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**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA**

MICHELLE KOPFMANN, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

STUBHUB, INC.,

Defendant.

Case No. 3:20-cv-3025

**CLASS ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL**

1. Conversion
2. Breach of Contract
3. Violation of California’s Consumer
Legal Remedies Act
4. Violation of California’s Unfair
Competition Law
5. Money Had and Received

INTRODUCTION

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2 1. As the COVID-19 pandemic took root in the United States in March 2020,
3 tens of thousands fell sick, unemployment filings hit record highs, and the Dow Jones
4 lost over a third of its value, leaving many in dire financial straits.

5 2. To prevent the spread of disease, thousands of sporting events, concerts,
6 and other live performances were canceled and most of the country took shelter in their
7 homes. The prompt cancellation of events should have meant that ticketholders were
8 promptly refunded their money – money that in many cases was desperately needed.

9 3. But that did not happen for consumers who bought their tickets on the
10 “world’s largest ticket marketplace.” Instead, a \$4 billion corporation decided that it
11 needed the money more than its customers.

12 4. Defendant StubHub has achieved tremendous success over the past two
13 decades thanks to its FanProtect Guarantee – a trademarked promise that guaranteed
14 consumers they would be protected against the risks of buying from a ticket reseller.
15 This highly publicized form of buyers’ insurance was the primary reason StubHub was
16 able to convert a dubious and largely underground market into more than \$1 billion in
17 annual revenue. Yet now that the time has come to pay out on that buyers’ insurance,
18 StubHub is in effect canceling the policy.

19 5. StubHub’s FanProtect Guarantee both implicitly and explicitly promised
20 that its customers would receive full refunds if their ticketed events were cancelled. But
21 at a time when consumers are facing unprecedented health, unemployment, and
22 financial crises, and can really use those refunds, StubHub decided to switch from
23 giving customers full refunds to giving them coupons.

24 6. Worse yet, StubHub is proactively collecting money owed to customers
25 and converting that money for its own use. When a consumer purchases tickets on
26 StubHub, the bulk of the purchase price is paid to a third-party reseller. In the event of
27 a cancellation, that money rightfully belongs to the ticket buyer. Stubhub is charging
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1 third-party resellers' credit cards for the money owed to its customers; but instead of
2 honoring its guarantee and refunding this money to its customers, StubHub is keeping
3 the money.

4 7. Plaintiff Michelle Kopfmann is one of the many consumers stuck with
5 worthless tickets to a cancelled event and unable to obtain a refund. On behalf of
6 herself and thousands like her, she seeks an order requiring StubHub to promptly
7 refund customers all money paid for tickets to cancelled events, including service and
8 delivery fees. Plaintiff also seeks an award of damages to compensate StubHub's
9 customers for the loss of use of their money during a time when cash is at a premium
10 and many families are struggling to get by. Finally, Plaintiff requests an award of
11 punitive damages suitable to deter billion-dollar corporations like StubHub from
12 exploiting the fog of a global crisis to enrich themselves at the expense of their
13 customers.

14 JURISDICTION AND VENUE

15 8. The Court has subject matter jurisdiction over this action under 28 U.S.C.
16 § 1332(d)(2) because this is a class action in which the amount in controversy exceeds
17 \$5,000,000, exclusive of interest and costs, there are more than 100 members in the
18 proposed class, and at least one class member is a citizen of a state different from
19 Defendant StubHub.

20 9. Venue is proper in this Court under 28 U.S.C. §1391(b) because Defendant
21 StubHub resides in this district and because a substantial part of the events or omissions
22 giving rise to Plaintiff's claims occurred in this district.

23 INTRADISTRICT ASSIGNMENT

24 10. Assignment to the Oakland Division or the San Francisco Division would
25 be proper because StubHub is headquartered in San Francisco, California, and a
26 substantial part of the events or omissions which give rise to the claims alleged herein
27 occurred there.

1 **PARTIES**

2 11. Plaintiff Michelle Kopfmann is a citizen and resident of Phoenix, Arizona.

