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8 Attorneys for Plaintiff TESSA NESIS
9 on Behalf of Herself and All Others Similarly Situated

10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

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14 TESSA NESIS on Behalf of
Herself and All Others Similarly
15 Situated, and the General Public and
Acting in the Public Interest,

16 Plaintiff,

17 vs.

18 DO LAB, INC.; JASON FLEMMING
19 a/k/a DEDE FLEMMING; JESSE
FLEMMING; JOSH FLEMMING; and
20 DOES 1-10, inclusive,

21 Defendants.

Case No.

CLASS ACTION COMPLAINT
FOR:

1. RESCISSION (CAL. CIV. CODE § 1689);
2. VIOLATION OF THE CONSUMER LEGAL REMEDIES ACT (CIV. CODE § 1750 *ET SEQ.*); AND
3. UNLAWFUL BUSINESS PRACTICES (BUS. & PROF. CODE §§ 17200, *ET SEQ.*).

22 JURY TRIAL DEMANDED

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24 Plaintiff, on behalf of herself and all others similarly situated, based on
25 information and belief, states as follows for her complaint:
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1 **NATURE OF THE ACTION**

2 1. Plaintiff brings this class action to recover damages and other relief on
3 behalf of herself and the Class who were all denied any refunds for their
4 passes/tickets purchased for the 2020 *Lightning In A Bottle* music festival (“LIB”) by
5 Do Lab, Inc. (“DLI”) and its owners, Jason “Dede” Flemming, Jesse Flemming, and
6 Josh Flemming (collectively, “Defendants”).

7 2. Specifically, Defendants violated California law and engaged in
8 deceptive and unfair practices by including unconscionable terms in their Terms and
9 Conditions (“Terms”) and not providing Plaintiff and the Class any refunds despite
10 cancelling LIB. As a result, Plaintiff brings this class action to recover the damages
11 due to Plaintiff and the following Classes (referred to as, “the Class” or “Class
12 Members”):

13 **General Class:** *All individuals residing in the United States that*
14 *purchased one or more passes/tickets to LIB.*

15 **Subclass:** *All individuals residing in the United States that*
16 *purchased one or more passes/tickets to any of Defendants’*
17 *events in the last four years that contain a similar or identical*
18 *Refund Policy.*

19 3. “Passes/tickets” include general admission passes, VIP passes, car and
20 RV camping passes, boutique camping passes, lightning bus passes, and all other
21 forms of admission relative to LIB.

22 **PARTIES**

23 4. Plaintiff Tessa Nesis is a resident of the State of Illinois. At all relevant
24 times, Plaintiff purchased one or more passes/tickets to LIB.

25 5. Defendant Do Lab, Inc. (“DLI” or “Defendant”) is a corporation
26 organized under the laws of the State of California with its principal place of
27 business at 1024 Santee Street, Suite 600, Los Angeles, California, 90015. At all
28

1 relevant times, DLI was doing business throughout the United States and the State of
2 California.

3 6. Defendants Jason “Dede” Flemming, Jesse Flemming, and Josh
4 Flemming (collectively, “The Flemmings”) are each individuals residing in Los
5 Angeles County. At all relevant times, The Flemmings were principals, officers,
6 owners or managing agents of DLI.

7 7. Defendants DOES 1 through 10, inclusive, are sued herein under
8 fictitious names. Their true names and capacities are unknown to Plaintiff at this
9 time. When their true names and capacities are ascertained, Plaintiff will amend this
10 complaint by inserting their true names and capacities herein. Plaintiff is informed
11 and believes and thereon alleges that each of the fictitiously named Defendants is
12 responsible in some manner for the occurrences herein alleged, and that Plaintiff’s
13 damages as herein alleged were proximately caused by those Defendants. Each
14 reference in this complaint to "defendants," "Defendants," or a specifically named
15 Defendant refers also to all Defendants sued under fictitious names.

16 8. Plaintiff is informed and believes and thereon alleges that each of the
17 defendants designated herein as DOE took part in and participated with Defendants
18 in all matters referred to herein and was in some manner responsible for the injuries
19 and losses suffered by Plaintiff.

