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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

16 PHILLIP GARCIA, on Behalf of
17 Himself and All Others Similarly
18 Situated,

19 Plaintiff,

20 v.

21
22 SHOWTIME NETWORKS, INC., a
Delaware Corporation; WILLIAM
23 MORRIS ENDEAVOR
24 ENTERTAINMENT, LLC, a Delaware
25 Corporation; ZUFFA, LLC, a Nevada
Corporation; and DOES 1-10, Inclusive

26 Defendants.
27

Case No.: '17CV1803 JM AGS

CLASS ACTION

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

28

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1 Plaintiff Phillip Garcia (“Plaintiff”), by and through his attorneys, brings this
 2 action on behalf of himself and the Class¹ against Showtime Networks, Inc.
 3 (“Showtime”), William Morris Endeavor Entertainment, LLC *d/b/a* WME-IMG
 4 (“WME”), and Zuffa, LLC *d/b/a* Ultimate Fighting Championship (“UFC”), a wholly
 5 owned subsidiary of WME (collectively, “Defendants”). Plaintiff makes the
 6 following allegations upon information and belief (except those allegations as to the
 7 Plaintiff or his attorneys, which are based on personal knowledge), based upon an
 8 investigation that is reasonable under the circumstances, which allegations are likely
 9 to have evidentiary support after a reasonable opportunity for further investigation
 10 and/or discovery.

NATURE OF THE CASE

11
 12 1. On August 26, 2017, Showtime aired what it promoted as an
 13 “unprecedented superfight” between boxing legend Floyd Mayweather and UFC
 14 superstar Conor McGregor in a 12-round boxing showdown at the T-Mobile Arena in
 15 Las Vegas, Nevada. The superfight was the main event of a Showtime Pay-Per-View
 16 (“PPV”) boxing card, which included three additional fights on the main card: (1)
 17 Andrew Tabiti vs. Steve Cunningham (cruiserweight); (2) Badou Jack vs. Nathan
 18 Cleverly (light heavyweight); and (3) Gervonta Davis vs. Francisco Fonseca (junior
 19 lightweight) (collectively referred to as the “PPV Fight”).

20 2. Showtime offered to millions of consumers an opportunity to “witness
 21 history” by airing the PPV Fight for about \$99.95 through (1) television cable and
 22 satellite providers (the “Television”), or (2) through Apps such as UFC Fight Pass or
 23 the Showtime App where consumers could watch the PPV Fight via the internet using
 24 live online streaming (the “Live Stream”). This case involves the Live Stream which,
 25 unfortunately, was defective and failed to conform to the promises and representations
 26
 27

28 ¹ The “Class” is defined in ¶34 below.

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1 made by Defendants and was not fit for its intended purpose. Contrary to Defendants’
2 promises and representations, the Live Stream: (1) failed to stream the entire PPV
3 Fight for which Plaintiff and the Class purchased; (2) caused the main event fight to
4 be delayed by about 50 minutes; and (3) failed to have sufficient bandwidth which
5 resulted in, *inter alia*, system failures (hereinafter, the “Defect”).

6 3. To redress the harms suffered, Plaintiff, on behalf of himself and the
7 Class, brings claims for: (1) violation of California’s Song-Beverly Consumer
8 Warranty Act (“Song-Beverly Act”), Civil Code §§1790, *et seq.* (Implied Warranty
9 of Merchantability); (2) violation of California’s Consumer Legal Remedies Act
10 (“CLRA”), Civil Code §§1750, *et seq.*; (3) Quasi-Contract (*a/k/a* Unjust Enrichment);
11 and (4) violation of California’s Unfair Competition Law (“UCL”), Business &
12 Professions Code §§17200, *et seq.*

13 **THE PARTIES**

14 **Defendants**

15 4. Defendant Showtime Networks, Inc. is a Delaware Corporation with its
16 principal place of business located at 51 West 52nd Street, New York, New York
17 10019. Showtime, a wholly-owned subsidiary of CBS Corporation, owns, operates,
18 markets, and distributes, among other things, sports and entertainment events for
19 exhibition to subscribers on a pay-per-view basis through SHOWTIME PPV.²
20 Showtime was the owner, operator, marketer, distributor, and seller of the Live Stream
21 of the PPV Fight. Based on information and belief, Showtime also contracted with
22 authorized agents to directly sell the PPV Fight to consumers, including Microsoft
23 Corporation (“Microsoft”), UFC, Apple, Inc., and many others.