3 12. Defendant Stubhub, Inc. is a Delaware corporation headquartered in San
4 Francisco, California.

5 **FACTUAL ALLEGATIONS**

6 **The StubHub Ticket Exchange**

7 13. StubHub operates a highly successful online platform for secondary ticket
8 sales. It acts as a high-tech middleman between those who want to resell their tickets to
9 sporting events, concerts, or other live entertainment (often at a substantial markup
10 over face value), and those interested in buying.

11 14. As StubHub puts it, "As a marketplace, we do not own any of the tickets
12 listed on our site. When buyers place an order for tickets on our site, they are
13 purchasing from a third party individual seller."

14 15. Consumers can visit StubHub's website or use one of StubHub's mobile
15 apps to find tickets available for purchase and see how much a reseller is asking for
16 those tickets. To buy tickets, consumers pay StubHub the price set by the reseller as
17 well as additional fees that StubHub charges for using its online platform. StubHub
18 then delivers the ticket to the buyer and pays the reseller. StubHub keeps the service
19 and delivery fees paid by the buyer as well as a commission it takes from the reseller's
20 proceeds.

21 16. In 2019 alone, StubHub made over \$1 billion in fees and commissions.
22 The company bills itself as the world's largest ticket marketplace and was recently
23 purchased for \$4.05 billion.

24 **StubHub's FanProtect Guarantee**

25 17. When StubHub was founded in 2000, the resale market for live
26 entertainment still suffered from a shady reputation. Consumers who could not secure
27 tickets directly from the issuer often had little choice but to take their chances dealing
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1 with a stranger. If something went wrong, buyers usually had no way to get their
2 money back.

3 18. StubHub has turned a shadowy market into a multi-billion-dollar
4 enterprise by reversing decades of consumer unease and convincing consumers they
5 could trust secondhand tickets purchased through the StubHub platform.

6 19. StubHub accomplished this through its trademarked “FanProtect
7 Guarantee.”

8 20. As one of StubHub’s co-founders put it, “The guarantee was in many
9 ways the nucleus of the value proposition that we were offering.” “People were
10 skeptical about buying tickets. We were trying to be the solution and the safe
11 alternative.”

12 21. The FanProtect Guarantee is just what it sounds like: “FanProtect™ means
13 every order is 100% guaranteed.” “Because 99% guaranteed just sounds sketchy.”
14 <https://www.stubhub.com/promise/>

15 22. StubHub engaged in a years-long marketing campaign designed to ensure
16 that sports fans, concertgoers, and other potential customers knew about the FanProtect
17 Guarantee. As StubHub’s Chief Marketing Officer put it, “it came down to being able
18 to name it the FanProtect Guarantee, and to reinforcing and reinforcing and reinforcing
19 that StubHub, like any best-in-class e-commerce company, was going to stand behind
20 the product that we’re selling.”

21 23. Among the things that the FanProtect Guarantee protects against is the
22 risk that the ticketed event is cancelled. Buyers don’t have to worry about tracking
23 down the reseller to get their money back. The FanProtect Guarantee means StubHub
24 will stand behind its product and guarantee buyers that they will receive their money
25 back.

26 24. StubHub has confirmed this interpretation of the FanProtect Guarantee on
27 numerous occasions. When it filed its trademark application in 2011, StubHub included
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1 as its trademark specimen marketing material that features the question, “What does
2 FanProtect™ mean for Buyers?” Among the examples it gave of how the FanProtect
3 Guarantee protects buyers, was “You will be refunded if the event is cancelled and not
4 rescheduled.”

5 25. Other examples appear in StubHub commercials still available on
6 YouTube. One commercial, entitled “Diva Behavior,” uses the tagline “If they don’t
7 play, you don’t pay.” In the caption describing the commercial, StubHub writes,
8 “When it comes to live music, a lot can happen behind the scenes. And sometimes, a
9 show gets cancelled. But if the band doesn’t play you won’t pay – thanks to StubHub’s
10 FanProtect guarantee.” YouTube reports over 12 million views for that commercial
11 alone. <https://www.youtube.com/watch?v=YGE8an5zojc>.