20 9. Plaintiff is informed and believes and thereon alleges that at all times
21 herein mentioned each of the Defendants was the agent, servant and/or employee or
22 occupied other relationships with each of the other named Defendants and at all
23 times herein mentioned acted within the course and scope of said agency and/or
24 employment and/or other relationship and each other Defendants has ratified,
25 consented to, and approved the acts of his/her/its agents, employees, and
26 representatives, and that each actively participated in, aided and abetted, or assisted
27 one another in the commission of the wrongdoing alleged in this Complaint.

ALTER EGO

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2 10. The Flemmings were doing business as DLI and DLI is an alter ego of
3 The Flemmings in that there is such a unity of interest between the DLI and The
4 Flemmings that they are indistinguishable from one another. At all times, The
5 Flemmings formulated, directed, controlled, had the authority to control, and/or
6 participated in the acts and practices set forth in this complaint and received a direct
7 financial benefit from them. As such, an inequitable result would occur if The
8 Flemmings and DLI are not treated as one and the same.

9 11. In fact, The Flemmings have absconded with millions of dollars from
10 passes/ticket sales compromising of monies belonging to Plaintiff and the Class and
11 used that money for purposes other than LIB. LIB was not to take part until end of
12 May 2020. Yet, the Flemmings would have the Class believe that they sold 10,000-
13 20,000 tickets and somehow expended all of that money by March 2020, nearly three
14 months before LIB was to take place. The Flemmings, Plaintiff believes, are laying
15 the groundwork to dissolve and/or reinvent DLI as a separate entity so as to avoid all
16 obligations of DLI and abscond with monies belonging to the Class.

JURISDICTION AND VENUE

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18 12. This Court has jurisdiction over the action pursuant to the Class Action
19 Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), because at least one Class member is
20 of diverse citizenship from one defendant, there are more than 100 Class members,
21 and the aggregate amount in controversy exceeds \$5 million, exclusive on interest
22 and costs.

23 13. This Court has personal jurisdiction over the parties because Plaintiff
24 submits to the jurisdiction of the Court and Defendants are citizens of this State and
25 systematically and continually have conducted and continue to conduct business in
26 the County of Los Angeles and the State of California. Defendants also own and
27 maintain substantial assets in the County of Los Angeles and the State of California.
28

1 REFUNDS AND EXCHANGES

2 ALL SALES ARE FINAL. NO REFUNDS WILL BE GRANTED FOR
3 ANY REASON. EVENT DATE AND TIME SUBJECT TO CHANGE.
4 ALL RIGHTS RESERVED. IF THE EVENT FOR WHICH THIS
5 TICKET IS ISSUED IS RESCHEDULED OR CANCELLED, THE
6 HOLDER SHALL NOT BE ENTITLED TO A REFUND EXCEPT AS
7 OTHERWISE REQUIRED BY LAW. INSTEAD, THE HOLDER
8 SHALL HAVE THE RIGHT, EXCEPT AS OTHERWISE
9 PROVIDED, (1) IF THE EVENT IS RESCHEDULED TO A DATE
10 AND TIME WITHIN TWELVE MONTHS OF THE DATE AND
11 TIME ORIGINALLY SCHEDULED, TO USE THIS TICKET TO
12 ATTEND THE EVENT AT THE RESCHEDULED DATE AND
13 TIME, OR (2) IF THE EVENT IS NOT RESCHEDULED WITHIN
14 TWELVE MONTHS OF THE DATE AND TIME ORIGINALLY
15 SCHEDULED, TO EXCHANGE THIS TICKET TO ANOTHER
16 EVENT THAT IS DESIGNATED BY MANAGEMENT AS THE
17 OFFICIAL REPLACEMENT EVENT FOR THE CANCELLED
18 EVENT.

19 22. Under California Law, a contract is unenforceable as illusory when one
20 of the parties has the unfettered or arbitrary right to modify or terminate the
21 agreement or assumes no obligations thereunder. (*Asmus v. Pacific Bell* (2000) 23
22 Cal.4th 1, 15-16.)

23 23. Defendants' Terms render the contract between Defendants and the
24 purchasers illusory because Defendants retain complete and unfettered control to
25 modify or terminate the agreement without assuming any obligations towards
26 Plaintiff and the Class.

27 24. Plaintiff and the Class performed all obligations and conditions required
28 of them.

