

PATRICIA L. ZIPPERER,
529 Pleasant Lane
Whitelaw, WI 54247-9533,
on her own behalf and on behalf of all
others similarly situated,

Plaintiff,

vs.

SUPPORTKIDS, INC., also known as
Supportkids.com, formerly known as
Child Support Enforcement Company,
a Texas corporation,
4120 Freidrich Lane, Suite 175
Austin, TX 78744,

Defendant.

Case No.

30106—Intentional Tort

COMPLAINT

INTRODUCTION

1. This lawsuit is being filed to challenge the nationwide business practices of defendant Supportkids, Inc., and to get refunds of money taken but not earned. Supportkids, Inc. is a private, for-profit child support collection agency. Supportkids uses false and misleading representations to induce parents, desperate to receive child support, into signing a contract that they cannot cancel. Supportkids promotes itself as a “risk-free” service, and promises to use its efforts to collect past-due child support. In fact, even if Supportkids has no role in child support being paid, it gets paid. It retains as its fee 34% of all child support paid during the term of the agreement, regardless of whether it contributes significantly to its collection, and regardless of whether the funds

are for current or past support. The members of the proposed class are custodial parents and guardians nationwide who entered into a certain “Agreement for Services” (“agreement”) with Supportkids. The proposed class representative asserts claims of fraud in the inducement, breach of fiduciary duty, and violation of the Texas Deceptive Trade Practices-Consumer Protection Act, Texas Business and Commerce Code § 17.41, et seq. (“the Act”), by Supportkids. This action seeks:

- a. Declaratory and injunctive relief against Supportkids’ continuation of the false and misleading representations complained of;
- b. Declaratory and injunctive relief against Supportkids’ retention, from child support paid to class members, of further fees contrary to those representations;
- c. Rescission or reformation of the agreements, as appropriate;
- d. Restitution of fees that Supportkids obtained;
- e. Court costs and reasonable and necessary attorneys’ fees.

PARTIES

2. The plaintiff (“Ms. Zipperer”) is an adult resident of the Village of Whitelaw, County of Manitowoc and State of Wisconsin. By occupation she is a retail salesperson. She is the mother of S.M.T., a minor born September 24, 1988, of whom she has had sole physical and legal custody at all times relevant hereto. In 1989 she obtained a judgment in the Oconto County Circuit Court against one Steven G. Thielke adjudicating him as the father of S.M.T., awarding her sole physical and legal custody of S.M.T., and requiring Mr. Thielke to make weekly child support payments for the benefit of S.M.T.

3. On information and belief, Supportkids is a corporation duly organized and existing under the laws of the State of Texas. It is engaged in the business of operating a private, for-profit child support collection agency on a nationwide basis. On information and belief, its principal place of business is located at 4120 Freidrich Lane, Suite 175, in the City of Austin, County of Travis and State of Texas.

CLASS ACTION ALLEGATIONS

4. Ms. Zipperer brings this action as a class action, on her own behalf and on behalf of all others similarly situated, under the provisions of § 803.08, Wis. Stats., for declaratory and injunctive relief, rescission or reformation of the agreements, restitution of certain fees obtained pursuant to the agreements, and costs and attorneys' fees.

5. The class that Ms. Zipperer represents, and of which she is herself a member, consists of all persons who, within four years prior to the date of commencement of this action, entered into an "Agreement for Services" providing for "fullsupport" services by Supportkids.

6. The exact number of members of the class, as identified and described above, is not known, but it is estimated that there are not less than 10,000 members, who reside in all fifty states of the Union. It is impracticable to bring them all before this Court.

7. There are common questions of law and fact in the action that relate to and affect the rights of each member of the class, and the relief sought is common to the entire class. In particular, the common questions of law and fact are:

a. Whether Texas law governs the relationship between Supportkids and class members;

b. Whether the representations that Supportkids made to all class members to induce them to enter into the agreements, to the effect that Supportkids offers a “risk-free” service for which the custodial parent does not pay unless Supportkids’ efforts result in the collection of past-due or unpaid child support, were false;

c. Whether Supportkids knew that those misrepresentations were false;

d. Whether Supportkids made those misrepresentations with intent to deceive class members and induce them to enter into the agreements;

e. Whether the relationships between Supportkids and class members are and were fiduciary in nature;

