chance, and (3) consideration for the chance to  
25  
26

1 win the prize. The Gambling Enterprise's violations include the laws prohibiting "Gambling,"  
2 RCW § 9.46.0237; "Professional gambling" RCW § 9.46.0269(1)(a)(c)(d)(e); "Bookmaking,"  
3 RCW § 9.46.0213; providing "Gambling information" as defined by RCW § 9.46.0245;  
4 maintaining "Gambling records" as defined by RCW § 9.46.0253; "Lottery" RCW § 9.46.0257  
5 and "Gambling device" RCW § 9.46.0241. Defendants are not state agencies or licensed to run  
6 lotteries or gambling activities, therefore they violate state law by operating an illegal gambling  
7 enterprise.  
8

9 The Enterprise violates the gambling and lottery laws of all 50 states because gambling is  
10 illegal unless authorized by the state Gambling Commissions. Defendants do not have the  
11 requisite licenses or permissions from any of the 50 states.

12 132. Project Fair Bid, Inc., Mayfield Fund, Foundation Capital and First Round Capital,  
13 moreover, employ five or more persons in furtherance of the Enterprise, have operated the  
14 Gambling Enterprise continuously since at least 2009, and have generated gross revenues that  
15 exceed two thousand dollars on many days.  
16

17 133. As a direct and proximate cause of the illegal gambling activity, Plaintiff and Class  
18 Members were directly injured in their business or property because Class Members have paid  
19 millions for bid packs and gambling fees, and have lost the use of their money.  
20

## 21 2. DEFENDANTS' VIOLATION OF 18 U.S.C., 1344(2) — BANK FRAUD

22 134. The Defendants engaged in and affected interstate commerce because they  
23 engaged in the following activities across state boundaries: First, the creation, use, and  
24 furtherance of their illegal gambling operation was fostered by the use of bank credit card funds,  
25 transactions and payments, which were under the "custody or control" of federally insured  
26 financial institutions. Second, the creation, use, and furtherance of their fraudulent scheme to

1 obtain money by means of false or fraudulent pretenses, representations or promises were fostered  
2 by the use of bank credit card funds, transactions and payments which were under the custody or  
3 control” of federally insured financial institutions.

4 135. The Defendants *knowingly* executed or attempted to execute their scheme to  
5 defraud or to obtain property by means of false or fraudulent pretenses, representations, or  
6 promises as more particularly alleged herein.  
7

8 136. The Defendants *intended to defraud* and obtain moneys, funds, credits, assets or  
9 other property owned by, or under the custody or control of, federally insured financial  
10 institutions, by means of false or fraudulent pretenses, representations, or promises as more  
11 particularly alleged herein.

12 137. Defendants false or fraudulent pretenses, representations, and/or promises, include,  
13 but are not limited to: (1) false representations or omissions as to the legality of Defendants’  
14 “auctions”; (2) fraudulent pretenses or omissions that the “auctions” did not violate state and  
15 federal gambling laws; (3) failure to advise and share their concerns and legal opinions regarding  
16 the legality of their auctions; (4) false or fraudulent pretenses, representations, and/or promises,  
17 that their auctions were fair; (5) that their “auctions” were easy to win; (6) that huge saving could  
18 be expected by everyone, (7) that it was free, (8) that they were guaranteed to win, (9) that  
19 everyone was a winner, (10) that they could not lose; (11) falsely representing that that  
20 merchandise were brand new when in fact much of the merchandise did not come with good title,  
21 (12) fraudulently transferring merchandise without good title, warranties or service; (13  
22 fraudulently allowing the use of computer scripts which render all previous bids worthless before  
23 they are placed.  
24  
25  
26

1 138. Defendants' bank fraud involved five or more persons, and has been in continuous  
2 operation for more than 30 days. All of Defendants money transaction with Plaintiff and Class  
3 Members involve bank credit cards and such transactions occurred continuously since 2009 and  
4 involve in excess of \$2,000 per day.

5 139. Defendants' fraudulent scheme was intended to entice victims, such as Plaintiff  
6 and Class Members to pay Defendants money, using credit card transactions involving federally  
7 insured financial institutions and banks, for the chance to win prizes.

8 140. Defendants by false or fraudulent pretenses, representations, and/or promises,  
9 advertise "HUGE SAVINGS. UP TO 98% OFF! "It's as easy as 1-2-3". "Winners save around  
10 75% on average, and many save 98% or even more." "Winning can be surprisingly easy or easier  
11 said than done, depending on who else is bidding." "We guarantee you a fair chance to win a  
12 great deal". "Everyone's a winner on BigDeal.com". "You can't lose" and "come on, you have  
13 nothing to lose". "Can everyone be a winner? Absolutely!" "Are products brand new?  
14 Unquestionably and indubitably yes." "All products on BigDeal are brand new". "How many bids  
15 does it take to win? That depends on what you're bidding for."

16 141. These statements are false representations and promises, since the odds of winning  
17 on any bid are very low, Big Deal cannot guarantee a fair chance to win, you definitely can lose  
18 and the chances of winning are remote. Not all products are "brand new" because the  
19 manufacturer or distributor prohibits them from being resold or transferred. These products are  
20 resold without good title, warranties or support. Examples are Apple products, which are  
21 prohibited from being resold. Defendants cannot guarantee a fair chance to win, first, because the  
22 odds of winning are very low; second, because Defendants do not and cannot adequately protect  
23 Plaintiff and Class Members from other players cheating by colluding with other players, using  
24  
25  
26

1 “bots,” automated programs, scripts, multiple computers with different login id’s, multiple email  
2 addresses or otherwise unfairly manipulating auctions; third, Defendants allow the use of  
3 computer scripts to automatically place bids when 30 seconds are left in an auction. This means  
4 that all previous bids were lost bids before they were placed.

5 142. Defendants falsely represents that the number of bids necessary to win depends on  
6 “what you’re bidding for,” when in fact it only takes one bid to win and any winning bid is  
7 merely a matter of chance.  
8

9 143. Defendants’ scheme failed to disclose that the website is an illegal online gambling  
10 website.

11 144. Defendants failed to disclose their research into whether or not there website was  
12 legal. Defendants failed to disclose or offer information as to the legalities of their website  
13 activities.  
14

15 145. Defendants’ website presents testimonials from players, which gives the  
16 impression that others are satisfied, that the website is legal, that their auctions are fair, that it is  
17 easy to win and that huge saving can be expected. These statements are false representations and  
18 promises and Defendants knowingly engaged in fraudulent pretenses to swindle customers’  
19 money.  
20

21 146. As stated above, Defendants allow players to use a computer script, called “Bid  
22 Buddy,” which automatically places bids for the player when the timer reaches 30 seconds or  
23 below. The use of Bid Buddy means that all previous bids, before the 30 second reset, were  
24 automatically failed bids prior to being placed. Defendants knew that these bids were failed bids  
25 before they were placed and did not advise players of this fact. Defendants knew that Plaintiff and  
26 Class Members had no chance of winning at the time they placed their bids because automatic



1 Bid Buddies were already in place to defeat any other bids. Defendants fraudulently robbed  
2 Plaintiff and Class Members of their money because Defendants knew that Plaintiff and Class  
3 Members had no chance of winning.

4 147. Defendants' intent was to entice people to play by making it appear that  
5 Defendants are conducting a fair and legitimate business and that it is easy to win prizes by only  
6 risking a small amount of money.

7  
8 148. Defendants' fraudulent scheme involves the illegal resale of merchandise to  
9 Plaintiffs and Class Members that is strictly prohibited from being resold by the manufactures or  
10 distributors.

11 149. Plaintiff incorporates herein by reference the specific allegation contained in Count  
12 III (CPA) with regard to Defendants other false or fraudulent pretenses, representations, and/or  
13 promises.

14  
15 150. Defendants' scheme to defraud Plaintiff and Class Members through their illegal  
16 Enterprise and/or fraudulent representations and promises, resulted in credit card charges to  
17 Plaintiff and Class Members accounts that were "under the custody or control of" their federally  
18 insured financial institutions or banks.

19 151. The Defendants violated 18 U.S.C., 1344(2) because their scheme to defraud  
20 resulted in the victims, Plaintiff and Class Members, authorizing their banks and financial  
21 institutions to release funds to the perpetrators i.e. the Defendants.

22  
23 152. As a direct and proximate cause of Defendants scheme to defraud and by enticing  
24 Plaintiff and Class Members to pay money under the custody or control of their financial  
25 institutions to Defendants, Plaintiff and Class Members were *directly injured* in their business or  
26 property because they have paid fees for bid packs and fees for bidding. They also lost the use of

1 their money. Plaintiffs and Class Members money was the *direct target* of Defendants' bank  
2 fraud.

3 153. *But for* Defendants illegal schemes, which were intentionally designed to obtain  
4 money, credit and funds under the custody or control of their financial institutions, Plaintiffs and  
5 Class Members would not have been injured.

6 154. Defendants' conduct and scheme to obtain money, credits and funds under the  
7 custody or control of their financial institutions was the direct and proximate cause of Plaintiff  
8 and Class Members injuries to their business or property, i.e. the loss of their money.

9  
10 **3. DEFENDANTS' VIOLATION OF 18 U.S.C., 1343 — WIRE FRAUD**

11 155. Plaintiff and Class Members incorporate by reference all previous and subsequent  
12 allegations contained herein.

13 156. The Defendants engaged in and affected interstate commerce because they  
14 engaged in the following activities across state boundaries: The creation, use, and furtherance of  
15 their fraudulent scheme and illegal gambling enterprise was fostered by the use of wire (the  
16 internet) in violation of 18 U.S.C., 1343.

17 157. The Defendants knowingly executed or attempted to execute their scheme to  
18 defraud or to obtain property by means of false or fraudulent pretenses, representations, or  
19 promises on the internet as more particularly alleged herein.

20 158. Defendants devised a scheme using the internet to defraud and obtain money and  
21 property from Plaintiff and Class Members, by means of false or fraudulent pretenses,  
22 representations, and/or promises, including but not limited to : (1) false representations or  
23 omissions as to the legality of Defendants' "auctions"; (2) fraudulent pretenses or omissions that  
24 the "auctions" did not violate state and federal gambling laws; (3) failure to advise and share their  
25  
26

1 concerns and legal opinions regarding the legality of their auctions; (4) false or fraudulent  
2 pretenses, representations, and/or promises, that their auctions were fair; (5) that "auctions" were  
3 easy to win; (6) that huge saving could be expected by everyone, (7) that it was free, (8) that they  
4 were guaranteed to win, (9) that everyone was a winner and (10) that they could not lose; (11)  
5 falsely representing that that merchandise were brand new when in fact much of the merchandise  
6 did not come with good title, (12) fraudulently transferring merchandise without good title,  
7 warranties or service; (13 allowing the use of computer scripts which render all previous bids  
8 worthless before they are placed.  
9

10 159. One of Defendants' fraudulent wire schemes was to entice victims, such as  
11 Plaintiff and Class Members to pay money to Defendants, for the opportunity to engage in illegal  
12 gambling activities for the chance to win prizes.