CLASS ALLEGATIONS

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2 25. Description of the Class: Plaintiff brings this Class action on behalf of
3 themselves and the Classes defined as follows:

4 **General Class**: *All individuals residing in the United States that*
5 *purchased one or more passes/tickets to LIB.*

6 **Subclass**: *All individuals residing in the United States that*
7 *purchased one or more passes/tickets to any of Defendants’*
8 *events in the last four years that contain a similar or identical*
9 *Refund Policy.*

10 26. Excluded from the Classes are governmental entities, any entity in
11 which Defendant had a controlling interest, and Defendant’s officers, directors, and
12 salaried and exempt employees. Also excluded from the Classes is any judge,
13 justice, or judicial officer presiding over this matter and the members of their
14 immediate families and judicial staff.

15 27. Plaintiff reserves the right to modify the Classes’ description and the
16 Classes’ period based on the results of discovery.

17 28. Numerosity: The proposed Classes are so numerous that individual
18 joinder of all its members is impracticable. As the factual allegations demonstrate,
19 thousands of persons are members of the Classes. While the exact number and
20 identities of the members of the Classes are unknown at this time, such information
21 can be ascertained through appropriate investigation and discovery. The disposition
22 of the claims of the members of the Classes in a single class action will provide
23 substantial benefits to all parties and to the Court.

24 29. Common Questions of Law and Fact Predominate: There are many
25 questions of law and fact common to the representative Plaintiff and the Classes, and
26 those questions substantially predominate over any questions that may affect
27 individual Class members. Common questions of fact and law include, but are not
28 limited to, the following:

- 1 a. Whether Defendants' Refund Policy is illusory or includes
- 2 unconscionable terms;
- 3 b. Whether Defendants' Refund Policy violates the CLRA;
- 4 c. Whether Defendants engaged in unlawful, unfair, or fraudulent
- 5 business practices in violation of Business and Professions Code
- 6 § 17200 *et seq.*;
- 7 d. The nature and extent of damages, restitution and disgorgement,
- 8 and other remedies to which Plaintiff and the members of the
- 9 Classes are entitled.

10 30. Typicality: Plaintiff's claims are typical of the claims of the members

11 of the Classes. Plaintiff and all members of the Classes have been similarly affected

12 by Defendant's common course of conduct which failed to provide Plaintiff and the

13 Classes rest and meal periods.

14 31. Adequacy of Representation: Plaintiff will fairly and adequately

15 represent and protect the interests of the Classes. Plaintiff has retained counsel with

16 substantial experience in prosecuting complex and class action litigation. Plaintiff

17 and her counsel are committed to vigorously prosecuting this action on behalf of the

18 Classes, and have the financial resources to do so. Neither Plaintiff nor her counsel

19 has any interests adverse to those of the Classes.

20 32. Superiority of a Class Action: Plaintiff and the members of the Classes

21 suffered, and will continue to suffer, harm as a result of Defendants' unlawful and

22 wrongful conduct. A class action is superior to other available methods for the fair and

23 efficient adjudication of the controversy. Individual joinder of all members of the

24 Classes is impractical. Even if individual Class members had the resources to pursue

25 individual litigation, it would be unduly burdensome to the courts in which the

26 individual litigation would proceed. Individual litigation magnifies the delay and

27 expense to all parties in the court system of resolving the controversies engendered

28 by Defendants' common course of conduct. The class action device allows a single

1 court to provide the benefits of unitary adjudication, judicial economy, and the fair
2 and equitable handling of all class members' claims in a single forum. The conduct
3 of this action as a class action conserves the resources of the parties and of the
4 judicial system, and protects the rights of the Classes. Furthermore, for many, if not
5 all, class members, a class action is the only feasible mechanism that allows them an
6 opportunity for legal redress and justice.

7 33. Adjudication of individual class members' claims with respect to the
8 Defendants would, as a practical matter, be dispositive of the interests of other
9 members not parties to the adjudication, and could substantially impair or impede the
10 ability of other class members to protect their interests.

11 **FIRST CAUSE OF ACTION**
12 **RESCISSION (CAL. CIV. CODE § 1689)**
13 **(Against All Defendants)**

14 34. The preceding paragraphs of this Complaint are realleged and
15 incorporated by reference. Plaintiff asserts this claim on behalf of himself and the
16 Classes.

17 35. Plaintiff and the Class seek, pursuant to Civil Code § 1689(b), to rescind
18 the agreements and contracts relative to the passes/tickets on the following grounds:
19 “(3) If the consideration for the obligation of the rescinding party becomes entirely
20 void from any cause; . . . (4) If the consideration for the obligation of the rescinding
21 party, before it is rendered to him, fails in a material respect from any cause; . . . (6)
22 If the public interest will be prejudiced by permitting the contract to stand;” and
23 other causes and grounds according to proof.