12 26. Another commercial, entitled “Merch Tent,” features the voiceover,
13 “Game cancelled? We got you covered with FanProtect.” In its description of the
14 commercial, StubHub writes, “Show cancelled due to weather? How about thunder,
15 lightning, and an incoming hurricane? StubHub’s FanProtect guarantees you a refund,
16 no matter what.” <https://www.youtube.com/watch?v=svJU6Z7JoAs>.

17 27. Another example appears on Major League Baseball’s website, which
18 informs prospective ticket purchasers that “StubHub is the Official Fan to Fan Ticket
19 Marketplace of MLB.com,” and includes information from StubHub about its
20 FanProtect Guarantee. Stubhub confirms that the FanProtect Guarantee means, in part,
21 “You’ll get a refund if your event is cancelled and not rescheduled.”

22 28. Similar language was long included on StubHub’s website as well.
23 References to the FanProtect Guarantee linked to a page entitled “The StubHub
24 Promise,” which stated in large teal letters that “FanProtect™ means every order is
25 100% guaranteed.” Until the recent events that gave rise to this lawsuit, the webpage
26 confirmed that StubHub would refund buyers in the event of cancellation.

StubHub’s Response to the COVID-19 Pandemic

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2 29. As COVID-19 began spreading around the globe, and StubHub’s
3 customers started to express concern that their events might be cancelled, StubHub’s
4 President sent an email to its customers “regarding the current Coronavirus situation.”
5 The email re-assured customers that “StubHub is here for you,” and that in the event of
6 cancellations, buyers could “receive a full refund for the original order amount
7 (including service and delivery fees).” Alternatively, buyers could opt to receive a
8 coupon for a future event worth 120% of their original order.

9 30. Only a few weeks later, on or about March 27, 2020, StubHub decided to
10 breach its core guarantee and not give refunds for cancelled events after all. It posted a
11 “Coronavirus update” on its webpage that stated it would only be giving coupons to
12 buyers when events were cancelled.

13 31. StubHub’s “Coronavirus update” also stated that when an event is
14 cancelled, StubHub would charge resellers’ credit cards to recoup the amounts that the
15 buyers paid them for tickets to the cancelled event. In other words, StubHub is now in
16 possession of money it collected from resellers for tickets to now-cancelled events –
17 money that rightfully belongs to buyers – but has decided to convert those funds for its
18 own use.

19 **PLAINTIFF’S EXPERIENCE**

20 32. Plaintiff Michelle Kopfmann has used StubHub’s online platform to
21 purchase tickets to more than a half dozen events over the past five years.

22 33. Most recently, on or about January 18, 2020, Ms. Kopfmann purchased six
23 tickets to a Spring Training baseball game between the Cincinnati Reds and Chicago
24 Cubs. She bought the tickets from a third-party reseller using StubHub’s iPhone mobile
25 app. The total cost of her purchase, including service and delivery fees, amounted to
26 \$613.54. The game was scheduled to be played on March 19 at Sloan Field, the Cubs’
27 Spring Training facility located in Mesa, Arizona.

1 34. On March 12, Major League Baseball announced the cancellation of all
2 remaining Spring Training games for the 2020 season due to the burgeoning COVID-19
3 pandemic.

4 35. Around the same time, Ms. Kopfmann received the “StubHub is here for
5 you” email from StubHub’s President, which confirmed she could “choose to receive a
6 full refund for the original order amount (including service and delivery fees) to the
7 original payment method.”

8 36. Ms. Kopfmann called StubHub’s customer service on or about March 19 to
9 request a refund of the \$613.54 she spent on the Spring Training tickets. She was
10 assured that she would soon receive her money back.

11 37. The next week, StubHub decided to stop providing refunds to customers
12 like Ms. Kopfmann who purchased tickets to cancelled events. Under the new rules,
13 Ms. Kopfmann will never receive her refund, and is only entitled to a time-limited
14 coupon valid only on StubHub’s platform.