13 160. Another of Defendants fraudulent wire schemes was to entice victims, such as  
14 Plaintiff and Class Members to pay Defendants money by using false or fraudulent pretenses,  
15 representations, and/or promises.  
16

17 161. Defendants advertise "HUGE SAVINGS. UP TO 98% OFF! "It's as easy as 1-2-  
18 3". "Winners save around 75% on average, and many save 98% or even more." "Winning can be  
19 surprisingly easy or easier said than done, depending on who else is bidding." "We guarantee you  
20 a fair chance to win a great deal". "Everyone's a winner on BigDeal.com". "You can't lose" and  
21 "come on, you have nothing to lose". "Can everyone be a winner? Absolutely!" "Are products  
22 brand new? Unquestionably and indubitably yes." "All products on BigDeal are brand new".  
23

24 162. These statements are false representations and promises, since the odds of winning  
25 on any bid are very low, Big Deal cannot guarantee a fair chance to win, you definitely can lose  
26 and it is not easier said than done. Not all products are "brand new" because the manufacturer or

1 distributor prohibits them from being legally re-sold or transferred. These products are being re-  
2 sold without good title, warranties or support. Defendants cannot guarantee a fair chance to win,  
3 since Defendants do not and cannot adequately protect Plaintiff and Class Members from other  
4 players cheating by colluding with other players, using “bots,” automated programs, scripts,  
5 multiple computers with different login id’s, multiple email addresses or otherwise unfairly  
6 manipulating auctions.  
7

8 163. Defendants’ scheme also failed to disclose that the website is actually an illegal  
9 online gambling website.

10 164. Defendants did not disclose their research into whether or not there website was  
11 legal. Defendants did not disclose or offer information as to the legalities of their website  
12 activities.

13 165. Defendants’ website presents testimonials from players, which gives the  
14 impression that others are satisfied, that the website is legal, that their auctions are fair, that it is  
15 easy to win and that huge saving can be expected. These statements are false representations and  
16 promises and Defendants knowingly engaged in fraudulent pretenses to swindle customers’  
17 money.  
18

19 166. Defendants entice people to play by making it appear that Defendants are  
20 conducting a fair and legitimate business and that it is easy to win prizes by only risking a small  
21 amount of money.  
22

23 167. Another wire fraud scheme of Defendants using false or fraudulent pretenses,  
24 representations, and/or promises involves cheating Plaintiffs and Class Members by allowing  
25 players to use a computer script called “Bid Buddy”. Bid Buddy allows players, in advance, to  
26 automatically place bids when the timer reaches 30 seconds or below. The use of Bid Buddies

1 means that all previous bids, before the 30 second reset, were guaranteed failed bids, prior to  
2 being placed. Defendants knew that these bids were failed bids before they were placed. By  
3 allowing the use of the computer script, Defendants fraudulently robbed Plaintiff and Class  
4 Members of their money. Defendants knew that Plaintiff and Class Members had no chance of  
5 winning at the time they placed their bids, but notwithstanding this knowledge, they took Plaintiff  
6 and Class Members' money.

8 168. Plaintiff further incorporates herein by reference the specific allegation contained  
9 in Count III (CPA) with regard to Defendants other false or fraudulent pretenses, representations,  
10 and/or promises.

11 169. Defendants' scheme to defraud Plaintiff and Class Members through their illegal  
12 Enterprise and/or fraudulent representations and promises, resulted in Plaintiff and Class  
13 Members losing money. Plaintiffs and Class Members money was the *direct target* of  
14 Defendants' wire fraud.

16 170. As a direct and proximate cause of Defendants scheme to defraud through their  
17 false or fraudulent pretenses, representations, and/or promises, Plaintiff and Class Members were  
18 directly injured in their business or property because Class Members have paid money to  
19 Defendants, and they have lost the use of their money.

21 171. *But for* Defendants illegal schemes, which were intentionally designed to obtain  
22 money, Plaintiffs and Class Members would not have been injured.

23 Defendants' conduct and scheme to obtain money, was the direct and proximate cause of  
24 Plaintiff and Class Members injuries to their business or property, i.e. their loss of their money.

1                   **4. CONDUCT OF THE RICO ENTERPRISE'S AFFAIRS**

2                   172.    During the Class Period, Project Fair Bid, Inc. exerted control over the Enterprise  
3 and, in violation of Section 1962(c) of RICO, it has conducted or participated in the conduct of  
4 the affairs of the Enterprise, directly or indirectly, in the following ways:

5                   173.    Project Fair Bid, Inc. had and continues to have a degree of control concerning the  
6 conduct and operation of the Enterprise; and

7  
8                   174.    Project Fair Bid, Inc., upon information and belief, directly controlled, and  
9 continues to directly control, the creation and distribution of the website, marketing, sales,  
10 advertising and other materials used to inform and entice Plaintiff and Class Members to pay  
11 money to the Enterprise.

12                   175.    Defendants, Mayfield Fund, Foundation Capital and First Round Capital, as  
13 venture capital investors in Project Fair Bid, Inc., have invested money and provided funding to  
14 Project Fair Bid, Inc. with the intent that Project Fair Bid, Inc.' online gambling business and/or  
15 scheme to defraud would flourish and provide them with profits. Defendants, Mayfield Fund,  
16 Foundation Capital and First Round Capital, as venture capital investors in Project Fair Bid, Inc.,  
17 offer management support, make recommendations and otherwise facilitate the Enterprise.  
18

19                   176.    Defendants, Mayfield Fund, Foundation Capital, First Round Capital and Does,  
20 knew or should have known that Project Fair Bid, Inc.'s online "auctions" were illegal gambling  
21 in violation of state and federal gambling laws.

22  
23                   177.    Defendants, Mayfield Fund, Foundation Capital, First Round Capital and Does,  
24 knew or should have known that Project Fair Bid, Inc.'s online "auctions" were an illegal scheme  
25 to defraud involving bank and wire fraud and in violation of state consumer protection laws.  
26

1 178. Defendants, Mayfield Fund, Foundation Capital and First Round Capital, knew or  
2 should have known that Project Fair Bid, Inc.'s online "auctions" were a scheme to defraud based  
3 on false or fraudulent pretenses, representations, and/or promises, that the auctions were fair, that  
4 it was easy to win, that huge saving could be expected, and that merchandise was brand new.

5 179. The Enterprise had and continues to have a hierarchical decision-making structure  
6 headed by Project Fair Bid, Inc. Defendants, Mayfield Fund, Foundation Capital and First Round  
7 Capital, as venture capital investors in Project Fair Bid, Inc., advised, directed, and at times,  
8 issued instructions on how the Enterprise was to operate and Project Fair Bid, Inc. accepted those  
9 instructions.  
10

11 180. Project Fair Bid, Inc. allowed, and continues to allow, Mayfield Fund, Foundation  
12 Capital and First Round Capital to exert control over its organization and provide funding and  
13 oversight. Mayfield Fund, Foundation Capital and First Round Capital have participated and  
14 continue to participate in the enterprise because the revenues generated by the illegal Enterprise  
15 and/or scheme to defraud were and are a fruitful part of their businesses, and Project Fair Bid, Inc.  
16 was integral to increasing Mayfield Fund, Foundation Capital and First Round Capital's profits  
17 for the reasons set forth herein.  
18

19 181. Mayfield Fund, Foundation Capital and First Round Capital's funding, support,  
20 advice and control have aided Project Fair Bid in its effort to create, establish, maintain and profit  
21 from the illegal Enterprise.  
22

23 182. In violation of Section 1962(c) of RICO, each Defendant conducted the affairs of  
24 the Enterprise with which it associated by, among other things, operating an illegal gambling  
25 enterprise and/or by operating an illegal scheme to defraud consumers by means of bank fraud  
26 and wire fraud.

1                   **5. DEFENDANTS' PATTERN OF RACKETEERING ACTIVITY**

2           183. Each of the Defendants conducted and participated in the affairs of the Enterprise  
3 through a pattern of racketeering activity, including acts that are indictable under 18 U.S.C. §  
4 1955, relating to illegal gambling, 18 U.S.C. § 1344, relating to bank fraud and 18 U.S.C. §.1343  
5 relating to wire fraud.

6           184. Defendants' pattern of racketeering involved thousands of separate instances of  
7 illegal gambling, bank and wire fraud. Defendants knowingly solicited and accepted Class  
8 Members' money in furtherance of the gambling, bank fraud and wire fraud Enterprise.  
9 Defendants knew or should have known that their conduct was illegal. Each transaction involving  
10 the solicitation and acceptance of Class Members' money constitutes a "racketeering activity"  
11 within the meaning of 18 U.S.C. § 1961(1)(B). Collectively, these violations constitute a "pattern  
12 of racketeering activity," within the meaning of 18 U.S.C. § 1961(5), in which Defendants  
13 intended to unlawfully obtain money from Plaintiff and Class Members.

14           185. Project Fair Bid, Inc., Mayfield Fund, Foundation Capital and First Round Capital  
15 calculated and intentionally designed the gambling activity, bank and wire fraud to ensure that  
16 Class Members would pay fees that would create revenues for Defendants. In designing and  
17 implementing the gambling activities and scheme to commit bank and wire fraud, the Defendants  
18 were cognizant of the fact that Plaintiff and Class Members would not know and have no reason  
19 to know that the gambling was illegal and that there was a scheme to commit bank and wire  
20 fraud; and that Plaintiff and Class Members would rely on the integrity and business acumen of  
21 Project Fair Bid, Inc., Mayfield Fund, Foundation Capital and First Round Capital as to the  
22 legality and fairness of Defendants' auctions.  
23  
24  
25  
26



1 186. Defendants' website specifically identifies the venture capital investments of  
2 Mayfield Fund, Foundation Capital and First Round Capital in order to promote the legitimacy,  
3 integrity and business acumen of the Enterprise.

4 187. Project Fair Bid, Inc., Mayfield Fund, Foundation Capital and First Round Capital  
5 have each engaged in the pattern of racketeering activity for conducting the ongoing business  
6 affairs of the Enterprise.

8 **6. DAMAGES CAUSED BY DEFENDANTS' ILLEGAL GAMBLING**

9 188. Plaintiff and Class Members had no basis to know or even suspect that the conduct  
10 was part of an illegal gambling operation because Defendants scheme was based on false or  
11 fraudulent pretenses, representations, and/or promises, false and deceptive advertising and  
12 marketing.

13 189. Plaintiff and Class Members relied on Defendants' false or fraudulent pretenses,  
14 representations, and/or promises, and advertising as to the legality of the auctions and they paid  
15 money to Defendants based on that reliance.

17 190. Plaintiff and Class Members relied on Defendants' false or fraudulent pretenses,  
18 representations, and/or promises, and advertising that their auctions were fair, that it was easy to  
19 win, that huge saving could be expected, that merchandise was brand new; and they paid money  
20 to Defendants based on that reliance.

21 191. Plaintiff and Class Members were unfairly and deceptively induced into paying  
22 money to Defendants for the chance to receive great savings on merchandise.

24 192. Plaintiff and Class Members and Defendants were not in "pari delicto" because of  
25 Defendants false or fraudulent pretenses, representations, and/or promise and unfair and deceptive  
26 conduct and inducements to Plaintiff and Class Members.