f. Whether Supportkids breached its fiduciary duty to class members by failing to disclose to them the facts that Supportkids would be entitled to a contingent fee based on *all* child support paid during the term of the agreement, regardless of whether it contributes significantly to its collection, and regardless of whether the funds are for current or past support; and that the agreement is effectively not subject to cancellation by the class member;

g. Whether, by means of the misrepresentations described above, Supportkids represented and continues to represent that that its services have characteristics and benefits which they do not have, in violation of the Act, Texas Business and Commerce Code § 17.46(5);

h. Whether, by means of the misrepresentations described above, Supportkids advertised and continues to advertise its services with intent not to sell them as advertised, in violation of the Act, Texas Business and Commerce Code § 17.46(9);

i. Whether, by means of the misrepresentations described above, Supportkids represented and continues to represent to class members that the agreements confer or involve a right which they do not have or involve—namely, the right not to pay Supportkids unless its efforts result in the collection of past-due child support—in violation of the Act, Texas Business and Commerce Code § 17.46(12);

j. Whether the misrepresentations and failures to disclose described above are material to the transactions between Supportkids and class members, such that there is a presumption of reliance by class members upon those misrepresentations;

k. Whether the misrepresentations and failures to disclose described above constitute an unconscionable course of action by Supportkids—i.e., an act or practice which, to the class members' detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of class members to a grossly unfair degree—in violation of the Act, Texas Business and Commerce Code § 17.50(a)(3);

l. Whether declaratory and injunctive relief is appropriate to prohibit Supportkids' continuation of the false and misleading representations complained of, and to prohibit Supportkids' retention, from child support paid to class members, of further fees contrary to those representations;

m. Whether the agreements should be rescinded, or in the alternative reformed to exclude from Supportkids' contingent fee those child support payments that

do not result substantially from Supportkids' efforts, or that are for current support, as that term is commonly understood;

n. Whether the class members are entitled to recover court costs and reasonable and necessary attorneys' fees under the Act.

8. The claims of Ms. Zipperer, who is the representative of the class herein, are typical of the claims of the class, in that the claims of all members of the class, including Ms. Zipperer, depend upon a showing of the acts and omissions of Supportkids giving rise to Ms. Zipperer's rights to the relief sought herein. There is no conflict between Ms. Zipperer and other members of the class with respect to this action, or with respect to the claims for relief set forth herein.

9. Ms. Zipperer is the representative party for the class, and is able to, and will, fairly and adequately protect the interests of the class. Ms. Zipperer's attorneys are experienced and capable in civil litigation, consumer protection law and class action law. Of the attorneys designated as Ms. Zipperer's counsel, Charles H. Barr will actively conduct and be responsible for her case herein.

10. This action is properly maintained as a class action inasmuch as the questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. In support of the foregoing allegations, Ms. Zipperer shows as follows:

a. The factual differences among the class members' cases are minor and insubstantial, because those differences relate only to the issues of whether or not the agreement between Supportkids and the class member has been terminated; whether

a class member who is currently party to an agreement desires rescission or reformation of the agreement; and the amount of fees that Supportkids retained based upon child support payments that did not result from Supportkids' efforts, or that were for current support.

b. Liability is a common question, because it arises from misrepresentations and failures to disclose, which Supportkids made or committed uniformly to its "fullsupport" clients, and therefore which were made or committed uniformly on a classwide basis.

MS. ZIPPERER'S EXPERIENCE WITH SUPPORTKIDS

11. Between 1989 and 2001, Mr. Thielke, the adjudicated father of S.M.T., consistently failed to make the child support payments mandated by the judgment of the Oconto County Circuit Court, which resulted in a substantial arrearage. All or most of this arrearage accrued between June 1999 and January 2001.

12. Ms. Zipperer obtained an order of the Oconto County Circuit Court dated March 15, 2000 holding Mr. Thielke in contempt of court, and a further order dated January 23, 2001 committing Mr. Thielke to the Oconto County Jail as punishment for the contempt. Nevertheless, a substantial child support arrearage remained.

13. In February or March 2001, Ms. Zipperer saw a Supportkids television advertisement at her home, which was then in the City and County of Manitowoc, State of Wisconsin. The advertisement discussed Supportkids' successful efforts to collect child support, and represented its fee as "34% of amount collected," thereby implying that "amount collected" refers to the amount collected through the efforts discussed in

the advertisement. The advertisement also directed Ms. Zipperer to Supportkids' Internet website.