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² <http://www.sho.com/about> (last visited August 31, 2017).

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1 5. Defendant William Morris Endeavor Entertainment, LLC *d/b/a* WME-
2 IMG is a Delaware Corporation with its principal place of business located at 9601
3 Wilshire Boulevard, Beverly Hills, California, 90210.

4 6. Defendant Zuffa, LLC, a wholly owned subsidiary of WME, is a Nevada
5 Corporation with its principal place of business located at 2960 West Sahara Avenue,
6 Suite 100, Las Vegas, Nevada, 89102. Zuffa, LLC and WME do business under the
7 name of Ultimate Fighting Championship (“UFC”).

8 7. WME and Zuffa, LLC, doing business as UFC, own, operate, market,
9 distribute, and sell a subscription-based internet streaming service called UFC.tv
10 (www.ufc.tv). UFC.tv consists of both a 24-hour linear streaming channel (UFC Fight
11 Pass) and pay-per-view programming from UFC’s library. Consumers can access
12 UFC.tv to watch events live online on virtually any device, including IOS and
13 Android devices, Xbox One, Xbox 360, AppleTV, Chromecast, Roku, Samsung, and
14 LG Smart TVs. For example, in 2011, UFC on-demand-content was launched for the
15 Xbox, enabling those with a Microsoft Xbox to access on-demand content using
16 UFC.tv’s app to stream live video through an internet connection. Consumers, such
17 as Plaintiff who have a device such as the Xbox, could purchase the PPV Fight
18 through Microsoft (who owns Xbox and was an authorized agent of Showtime to sell
19 the PPV Fight) and watch the Live Stream of the PPV Fight using the UFC.tv app.
20 Based on information and belief, UFC contracted with Showtime and was one of
21 Showtime’s authorized retailers of the Live Stream of the PPV Fight. Based on
22 information and belief, UFC was also partnered with NeuLion as its streaming
23 partner.

Plaintiff

24
25 8. Plaintiff is now, and at all relevant times was, a resident of San Diego,
26 California. Plaintiff brings this action in his individual capacity and on behalf of the
27 Class. As set forth below, Plaintiff purchased the Live Stream of the PPV Fight in San
28 Diego, California.

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1 9. Plaintiff is, and has been since he was a child, an avid boxing fan.
2 Growing up, he boxed at the infamous Gleason’s Gym in Brooklyn, New York.
3 Plaintiff watches boxing and mixed martial arts matches through online connections
4 on about a weekly basis. Plaintiff learned of the PPV Fight weeks in advance of the
5 August 26, 2017 official public announcement and became very excited.

6 10. From Defendants’ marketing and advertising, Plaintiff learned not only
7 that Mayweather and McGregor would be fighting in the main event, but that fighters
8 such as Andrew Tabiti and Badou Jack would be fighting on the main card and for
9 title belts – fighters who Plaintiff was well-aware of. Plaintiff did not purchase the
10 PPV Fight to watch only the main event; he purchased it to be able to watch the *entire*
11 PPV Fight, including the other three fights on the main card, including the Tabiti vs.
12 Cunningham fight for a vacant cruiserweight title.

13 11. Plaintiff was lured into and watched Showtime’s promotional video of
14 the PPV Fight, along with the other online promotional materials advertising the PPV
15 Fight. The Live Stream was advertised as viewable in one simultaneous stream in
16 high definition (“HD”). Based on Defendants’ advertising and marketing, and
17 common sense, Plaintiff reasonably expected to be able to watch the entire PPV Fight,
18 continuously and without interruption in service, in HD via the Live Stream.

19 12. It was because of the above-identified representations and expectations
20 that Plaintiff purchased Showtime’s Live Stream of the PPV Fight.