1 193. Plaintiff and Class Members have state-created “property or business” interests  
2 because of their entitlement to money damages pursuant to (1) RCW § 9.46.200; (2) RCW §  
3 4.24.070; (3) RCW 19.86 et seq. (Consumer Protection Act); (4) Criminal Profiteering Act, RCW  
4 19.82.100; and (6) restitution.

5  
6 194. Plaintiff and Class Members have federally-created “property or business”  
7 interests because of their entitlement to money damages pursuant to Defendants illegal bank and  
8 wire fraud.

9 195. Defendants' violation of federal and state law, and their pattern of racketeering  
10 activity, has directly and proximately caused Plaintiff and Class Members to be injured in their  
11 business or property because Class Members have paid millions of dollars in bid pack fees and  
12 gambling fees.

13  
14 196. The money paid by Plaintiff and Class Members to Defendants for entry fees and  
15 bidding fees was the “direct target” sought by Defendants’ RICO Enterprise.

16 197. *But for* Defendants creating, establishing and conducting illegal gambling  
17 activities and committing bank and wire fraud, Plaintiff and Class Members would not have paid  
18 valuable consideration to Defendants and they would not have been injured in their business and  
19 property, i.e. lost their money.

20 198. Defendants’ conduct of creating, establishing, operating and deceptively  
21 advertising their gambling activities, their conduct of obtaining funds through bank fraud and  
22 wire fraud, were the direct and proximate cause of Plaintiff and Class Members loss of money to  
23 Defendants. This harm was proximately caused “by reason” of the RICO violations.

24  
25 199. Plaintiff and Class Members did not receive any benefit of the bargain, because in  
26 exchange for their money, they only received illegal and/or worthless vouchers. Even if Class

1 Members won a prize much of the merchandise was illegally re-sold by Defendants. Plaintiff and  
2 Class Members did not receive anything of value for their money.

3 200. Plaintiff and Class Members were the parties injured by Defendants. They are the  
4 immediate victims of Defendants' Bank Fraud, Wire Fraud and illegal Enterprise. There are no  
5 other persons or entities better situated to sue Defendants for their RICO violations than Plaintiff  
6 and Class Members.

7  
8 201. Under the provisions of Section 1964(c) of RICO, Project Fair Bid, Inc., Mayfield  
9 Fund, Foundation Capital, First Round Capital and Does are jointly and severally liable to Class  
10 Members for three times the damages that Class Members have sustained, plus the costs of  
11 bringing this suit, including reasonable attorneys' fees.

12 202. Under the provisions of Section 1962 of RICO, this court has jurisdiction to  
13 prevent and restrain violations of Section 1962 of this chapter by issuing appropriate orders to  
14 enjoin Project Fair Bid, Inc., Mayfield Fund, Foundation Capital, First Round Capital and Does  
15 from continuing their illegal gambling enterprise wire fraud and bank fraud.  
16

17 **a. Alternative Relief**

18 203. The subsequent paragraphs of this Complaint for alternative relief articulated in  
19 Count III regarding the CPA, are alleged and incorporated by reference as though fully set forth  
20 herein.

21 204. If the court finds that Defendants did not engaged in gambling because no chance  
22 or future contingent event exists in Defendants' auctions, then Plaintiff and Class Members  
23 demand, under Section 1964(c) of RICO based on Defendants' Bank and Wire Fraud violations,  
24 that Defendant deliver the value of merchandise for each \$.75 bid.  
25  
26

1           205. Class Members demand an award of the retail price listed for each bid, for every  
2 auction conducted by Defendants.

3  
4           **B. COUNT II — Violations of RCW Chapter 9A.82 (Washington Criminal  
5 Profiteering Act) (As to all Defendants).**

6           206. Plaintiff alleges and incorporates by reference each of the allegations contained in  
7 the preceding and subsequent paragraphs.

8           207. Plaintiff specifically re-alleges the allegations contained in Count I because they  
9 relate directly to this cause of action, commonly referred to as the Washington Racketeer  
10 Influenced and Corrupt Organization Act.

11           208. Defendants, as described more specifically in Count I, have knowingly and  
12 intentionally received, and continue to receive, proceeds derived from a pattern of racketeering  
13 activity.

14           209. Defendants use and invest those proceeds or the proceeds derived from them, to  
15 acquire, establish, and operate an illegal gambling enterprise and engage in bank and wire fraud.

16           210. Defendants, through a pattern of racketeering activity more fully described under  
17 Count I, knowingly and intentionally acquired and maintained, and continue to acquire and  
18 maintain, an interest in an illegal enterprise.

19           211. Plaintiff and Class members are aggrieved persons under RCW § 91A.82.100, in  
20 that they have been harmed by Defendants' pattern of racketeering activity, and acquisition and  
21 maintenance of an illegal enterprise.

22           212. Plaintiff and Class Members continue to suffer from Defendants' corrupt business  
23 influences, and seek an injunction preventing Defendants from continuing their illegal activity.  
24  
25  
26

1           213. Defendants are liable to Class Members for three times the actual damages, the  
2 costs of bringing this suit, including reasonable attorneys' fees.  
3

4           **C. COUNT III — Consumer Protection Act (RCW 19.86 *et seq.*) (As to all**  
5           **Defendants).**

6           214. The preceding and subsequent paragraphs of this Complaint are alleged and  
7 incorporated by reference.

8           215. RCW 19.86 Washington's Consumer Protection Act provides that "Unfair methods  
9 of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce  
10 are hereby declared unlawful." RCW § 19.86.020.

11           216. Defendants unfairly and deceptively make their "auction" website appear to be a  
12 legal auction like eBay, when in fact they are illegal auctions.

13           217. Defendants by means of false or fraudulent pretenses, representations, and/or  
14 promises made it appear that their auctions were fair, that it was easy to win and that huge saving  
15 could be expected.  
16

17           218. Defendants by false or fraudulent pretenses, representations, and/or promise  
18 advertise "HUGE SAVINGS. UP TO 98% OFF! "It's as easy as 1-2-3". "Winners save around  
19 75% on average, and many save 98% or even more." "Winning can be surprisingly easy or easier  
20 said than done, depending on who else is bidding." "We guarantee you a fair chance to win a  
21 great deal". "Everyone's a winner on BigDeal.com". "You can't lose" and "come on, you have  
22 nothing to lose". " "Can everyone be a winner? Absolutely!" "Are products brand new?  
23 Unquestionably and indubitably yes." "All products on BigDeal are brand new". "How many bids  
24 does it take to win? That depends on what you're bidding for."  
25  
26

1           219. These statements are false representations and promises, since the odds of winning  
2 on any bid are very low, Big Deal cannot guarantee a fair chance to win, you definitely can lose  
3 and the chances of winning are remote. Not all products are “brand new” because the  
4 manufacturer or distributor prohibits them from being legally re-sold or transferred. These  
5 products are being re-sold without good title, warranties or support. It only takes one bid to win,  
6 but Defendants falsely represent “that it depends on what you’re bidding for.”  
7

8           220. Defendants’ website and marketing material unfairly and deceptively make it  
9 appear that it is easy 1-2-3 to win, when in fact the odds of winning are very low.

10           221. Defendants’ website and marketing material unfairly and deceptively states that  
11 “we guarantee you a fair chance to win a great deal”.

12           222. Defendants’ website and marketing material unfairly and deceptively advised  
13 Plaintiff and Class Members that they “can’t lose” and “you have nothing to lose” and encourages  
14 them to participate.  
15

16           223. Defendants unfairly and deceptively advertise that their merchandise is “brand  
17 new” when in fact they are not. Much of BigDeal’s merchandise is being illegally re-sold in  
18 violation of manufacturers or distributors’ contracts. These products are re-sold without good  
19 title, warranties or support.  
20

21           224. Defendants’ website and marketing material fails to disclose any information  
22 regarding whether the auctions are legal. There is no mention whether the conduct of accepting  
23 money for the chance to win prizes or accepting money to bid (bet) on the outcome of a future  
24 contingent event is illegal.

25           225. Defendants have obtained legal opinions on the lawfulness of their website, but  
26 they unfairly and deceptively did not provide that information to Plaintiff and Class Members. It

1 was unfair and deceptive for Defendants' to omit this necessary information. Plaintiff and Class  
2 Members required this information to evaluate the risks of the website, the legality of the website,  
3 to determine whether they could legally do business with Defendants.

4           226. Defendants' website makes it appear that it is a reputable and legal auction site.  
5 There are video testimonials from customers who have won prizes, making it appear that it is easy  
6 to win and that the auction site is legitimate. There is a FAQ page, but there is no mention or  
7 guidance to customers on the legality of the website.  
8

9           227. Defendants allow customers to register free, creating the deception that the auction  
10 site is like all other legal auction sites like eBay.

11           228. Defendants' representation of "FREE" violates FTC regulations on advertising  
12 "FREE" services or products.

13           229. Defendants' actions were and are unfair and deceptive because they do not advise  
14 Plaintiff and Class Members that their website is not a legal auction site but rather an illegal  
15 gambling website.  
16

17           230. Defendants' actions were and are unfair and deceptive because they do not advise  
18 Plaintiff and Class Members that in exchange for the money that they are paying to Defendants,  
19 they have little or no chance of winning a prize.

20           231. Defendants' actions were and are unfair and deceptive because they do not advise  
21 Plaintiff and Class Members of their odds of winning a prize on Defendants' website, or their  
22 odds or chance of winning any particular "auction".  
23

24           232. Defendants' actions were and are unfair and deceptive because they do not advise  
25 that the odds or chance of winning are very low.  
26

1           233. Defendants' actions were and are unfair and deceptive because they do not advise  
2 Plaintiff and Class Members that their odds or chance of winning do not increase with their next  
3 bid or with repeated bidding or by their selection of the timing of when to place a bid.

4           234. Defendants' actions were and are unfair and deceptive because they do not advise  
5 Plaintiff and Class Members that no matter how many times they bid or when they chose to place  
6 their bid, they are getting no closer to winning the prize than they were on their first failed bid or  
7 any of their other failed bids.  
8

9           235. Defendants' actions were and are unfair and deceptive because they allow players  
10 to use a computer script called "Bid Buddy". Bid Buddy allows players, in advance, to  
11 automatically place bids when the timer reaches 30 seconds or below. The use of Bid Buddies  
12 means that all previous bids, before the 30 second reset, were guaranteed failed bids, prior to  
13 being placed. Defendants knew that these bids were failed bids before they were placed, and thus,  
14 fraudulently robbed Plaintiff and Class Members of their money.  
15

16           236. Defendants' false or fraudulent pretenses, representations, and/or promise through  
17 marketing material, advertisements, FAQ's, tutorials, instructions and other material unfairly and  
18 deceptively advises Plaintiff and Class Members on alleged strategies to win, such as (when to  
19 bid, how much to bid, when to bid, what to watch for, etc.), when in fact these strategies are  
20 worthless and do not increase a players odds or chance of winning.  
21

22           237. Defendants marketing material, advertisements, FAQ's, tutorials, instructions and  
23 other material unfairly and deceptively gave the false impression that Plaintiff and Class Members  
24 odds or chances of winning were high, when in fact their chances of winning were very low.  
25  
26



1           238. Defendants marketing material unfairly and deceptively makes it appear that  
2 winning takes skill and that by learning those skill and with practice players can learn how to win,  
3 when fact winning is merely a matter of chance.