14. Shortly thereafter, in February or March 2001, Ms. Zipperer visited Supportkids' website. The website contained, and still contains, the following representations, which Ms. Zipperer read:

- a. "Click Here for *Risk-Free* Child Support Enforcement" (italics added).
- b. "Our fees are strictly on a contingency basis: if *we* don't collect, we don't get paid" (italics added).
- c. With respect specifically to Supportkids' "fullsupport" service: "Our success is based upon results. Supportkids receives 34% of the money *we* recover for you. We don't get paid unless *we* collect your *unpaid* child support. Period." (Italics added.)

15. On the basis of Supportkids' representations in its television advertisement and on its website, Ms. Zipperer contacted Supportkids and requested an application for its services.

16. Supportkids provided Ms. Zipperer an application with a cover letter dated March 9, 2001. That letter contained the following representation:

As you'll see in the information I've enclosed for you, Supportkids offers the resources you need to get the results you've been waiting for. Legal experts. Investigators. Enforcement specialists. That's why we're the most successful child support collection organization in the country.

Best of all, you won't pay a cent for our resources until we deliver those results. So you risk nothing, and you have everything to gain.

(Italics added.) A true and correct copy of this letter is attached hereto as Exhibit 1.

17. Supportkids sent Ms. Zipperer several informational and promotional items with the application.

a. One of those items contains the following representation:

“Founded in 1991, Supportkids.com has achieved unprecedented success in collecting *past-due* child support for thousands of children across the U.S.” (italics added.)

b. Another of those items states: “We offer you a *risk-free* service. You do not pay up-front fees of any kind – nor do you ever pay legal fees. So, if for some reason *we* cannot collect, you owe nothing.” (Italics added.)

c. Still another of those items states: “Fees will be deducted from each check *collected by Supportkids.com* until the *past-due* child support has been collected” (italics added).

True and correct copies of these informational and promotional items are attached hereto as Exhibits 2 through 4, respectively.

18. The application contained an agreement for Supportkids’ “fullsupport” service, entitled “Agreement for Services,” for Ms. Zipperer’s completion and signature. A true and correct copy of the agreement, as completed and signed by Ms. Zipperer and dated March 16, 2001, is attached hereto as Exhibit 5.

a. The agreement authorizes Supportkids “to enforce and collect ‘Past-Due Support Owed’ from Steven Thielke” as a result of his “failure to comply with a valid court order or legally binding agreement to pay child support or other monetary obligations that may be owed me,” in exchange for a fee of 34% of all payments made by Mr. Thielke on “Past-Due Support Owed.”

b. The agreement defines “Past-Due Child Support Owed” as

follows:

“Past-Due Child Support Owed” is defined throughout this agreement as the sum of all past-due child support; also any other monetary obligation, including any interest, due and owing from NCP [non-custodial parent] as of the date NCP’s first payment is received by Supportkids. “Past-Due Support Owed” also includes any support and interest that becomes past due after the first payment is received by Supportkids. Regardless of how payments are designated by NCP, a party making payments on behalf of NCP, court records or any other documents, it is specifically agreed that *any and all amounts received by Supportkids will be first credited to reduce “Past-Due Support Owed.”*

(Italics added.)

c. The agreement provides that it may terminate only in three ways:

(i) When Supportkids collects all “Past-Due Support Owed”;

(ii) If the custodial parent notifies Supportkids in writing of

his or her wish to terminate the agreement within seven days of signing it; and

(iii) If the custodial parent receives no payment on “Past-Due Support Owed” for twelve consecutive months, and sends a written notice of termination to Supportkids, *except* that if Supportkids has hired an attorney to place a lien against the non-custodial parent’s property, the termination occurs only upon release and satisfaction of the lien.

d. In the agreement, the custodial parent grants Supportkids a Limited Power of Attorney to act on behalf of the custodial parent for the collection of “Past-Due Support Owed,” including authorization to receive from any court, agency or private firm all information to which the custodial parent is entitled. The Limited Power of Attorney also grants Supportkids the right to receive, endorse and deposit child

support payments due the custodial parent directly from any court or government agency, and the right to retain the agreed fee for services from those payments.

e. The agreement states that Supportkids is a Texas corporation, that the agreement is entered into in Texas, and that it shall be interpreted according to Texas law.

