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9 Attorneys for Plaintiff  
JOHN SHANKULA

10 **UNITED STATES DISTRICT COURT**  
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 JOHN SHANKULA, individually and  
13 on behalf of all others similarly situated,

14 Plaintiff,

15 v.

16  
17 TICKETSONSALE.COM, LLC, a  
18 Delaware limited liability company;  
19 TICKET FULFILLMENT SERVICES  
20 LP, a Delaware limited partnership; and  
DOES 1-10 inclusive,

21 Defendants.  
22  
23  
24

Case No. **'21CV0515 AJB AGS**

**CLASS ACTION COMPLAINT FOR  
PUBLIC INJUNCTIVE RELIEF,  
DAMAGES, AND RESTITUTION  
FOR:**

1. Violation of the California Consumer Legal Remedies Act (“CLRA”) (Civ. Code § 1750, *et seq.*);
2. Violation of the Unfair Competition Law (“UCL”) (Bus. & Prof. Code § 17200, *et seq.*).
3. Breach of Contract;
4. Unjust Enrichment; and,
5. Conversion.

**JURY TRIAL DEMANDED**

1 Plaintiff JOHN SHANKULA (“Plaintiff”) brings this action for public  
2 injunctive relief to protect the consuming public in California from the deceptive and  
3 unfair business practices of Defendants, TICKETSONSALE.COM, LLC (“ToS”) and  
4 TICKET FULFILLMENT SERVICES, LP (“TFS”) (together “Defendants”)  
5 resulting in violations of California consumer protection laws and for common law  
6 claims related to Defendants’ deceptive, unfair, and unlawful acts and practices in  
7 failing to provide refunds for cancelled, indefinitely postponed, and/or rescheduled  
8 live events as follows:

9 **JURISDICTION AND VENUE**

10 1. This Court has jurisdiction over this action under 28 U.S.C. §1332(d)  
11 (“CAFA”), because this is a proposed class action in which: (i) the matter in  
12 controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs;  
13 (ii) members of the proposed Class are citizens of a State different from Defendants;  
14 and (iii) upon information and belief, the number of Class Members is greater than  
15 100.

16 2. Defendants have sufficient minimum contacts with California and have  
17 otherwise intentionally availed themselves of the markets in California through the  
18 promotion, marketing, and sale of their products and services, sufficient to render the  
19 exercise of jurisdiction by this Court permissible under traditional notions of fair play  
20 and substantial justice.

21 3. Venue is proper in this District under 28 U.S.C. §1391(b)(2) and (3)  
22 because: (i) a substantial part of the events or omissions giving rise to these claims  
23 occurred in this District; (ii) Defendants are subject to the Court’s personal  
24 jurisdiction with respect to this action because Defendants conduct business in this  
25 judicial district; and (iii) Plaintiff resides within this judicial district.

26 4. This Court has jurisdiction over Plaintiff and putative class members’  
27 claims for public injunctive relief, including restitution, which is the money and  
28 property of Plaintiff and class members, arising from Defendants’ unlawful, unfair,

1 and/or fraudulent practices under Business & Professions Code §§ 17203 and 17204.

2 **THE PARTIES**

3 5. Plaintiff is, and at all relevant times was, a resident of San Diego County,  
4 California.

5 6. On information and belief, ToS is a limited liability company formed  
6 under the laws of the State of Delaware that does business throughout this county, the  
7 State of California, and/or the various states of the United States of America. All  
8 references made to “ToS” include all subsidiaries and divisions.

9 7. On information and belief, TFS is a limited partnership formed under the  
10 laws of the State of Delaware with a principal place of business in Chicago, IL.

11 8. Both ToS and TFS do business throughout this county, the State of  
12 California, and/or the various states of the United States of America.

13 9. Specifically, Defendants resell tickets to public events, such as concerts  
14 and sporting events. Defendants conduct extensive business through internet sales  
15 within the United States, including California. On information and belief, at all  
16 relevant times, Defendants, and each of them, ratified every act or omission  
17 complained of herein. At all relevant times, Defendants, and each of them, aided and  
18 abetted the acts and omissions of each and all the other Defendants in proximately  
19 causing the violations herein alleged.