21 13. All of Plaintiff’s equipment and software (*e.g.*, Xbox One, Motorola
22 Surfboard modem, and ISP connection), met (and exceeded) all the minimum
23 technical requirements to be able to watch the Live Stream of the PPV Fight. Prior to,
24 during, and after the PPV Fight, Plaintiff’s equipment was up-to-date and was
25 otherwise fully functional without any problems or issues.

26 14. A few hours before the 6:00 p.m. PST start time of the PPV Fight on
27 August 26, 2017, Plaintiff purchased the PPV Fight through Microsoft for \$99.95,
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1 plus \$8.05 in tax, for a total payment of \$108, which was supposed to enable Plaintiff
2 to watch the Live Stream of the PPV Fight through the UFC.tv app on his Xbox One.

3 15. Plaintiff quickly learned that Defendants’ Live Stream was defective and
4 unable to stream the PPV Fight as promised. About 15 minutes before the 6:00 p.m.
5 PST start time, Plaintiff attempted to access the PPV Fight via the Live Stream, but
6 due to Defendants’ defective system (*see* ¶¶23-29, below), Plaintiff was not able to
7 access the PPV Fight. Plaintiff attempted to contact UFC’s customer support via its
8 online “live help” chat, which was where he was directed for technical issues during
9 live events, but the chat link did not (and still does not) work.

10 16. Plaintiff continued to repeatedly try to access the PPV Fight via Live
11 Stream, but he was unable to access it because of Defendants’ defective system until
12 after the 6:00 p.m. PST start time and after several rounds of the Tabiti fight were
13 already over. The Live Stream continued to suffer system failures, and Plaintiff’s Live
14 Stream froze and then resumed during the PPV Fight. In addition, due to Defendants’
15 defective system, the main event between Mayweather and McGregor was delayed
16 by about 50 minutes, causing a material disruption in Plaintiff’s planned evening
17 schedule.

18 17. Had Plaintiff known of Defendants’ defective system causing the Defect,
19 Plaintiff would not have purchased the Live Stream of the PPV Fight. Accordingly,
20 Plaintiff reasonably seeks restitution of the money he paid for the defective Live
21 Stream product.

JURISDICTION AND VENUE

22
23 18. The Court has jurisdiction over the lawsuit under 28 U.S.C. §1332(a)(1)
24 because Plaintiff and Defendants are citizens of different states and the amount in
25 controversy exceeds \$75,000, excluding interest and costs. The Court also has
26 jurisdiction under the Class Action Fairness Act of 2005, 28 U.S.C. §1332(d)(2),
27 because the suit is a class action, the parties are minimally diverse, and the amount in
28 controversy exceeds \$5,000,000, excluding interest and costs. The Court has

1 supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C.
2 §1367(a).

3 19. This Court has personal jurisdiction over Defendants because they do a
4 substantial amount of business in California, including in this District; are authorized
5 to conduct business in California, including in this District; and have intentionally
6 availed themselves of the laws and markets of this District through the promotion,
7 sale, marketing, and/or distribution of their products and services.

8 20. Venue is proper in this district under 28 U.S.C. §1391(a)(1) and (a)(2)
9 because a substantial part of the events or omissions giving rise to this claim occurred
10 in this district. Venue is also proper under 18 U.S.C. §1965(a), because Defendants
11 transact a substantial amount of its business in this District.

12 **FACTUAL BACKGROUND**

13 21. Prior to the PPV Fight, virtually every major reporting agency was
14 predicting record-setting audience viewing for the PPV Fight, claims that appear to
15 have come true. Sources are reporting that UFC’s President, Dana White, reported
16 that the PPV Fight obtained a record 6.5 million PPV buys, likely bringing in more
17 than \$650 million in PPV business.