4           239. Defendants' unfair and deceptive scheme was to entice victims, such as Plaintiff  
5 and Class Members to pay Defendants money, based on false or fraudulent pretenses,  
6 representations, and/or promises that their auctions were fair, that it was easy to win, that huge  
7 saving could be expected and merchandise was brand new.

8           240. Defendants unfairly and deceptively guaranteed a fair chance to win. Defendants  
9 cannot guarantee a fair chance to win, since Defendants do not and cannot adequately protect  
10 Plaintiff and Class Members from other players cheating by colluding with other players, using  
11 "bots," automated programs, scripts, multiple computers with different login id's, multiple email  
12 addresses or otherwise unfairly manipulating auctions.

13           241. Defendants sell their prizes to winners at a price well below the minimum resale  
14 price established by manufacturers and well below other retailer prices. Defendants' illegal  
15 gambling and unfair and deceptive practices allow them to subsidize the sale of their prizes at  
16 below market rates. This conduct is unfair and anti-competitive in violation of RCW § 19.86.  
17

18           242. Defendants are not authorized to sell or re-sell the products for less than  
19 manufacturers' suggested retail price. This is anti-competitive and an unfair and deceptive  
20 practice.  
21

22           243. Defendants conduct as described above is theft by deception under the Washington  
23 theft Statute, Wash. Rev. Code. § 9A.56.020(1)(a),(b), as defined by RCW § 9A.56.010(4) and  
24 (5)(a),(b),(d),(e). Illegal conduct is a violation of the CPA.  
25  
26

1           244. The above stated omissions and unfair and deceptive acts were and are important  
2 and material facts necessary for Plaintiff and Class Members decision making process on whether  
3 to do business with Defendants and pay money to Defendants.

4           245. Plaintiff and Class Members relied on the above stated unfair and deceptive acts  
5 and omissions to their detriment.

6           246. Defendants' illegal gambling and their unfair and deceptive marketing, advertising  
7 and conduct constitute "unfair" and deceptive practice under the Washington Consumer  
8 Protection Act.

9           247. Defendants' illegal gambling enterprise and their unfair and deceptive conduct and  
10 practices have deceived Plaintiff and Class Members.

11           248. Defendants' unfair, deceptive and illegal conduct was repeated thousands of times.

12           249. The unfair, deceptive and illegal conduct complained of herein occurred during  
13 the course of Defendants' business operations, and occurred as a generalized course of conduct.  
14 This conduct is unfair and anti-competitive in violation of RCW § 19.86. This conduct harms the  
15 public and legitimate retailers.

16           250. Defendants' unfair and deceptive acts or practices have the capacity to deceive,  
17 and did deceive, a substantial portion of the public and have the potential for repetition. The  
18 unfair, deceptive and illegal conduct complained of herein affected the public interest. Defendants  
19 operated and continue to operate a gambling enterprise without a license. Defendants solicited  
20 Class Members to participate in their unlicensed gambling enterprise, and continue to solicit the  
21 general public to participate in the gambling enterprise, even though it has not obtained a license  
22 and is not qualified to obtain a license.  
23  
24  
25  
26

1           251. Defendants' solicitation of Class Members, and continued solicitation, constitutes  
2 an unfair practice and involves deceptive mean. This conduct is unfair and anti-competitive in  
3 violation of RCW § 19.86. This conduct harms the public and legitimate retailers.

4           252. As a direct and proximate result of Defendants unfair and deceptive acts and  
5 practices as alleged herein, Plaintiff and Class Members were injured in their business and/or  
6 property.

7  
8           253. *But for* Defendants unfair or deceptive practice, plaintiffs would not have suffered  
9 an injury.

10           254. The gravity of the harm to all consumers from Defendants illegal gambling  
11 enterprise far outweighs any purported reasonable business purpose of those policies and  
12 practices.

13           255. Defendants committed these unfair and deceptive acts or practices in the conduct  
14 of trade or commerce.

15           256. Plaintiff and Class Members seek injunctive relief restraining Defendants from  
16 further illegal conduct, actual damages, cost and attorney's fees, and three times such damages to  
17 be proven at trial pursuant to RCW 19.86.090.

18  
19           **a. Alternative Relief**

20           257. Defendants "auctions" contain an element of chance. The winner is determined by  
21 the outcome of a future contingent event (the last bid). Retail stores like Amazon.com do not have  
22 an element of change or a future contingent event. A click of the button on Amazon purchases the  
23 merchandise because there is no chance, no contingency.  
24  
25  
26

1           258. If Defendants maintain or argue in any brief, filing or proceeding, that their  
2 auctions do not contain an element of chance or that no future contingent event exists, then this is  
3 an admission against interest.

4           259. If no chance or contingency exists (no last bid rule), then Defendants are admitting  
5 that Plaintiff and Class Members were entitled to delivery of the merchandise with each \$.75 bid  
6 — the same as a purchase on Amazon.com.

7  
8           260. If no chance or future contingent exists, then Defendants unfairly and deceptively  
9 withheld from Plaintiff and Class Members the merchandise they rightfully purchased with their  
10 bid.

11           261. Therefore, in the alternative, if Defendant argues or the Court finds that  
12 Defendants did not engaged in gambling because no chance or no future contingent event exists,  
13 then Plaintiff and Class Members demand recovery of the value of the merchandise for each bid  
14 placed.

15  
16           262. Class Members demand an award of the retail price listed for each bid, for every  
17 auction conducted by Defendants, plus costs and attorney's fees.

18  
19           **D. COUNT IV — Declaratory Judgment (RCW Chapter 7.24 et seq.) (As to all  
20 Defendants).**

21           263. The preceding and subsequent paragraphs of this Complaint are alleged and  
22 incorporated by reference as though fully set forth herein.

23           264. The subject matter of the contracts between Defendants and Class Members is  
24 illegal- *i.e.* the implementation of illegal gambling enterprise. As such, the contracts are void as a  
25 matter of public policy and devoid of an element required for contract formation.  
26

1           265. Plaintiff and Class Members, therefore, seek an order declaring the contracts void  
2 *ab initio* under the Washington Uniform Declaratory Judgment Act, RCW Chapter 7.24 *et seq.*

3           266. Plaintiff and Class Members have no adequate remedy at law for the injuries that  
4 are threatened to recur, in that, absent action from this Court, Defendants will continue to enter  
5 into and enforce contracts that are repugnant to public policy and based on unfair, deceptive and  
6 fraudulent practices.

7  
8           267. Plaintiff and Class Members seek the return of their money plus interest because  
9 Defendants have no legal right to retain their money.

10           268. Plaintiff and Class Members seek an injunction preventing Defendants from  
11 continuing to operate and maintain their illegal gambling enterprise.

12           269. Defendants' actions are applicable to the Class as a whole, and therefore  
13 declaratory relief with respect to the Class as a whole is appropriate.  
14

15           **E. COUNT V — Unjust Enrichment, Monies had and Received and/or Restitution**  
16           **(As to all Defendants).**

17           270. The preceding and subsequent paragraphs of this Complaint are alleged and  
18 incorporated by reference as though fully set forth herein.

19           271. There are no valid contracts between Defendants and Class Members, only illegal  
20 agreements written by Defendants.

21           272. Plaintiff and Class Members, on the other hand, entered into the agreements  
22 through the deceptive advertising and marketing of Defendants, with no basis to know or even  
23 suspect that the conduct was part of an illegal gambling operation and void under state law.

24           273. Plaintiff and Class Members are innocent parties to illegal gambling and void  
25 contracts. Defendants had the resources and ability to research, investigate applicable laws and  
26

1 regulations, and rely on professional advice. Upon information and belief, they did so. Defendants  
2 were in a far better position to assess the legality and propriety of the gambling enterprise.

3 274. Defendants did not disclose to Plaintiff or Class Members that their internet  
4 auctions were in reality illegal gambling activities under state law.

5 275. Defendants, because of their illegal agreements and conduct, were unjustly  
6 enriched at the expense of Class Members, and Class Members suffered a detriment because of  
7 Defendants' illegal conduct.

8 276. Defendants should not be unjustly enriched due to the illegal agreements they  
9 created.

10 277. Plaintiff and Class Members paid consideration to Defendants. There was no  
11 consideration or, at the very least, a failure of consideration by Defendants.

12 278. Defendants solicited and accepted money from Class Members and Plaintiff in  
13 furtherance of their illegal gambling enterprise.

14 279. Defendants have received monies from Class Members. Equity and good  
15 conscience requires Defendants to return all money received from Plaintiff and Class Members,  
16 and it would be inequitable for Defendants to retain money received from Plaintiff and Class  
17 Members.

18 280. As such, Plaintiff seeks an order returning all money received from Plaintiff and  
19 Class Members by way of disgorgement, restitution, unjust enrichment or money had and  
20 received.

21 281. Plaintiff seeks an order for monetary benefits or damages to include, but not  
22 necessarily limited to, entry fees and all monetary benefits derived from money submitted to  
23 Defendants.

1                   **b. Alternative Relief**

2                   282. The prior paragraphs of this Complaint for alternative relief under the CPA, are  
3 alleged and incorporated by reference as though fully set forth herein.

4                   283. If the court finds that Defendants did not engaged in gambling because no chance  
5 or future contingent event exists in Defendants' auctions, then Plaintiff and Class Members  
6 demand recovery by way of restitution, disgorgement or money had and received, for Defendants  
7 not delivering the merchandise for each bid.  
8

9                   284. Class Members demand an award of the retail price listed for each bid, for every  
10 auction conducted by Defendants.  
11

12                   **F. COUNT VI — Civil Conspiracy (As to all Defendants).**

13                   285. The preceding and subsequent paragraphs of this Complaint are alleged and  
14 incorporated by reference as though fully set forth herein.

15                   286. Defendants joined in a conspiracy to implement an illegal gambling enterprise  
16 and/or scheme to defraud. Each Defendant also agreed to publish or caused to be published  
17 marketing materials with the express intention to further the illegal gambling enterprise and/or  
18 scheme to defraud. Defendants knew that by agreeing to implement the illegal enterprise, they  
19 were violating state and federal law as described above.  
20

21                   287. Defendants consciously conspired and deliberately pursued a common plan or  
22 design to commit illegal acts, subjecting each to joint and several liability.

23                   288. Defendants each committed one or more unlawful acts in furtherance of this  
24 conspiracy, including acts violating RICO and state and federal gambling laws. All of these acts  
25 were in furtherance of the conspiracy. Defendants further harmed Plaintiff and Class Members by  
26 soliciting their participation in the illegal enterprise.

1           289. As a direct, proximate result of this conspiracy, Plaintiff and Class Members have  
2 been injured, as they have suffered and continue to suffer economic losses and general and  
3 specific damages, all in an amount to be determined according to proof.  
4

5           **G. COUNT VII — Wash. Rev. Code Ann. § 9.46.200 and RCW § 4.24.070 (Action**  
6           **for money damages) (As to all Defendants)**

7           290. The preceding and subsequent paragraphs of this Complaint are alleged and  
8 incorporated by reference as though fully set forth herein.

9           291. Defendants' conduct, as previously alleged, constituted and constitutes an illegal  
10 gambling organization under RCW Chapter 9.46 et seq.