20 10. Defendants are each a “ticket seller” as that term is defined by Business  
21 & Professions Code § 22503.

22 11. Plaintiff is informed and believes, and thereon alleges, that each  
23 Defendant is in some manner intentionally, negligently, or otherwise responsible for  
24 the acts, omissions, occurrences, and transactions alleged herein.

25 **GENERAL ALLEGATIONS**

26 12. On information and belief, Defendants are an online secondary ticket  
27 (resale) marketplace.

28 13. Defendants’ website provides a platform for the resale between private

1 parties of tickets to live events. Defendants charge a fee for use and provide certain  
2 protections for transactions.

3 14. Thus, consumers pay a premium to utilize Defendants’ website because  
4 Defendants advertise their platform as an online marketplace for resale tickets that is  
5 safer and more reliable than making such transactions directly.

6 15. In fact, Defendants state expressly that the benefits of purchasing tickets  
7 through their website, rather than directly from the reseller, include that  
8 “[Defendants] are here to ensure that all transactions between the parties are safe and  
9 secure, and that [customers] have no issues from start to finish.”<sup>1</sup>

10 16. Defendants also offer customers “support, security, or money back  
11 guarantees.”<sup>2</sup>

12 17. Defendants state expressly that “[a]ll orders are protected by our 100%  
13 Buyer Guarantee.”<sup>3</sup>

14 18. According to Defendants’ website, “[t]he 100% Buyer Guarantee means  
15 that your transaction will be safe and secure . . . and the tickets shall be valid and  
16 authentic.”<sup>4</sup>

17 19. Defendants emphasize the “100% Buyer Guarantee” in large text on  
18 Defendants’ website and on banners throughout.

19 20. On information and belief, Defendants’ “100% Buyer Guarantee” is a  
20 material term of contract intended as an inducement to use Defendants’ ticket resale  
21 marketplace over competitor services.

22 21. On or around March 3, 2020, prior to filing the instant complaint,

23 <sup>1</sup> TicketsOnSale, “FAQ,” *available at*  
24 [https://support.ticketsonsale.com/support/solutions/articles/69000058586-how-do-](https://support.ticketsonsale.com/support/solutions/articles/69000058586-how-do-ticket-resale-sites-like-this-operate-how-is-this-different-from-scalping-tickets-)  
25 [ticket-resale-sites-like-this-operate-how-is-this-different-from-scalping-tickets-](https://support.ticketsonsale.com/support/solutions/articles/69000058586-how-do-ticket-resale-sites-like-this-operate-how-is-this-different-from-scalping-tickets-) (last  
visited Mar. 16, 2021).

26 <sup>2</sup> *Id.*

27 <sup>3</sup> TicketsOnSale landing page, *available at* <https://www.ticketsonsale.com/> (last  
visited Mar. 16, 2021).

28 <sup>4</sup> TicketsOnSale, *Policies and Terms of Use*, <https://www.ticketsonsale.com/policies>  
(last visited March 14, 2021).

1 Plaintiff used Defendants’ website to purchase two (2) tickets to a live performance  
2 by Hillsong Worship at the Cal Coast Credit Union Open Air Theatre at San Diego  
3 State University for June 23, 2020.

4 22. Plaintiff paid for the tickets using an American Express credit card and  
5 was charged \$368.03, payable to TFS.

6 23. The order confirmation Plaintiff received by email from ToS stated  
7 expressly that “[a]fter you place your order and your order is confirmed, we guarantee  
8 that your tickets will be within the zone or section listed or one comparable and that  
9 you will receive these tickets in time for the event or your money back.”

10 24. In March 2020, in response to the COVID-19 pandemic, a state of  
11 emergency was declared in California. Many public events were canceled, often  
12 without rescheduling.

13 25. On or around April 6, 2020, ToS sent Plaintiff an email informing him  
14 that the tickets he purchased were still valid and that the concert had been rescheduled  
15 to August 15, 2020. Plaintiff was assured that the tickets would be honored.