18 22. This turnout was expected by Defendants. The PPV Fight was marketed
19 as the biggest fight in boxing history. It has been publicly reported that Mayweather
20 participated in the three biggest PPV fights in history prior to the PPV Fight: (1) 2015
21 Pacquiao fight (4.6 million PPV buys); (2) 2007 Oscar De La Hoya fight (2.4 million
22 buys); and (3) 2013 Alvarez fight (2.2 million buys). McGregor, on the other hand, is
23 the biggest drawer of PPV buys for the UFC (mixed martial arts fighting) in recent
24 history: (1) second fight against Nate Diaz (1.65 million buys); (2) first fight against
25 Diaz (1.5 million buys); and (3) Alvarez fight (1.3 million buys). In other words,
26 Defendants knew, and expected, for the PPV buys, including for the Live Stream of
27 the PPV Fight, to be record setting in the many millions. Based on prior history,
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1 Defendants also knew that many of these PPV buys are not made until soon before
2 the fight.

3 23. Unfortunately, despite knowing many millions of consumers would be
4 purchasing and watching the PPV Fight via Live Stream commencing around 6:00
5 p.m. PST on August 26, 2017, Defendants knowingly did not have a system that could
6 handle the expected internet traffic resulting from the Live Stream of the PPV Fight.

7 24. Based on information and belief, Defendants knowingly did not secure
8 sufficient networking bandwidth to support the substantial number of subscribers who
9 paid to watch the PPV Fight via Live Stream. Bandwidth governs access to the
10 internet, the speed of that data, images, and video that can be uploaded and
11 downloaded, and where usage will be problematic. Defendants knew their system
12 could not conform to the representations made about its product, based on, *inter alia*,
13 Defendants’ available bandwidth and anticipated and known subscriber numbers.

14 25. As a result, reports from hundreds of consumers immediately started to
15 appear in online forums, such as Twitter, around the 6:00 p.m. PST start time,
16 complaining about receiving error messages and an inability to login to the Live
17 Stream of the PPV Fight. Even though consumers were using different devices and
18 apps to access the Live Stream of the PPV Fight, they faced the same problem – the
19 inability to access the PPV Fight. Due to the defective system, Showtime was forced
20 to delay the start of the main event and publicly acknowledge the problem:

21 Due to high demand, we have reports of scattered outages from various
22 cable and satellite providers [*sic*] and the online offering. We will delay
23 the start of the main event slightly to allow for systems to get on track.
24 We do not expect a lengthy delay.

25 26. Public reporting since the PPV Fight have credited the delay due to
26 bandwidth issues, including servers having crashed due to the amount of traffic
27 volume.
28

27. The UFC also publicly acknowledged the defective system on Twitter:



28. As the problem persisted, the UFC ultimately advised its customers to “find an alternate provider”:



29. Due to the defective system, including Defendants’ knowing failure to secure sufficient networking bandwidth, consumers continued to receive error messages and get dropped from the Live Stream at intermittent times throughout the PPV Fight. The usage was not seamless and the speed of the data was slowed and even stopped at certain points. Despite knowing its system was defective and unable to handle the expected and known volume of traffic, Defendants failed to inform Plaintiff and the Class of the same because Defendants knew the PPV Fight was going to be the most lucrative PPV event in history. Indeed, reports are estimating revenue of the PPV Fight to be between \$650 million to \$1 billion.

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1 (g) Whether Defendants breached the implied warranty of
2 merchantability;

3 (h) Whether Defendants were unjustly enriched through their
4 wrongful acts; and

5 (i) Whether Plaintiff and the Class have been harmed and the proper
6 measure of relief.

7 **Typicality**

8 41. The claims of Plaintiff are typical of the claims of the Class. Plaintiff and
9 all members of the Class sustained injuries and damages arising out of and caused by
10 Defendants' common course of conduct in violation of laws and statutes as alleged
11 herein.

12 **Adequacy of Representation**

13 42. Plaintiff will fairly and adequately represent and protect the interest of
14 the Class. Counsel who represents Plaintiff are competent and experienced in
15 litigating large consumer class actions.

16 **Superiority of Class Action**

17 43. A class action is superior to other available means for the fair and
18 efficient adjudication of this controversy. Individual joinder of the Class is not
19 practicable, and questions of law and fact common to the Class predominate over any
20 questions affecting only individual members of the Class. Each member of the Class
21 has been damaged and is entitled to recovery because of Defendants' uniform
22 unlawful practices described herein. There are no individualized factual or legal issues
23 for the court to resolve that would prevent this case from proceeding as a class action.
24 Class action treatment will allow those similarly situated persons to litigate their
25 claims in the manner that is most efficient and economical for the parties and the
26 judicial system. Plaintiff is unaware of any difficulties that are likely to be
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1 encountered in the management of this action that would preclude its maintenance as
2 a class action.