15 **CLASS ALLEGATIONS**

16 38. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff seeks
17 to pursue her claims on behalf of a class of similarly situated persons. The parameters
18 of the class may be refined through discovery and will be subject to Court approval and
19 modification, but for purposes of this complaint, Plaintiff proposes the following class
20 definition:

21 All persons residing in the United States who purchased tickets on the
22 StubHub ticket marketplace for events that were cancelled on or after
23 March 1, 2020, and who did not receive a full refund within 10 days of the
cancellation.

24 Excluded from the class are StubHub, Inc., and its officers, directors,
25 affiliates, legal representatives, employees, successors, subsidiaries, parent
26 companies and assigns. Also excluded from the class are any judicial
27 officers and associated court staff assigned to this case and their
immediate family members.

28 39. The proposed class meets each of the requirements for class certification

1 pursuant to Rule 23(a), Rule 23(b)(2), and Rule 23(b)(3).

2 40. Numerosity: The class is sufficiently numerous such that individual
3 joinders are impracticable. According to StubHub's President, more than 20,000 events
4 listed on StubHub had been cancelled as of April 1, 2020, meaning that the class likely
5 numbers in the hundreds of thousands if not millions.

6 41. Commonality & Predominance: Common questions of law and fact that
7 exist within the proposed class and are likely to predominate over any individualized
8 issues include:

- 9 a. Whether class members have an ownership interest in money they paid
10 third-party resellers for tickets to subsequently cancelled events;
- 11 b. Whether StubHub converted those funds for its own use by charging the
12 resellers' credit cards and failing to turn over the proceeds to class
13 members;
- 14 c. Whether StubHub converted those funds with willful, wanton, or reckless
15 disregard for the rights, health, and safety of its customers, such that
16 punitive damages are warranted;
- 17 d. Whether StubHub's FanProtect Guarantee or any of the representations
18 made in connection with the FanProtect Guarantee constitute a binding
19 promise to provide refunds in the event of a cancellation;
- 20 e. Whether an objectively reasonable consumer would believe that the
21 FanProtect Guarantee or any of the representations made in connection
22 with the FanProtect Guarantee meant that StubHub would provide
23 refunds in the event of cancellations;
- 24 f. Whether it was unfair for StubHub to switch from providing refunds for
25 cancelled events to coupons in the middle of a global pandemic;
- 26 g. Whether as a matter of equity and good conscience, StubHub should be
27 required to return money paid by its customers for cancelled events.
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1 42. Typicality: Plaintiff’s claims are typical of those asserted by the proposed
2 class, as Plaintiff and class members were similarly affected by StubHub’s decision to
3 stop providing refunds for cancelled events and each seeks to recover a full refund and
4 associated damages.

5 43. Adequacy: Plaintiff will fairly and adequately protect the interests of the
6 proposed class. Plaintiff’s interests do not conflict with the class’s interests, as both seek
7 to recover refunds for cancelled events from StubHub, and Plaintiff has retained
8 counsel experienced in complex class litigation to represent class members’ interests.

9 44. Superiority: A class action is superior to other available methods for the
10 fair and efficient adjudication of this controversy. StubHub has taken money that
11 rightfully belongs to hundreds of thousands of consumers, and only through collective
12 action can that wrong be fully remedied.

13 45. Injunctive Relief: StubHub’s decision to switch from providing refunds
14 for cancelled events to coupons in the middle of a global pandemic was an action that
15 applied generally to the entire class, such that final injunctive relief or corresponding
16 declaratory relief would be appropriate respecting the class as a whole.

17 **CHOICE OF LAW ALLEGATIONS**

18 46. The State of California has sufficient contacts to class members’ claims
19 such that uniform application of California law to those claims is appropriate.

20 47. StubHub has been headquartered in San Francisco, California, since its
21 founding in 2000, StubHub does substantial business in California, a sizable percentage
22 of the class is located in California, and all the core decisions that gave rise to class
23 members’ claims were made from California.

24 48. StubHub’s FanProtect Guarantee was developed in California, as was the
25 prolonged marketing that created pervasive awareness of the FanProtect Guarantee
26 among consumers.