11           292. RCW § 9.46.200 allows for the recovery of money damages from every person  
12 controlling the operation of any gambling activity.

13           293. Lotteries are "authorized" under, if no consideration is charged. Defendants are  
14 liable to Plaintiff and Class Members under RCW § 9.46.200 because although lotteries are  
15 authorized, Defendants violated RCW § 9.46 by charging consideration for their lotteries.  
16

17           294. Gambling is "authorized" under RCW § 9.46 if no consideration is charged or if no  
18 vigorish is charged for the right to play. Defendants are liable to Plaintiff and Class Members  
19 under RCW § 9.46.200 because although gambling is "authorized," Defendants violated RCW §  
20 9.46 by charging consideration and a vigorish for their gambling operations.

21           295. Plaintiff and Class Members have been injured in fact and lost money and property  
22 as a result of Defendants' illegal gambling enterprise.  
23

24           296. Defendants' conduct has caused, and is causing, injury to Class Members.  
25  
26



1 297. Plaintiff and Class Members are therefore entitled to and demand restitution and  
2 money damages at six percent per annum from the date of the loss, and reasonable attorney's fees  
3 pursuant to RCW § 9.46.200.

4 298. Furthermore, RCW § 9.46.200 provides that any civil action under this section  
5 may be considered a class action.

6 299. Under RCW § 4.24.070, Plaintiff and Class Members have a right to recover from  
7 Defendants the amount of "the money or the value of the thing so lost" as a result of Defendants  
8 illegal gambling enterprise. Defendants' conduct has caused injury to Class Members because  
9 they lost money to Defendants.

10 300. Plaintiff and Class Members are therefore entitled to and demand restitution and  
11 money damages and reasonable attorney's fees pursuant to RCW § 4.24.070.  
12

13  
14 **H. COUNT VIII — Violation of Gift Card Statutes (RCW 19.240 et seq.) (As to**  
15 **Project Fair Bid).**

16 301. The preceding paragraphs of this Complaint are re-alleged and incorporated by  
17 reference.

18 302. Defendants had a policy and practice of offering various promotions and "comps"  
19 to players that meet the definition of "gift card".

20 303. These gift cards such as "Buy it Now", "Loyalty Bucks", "Credit Store", including  
21 the deadline for payment by winners of prizes, have expiration times in violation of most state  
22 statutes such as Wash. Rev. Code § 919.240 et seq. and California Civil Code section 1749.5, and  
23 similar statutes which makes it unlawful for any person or entity to enforce against a bearer a gift  
24 certificate that contains an expiration date, any fee, including a service fee or a dormancy or  
25 inactivity charge.  
26

1 304. Defendants' credit expiration date, fees, including service fees for "Buy it Now",  
2 "Loyalty Bucks", "Credit Store", and deadline for payment by winners for prizes violates the gift  
3 card statutes.

4 305. As a direct and proximate result of Defendants' violation of the Gift Certificate  
5 Statutes, Plaintiff and the members of the Class have suffered monetary damages in an amount to  
6 be proven at the time of trial.  
7

8 **V. DEMAND FOR JUDGMENT**

9 WHEREFORE, Plaintiff demands judgment as follows:

10 306. The Court determine that this action may be maintained as a class action pursuant  
11 to Rule 23(b)(2) of the Rules of Civil Procedure with respect to Plaintiff's claims for declaratory  
12 and injunctive relief, and Rule 23(b)(3) of the Rules of Civil Procedure with respect to the claims  
13 for damages and equitable relief, and declaring Plaintiff as representative of the Class and his  
14 counsel as counsel for the Class;  
15

16 307. The conduct alleged herein be declared, adjudged, and decreed to be unlawful;

17 308. Plaintiff and the Class be granted an award of damages in such amount to be  
18 determined at trial, with trebling and statutory penalties;  
19

20 309. Defendants be enjoined from continuing the illegal activities alleged herein;

21 310. Plaintiff and the Class recover their costs of suit, including reasonable attorneys'  
22 fees and expenses as provided by law;

23 311. Plaintiff and the Class be awarded all pre- and post-judgment interest permitted by  
24 law; and  
25  
26

1           312. Plaintiff and the Class be granted such other, further, and different relief as the  
2 nature of the case may require or as may be determined to be just, equitable, and proper by this  
3 Court.  
4

5                                   **VI. DEMAND FOR JURY TRIAL**

6           313. Pursuant to Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues  
7 so triable.  
8

9           Dated the 15th day of February 2011.

/s/ William Houck  
William Houck

10  
11           HOUCK LAW FIRM, P.S.  
12           William W. Houck WSBA No. 13324  
13           4045 262nd Ave. SE  
14           Issaquah, Washington 98029  
15           (425) 392-7118  
16           © Houck Law Firm, P.S.  
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# EXHIBIT B

FILED

11 FEB 16 AM 9:00

KING COUNTY  
SUPERIOR COURT CLERK  
E-FILED  
CASE NUMBER: 11-2-06859-5 SEA

SUPERIOR COURT OF WASHINGTON  
COUNTY OF KING

JOHN DOE

NO. 11-2-06859-5 SEA

VS

PROJECT FAIR BID, INC.

CASE INFORMATION COVER SHEET  
AND AREA DESIGNATION

---

CAUSE OF ACTION

**(TTO) -** TORT, NON-MOTOR VEHICLE

AREA DESIGNATION

**SEATTLE -** Defined as all King County north of Interstate 90 and including all of Interstate 90 right of way, all of the cities of Seattle, Mercer Island, Issaquah, and North Bend, and all of Vashon and Maury Islands.

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**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

JOHN DOE, individually and on behalf  
of all the members of the Class of  
persons similarly situated,

Plaintiff,

v.

PROJECT FAIR BID, INC., d/b/a  
BIGDEAL.COM, a Delaware  
corporation, MAYFIELD FUND,  
FOUNDATION CAPITAL and FIRST  
ROUND CAPITAL, AND DOES 1 –  
20,

Defendants.

NO.

CLASS ACTION

COMPLAINT FOR:  
RICO VIOLATIONS  
DECLARATORY RELIEF  
STATUTORY DAMAGES  
RESTITUTION  
CONSUMER PROTECTION ACT  
GIFT CERTIFICATE STATUTES

**DEMAND FOR JURY**

TO DEFENDANTS: PROJECT FAIR BID, INC., d/b/a BIGDEAL.COM, MAYFIELD  
FUND, FOUNDATION CAPITAL and FIRST ROUND CAPITAL:

---

PROJECT FAIR BID, INC., d/b/a BIGDEAL.COM  
BigDeal.com  
660 4th Street #296  
San Francisco, CA94107

---

MAYFIELD FUND  
2800 Sand Hill Road, Suite 250  
Menlo Park, CA 94025

---

1 FOUNDATION CAPITAL  
2 250 Middlefield Road  
3 Menlo Park, CA 94025

---

3 FIRST ROUND CAPITAL  
4 217 Second Street  
5 5th Floor  
6 San Francisco, CA 94105

---

6 A class action lawsuit has been started against you in the above-entitled court by plaintiff.  
7 Plaintiff's claims are stated in the written Complaint, a copy of which is served upon you with  
8 this summons.

9 In order to defend against this lawsuit, you must respond to the complaint by stating your  
10 defense in writing, and serve a copy upon the undersigned attorneys for the plaintiff within **60**  
11 **days after the service of this Summons** excluding the day of service, or a default judgment may  
12 be entered against you without notice. A default judgment is one where plaintiffs are entitled to  
13 what he asks for because you have not responded. If you serve a notice of appearance on the  
14 undersigned attorney, you are entitled to notice before a default judgment may be entered.

15 You may demand that the plaintiffs file this lawsuit with the court. If you do so, the  
16 demand must be in writing and must be served upon the plaintiffs. Within fourteen (14) days after  
17 you serve the demand, the plaintiffs must file this lawsuit with the court, or the service on you of  
18 this Summons and Complaint will be void.

19 If you wish to seek the advice of an attorney in this matter, you should do so promptly so  
20 that your written response, if any, may be served on time. This Summons is issued pursuant to  
21 Rule 4 of the Superior Court Civil Rules of the State of Washington.

22 Dated the 15th day of February 2011.

23 /s/ William Houck  
24 William Houck

FILED

11 FEB 16 AM 9:00

KING COUNTY  
SUPERIOR COURT CLERK  
E-FILED  
CASE NUMBER: 11-2-06859-5 SEA

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING**

JOHN DOE

vs

PROJECT FAIR BID, INC.

Plaintiff(s)

Defendant(s)

NO. 11-2-06859-5 SEA

Order Setting Civil Case Schedule (\*ORSCS)

ASSIGNED JUDGE Armstrong 29

FILE DATE: 02/16/2011

**TRIAL DATE: 07/30/2012**

A civil case has been filed in the King County Superior Court and will be managed by the Case Schedule on Page 3 as ordered by the King County Superior Court Presiding Judge.

**I. NOTICES**

**NOTICE TO PLAINTIFF:** The Plaintiff may serve a copy of this **Order Setting Case Schedule (Schedule)** on the Defendant(s) along with the **Summons and Complaint/Petition**. Otherwise, the Plaintiff shall serve the *Schedule* on the Defendant(s) within 10 days after the later of: (1) the filing of the **Summons and Complaint/Petition** or (2) service of the Defendant's first response to the **Complaint/Petition**, whether that response is a **Notice of Appearance**, a response, or a Civil Rule 12 (CR 12) motion. The **Schedule** may be served by regular mail, with proof of mailing to be filed promptly in the form required by Civil Rule 5 (CR 5).

**"I understand that I am required to give a copy of these documents to all parties in this case."**

\_\_\_\_\_|\_\_\_\_\_  
Print Name Sign Name



## I. NOTICES (continued)

### **NOTICE TO ALL PARTIES:**

All attorneys and parties should make themselves familiar with the King County Local Rules [KCLR] -- especially those referred to in this **Schedule**. In order to comply with the **Schedule**, it will be necessary for attorneys and parties to pursue their cases vigorously from the day the case is filed. For example, discovery must be undertaken promptly in order to comply with the deadlines for joining additional parties, claims, and defenses, for disclosing possible witnesses [See KCLCR 26], and for meeting the discovery cutoff date [See KCLCR 37(g)].

### **CROSSCLAIMS, COUNTERCLAIMS AND THIRD PARTY COMPLAINTS:**

A filing fee of **\$230** must be paid when any answer that includes additional claims is filed in an existing case.

#### **KCLCR 4.2(a)(2)**

A Confirmation of Joinder, Claims and Defenses or a Statement of Arbitrability must be filed by the deadline in the schedule. The court will review the confirmation of joinder document to determine if a hearing is required. If a Show Cause order is issued, all parties cited in the order must appear before their Chief Civil Judge.

### **PENDING DUE DATES CANCELED BY FILING PAPERS THAT RESOLVE THE CASE:**

When a final decree, judgment, or order of dismissal of all parties and claims is filed with the Superior Court Clerk's Office, and a courtesy copy delivered to the assigned judge, all pending due dates in this **Schedule** are automatically canceled, including the scheduled Trial Date. It is the responsibility of the parties to 1) file such dispositive documents within 45 days of the resolution of the case, and 2) strike any pending motions by notifying the bailiff to the assigned judge.