3 **COUNT I**

4 **Violation of California’s Song-Beverly Consumer**
5 **Warranty Act, Civil Code §§1790, *et seq.***
6 **(Implied Warranty of Merchantability)**

7 44. Plaintiff hereby alleges and incorporates by reference the allegations
8 contained in the paragraphs above as if fully set forth herein.

9 45. In California, “every sale of consumer goods that are sold at retail in this
10 state shall be accompanied by the manufacturer’s and the retail seller’s implied
11 warranty that the goods are merchantable.” Civil Code §1792. “The retail seller shall
12 have a right of indemnity against the manufacturer in the amount of any liability under
13 this section.” *Id.* “Any buyer of consumer goods who is damaged by a failure to
14 comply with any obligation under [the Song-Beverly Act] or under an implied or
15 express warranty or service contract may bring an action for the recovery of damages
16 and other legal and equitable relief.” Civil Code §1794(a).

17 46. “Implied warranty of merchantability” means that the consumer goods
18 meet all the following: (1) pass without objection in the trade under the contract
19 description; (2) are fit for the ordinary purposes for which such goods are used; (3)
20 are adequately contained, packaged, and labeled; and (4) conform to the promises or
21 affirmations of fact made on the container or label. Civil Code §1791.1(a)(1)-(4).

22 47. Here, all the elements for a claim for breach of implied warranty of
23 merchantability are satisfied: (1) Plaintiff (and the Class) was a “retail buyer” (2) of
24 “consumer goods” (Live Stream of the PPV Fight) (3) purchased from a “retail seller,”
25 and (4) the consumer goods purchased were not merchantable.

26 48. Specifically, Plaintiff is, and at all relevant times was, a “buyer” or “retail
27 buyer” within the meaning of the Song-Beverly Act, Civil Code §1791(b), because
28 he is an individual who bought a consumer good (the Live Stream of the PPV Fight)

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1 from a person (Microsoft) engaged in the business of manufacturing, distributing, or
2 selling consumer goods at retail. Plaintiff bought the Live Stream from Microsoft,
3 who was Showtime's authorized retail seller. Based on information and belief,
4 Microsoft also has a contract(s) with UFC, and it was authorized to sell the PPV
5 Fight to be viewed via Live Stream using UFC's app.

6 49. Microsoft is, and at all relevant times was, a "retail seller," "seller," and
7 "retailer," within the meaning of the Song-Beverly Act, Civil Code §1791(l) because
8 it is a corporation that engages in the business of selling consumer goods to retail
9 buyers. As Showtime's authorized retail seller, Microsoft distributed and sold the
10 Live Stream of the PPV Fight to buyers. Microsoft also sells numerous other
11 consumer goods to buyers, such as Xbox entertainment systems, laptop computers,
12 software, and other products.

13 50. Showtime is, and at all relevant times was, a "retail seller," "seller," and
14 "retailer," within the meaning of the Song-Beverly Act, Civil Code §1791(l) because
15 it is a corporation that engages in the business of selling consumer goods to retail
16 buyers. Showtime not only sold the Live Stream of the PPV Fight indirectly to buyers
17 such as Plaintiff through its authorized retail sellers, but it also sold the Live Stream
18 of the PPV Fight directly to buyers. Showtime also sells other consumer goods to
19 buyers, such as cable and satellite television network programs, On Demand
20 television programs, and other video content products.

21 51. UFC is, and at all relevant times was, a "retail seller," "seller," and
22 "retailer," within the meaning of the Song-Beverly Act, Civil Code §1791(l) because
23 it is a corporation that engages in the business of selling consumer goods to retail
24 buyers. As Showtime's authorized retail seller, UFC distributed and directly sold the
25 Live Stream of the PPV Fight to buyers. UFC also sells other consumer goods to
26 buyers, such as on-demand video of pre-recorded content and live online streaming
27 of video content, among other goods.