27 49. Likewise, the decision to switch from providing refunds for cancelled
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1 events to coupons in the midst of a global pandemic was made by StubHub’s President,
2 who is based at StubHub’s headquarters in San Francisco, California, as was the related
3 decision to charge third-party resellers’ credit cards for money owed to StubHub’s
4 customers.

5 50. StubHub also includes a California choice-of-law provision in its StubHub
6 Marketplace Global User Agreement. Although Plaintiff and the proposed class did not
7 have proper notice of and did not agree to that Global User Agreement, it reflects
8 StubHub’s acquiescence to the application of California law and expectation that
9 California law will apply to claims brought by its customers.

10 51. The State of California also has a strong regulatory interest in applying its
11 law to all class members’ claims. California’s consumer protection law, in particular, is
12 designed to preserve a business climate in California free of unfair and deceptive
13 practices. If California were only able to address unfair business conduct when the
14 injured consumer resides in California, that consumer protection law would be largely
15 ineffective at regulating companies who do business in all fifty states. Violators would
16 be able to keep the vast majority of their ill-gotten gains (all those obtained from non-
17 California consumers), leaving California-based companies like StubHub undeterred
18 from engaging in similar conduct in the future

19 **FIRST CAUSE OF ACTION**
20 **Conversion**

21 52. Plaintiff alleges this cause of action on behalf of herself and the proposed
22 class, and in so doing, incorporates all preceding and ensuing factual allegations.

23 53. Plaintiff and class members purchased tickets from third-party resellers,
24 with StubHub acting as the intermediary for those purchases. StubHub has publicly
25 confirmed that it is not the seller for purchases made through its website or mobile
26 apps, including by repeatedly stating: “We do not own any of the tickets listed on our
27 site. When buyers place an order for tickets on our site, they are purchasing from a
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1 third party individual seller.”

2 54. The events for which Plaintiff and class members purchased tickets were
3 canceled. When an event is cancelled, the original ticket vendor has an obligation to
4 repay the original purchaser. Likewise, if the tickets were resold, as they were here, the
5 reseller has an obligation to repay the secondary purchaser. Accordingly, class
6 members were legally and equitably entitled to the funds they paid third-party resellers
7 for their tickets.

8 55. Defendant StubHub is in possession of the refunds to which Plaintiff and
9 class members are entitled. As StubHub stated in its “Coronavirus update,” it is
10 charging the credit cards of third-party resellers to recoup any proceeds it previously
11 turned over to the resellers.

12 56. But rather than turn the refunds over to Plaintiff and class members,
13 StubHub has converted them for its own use and is instead giving buyers a coupon that
14 is valid only for future tickets purchased through StubHub, and only for a limited time.

15 57. Plaintiff and class members did not consent to StubHub’s taking
16 possession of the money owed to them by the third-party resellers and did not consent
17 to StubHub’s conversion of that money for its own use.

18 58. As a result of StubHub’s conversion of the money owed them by third-
19 party resellers, Plaintiff and class members have lost the use of their money during a
20 worldwide public-health and economic crisis and have suffered damages in an amount
21 according to proof.

22 59. Plaintiff and class members seek an award of compensatory and punitive
23 damages against StubHub, whose conduct evidences a willful, wanton, and reckless
24 disregard for the rights, health, and safety of Plaintiff and class members.

25 **SECOND CAUSE OF ACTION**
26 **Breach of Contract**

27 60. Plaintiff alleges this cause of action on behalf of herself and the proposed
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1 class, and in so doing, incorporates all preceding and ensuing factual allegations.

2 61. StubHub offered to insure consumers against the risks of buying from a
3 ticket reseller, including the risk that the ticketed event would be cancelled, if they
4 purchased those tickets through StubHub's website or mobile apps. StubHub conveyed
5 this offer through its heavily marketed and trademarked FanProtect Guarantee, as
6 discussed above.

7 62. Plaintiff and class members accepted StubHub's offer by purchasing
8 tickets through its website or mobile apps, and paid StubHub service and delivery fees
9 in connection with that purchase.