19. Ms. Zipperer mailed the completed application, including the agreement that she signed and dated, to Supportkids. She then received a letter from Supportkids dated April 9, 2001, which acknowledged receipt of her application materials, and enclosed additional forms for her to sign and return. A true and correct copy of that letter is attached hereto as Exhibit 6.

20. Among the forms enclosed with Supportkids' April 9 letter was a Limited Power of Attorney and Authorization to Release Information, which Ms. Zipperer signed and dated July 2, 2001 and returned to Supportkids. A true and correct copy of that instrument is attached hereto as Exhibit 7. That instrument appoints Child Support Enforcement Company (CSE), a Texas corporation (by which name Supportkids was formerly known) as her true and lawful attorney-in-fact to handle all matters with respect to her claim for child support against Steven Thielke. The grant includes but is not limited to the right to receive, negotiate and deposit all money designated as child support, even after termination or expiration of the agreement; and the right to change the address on file with any court or government official for disbursement of child support payments to the address designated by CSE (Supportkids).

21. Also among the forms enclosed with Supportkids' April 9 letter was a form entitled Change of Address for Child Support, which Ms. Zipperer signed and

dated July 2, 2001 and returned to Supportkids. A true and correct copy of that instrument is attached hereto as Exhibit 8. This instrument instructs and authorizes the child support disbursing agency to send all child support payments received on Ms. Zipperer's account to CSE (Supportkids).

22. Ms. Zipperer received a letter from Supportkids dated July 12, 2001, which acknowledged receipt of the additional forms and stated that Supportkids would begin its attempt to collect her past-due child support.

23. By November 2001, Ms. Zipperer had become dissatisfied with Supportkids' services. Collections were so minimal that the arrearage was increasing rather than decreasing, even though Mr. Thielke was required to pay only \$55.80 per week for child support during that period of time. Moreover, Ms. Zipperer had received no response from Supportkids to her several inquiries since July 2001. Therefore, Ms. Zipperer wished to terminate Supportkids' services.

24. Beginning in November 2001, Ms. Zipperer repeatedly wrote letters and sent e-mails to Supportkids in an effort to terminate its services. In response, Supportkids repeatedly referred Ms. Zipperer to the termination provision of the agreement, and refused to terminate it. Finally, after Ms. Zipperer's repeated demands, Supportkids "closed" her case in March 2002.

OTHER CLASS MEMBERS' EXPERIENCE WITH SUPPORTKIDS

25. On information and belief, Supportkids, by means of television advertisements, its website and written promotional materials, made the same or substantially the same representations to other class members as it made to Ms. Zipperer—namely, that its services are risk-free, and that its fee is 34% of the past due

child support that *it* collects—in order to induce the class members to enter into agreements for Supportkids’ “fullsupport” services.

26. On information and belief, Supportkids entered into agreements with other class members containing the same terms as its agreement with Ms. Zipperer (Exhibit 5).

27. On information and belief, Supportkids’ collection efforts do bear fruit in some cases, but in many others, Supportkids exerts little or no collection efforts, or its collection efforts are substantially unsuccessful. However, even with respect to cases where Supportkids makes no significant collection efforts, or its efforts are substantially unsuccessful, its agreements with class members assure it, in the vast majority of such cases, of receiving 34% of all support payments from the inception of each agreement and for the duration of the child support judgment or order. Supportkids accomplishes this objective through a combination of three provisions of its agreements:

a. *The provision that effectively redefines current child support as “Past-Due Support Owed” by requiring any payment to be applied first to the arrearage, regardless of the designation or intention of the non-custodial parent, courts or child support agencies.* Since a custodial parent would only be interested in Supportkids’ services if a significant child support arrearage exists, any such custodial parent who also is entitled to current support will effectively be subject to a self-renewing arrearage under the Supportkids agreement. This is true because even if current support payments are made, the payments are credited to past support, and current support itself therefore becomes past due. Only in those cases where the recovery of the arrearage substantially outstrips the amount of current support coming

due, or the current child support obligation has ended, is there any possibility of breaking the cycle and satisfying the arrearage. On information and belief, only in a relatively miniscule number of cases has the obligation to pay current child support ended, or is it realistic to expect collection on the arrearage to outstrip the current child support obligation sufficiently to satisfy the arrearage.