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1 52. Based on information and belief, Showtime is, and at all relevant times
2 was, a “manufacturer” within the meaning of the Song-Beverly Act, Civil Code
3 §1791(j) because it is a corporation that manufactures, assembles, or produces
4 consumer goods, including the Live Stream of the PPV Fight.

5 53. Based on information and belief, Microsoft is, and at all relevant times
6 was, a “manufacturer” within the meaning of the Song-Beverly Act, Civil Code
7 §1791(j) because it is a corporation that manufactures, assembles, or produces
8 consumer goods.

9 54. Based on information and belief, UFC is, and at all relevant times was,
10 a “manufacturer” within the meaning of the Song-Beverly Act, Civil Code §1791(j)
11 because it is a corporation that manufactures, assembles, or produces consumer goods.

12 55. The Live Stream of the PPV Fight purchased from Microsoft by Plaintiff
13 in San Diego, California, is a “consumer good” within the meaning of the Song-
14 Beverly Act, Civil Code §1791(a) because it was a new product bought by Plaintiff
15 for use primarily for personal, family, and household purposes, and it is not clothing
16 or a consumable.

17 56. The Song-Beverly Act does not require “privity” between Plaintiff and
18 Showtime or the UFC to assert an implied warranty claim. *Sater v. Chrysler Group*
19 *LLC*, Case No. EDCV 14-00700-VAP (DTBx), 2015 U.S. Dist. LEXIS 21022, *20-
20 21 (C.D. Cal. Feb. 20, 2015) (“The SBA does not require privity to assert an implied
21 warranty claim (either for merchantability or fitness).”); *Ehrlich v. BMW of N. Am.,*
22 *LLC*, 801 F. Supp. 2d 908, 921 (C.D. Cal. Aug. 11, 2010) (same) (listing cases).
23 Moreover, Microsoft contracted with Showtime and UFC to be an authorized retail
24 seller of the Live Stream and Plaintiff is a third-party beneficiary of those agreements.
25 Accordingly, even if privity was required, which it is not under the Song-Beverly Act
26 by the plain language of the statute, Plaintiff’s transaction in purchasing the Live
27 Stream is a well-established exception to the privity requirement. *Id.*

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1 Stream of the PPV Fight constitute “goods” and/or “services” as defined by Civil
2 Code §§1761(a) and (b). Defendants constituted “persons” under Civil Code
3 §1761(c), and Plaintiff and the Class purchases of the Live Stream of the PPV Fight
4 constitute “transactions,” as defined in Civil Code §1761(e).

5 63. Defendants violated the CLRA by engaging in the following deceptive
6 practices proscribed by Civil Code §1770(a), in transactions with Plaintiff and the
7 Class, that were intended to result and which resulted in the sale of goods and/or
8 services to a consumer:

9 (a) In violation of Civil Code §1770(a)(5), Defendants’ acts and
10 practices constitute material misrepresentations that the Live Stream of the PPV Fight
11 in question have characteristics, benefits, or uses which they did not have;

12 (b) In violation of Civil Code §1770(a)(7), Defendants
13 misrepresented that the Live Stream of the PPV Fight was of a particular standard,
14 quality and/or grade, when it was of another;

15 (c) In violation of Civil Code §§1770(a)(5) and (a)(7), Defendants
16 omitted and/or failed to disclose to Plaintiff and the Class material facts that were
17 contrary to representations made by Defendants about the characteristics, benefits,
18 uses, standard, quality, and/or grade of the Live Stream of the PPV Fight; and

19 (d) In violation of Civil Code §1770(a)(9), Defendants advertised the
20 Live Stream of the PPV Fight with the intent not to sell it as advertised or represented.

21 64. Defendants had exclusive knowledge of its defective system causing the
22 Defect and failed to disclose such to Plaintiff and the Class.

23 65. Because of Defendants’ unlawful conduct, Plaintiff and the Class have
24 suffered injury and damage in an amount to be determined at trial.