Parties may also authorize the Superior Court to strike all pending due dates and the Trial Date by filing a *Notice of Settlement* pursuant to KCLCR 41, and forwarding a courtesy copy to the assigned judge. If a final decree, judgment or order of dismissal of all parties and claims is not filed by 45 days after a *Notice of Settlement*, the case may be dismissed with notice.

**If you miss your scheduled Trial Date**, the Superior Court Clerk is authorized by KCLCR 41(b)(2)(A) to present an *Order of Dismissal*, without notice, for failure to appear at the scheduled Trial Date.

### **NOTICES OF APPEARANCE OR WITHDRAWAL AND ADDRESS CHANGES:**

*All parties to this action must keep the court informed of their addresses.* When a Notice of Appearance/Withdrawal or Notice of Change of Address is filed with the Superior Court Clerk's Office, parties must provide the assigned judge with a courtesy copy.

### **ARBITRATION FILING AND TRIAL DE NOVO POST ARBITRATION FEE:**

A Statement of Arbitrability must be filed by the deadline on the schedule **if the case is subject to mandatory arbitration** and service of the original complaint and all answers to claims, counterclaims and cross-claims have been filed. If mandatory arbitration is required after the deadline, parties must obtain an order from the assigned judge transferring the case to arbitration. **Any party filing a Statement must pay a \$220 arbitration fee.** If a party seeks a trial de novo when an arbitration award is appealed, a fee of \$250 and the request for trial de novo must be filed with the Clerk's Office Cashiers.

### **NOTICE OF NON-COMPLIANCE FEES:**

**All** parties will be assessed a fee authorized by King County Code 4.71.050 whenever the Superior Court Clerk must send notice of non-compliance of schedule requirements and/or Local Civil Rule 41.

**King County Local Rules are available for viewing at [www.kingcounty.gov/courts/clerk](http://www.kingcounty.gov/courts/clerk).**

## II. CASE SCHEDULE

CASE EVENT	DEADLINE or EVENT DATE	Filing Needed
Case Filed and Schedule Issued.	Wed 02/16/2011	*
Last Day for Filing Statement of Arbitrability without a Showing of Good Cause for Late Filing [See <i>KCLMAR 2.1(a) and Notices on Page 2</i> ]. <b>\$220 arbitration fee must be paid</b>	Wed 07/27/2011	*
<b>DEADLINE</b> to file Confirmation of Joinder if not subject to Arbitration. [See <i>KCLCR 4.2(a) and Notices on Page 2</i> ].	Wed 07/27/2011	*
<b>DEADLINE</b> for Hearing Motions to Change Case Assignment Area. [See <i>KCLCR 82(e)</i> ]	Wed 08/10/2011	
<b>DEADLINE</b> for Disclosure of Possible Primary Witnesses [See <i>KCLCR 26(b)</i> ].	Mon 02/27/2012	
<b>DEADLINE</b> for Disclosure of Possible Additional Witnesses [See <i>KCLCR 26(b)</i> ].	Mon 04/09/2012	
<b>DEADLINE</b> for Jury Demand [See <i>KCLCR 38(b)(2)</i> ].	Mon 04/23/2012	*
<b>DEADLINE</b> for Setting Motion for a Change in Trial Date [See <i>KCLCR 40(d)(2)</i> ].	Mon 04/23/2012	*
<b>DEADLINE</b> for Discovery Cutoff [See <i>KCLCR 37(g)</i> ].	Mon 06/11/2012	
<b>DEADLINE</b> for Engaging in Alternative Dispute Resolution [See <i>KCLCR 16(b)</i> ].	Mon 07/02/2012	
<b>DEADLINE</b> for Exchange Witness & Exhibit Lists & Documentary Exhibits [See <i>KCLCR 4(j)</i> ].	Mon 07/09/2012	
<b>DEADLINE</b> to file Joint Confirmation of Trial Readiness [See <i>KCLCR 16</i> ].	Mon 07/09/2012	*
<b>DEADLINE</b> for Hearing Dispositive Pretrial Motions [See <i>KCLCR 56; CR 56</i> ].	Mon 07/16/2012	
Joint Statement of Evidence [See <i>KCLCR (4)(k)</i> ].	Mon 07/23/2012	*
<b>DEADLINE</b> for filing Trial Briefs, Proposed Findings of Fact and Conclusions of Law and Jury Instructions (Do not file Proposed Findings of Fact and Conclusions of Law with the Clerk)	Mon 07/23/2012	*
Trial Date [See <i>KCLCR 40</i> ].	Mon 07/30/2012	

## III. ORDER

Pursuant to King County Local Civil Rule 4 [KCLCR 4], IT IS ORDERED that the parties shall comply with the schedule listed above. Penalties, including but not limited to sanctions set forth in Local Civil Rule 4(g) and Rule 37 of the Superior Court Civil Rules, may be imposed for non-compliance. It is FURTHER ORDERED that the party filing this action **must** serve this *Order Setting Civil Case Schedule* and attachment on all other parties.

DATED: 2/15/2011



PRESIDING JUDGE

#### **IV. ORDER ON CIVIL PROCEEDINGS FOR ASSIGNMENT TO JUDGE**

##### **READ THIS ORDER BEFORE CONTACTING YOUR ASSIGNED JUDGE**

This case is assigned to the Superior Court Judge whose name appears in the caption of this case schedule. The assigned Superior Court Judge will preside over and manage this case for all pretrial matters.

**COMPLEX LITIGATION:** If you anticipate an unusually complex or lengthy trial, please notify the assigned court as soon as possible.

**APPLICABLE RULES:** Except as specifically modified below, all the provisions of King County Local Civil Rules 4 through 26 shall apply to the processing of civil cases before Superior Court Judges. The local civil rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

##### **CASE SCHEDULE AND REQUIREMENTS**

Deadlines are set by the case schedule, issued pursuant to Local Civil Rule 4.

##### **THE PARTIES ARE RESPONSIBLE FOR KNOWING AND COMPLYING WITH ALL DEADLINES IMPOSED BY THE COURT'S LOCAL CIVIL RULES.**

###### **A. Joint Confirmation regarding Trial Readiness Report:**

No later than twenty one (21) days before the trial date, parties shall complete and file (with a copy to the assigned judge) a joint confirmation report setting forth whether a jury demand has been filed, the expected duration of the trial, whether a settlement conference has been held, and special problems and needs (e.g. interpreters, equipment, etc.).

The form is available at <http://www.kingcounty.gov/courts/superiorcourt.aspx>. If parties wish to request a CR 16 conference, they must contact the assigned court. Plaintiff's/petitioner's counsel is responsible for contacting the other parties regarding said report.

###### **B. Settlement/Mediation/ADR**

a. Forty five (45) days before the trial date, counsel for plaintiff/petitioner shall submit a written settlement demand. Ten (10) days after receiving plaintiff's/petitioner's written demand, counsel for defendant/respondent shall respond (with a counter offer, if appropriate).

b. Twenty eight (28) days before the trial date, a Settlement/Mediation/ADR conference shall have been held. **FAILURE TO COMPLY WITH THIS SETTLEMENT CONFERENCE REQUIREMENT MAY RESULT IN SANCTIONS.**

**C. Trial:** Trial is scheduled for 9:00 a.m. on the date on the case schedule or as soon thereafter as convened by the court. The Friday before trial, the parties should access the King County Superior Court website <http://www.kingcounty.gov/courts/superiorcourt.aspx> to confirm trial judge assignment. Information can also be obtained by calling (206) 205-5984.

#### **MOTIONS PROCEDURES**

##### **A. Noting of Motions**

**Dispositive Motions:** All summary judgment or other dispositive motions will be heard with oral argument before the assigned judge. The moving party must arrange with the hearing judge a date and time for the hearing, consistent with the court rules. Local Civil Rule 7 and Local Civil Rule 56 govern procedures for summary judgment or other motions that dispose of the case in whole or in part. The local civil rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

**Nondispositive Motions:** These motions, which include discovery motions, will be ruled on by the assigned judge without oral argument, unless otherwise ordered. All such motions must be noted for a date by which the ruling is requested; this date must likewise conform to the applicable notice requirements. Rather than noting a time of day, the Note for Motion should state "Without Oral Argument." Local Civil Rule 7 governs these motions, which include discovery motions. The local civil rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

**Motions in Family Law Cases not involving children:** Discovery motions to compel, motions in limine, motions relating to trial dates and motions to vacate judgments/dismissals shall be brought before the assigned judge. All other motions should be noted and heard on the Family Law Motions calendar. Local Civil Rule 7 and King County Family Law Local Rules govern these procedures. The local rules can be found at <http://www.kingcounty.gov/courts/superiorcourt/civil.aspx>.

**Emergency Motions:** Under the court's local civil rules, emergency motions will be allowed only upon entry of an Order Shortening Time. However, emergency discovery disputes may be addressed by telephone call and without written motion, if the judge approves.

## **B. Original Documents/Working Copies/ Filing of Documents**

**All original documents must be filed with the Clerk's Office.** Please see information on the Clerk's Office website at [www.kingcounty.gov/courts/clerk](http://www.kingcounty.gov/courts/clerk) regarding the new requirement outlined in LGR 30 that attorneys must e-file documents in King County Superior Court. The exceptions to the e-filing requirement are also available on the Clerk's Office website.

The working copies of all documents in support or opposition must be marked on the upper right corner of the first page with the date of consideration or hearing and the name of the assigned judge. The assigned judge's working copies must be delivered to his/her courtroom or the Judges' mailroom. Working copies of motions to be heard on the Family Law Motions Calendar should be filed with the Family Law Motions Coordinator. On June 1, 2009 you will be able to submit working copies through the Clerk's office E-Filing application at [www.kingcounty.gov/courts/clerk](http://www.kingcounty.gov/courts/clerk).

**Service of documents.** E-filed documents may be electronically served on parties who opt in to E-Service within the E-Filing application. The filer must still serve any others who are entitled to service but who have not opted in. E-Service generates a record of service document that can be e-filed. Please see information on the Clerk's office website at [www.kingcounty.gov/courts/clerk](http://www.kingcounty.gov/courts/clerk) regarding E-Service.

**Original Proposed Order:** Each of the parties must include an original proposed order granting requested relief with the working copy materials submitted on any motion. Do not file the original of the proposed order with the Clerk of the Court. Should any party desire a copy of the order as signed and filed by the judge, a pre-addressed, stamped envelope shall accompany the proposed order.

**Presentation of Orders:** All orders, agreed or otherwise, must be presented to the assigned judge. If that judge is absent, contact the assigned court for further instructions. If another judge enters an order on the case, counsel is responsible for providing the assigned judge with a copy.

**Proposed orders finalizing settlement and/or dismissal by agreement of all parties shall be presented to the assigned judge or in the Ex Parte Department.** Formal proof in Family Law cases must be scheduled before the assigned judge by contacting the bailiff, or formal proof may be entered in the Ex Parte Department. **If final order and/or formal proof are entered in the Ex Parte Department, counsel is responsible for providing the assigned judge with a copy.**

**C. Form**

Memoranda/briefs for matters heard by the assigned judge may not exceed twenty four (24) pages for dispositive motions and twelve (12) pages for nondispositive motions, unless the assigned judge permits over-length memoranda/briefs in advance of filing. Over-length memoranda/briefs and motions supported by such memoranda/briefs may be stricken.