10 63. StubHub breached its FanProtect Guarantee by not making Plaintiff and
11 class members whole after their events were cancelled and they were left with
12 worthless tickets. StubHub has not refunded Plaintiff and class members the money
13 they paid for the tickets or the service and delivery fees they paid to StubHub.

14 64. As a result of StubHub's failure to fully protect and guarantee Plaintiff
15 and class members' purchases as promised, Plaintiff and class members have suffered
16 damages according to proof, including loss of the use of the money they spent for the
17 tickets.

18 **THIRD CAUSE OF ACTION**

19 **Violation of the California Consumers Legal Remedies Act**

20 65. Plaintiff alleges this cause of action on behalf of herself and the proposed
21 class, and in so doing, incorporates all preceding and ensuing factual allegations.

22 66. Plaintiff and class members paid for StubHub's services in connection
23 with their purchase of tickets to entertainment events.

24 67. Defendant StubHub has violated and continues to violate California's
25 Consumers Legal Remedies Act (CLRA), Cal. Civ. Code §§ 1770(a)(5), (7), (9), (14), and
26 (16), by engaging in unfair methods of competition and unfair and deceptive acts and
27 practices in connection with its marketing and sale of ticket services.

1 68. StubHub represented that ticket purchases made on its website and
2 mobile apps were protected against the risks of buying from a ticket reseller, including
3 the risk that the ticketed event would be cancelled. StubHub made this representation
4 through heavy marketing and widespread dissemination of its trademarked
5 “FanProtect Guarantee.”

6 69. In marketing its FanProtect Guarantee, StubHub both implicitly and
7 explicitly represented that if an event were cancelled, StubHub would refund
8 consumers the money they paid to buy tickets for that event on StubHub’s platform,
9 including service and delivery fees. Yet StubHub has not refunded Plaintiff and class
10 members the money they paid to purchase tickets on StubHub’s platform and has
11 announced that it will be providing customers with coupons in lieu of refunds.

12 70. As a result of StubHub’s violations of the CLRA, Plaintiff and class
13 members have suffered damages. Plaintiff and class members would not have
14 purchased tickets through StubHub were it not for the FanProtect Guarantee. They
15 reasonably believed that StubHub would refund their money in the event of a
16 cancellation, and because StubHub is not making good on its marketing, Plaintiff and
17 class members have lost much-needed money at a time of great economic uncertainty.

18 71. Plaintiff seeks an order enjoining StubHub from marketing its FanProtect
19 Guarantee without simultaneously disclosing with equal prominence that the
20 FanProtect Guarantee is not a total guarantee and that it no longer protects buyers from
21 losing money in the event of a cancellation. In addition, Plaintiff will request that the
22 Court order a corrective marketing campaign. StubHub has heavily marketed the
23 FanProtect Guarantee to consumers for well over a decade and continues to market the
24 FanProtect Guarantee to this day, including through the channels and in the manner
25 previously alleged.

26 72. Without suitable injunctive relief, that marketing will continue to deceive
27 consumers, who have been trained by StubHub’s marketing to believe that purchases
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1 on StubHub are fully protected and guaranteed. In addition, Plaintiff and many class
2 members would consider purchasing tickets on StubHub after the COVID-19 pandemic
3 subsides, and without the benefit of injunctive relief, they will not be able to rely on
4 StubHub's representations at that time.

5 73. Pursuant to California Civil Code section 1782, Plaintiff will serve
6 StubHub with a notice and demand for correction, and intends to amend this cause of
7 action to seek damages if StubHub does not timely remedy its ongoing CLRA
8 violations.

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10 **FOURTH CAUSE OF ACTION**
Violation of California's Unfair Competition Law

11 74. Plaintiff alleges this cause of action on behalf of herself and the proposed
12 class, and in so doing, incorporates all preceding and ensuing factual allegations.

13 75. StubHub has violated and continues to violate California's Unfair
14 Competition Law, Cal. Bus. & Prof. Code § 17200, et seq., which prohibits unlawful,
15 fraudulent, and unfair business acts and practices.