b. *The provision that effectively prevents the custodial parent from terminating the agreement, after the seven-day “free look” period, for the duration of the child support judgment or order.* Even if no child support payment has been received for a period of twelve consecutive months, and the custodial parent then requests termination in writing, Supportkids can unilaterally prevent termination simply by retaining counsel for the purpose of placing a lien on the non-custodial parent’s property. Thus, after the seven-day “free look” period (during which custodial parents typically lack incentive to terminate), Supportkids can effectively extend the term of its agreements for the duration of the respective child support judgments and orders. Supportkids thereby assures itself of 34% of the collections on those judgments and orders even in cases where it expends no significant effort, or has no significant effect in achieving the recoveries.

c. The last piece of the puzzle is the *limited power of attorney provision* that authorizes Supportkids to receive and deposit all child support payments made, regardless of whether the payment results from Supportkids’ efforts, and regardless of whether it is truly a payment of past due, as opposed to current, child support.

28. On information and belief, many class members do not perceive, at the time that they sign “fullsupport” agreements with Supportkids or within seven days thereafter, the practical and legal effect of the foregoing combination of contractual provisions. Those that realize that effect after that time are effectively precluded from terminating their agreements absent Supportkids’ consent.

29. Contrary to Supportkids’ representations to class members, its “fullsupport” services are not risk-free. Class members who enter into agreements for such services are subject to the risk that they will receive substantially less child support, net of Supportkids’ fees, than they would have otherwise received, both because Supportkids does not have any or a significant effect on the collections that subsequently occur, and because current support is redefined under the agreements as past due support subject to Supportkids’ contingent fee. Often, such class members would have been better off to compromise or write off the arrearage in exchange for receiving payments of current support that are not subject to a contingent collection fee of indefinite duration. The magnitude of this risk is exacerbated by the practical inability to terminate the agreements.

30. Contrary to Supportkids’ representations to class members, its 34% contingent fee is computed not merely on child support payments that Supportkids collects, but rather on *all* child support payments made, regardless of whether or not Supportkids contributes significantly or at all to their collection.

31. Contrary to Supportkids’ representations to class members, its 34% contingent fee is computed not merely on past due or unpaid child support payments, as

those terms are commonly understood, but also on current child support payments, which the agreement redefines, for its purposes, as “Past-Due Support Owed.”

FIRST CAUSE OF ACTION—FRAUD IN THE INDUCEMENT

32. Ms. Zipperer realleges and incorporates by reference paragraphs 1 through 31 of this Complaint, as if fully set forth in this First Cause of Action.

33. Supportkids, by means of television advertisement, its website and written promotional materials, made to the class members the representations of fact described in paragraphs 13 through 17 of this Complaint.

34. Each of those representations was untrue.

35. Supportkids made each of those representations knowing that it was untrue, or recklessly without caring whether it was true or false.

36. Supportkids made each of those representations with intent to deceive and induce class members to act upon it by entering into agreements for “fullsupport” services, to their pecuniary damage.

37. The class members believed each of those representations to be true and relied on them.

38. Declaratory relief on the issue of the truthfulness of untruthfulness of Supportkids’ representations described in paragraphs 13 through 17 of this Complaint is appropriate, because such relief will help to terminate the controversy giving rise to this proceeding.

39. Those class members who are currently parties to agreements with Supportkids for “fullsupport” services are entitled to injunctive relief prohibiting Supportkids’ retention of further fees contrary to its representations described in

paragraphs 13 through 17 of this Complaint, because those class members and their children will be irreparably harmed by Supportkids' continued retention of such fees, those class members have no adequate remedy at law, and injunctive relief is in the public interest.

40. Those class members who are currently parties to agreements with Supportkids for "fullsupport" services are entitled to rescind those agreements, or in the alternative to reform those agreements to prevent Supportkids from retaining fees contrary to its representations described in paragraphs 13 through 17 of this Complaint.

41. The class members are entitled to restitution of amounts retained by Supportkids as fees, under agreements for "fullsupport" services, contrary to its representations described in paragraphs 13 through 17 of this Complaint.