***IT IS SO ORDERED. FAILURE TO COMPLY WITH THE PROVISIONS OF THIS ORDER MAY RESULT IN DISMISSAL OR OTHER SANCTIONS. PLAINTIFF/PEITITONER SHALL FORWARD A COPY OF THIS ORDER AS SOON AS PRACTICABLE TO ANY PARTY WHO HAS NOT RECEIVED THIS ORDER.***



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**PRESIDING JUDGE**

King County  
Department of Judicial Administration  
Superior Court Clerk's Office

**IMPORTANT NOTICE**  
**KING COUNTY SUPERIOR COURT HEARING LOCATIONS  
WILL CHANGE  
IF THE MALENG REGIONAL JUSTICE CENTER IN KENT IS  
CLOSED**

The Maleng Regional Justice Center (MRJC) in Kent lies within the former Green River floodplain and is at risk of flooding if the Green River overtops its levies in a major flood event. The MRJC facility will likely be evacuated and closed if an imminent flood is predicted and operations normally located there will be forced to relocate.

If it becomes necessary to close the MRJC facility and relocate the courtrooms, some scheduled court proceedings at the King County Courthouse in Seattle will also be affected, with a changed location.

**PLEASE NOTE: If you have a court proceeding scheduled at either the King County Courthouse in Seattle or the Maleng Regional Justice Center in Kent, please call (206) 296-9300 x '0' to learn if there is a flood related change to the location of your court proceeding. Call within two days of your scheduled court date for the current information.**

Current MRJC flood status and proceeding location information will also be posted online here:

King County Superior Court's website: <http://www.kingcounty.gov/courts/superiorcourt>

King County Clerk's Office website: <http://www.kingcounty.gov/courts/Clerk>

The Clerk's Office and Superior Court remain committed to providing good customer service throughout the flood watch season and, if necessary, during a MRJC facility closure period. We thank you for your patience during this time.

**\*Please include a copy of this notice when providing copies of court documents to other parties.**

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**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

JOHN DOE, individually and on behalf  
of all the members of the Class of  
persons similarly situated,

Plaintiff,

v.

PROJECT FAIR BID, INC., d/b/a  
BIGDEAL.COM, a Delaware  
corporation, MAYFIELD FUND,  
FOUNDATION CAPITAL and FIRST  
ROUND CAPITAL, AND DOES 1 –  
20,

Defendants.

NO. 11-2-06859-5

**PLAINTIFF'S FIRST SET OF  
INTERROGATORIES AND REQUEST  
FOR PRODUCTION**

TO DEFENDANTS: PROJECT FAIR BID, INC. AND TO ITS ATTORNEYS.

**A. GENERAL DEFINITIONS AND PROCEDURES**

You are served with the original of Plaintiff's First Set of Interrogatories and Requests for Production to the Defendant Entertainment Shopping Inc. pursuant to CR 33 and CR 34. Please type your answers in the space provided or on a separate page or pages as needed. In the event you choose to place your response on a separate page, you must clearly denote the number of the question to which the response relates, including any subpart thereof, if applicable. Return the verified original of the completed interrogatories to the attention of William Houck,

1 4045 262<sup>nd</sup> Ave. SE Issaquah, WA 98029 within 40 days of service or at such time and place as is  
2 mutually agreed upon by counsel.

3 **SUPPLEMENTATION**

4 Plaintiff hereby requests that Defendant supplement all responses to these Requests for  
5 Production of Documents consistent with the provisions of CR 26 and 34 Rules of Civil  
6 Procedure.

7 **Request for Production of Documents.**

8 Request is also made, pursuant to CR 26 and 34, that you produce, for inspection and  
9 copying, the documents described in each request made below at the offices of William Houck,  
10 4045 262<sup>nd</sup> Ave. SE Issaquah, WA 98029 and accurate copies of the requested documents may be  
11 produced with the answers to these interrogatories, but in any event shall be provided within 40  
12 days after they are served on you.

13 These requests for production are directed to you and to your agents, attorneys,  
14 accountants, consultants, representatives, private investigators, and any and all persons acting on  
15 your or their behalf. These requests for production are intended to encompass the original and all  
16 non-duplicate copies (those that differ from the original in some respect, for example, by reason  
17 of notations made on the copy) of all documents of any nature which are now or have at any time  
18 been within your care, custody or control.

19 If you contend that any document encompassed by any request is privileged, in whole or  
20 in part, or otherwise object to its production, then with respect to each such document:

21 (1) State with specificity the reason or reasons for your objection and/or the nature of  
22 any privilege asserted;

23 (2) State the name and address of each person having knowledge of the factual basis,  
24 if any, upon which the privilege or other objection is asserted; and

25 (3) Specify:

26 (a) The date of the document;  
27



1 (b) The nature or type of the document (i.e., whether letter, telegram, memorandum,  
2 etc.);

3 (c) The name and address of each individual who prepared the document;

4 (d) The name and address of each individual to whom the document, or a copy  
5 thereof, has been at any time provided;

6 (e) The name and address of each person from whom the document has been obtained  
7 by you;

8 (f) The name and address of the individual or entity having possession of the original  
9 of the document (or if the whereabouts of the original is unknown, the name and address of each  
10 person or entity known or believed to have a copy or copies thereof);

11 (g) All other information necessary to identify the document with sufficient  
12 particularity to meet the requirements for its inclusion in a motion for production pursuant to CR  
13 37; and

14 (h) If such document was, but is no longer within your care, custody or control, state  
15 what disposition was made of it, the reason for such disposition, and the date upon which it was  
16 so disposed.

## 17 DEFINITIONS

18 Included below are definitions of the terms used in these interrogatories and requests for  
19 production. Please read these definitions carefully, as some of the terms used in these  
20 interrogatories and requests for production are given definitions which may be more expansive  
21 than the definitions which those terms are given in common usage.

22 1. "You" and "your" shall refer to and include the party to whom this discovery is  
23 directed, its current and former attorneys, agents, investigators, accountants, officers, directors,  
24 and employees.

25 2. "Person" shall include any individual, corporation, partnership, association, or any  
26 other entity of any kind.  
27

1           3.     "Document" includes, but is not limited to, any paper, agreement, note, book,  
2 photograph, x-ray, reproduction, pamphlet, brochure, manual, periodical, letter, report,  
3 memorandum, summary, notation, statement, draft, message, telegram, telex, wire, cable, record,  
4 log book, study, working paper, map, survey, drawing, blueprint, sketch, model, chart, schedule,  
5 graph, index, tape, minutes, minute book, contract, lease, invoice, purchase order, ledger, check,  
6 check stub, estimate, record of purchase or sale, correspondence, correspondence files, desk  
7 calendar, work paper, business form, appointment book, time sheet, business form, printout,  
8 *information kept on a computer, computer disk, or in digital or computerized form*, computer  
9 tape, computer printout, computer program, computer disc, or index thereto, pleading,  
10 transcription or taping of telephone or personal conversation or conference, including  
11 intercompany, intra-company, interoffice, and intra office memorandum or other document  
12 regarding any conference, conversation, or other communication, and any and all other written,  
13 printed, typed, taped, recorded, transcribed, punched, filmed, or graphic matter, however  
14 produced or reproduced.

15           If a document has been prepared in several copies or additional copies have been made,  
16 and the copies are not identical, each non-identical copy is a separate "document," and should be  
17 produced for inspection and copying.

18           *If information is kept in a computer, on a computer disk, or in digital or computerized*  
19 *form, and that information is not available in a printed form, then also download a copy of that*  
20 *information onto a disk or disks and produce those disks.*

21           4.     "Identify," when applied to a person, requires that you give the person's full name,  
22 residence address, residence telephone, business or occupation, job title or description, employer,  
23 business address and business telephone. If you do not have current information on the person  
24 being identified, then give their last known residence address, residence telephone, etc.

25           5.     "Identify," when referring to a business, organization, or other entity means to give  
26 the legal name of the entity, a description of its nature (e.g., corporation, partnership, joint  
27

1 venture, etc.), any business or assumed name under which it does business, its principal place of  
2 business, and the address of the office(s) of such entity which are involved in the transaction  
3 about which the interrogatory or request is seeking information.

4 6. "Identify," when used in reference to a document, requires that you (regardless of  
5 whether you may assert a privilege or other objection to its disclosure) describe the document  
6 (i.e., whether it is a letter, memorandum, contract, etc.) and state its date, the name of the person  
7 or persons whose signatures are affixed or for whom signature lines were prepared if the  
8 document was unsigned, the person who prepared it, the person to whom it was addressed and/or  
9 prepared for, a short synopsis of the document's contents, and to otherwise describe it with  
10 sufficient detail to meet the requirements for its inclusion in a CR 34 request for production or a  
11 CR 37 motion to compel, and also requires that you identify all persons known to you to have  
12 control or possession of such documents or copies thereof.

13 7. "State with particularity," when used in reference to a matter of fact means to state  
14 every material fact and circumstance specifically and completely (including, but not limited to,  
15 date, time, location, and the identity of all participants), and whether each such fact or  
16 circumstance is stated on knowledge, information, or belief, or is alleged without foundation.

17 8. "State with particularity," when used in reference to a matter of law is directed to  
18 your attorney and means to state every relevant legal theory and material conclusion of law  
19 specifically and completely and to cite the principal authorities relied upon in support of each.

20 9. "Computer Devices" means any computer device, including any computer laptop  
21 or desktop.

22 10. "File" and "Files" means the complete file, folder, binder, or other filing system,  
23 and all documents contained therein as of the date of the deposition, and all documents not  
24 physically in the file, folder, binder, or other filing system that are normally kept within the file,  
25 folder, binder, or other filing system in the normal course of business.

26 11. "Defendant" means and includes PROJECT FAIR BID, INC., BIGDEAL.COM  
27

1 and each person and/or entity acting on its behalf, including, but not limited to, its parent and  
2 subsidiary companies, predecessors-in-interest, successors-in-interest, affiliated entities, officers,  
3 directors, partners, associates, shareholders, investors, promoters and agents.

4 12. "Co-defendants" mean MAYFIELD FUND, FOUNDATION CAPITAL AND  
5 FIRST ROUND CAPITAL and DOES 1-20, and each person and/or entity acting on its behalf,  
6 including, but not limited to, their parent and subsidiary companies, predecessors-in-interest,  
7 successors-in-interest, affiliated entities, officers, directors, partners, associates, shareholders, and  
8 agents.

9 13. The time period for these Interrogatories and Requests for Production includes the  
10 time period when Defendant first began conducting business from any location, either from  
11 within the United States or any offshore locations, with United States residents, to the present.  
12

13  
14 **Interrogatory No. 1:** State the names and addresses of all past and present,  
15 officers, directors, employees, shareholders, partners, investors and board members of the  
16 Defendant, and Co-Defendants.

17 **Response:**  
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20  
21 **Request for Production No.1:** Please produce all documents that evidence  
22 Defendant's answers to interrogatories number 1 including organizational charts.

23 **Response:**  
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1           **Interrogatory No. 2:**           State the total number of customers that have placed bids on  
2 your website since you first began conducting business with United States residents.