24 36. Because the consideration due Plaintiff and the Class has failed,
25 Plaintiff and the Class are entitled to the return of all monies paid to Defendants and
26 request the same by way of compensatory damages. (Civ. Code § 1691.)

27 37. Plaintiff and the Class intend service of the summons and complaint in
28 this action to serve as notice of rescission of the Agreement.

1 44. Plaintiff and the Class are also entitled to an award of attorneys' fees
2 and costs.

3 45. Plaintiff and the Class are also entitled to an award of punitive damages
4 pursuant to the CLRA. (Civ. Code, § 1780(a)(4).)

5 **THIRD CAUSE OF ACTION**

6 **VIOLATION OF CALIFORNIA BUS. & PROF. CODE § 17200 ET SEQ.**

7 **(Against All Defendants)**

8 46. The preceding paragraphs of this Complaint are realleged and
9 incorporated by reference. Plaintiff asserts this claim on behalf of herself and the
10 Classes.

11 47. This cause of action is brought on behalf of Plaintiff and members of
12 the general public pursuant to California Business and Professions Code section
13 17200 *et seq.* which provides that “unfair competition shall mean and include any
14 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue
15 or misleading advertising and any act prohibited by Chapter 1 (commencing with
16 Section 17500) of Part 3 of Division 7 of the Business and Professions Code.”

17 48. Defendants' above-described deceptive and misleading acts and
18 practices have deceived and/or are likely to deceive Plaintiff and other Class
19 members.

20 49. Plaintiff and the Classes were, in fact, deceived as to the terms and
21 conditions of services provided by Defendants.

22 50. The actions described herein constitute a violation of California
23 Business and Professions Code section 17200, *et seq.* Specifically, Defendants have
24 engaged in acts in violation of law, including, but not limited to violations of
25 Business and Professions Code section 17200 *et seq.*, and California Civil Code §§
26 1770 (a (14) and (19)).

27 51. Plaintiff and Class members have suffered actual harm as a result of
28 Defendants' misrepresentations and/or omissions. Plaintiff and the Class have

1 suffered injury in fact and have lost money as a result of such unfair and unlawful
2 business practices. Such injuries and losses include, but are not limited to, the full
3 value and amounts paid for the passes/tickets.

4 52. Plaintiff and the Class seek restitution, injunctive relief and all other
5 relief from Defendants allowed under §17200, *et seq.* Plaintiff and the Class also
6 seek attorneys' fees pursuant to Cal. Code Civ. Proc. §1021.5, as well as such other
7 and further relief as the Court deems just and proper.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff and members of the Classes request that the Court
10 enter an order or judgment against the Defendants as follows:

11 1. Certification of the Class and appointment of Plaintiff as Class
12 Representative and her counsel of record as Class Counsel;

13 2. Adjudge and decree that each Defendant has engaged in the conduct
14 alleged herein;

15 3. Enjoin and restrain each Defendant and their officers, agents, servants
16 and employees, and those in active concert or participation with them, from
17 continuing or engaging in such conduct or other conduct having similar purpose or
18 effect;

19 4. For injunctive relief prohibiting the violations of the Consumers Legal
20 Remedies Act alleged in the complaint unless and until such time as the complaint is
21 amended to include claims for damages pursuant to the notice and time limitations
22 provided for by California Civil Code 1780(b);

23 5. Award to Plaintiff and the Classes attorneys' fees and other costs of suit
24 to the extent permitted by law;

25 6. Award general and special damages, according to proof;

26 7. Award of punitive damages;

27 8. Award restitution and all other relief allowed under §17200, *et seq.* to
28 Plaintiff and the Classes; and

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9. As to all causes of action, such other and further relief as the Court may deem just and proper.

Dated: April 14, 2020

GERAGOS LAW GROUP
SINA LAW GROUP

By: 
MATTHEW J. GERAGOS
Attorney for Plaintiff and the Classes

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury in this action.

Dated: April 14, 2020

GERAGOS LAW GROUP
SINA LAW GROUP

By: 
MATTHEW J. GERAGOS
Attorney for Plaintiff and the Classes

ClassAction.org

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