SECOND CAUSE OF ACTION—BREACH OF FIDUCIARY DUTY

42. Ms. Zipperer realleges and incorporates by reference paragraphs 1 through 31 of this Complaint, as if fully set forth in this Second Cause of Action.

43. Supportkids assumed the duties of a fiduciary towards class members by virtue of:

a. The Limited Power of Attorney that Supportkids induced class members to grant to it, by which class members appointed Supportkids as their true and lawful attorney-in-fact to handle all matters with respect to their child support claims, including but not limited to receiving, negotiating and depositing all money designated as child support; and

b. The confidence that Supportkids induced class members to repose in it, as a result of its claim of possessing special expertise in collecting past-due child

support, and pursuant to which Supportkids makes all strategic decisions concerning class members' child support claims, including but not limited to the decision to retain attorneys and the choice of attorneys.

44. Supportkids has a fiduciary duty to class members to inform them:

a. That its "fullsupport" services are not risk-free as it represented in its advertisements and promotional material;

b. That contrary to representations in its advertisements and promotional material, its 34% contingent fee is computed not merely on child support payments that it collects, but rather on *all* child support payments made, regardless of whether or not it contributes significantly to their collection; and

c. That contrary to representations in its advertisements and promotional material, its 34% contingent fee is computed not merely on past due or unpaid child support payments, as those terms are commonly understood, but also on current child support payments, which the agreement redefines, for its purposes, as "Past-Due Support Owed."

45. Supportkids breached its fiduciary duty to class members by failing to disclose that information to them at the inception of their relationship.

46. Declaratory relief on the issue of whether or not Supportkids has a fiduciary duty to class members as described in paragraph 44 above is appropriate, because such relief will help terminate the controversy giving rise to this proceeding.

47. Those class members who are currently parties to agreements with Supportkids for "fullsupport" services are entitled to injunctive relief prohibiting Supportkids' retention of further fees contrary to its fiduciary duty to those class

members, because those class members and their children will be irreparably harmed by Supportkids' continued retention of such fees, those class members have no adequate remedy at law, and injunctive relief is in the public interest.

48. Those class members who are currently parties to agreements with Supportkids for "fullsupport" services are entitled to rescind those agreements, or in the alternative to reform those agreements to prevent Supportkids from retaining fees contrary to its fiduciary duty to those class members.

49. The class members are entitled to restitution of amounts retained by Supportkids as fees, under agreements for "fullsupport" services, contrary to its fiduciary duty to those class members.

THIRD CAUSE OF ACTION—VIOLATION OF TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT

50. Ms. Zipperer realleges and incorporates by reference paragraphs 1 through 31 of this Complaint, as if fully set forth in this Third Cause of Action.

51. Pursuant to Supportkids' course of conduct described in paragraphs 13 through 19 and 25 through 27 of this Complaint, Supportkids represented and continues to represent that its services have characteristics and benefits which they do not have, in violation of the Act, Texas Business and Commerce Code § 17.46(5).

52. Pursuant to Supportkids' course of conduct described in paragraphs 13 through 19 and 25 through 27 of this Complaint, Supportkids advertised and continues to advertise its "fullsupport" services with intent not to sell them as advertised, in violation of the Act, Texas Business and Commerce Code § 17.46(9).

53. Pursuant to Supportkids' course of conduct described in paragraphs 13 through 19 and 25 through 27 of this Complaint, Supportkids represented and continues

to represent that the agreements confer or involve a right which they do not have or involve—namely, the right not to pay Supportkids unless its efforts result in the collection of past-due child support—in violation of the Act, Texas Business and Commerce Code § 17.46(12).

54. Supportkids’ course of conduct described in paragraphs 13 through 19 and 25 through 27 of this Complaint constitutes an unconscionable course of action by Supportkids—i.e., an act or practice which, to class members’ detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of class members to a grossly unfair degree—in violation of the Act, Texas Business and Commerce Code § 17.50(a)(3).