3           **Response:**  
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7           **Interrogatory No. 3:**           State the names, addresses, account numbers and any other  
8 identifying account information of all banks, financial institutions and credit card processors  
9 utilized by Defendants during the class period.

10          **Response:**  
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15          **Request for Production No. 2:**    Please produce all documents that evidence in any  
16 manner the relationship between Defendant and co-defendants. Included in this request are all e-  
17 mails, letters, memos, or other documents to or from the Defendant and co-defendants. This  
18 request also includes all documents that evidence co-defendants investments and participation in  
19 Defendant and its management, including cancelled checks accounting records, bank ledgers,  
20 agreements, contracts, corporate records, articles of incorporation, proposals, presentations,  
21 amendments, memorandums of understanding; minutes, records, presentations, proposals and  
22 documents of board meetings, management meetings, officer and director meetings and  
23 shareholder meetings.  
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25          **Response:**  
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**Request for Production 3:** Produce in searchable Excel spreadsheet format the names, addresses, phone numbers, e-mail addresses, log-in or user names, the type of credit card used to purchase bid packs, the names of the banks that issued the credit cards and any other information obtained, from all past and present registered members of Defendant domiciled within the United States.

**Response:**

**Request for Production No. 4:** Produce in Excel spreadsheet format, the names and addresses, phone numbers and e-mail addresses of all registered users, itemized by all of their winnings and losses (including the amount of all unused bid packs). Include in this production for each registered customer, the number of bids placed, items won, the fair market value of the items won and your cost for the items won.

**Response:**

**Request for Production No. 5:** Produce in htm, html, Webpage complete searchable format or other standard internet searchable format, all documents and website pages that reference membership, services, help files, tutorials, getting started, contracts, terms of service, terms of agreement, warnings, limitations, about us, privacy, what is, contact, jobs, indexes,

1 forgotten passwords, bid Butler, help, auction merchandise, newsletters, member information,  
2 purchase information, promotions, promote a friend, how to, important information, refunds,  
3 change in address, auction pages, FAQ's and any and all other pages available to the public or  
4 registered members. This request includes the time period identified in the Definitions above, to  
5 the present, and it includes all changes made to these webpages during the time period.  
6

7 **Response:**  
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10 **Request for Production No. 6:** Produce all documents relating to all complaints, and  
11 inquiries from the general public, registered members, media, news organizations, governmental  
12 organizations, state agencies, United States federal agencies, Canadian governmental agencies  
13 and European governmental agencies, made to Defendant. This request includes all documents  
14 relating to all responses by Defendant regarding complaints and inquiries.  
15

16 **Response:**  
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21 **Request for Production No. 7:** Produce all documents relating to any  
22 surveys, questionnaires, inquiries, solicitations, advice, legal opinions, memoranda or other input  
23 sought from the general public, registered members of Defendant [Class Members], media, news  
24 organizations, government organizations, state agencies, United States federal agencies, Canadian  
25 governmental agencies, and European governmental agencies.  
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**Response:**

**Request for Production No. 8:** Produce all documents relating to all business licenses, certificates, certifications, permissions, approvals, endorsements of Defendant.

**Response:**

**Request for Production No. 9:** Produce all documents relating to all sanctions, legal actions, prohibitions, bans, grievances against Defendant or co-defendants.

**Response:**

**Request for Production No. 10:** Produce all written reports of each person whom you expect to call as an expert witness at trial.

**Response:**

**Request for Production No. 11.** Produce all documents upon which any expert witness you intend to call at trial relied to form an opinion.

**Response:**

**Request for Production No. 12:** Produce the most recent resume or curriculum vitae of each expert whom you expect to call as an expert witness at trial.

**Response:**



1           **Request for Production No.13:**    Produce all notes, correspondence, or other  
2 documents prepared or reviewed by each person whom you expect to call as an expert witness at  
3 trial.

4           **Response:**

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6           **Request for Production No.14:**    Produce all invoices generated by expert witnesses  
7 generated for performing all expert witness services to the Defendant, including but not limited  
8 to, the fees for the medical examination, the records review, the pretrial preparation, any  
9 telephone conference, any trial testimony anticipated and any other fee paid by the defendants for  
10 expert fees.  
11

12           **Response:**

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14           **Request for Production No.15:**    Produce all written, recorded, or signed statements of  
15 any party, including the Plaintiff, Defendants, investigators, or agent, representative or employee  
16 of the parties concerning the subject matter of this action.  
17

18           **Response:**

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20           **Request for Production No.16:**    Produce any documents that afforded liability  
21 insurance for the incidents which are the subject matter of the Plaintiff's Complaint.  
22

23           **Response:**

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25           **Request for Production No.17:**    Produce any documents identified in any other  
26 parties' Answers to Interrogatories.  
27

1           **Response:**

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3           **Request for Production No. 18:**   Produce any documents received pursuant to a  
4 subpoena request relating in any manner to the facts contained in this lawsuit or any other similar  
5 lawsuit.

6           **Response:**

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9           **Request for Production No. 19:**   Produce any document prepared during the regular  
10 course of business relating to the facts complained of in the Plaintiff's Complaint, including  
11 whether Defendant's conduct constitutes gambling or a lottery.

12           **Response:**

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16           **Request for Production No.20:**   Produce copies of any treaties, standards in the  
17 industry, legal authority, rule, case, statute, or code, which will be relied upon in the defense of  
18 this case.

19           **Response:**

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21           **Request for Production No. 21:**   Produce all documents in your possession regarding  
22 Defendant's financial statements, including detailed monthly income statements, monthly profit  
23 and loss statements, detailed yearly income statements and yearly profit and loss statements of  
24 Defendant; from the time Defendant first conducted business with customers located in the United  
25 States.  
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1       **Response:**  
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5               **Request for Production No. 22:**    Produce all income tax returns for each year in  
6 which Defendant conducted business with customers from United States.  
7

8       **Response:**  
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10              **Request for Production No. 23:**    Produce all documents in your possession  
11 ITEMIZED BY STATE, regarding Defendant's financial statements, including detailed monthly  
12 income statements, monthly profit and loss statements, detailed yearly income statements and  
13 yearly profit and loss statements of Defendant; from the time Defendant first conducted business  
14 with customers located in the United States. Produce all income tax returns for each year in which  
15 Defendant conducted business with customers from United States.  
16

17       **Response:**  
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21              **Request for Production No. 24:**    Produce all documents relating to all other litigation  
22 in which Defendant is or was a party. This request includes all documents filed with the court  
23 such as the complaint, answer, motions, responses, replies and court orders.  
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25       **Response:**  
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**Request for Production No. 25:** Produce all documents and records that identify all credit card companies with whom Defendant has transacted business, including the credit card companies utilized by members to transact business with Defendant.

**Response:**

**Request for Production No. 26:** Produce all documents and records that identify all lenders, banks and financial institutions with whom Defendant has transacted business.

**Response:**

**Request for Production No. 27:** Produce in htm, html or Webpage complete format or other standard internet format all documents and website pages that contain or contained the word "chance". This request includes the time period identified in the Definitions above, to the present, and it includes all changes made to these webpages during the time period.

**Response:**

**Request for Production No. 28:** Produce in htm, html or Webpage complete format or other standard internet format all documents and website pages that contain or contained the word "prize". This request includes the time period identified in the Definitions above, to the present, and it includes all changes made to these webpages during the time period.

1           **Response:**  
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4           **Request for Production No. 29:**   Produce in htm, html or Webpage complete format  
5 or other standard internet format all documents and website pages that reference the cost of bid  
6 packs and bidding fees. This request includes the time period identified in the Definitions above,  
7 to the present, and it includes all changes made to these webpages during the time period.

8           **Response:**  
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12           **Request for Production No. 30:**   Produce the computer source code for your website  
13 auctions as it was used on website from inception until the present. This request includes a list of  
14 what functions of the source code were enabled or disabled.

15           **Response:**  
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19           **Request for Production No. 31:**   Produce in searchable electronic format all monthly  
20 bank, financial institution and credit card processors' detailed account activity records, including  
21 the names, addresses, account numbers and detailed transaction logs for each account. This  
22 request includes the names, addresses, account numbers, credit card account numbers of all  
23 customers of Defendants. This request also includes the itemized records of each customer's  
24 credit card transactions with details of the credit card numbers, transaction dates and transaction  
25 amounts.

26           **Response:**  
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3 **Request for Production No. 32:** Produce all advertisements, including internet  
4 advertisements, email, Facebook, Twitter, texting, voice, video, TV print or any other form of  
5 advertisement utilized by Defendant.

6 **Response:**  
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10 Dated the 14th day of April 2011. /s/ William Houck  
11 William Houck  
12

13 HOUCK LAW FIRM, P.S.  
14 William W. Houck WSBA No. 13324  
15 4045 262nd Ave. SE  
16 Issaquah, Washington 98029  
17 (425) 392-7118  
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**VERIFICATION**

STATE OF WASHINGTON )  
COUNTY OF KING ) ss.

\_\_\_\_\_, being duly sworn upon oath, deposes and says:

I am the attorney for the Defendant, \_\_\_\_\_, I have read the foregoing answers and responses to Plaintiff 's First Requests for Production and Interrogatories, know the contents thereof, and believe the same to be true and correct.

\_\_\_\_\_  
SUBSCRIBED AND AFFIRMED to before me this \_\_ day of \_\_\_\_\_, 2011.

Printed Name: \_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**CERTIFICATION OF COUNSEL**

I, \_\_\_\_\_, the attorney for the Defendants, certify that I have read the answers, responses, and objections (if any) to the foregoing interrogatories and requests and, to the best of my knowledge, information, and belief formed after a reasonable inquiry, they are (1) consistent with the rules of civil procedure and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonably or unduly burdensome or expensive, given the needs of the

1 case, the discovery already had in the case, the amount in controversy, and the importance of the  
2 issues at stake in the litigation.

3 DATED: \_\_\_\_\_  
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6 Attorney for Defendants  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

JOHN DOE, individually and on behalf of  
all the members of the Class of persons  
similarly situated,

Plaintiff,

v.

PROJECT FAIR BID, INC., d/b/a  
BIGDEAL.COM, a Delaware corporation,  
MAYFIELD FUND, FOUNDATION  
CAPITAL and FIRST ROUND CAPITAL,  
AND DOES 1-20,

Defendants.

No. 11-2-06859-5 SEA

NOTICE OF APPEARANCE ON  
BEHALF OF PROJECT FAIR BID,  
INC., d/b/a BIGDEAL.COM

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that Defendant  
Project Fair Bid, Inc., d/b/a BigDeal.com, without waiving any defenses whatsoever,  
including but not limited to the defenses available by statute or court rule, hereby enters an  
appearance in the above-captioned matter and requests that all further papers and pleadings,  
except original process, be served upon the undersigned attorneys at 701 Fifth Avenue, Suite  
2100, Seattle, Washington 98104.

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Dated: May 10, 2011

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CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2011, I electronically filed the foregoing with the Clerk of the Court using the E-Filing system, and concurrently served it via E-Service on the following:

N/A

I further certify that I served the foregoing on the following non-E-Service participants via facsimile and first-class mail, postage prepaid:

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