16 76. Unlawful Practices: StubHub engaged in unlawful business practices
17 when it violated the California Consumers Legal Remedies Act, converted refunds
18 owed to Plaintiff and class members for its own use, and breached its FanProtect
19 Guarantee to consumers, as alleged in the preceding causes of action.

20 77. Fraudulent Practices: StubHub engaged in fraudulent business practices
21 by marketing its services and FanProtect Guarantee in a manner likely to deceive a
22 reasonable consumer.

23 78. As previously alleged, StubHub's years-long marketing of its FanProtect
24 Guarantee conveyed to consumers that ticket purchases made through StubHub were
25 protected against the risks of buying from a ticket reseller.

26 79. StubHub's FanProtect Guarantee marketing both implicitly and explicitly
27 represented to consumers that if an event were cancelled, StubHub would refund
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1 consumers the money they paid to buy tickets for that event on StubHub’s platform,
2 including service and delivery fees.

3 80. Yet StubHub has not refunded Plaintiff and class members the money
4 they paid to purchase tickets on StubHub’s platform and has announced that it will be
5 providing customers with coupons in lieu of refunds.

6 81. Unfair Practices: StubHub engaged in unfair business practices by
7 reneging on its long-standing FanProtect Guarantee and substituting coupons for
8 refunds at a time when the FanProtect Guarantee is most needed.

9 82. StubHub’s practice of providing coupons instead of refunds is unethical,
10 unscrupulous, oppressive, and substantially injurious to consumers; any legitimate
11 utility of the practice is outweighed by the harm to consumers; and the practice violates
12 California’s strong consumer-protection policy, as reflected in statutes such as the
13 Consumers Legal Remedies Act.

14 83. As a result of StubHub’s business practices, Plaintiff and class members
15 suffered injury in fact and lost money – namely, the money they paid for tickets and
16 service fees, which StubHub has failed to return to them.

17 84. Pursuant to California Business and Professions Code section 17203,
18 Plaintiff and class members seek such orders or judgments as may be necessary to
19 prevent StubHub from continuing to engage in unfair competition, including by issuing
20 injunctive relief similar to that sought for violation of the CLRA.

21 85. Plaintiff and class members also seek restitution of all money that
22 StubHub may have acquired by means of its unfair competition.

23 **FIFTH CAUSE OF ACTION**
24 **Money Had and Received**

25 86. Plaintiff alleges this cause of action on behalf of herself and the proposed
26 class, and in so doing, incorporates all preceding and ensuing factual allegations.

27 87. As an alternative to the Second Cause of Action for breach of contract, and
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1 without intending to make an election of remedies, Plaintiff and class members seek
2 restitution from StubHub for money had and received.

3 88. StubHub received money from Plaintiff and class members that was
4 intended to be used for their benefit.

5 89. StubHub did not use the money received from Plaintiff and class members
6 for their benefit and has not returned the money to them. As a matter of equity and
7 good conscience, that money should be returned to Plaintiff and the proposed class.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff, individually and on behalf of members of the proposed
10 class, respectfully requests the following relief:

- 11 A. A determination this action may be maintained as a class action;
12 B. An award of damages and restitution to be paid according to proof,
13 including statutory damages and punitive damages where appropriate;
14 C. Appropriate injunctive and equitable relief sufficient to correct the
15 consumer deception caused by StubHub's actions and prevent it from
16 continuing to capitalize on its unfair acts and practices;
17 D. Pre-judgment interest and post-judgment interest, as provided by law;
18 E. Attorneys' fees and expenses, including expert fees and costs;
19 F. Any and all other legal and equitable relief that the Court may find
20 appropriate.

21 **JURY DEMAND**

22 Plaintiff hereby demands a jury trial for all claims so triable.

23
24 May 1, 2020

Respectfully submitted,

25 By: /s/ Michael L. Schrag

26 Michael L. Schrag (SBN 185832)
27 Joshua J. Bloomfield (SBN 212172)
28 **GIBBS LAW GROUP LLP**

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