55. Pursuant to the Act, Texas Business and Commerce Code § 17.50(b), the class members are entitled to the following relief:

a. Declaratory relief on the issue of whether Supportkids’ course of conduct violates the Act in each of the respects described in paragraphs 51 through 54 above;

b. Injunctive relief in favor of those class members who are currently parties to agreements with Supportkids for “fullsupport” services, prohibiting Supportkids’ retention of further fees as a consequence of its violation of the Act;

c. Injunctive relief prohibiting Supportkids’ continued representations, in its advertisements and promotional material, which violate the Act;

d. Those class members who are currently parties to agreements with Supportkids for “fullsupport” services are entitled to rescind those agreements, or in the

alternative to reform those agreements to prevent Supportkids from retaining fees as a consequence of its violation of the Act;

e. Restitution of amounts retained by Supportkids as fees, under agreements for “fullsupport” services, as a consequence of its violation of the Act; and

f. An award of court costs and reasonable and necessary attorneys’ fees.

WHEREFORE, Ms. Zipperer, on her own behalf and on behalf of the class, demands judgment against Supportkids as follows:

1. Recognizing, approving and certifying the class specified herein;

2. Declaratory relief:

a. That Supportkids’ representations described in paragraphs 13 through 17 of this Complaint are untruthful;

b. That Supportkids had a fiduciary duty to class members;

c. That pursuant to Supportkids’ course of conduct described in paragraphs 13 through 19 and 25 through 27 of this Complaint, Supportkids advertised and continues to advertise its “fullsupport” services with intent not to sell them as advertised, in violation of the Act, Texas Business and Commerce Code § 17.46(9);

d. That pursuant to Supportkids’ course of conduct described in paragraphs 13 through 19 and 25 through 27 of this Complaint, Supportkids represented and continues to represent that the agreements confer or involve a right which they do not have or involve—namely, the right not to pay Supportkids unless its efforts result in

the collection of past-due child support—in violation of the Act, Texas Business and Commerce Code § 17.46(12); and

e. That Supportkids’ course of conduct described in paragraphs 13 through 19 and 25 through 27 of this Complaint constitutes an unconscionable course of action by Supportkids—i.e., an act or practice which, to class members’ detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of class members to a grossly unfair degree—in violation of the Act, Texas Business and Commerce Code § 17.50(a)(3).

3. A permanent injunction:

a. In favor of those class members who are currently parties to agreements with Supportkids for “fullsupport” services, prohibiting Supportkids’ retention of further fees contrary to its representations described in paragraphs 13 through 17 of this Complaint;

b. In favor of those class members who are currently parties to agreements with Supportkids for “fullsupport” services, prohibiting Supportkids’ retention of further fees contrary to its fiduciary duty to class members;

c. In favor of those class members who are currently parties to agreements with Supportkids for “fullsupport” services, prohibiting Supportkids’ retention of further fees as a consequence of its violation of the Act; and

d. Prohibiting Supportkids’ continued representations, in its advertisements and promotional material, which violate the Act.

4. Rescission of the agreements currently in force, or in the alternative, reformation of those agreements:

- a. To prevent Supportkids from retaining fees contrary to its representations described paragraphs 13 through 17 of this Complaint;
- b. To prevent Supportkids from retaining fees contrary to its fiduciary duty to class members; and
- c. To prevent Supportkids from retaining fees as a consequence of its violation of the Act.

5. Restitution of amounts retained by Supportkids as fees, under agreements for “fullsupport” services:

- a. Contrary to its representations described in paragraphs 13 through 17 of this Complaint;
- b. Contrary to its fiduciary duty to class members; or
- c. As a consequence of Supportkids’ violation of the Act.

6. For an award of court costs and reasonable and necessary attorneys’ fees under the Act.

7. For such other or further relief as this Court deems just.

Dated at Milwaukee, Wisconsin, this ____ day of June, 2002.

CROEN & BARR LLP
Attorneys for Plaintiff

By: _____
Charles H. Barr—SBW #1004802

ADDRESS AND TELEPHONE:
250 East Wisconsin Avenue, Suite 1550
Milwaukee, Wisconsin 53202
414-226-2080

OF COUNSEL:

Steven E. Goren—# P36581 (Michigan)
Goren & Goren, P.C.
30400 Telegraph Road, Suite 470
Bingham Farms, MI 48025-4541
248-540-3100

Stephen Gardner—Texas State Bar # 07660600
Woodall Rodgers Tower, Suite 1750
1945 Woodall Rodgers Freeway
Dallas, TX 75201
214-954-0663

Stuart Rossman—BBO # 430640 (Massachusetts)
National Consumer Law Center, Inc.
77 Summer Street, 10th Floor
Boston, MA 02110
617-542-8010