25 66. Pursuant to Civil Code §1782, on September 6, 2017 Plaintiff notified
26 Defendants in writing by certified mail of the violations of Civil Code §1770, and
27 have demanded that Defendants remedy the violations as detailed herein and to give
28 notice to all affected consumers of its intent to so act. Plaintiff sent this notice by

1 certified mail, return receipt requested, to each of Defendants’ principal place of
2 business.

3 67. If Defendants fail to remedy the violations or give notice to all affected
4 consumers within 30 days after receipt of the Civil Code §1782 notice, Plaintiff will
5 seek to amend this Complaint and seek actual damages and punitive damages for
6 violations of the CLRA.

7 68. Pursuant to Civil Code §1780(a)(2), Plaintiff seeks equitable and
8 injunctive relief because of the violations of the CLRA.

9 69. Plaintiff and the Class are also entitled to recover attorneys’ fees, costs,
10 expenses, and disbursements pursuant to Civil Code §§1780 and 1781.

11 **COUNT III**

12 **Quasi-Contract (Unjust Enrichment)**
13 **Seeking Restitution**

14 70. Plaintiff hereby alleges and incorporates by reference the allegations
15 contained in the paragraphs above as if fully set forth herein.

16 71. Where a defendant has been unjustly conferred a benefit “through
17 mistake, fraud, coercion, or request” the return of that benefit is a remedy sought in
18 “a quasi-contract cause of action.” *Astiana v. Hain Celestial Grp., Inc.*, 783 F.3d 753,
19 762 (9th Cir. 2015). When a plaintiff alleges “unjust enrichment, a court may
20 ‘construe the cause of action as a quasi-contract claim seeking restitution.’” *Id.*

21 72. Plaintiff and the Class conferred a benefit on Defendants, namely,
22 money, because of Defendant’s representations and implied warranty that it would
23 provide Plaintiff and the Class with a fully functioning Live Stream of the PPV Fight.
24 Defendants accepted the benefit of money from Plaintiff and the Class and it would
25 be unfair for Defendants to retain the benefit because the goods were not merchantable
26 because they were not fit for the ordinary purposes for which such goods are used and
27 did not otherwise conform as promised and expected.

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1 73. Because of Defendants’ unlawful conduct, Plaintiff and the Class have
2 suffered injury and, thus, they are entitled to restitution of the money they conferred
3 on Defendants.

4 **COUNT IV**

5 **Violation of California’s Unfair Competition Law,**
6 **Business & Professions Code §§17200, *et seq.***

7 74. Plaintiff hereby alleges and incorporates by reference the allegations
8 contained in the paragraphs above as if fully set forth herein.

9 75. California Business & Professions Code §17200 prohibits acts of unfair
10 competition, which means and includes any “unlawful, unfair or fraudulent business
11 act or practice” and any act prohibited by California Business & Professions Code
12 §17500.

13 76. Defendants engaged in unlawful activity prohibited by Business &
14 Professions Code §§17200, *et seq.* The actions of Defendants as alleged within this
15 Complaint constitute unlawful and unfair business practices with the meaning of
16 Business & Professions Code §§17200, *et seq.*

17 77. Defendants have conducted the following unlawful activities:

18 (a) Violation of the Song-Beverly Act, Civil Code §§1790, *et seq.*, by
19 breaching the implied warranty of merchantability;

20 (b) Violation of the CLRA, Civil Code §§1750, *et seq.* by engaging
21 in deceptive practices proscribed by Civil Code §1770; and

22 (c) Unjust enrichment, by unfairly taking Plaintiff’s and the Class’
23 money without conferring a promised benefit.

24 78. Defendants’ activities also constitute unfair practices in violation of
25 Business & Professions Code §§17200, *et seq.*, because Defendants’ practices violate
26 the above noted laws, and/or violate an established public policy, and/or the practice
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1 is immoral, unethical, oppressive, unscrupulous, and substantially injurious to
2 Plaintiff and the Class.

3 79. Defendants’ also violated the UCL’s prohibition against fraudulent
4 business acts or practices through their misrepresentations regarding the Live Stream
5 of the PPV Fight that had a tendency to mislead the public and with intent to induce
6 reliance of Plaintiff and the Class.

7 80. Because of Defendants’ violations of the noted laws, Plaintiff and the
8 Class have suffered injury-in-fact and have lost money or property because of
9 Defendants’ practices. The injury includes the money Plaintiff and the Class paid for
10 the Live Stream of the PPV Fight. Plaintiff and the Class are entitled to restitution, an
11 injunction, declaratory, and other equitable relief against such unlawful practices to
12 prevent future damage for which there is no adequate remedy at law.

13 81. Plaintiff is also entitled to and hereby claims attorneys’ fees and costs,
14 pursuant to the private attorney general theory doctrine (Code of Civil Procedure
15 §1021.5), and any other applicable provision for attorney fees and costs, based upon
16 the violation of the underlying public policies.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for
19 judgment against Defendants as follows:

20 A. That the Court determine that this action may be maintained as a
21 class action with the named Plaintiff appointed as The Class Representative;

22 B. For the attorneys appearing on the above-caption to be named
23 Class counsel;

24 C. For nominal, actual, and compensatory damages, according to
25 proof at trial;

26 D. For restitution of all monies, expenses, and costs due to Plaintiff
27 and the Class;

28

1 E. For disgorged profits from the unlawful and unfair business
2 practices in violation of Business & Professions Code §§17200, *et seq.*;

3 F. For reasonable attorneys’ fees, expenses, costs, and interest
4 pursuant to Civil Code §§1780, 1781, and 1794, Code of Civil Procedure §1021.5,
5 and as otherwise allowed by law;

6 G. For equitable relief pursuant to Business & Prof Code §§17200, *et*
7 *seq.*, and as otherwise allowed by law;

8 H. For declaratory relief as deemed proper;

9 I. For pre-judgment and post-judgment interest to the extent
10 allowable by law; and

11 J. For such other and further relief as the Court deems just and
12 proper.

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff, on behalf of himself and the Class, demand trial by jury on all issues
15 so triable.

16 Dated: September 6, 2017

HAEGGQUIST & ECK, LLP
ALREEN HAEGGQUIST (221858)
AARON M. OLSEN (259923)

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19 By: 

20 AARON M. OLSEN

21 225 Broadway, Suite 2050
22 San Diego, CA 92101
23 Telephone: (619) 342-8000
24 Facsimile: (619) 342-7878
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HAEGGQUIST & ECK, LLP

HAEGGQUIST & ECK, LLP

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LAGUARDIA LAW
ERIC A. LAGUDIA (272791)
402 W. Broadway, Suite 800
San Diego, CA 92101
Telephone: (619) 655-4322
Facsimile: (619) 655-4344

Attorneys for Plaintiff and the Proposed
Class

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Affidavit of Aaron M. Olsen re Venue for CLRA Count

I, Aaron M. Olsen, am an attorney admitted to practice before this Court and I am counsel of record for Plaintiff in the above-captioned matter. I make this affidavit pursuant to California Civil Code §1780(d). Venue is proper in this District because it is within the county where Plaintiff’s transaction at issued in this Complaint occurred. I declare under penalty of perjury under the laws of the United States of America the above is true and correct and of my own personal knowledge.

Dated: September 6, 2017



AARON M. OLSEN

HAEGGQUIST & ECK, LLP

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Phillip Garcia, on Behalf of Himself and All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Aaron M. Olsen (259923)
Haeggquist & Eck, LLP
225 Broadway, Suite 2050, San Diego, CA, 92101 (619) 342-8000

DEFENDANTS

Showtime Networks, Inc., a Delaware Corporation; Willaim Morris Endeavor Entertainment, LLC, a Delaware Corporation; Zuffa LLC, a Nevada Corporation; and DOES 1-10, Inclusive

County of Residence of First Listed Defendant Delaware
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) **'17CV1803 JM AGS**

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input checked="" type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §§1332, 1367
Brief description of cause:
Consumer Class Action

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 09/06/2017 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Showtime, UFC Tagged with Class Action Over Mayweather-McGregor Streaming Problems](#)