16 26. On or around June 22, 2020, ToS sent Plaintiff another email informing  
17 him that the concert had been postponed indefinitely. Plaintiff was again assured that  
18 the tickets remained valid and would be honored. ToS advised that it would notify  
19 Plaintiff of the new concert date via email.

20 27. Subsequently, with no indication that the concert would be rescheduled,  
21 Plaintiff disputed the charges to his American Express credit card for the ticket sales  
22 and was issued a credit for the full the amount of \$368.03.

23 28. On or around October 16, 2020, American Express verified the  
24 transaction and rebilled Plaintiff’s account for the entire amount.

25 29. On or around February 2, 2021, Plaintiff contacted ToS directly to  
26 request a refund because the event has not been rescheduled. ToS denied the request  
27 on that grounds that Defendants’ policy is to issue refunds only for officially cancelled  
28 events.



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All persons residing in California who used Defendants’ ticket resale platform to purchase one or more tickets to any event that was subsequently cancelled, postponed indefinitely, or rescheduled at any point within four (4) years prior to the filing of this action and continuing until judgment is entered, and to whom Defendant has not provided a full refund, including fees.

39. Members of the proposed Class will hereafter be referred to as Class Members.

40. The “Class Period” means four years prior to the filing of the Complaint in this action.

41. Excluded from the Class are Defendants and any of their officers, directors, and employees, or anyone who purchased Defendants’ products for the purpose of resale. Plaintiff reserves the right to modify or amend the Class definition before the Court determines whether certification is appropriate.

42. Plaintiff reserves the right to redefine the Class and to add subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

43. There are common questions of law and fact as to the Class that predominate over questions affecting only individual members, including:

- a. Whether Defendants’ failure to issue refunds constitutes unjust enrichment, a breach of contract, and/or conversion;
- b. Whether Defendants’ conduct violates California Civil Code § 1750, *et seq.*;
- c. Whether Defendants’ conduct is an unfair, fraudulent, or unlawful act or practice within the meaning of California Business & Professions Code §17200, *et seq.*;
- d. Whether Defendants’ advertising is unfair, deceptive, untrue or misleading within the meaning of California Business & Professions Code § 17200, *et seq.*;

- 1 e. Whether Defendants were excused from having to provide a refund to
- 2 Plaintiff and the putative class for events that were cancelled, postponed
- 3 indefinitely, or rescheduled;
- 4 f. Whether Defendants’ refund policy is unconscionable; and
- 5 g. Whether Defendants’ refund policy is invalid as a matter of law under
- 6 Bus. & Prof. Code § 22507.

7 44. Plaintiff is informed and believes and thereon alleges that Defendants are  
8 and were advised by skilled lawyers and other professionals, employees, and advisors  
9 regarding the requirements of California’s Consumer Legal Remedies Act (“CLRA”),  
10 Civ. Code, § 1791, *et seq.*, and Unfair Competition Law (“UCL), Bus. & Prof. Code  
11 § 17200, *et seq.*

12 45. This action seeks relief for these un-remedied violations of California  
13 law, including:

- 14 a. Damages and/or restitution, as appropriate, to Plaintiff and Class
- 15 Members, for monies obtained unlawfully;
- 16 b. Damages and/or penalties for Plaintiff and Class Members pursuant to
- 17 Civil Code § 3300;
- 18 c. Implementation of other equitable relief, including, *inter alia*, a public
- 19 injunction prohibiting Defendants, and each of them, from continuing to
- 20 violate Business & Professions Code §§ 22506, 22507; and
- 21 d. Attorneys’ fees and costs as provided by statute and/or applicable case
- 22 law, including Code of Civil Procedure § 1021.5, and such other relief
- 23 as the Court deems just and proper.

24 46. Defendants’ acts and conduct as alleged herein violate the CLRA and  
25 Business & Professions Code § 22500, *et seq.* As a result, Defendants’ acts and  
26 conduct constitute a violation of the UCL, as set forth below.

27 47. The policies, practices, and customs described above and herein have  
28 resulted in Defendants’ unjust enrichment and an unfair business advantage over

1 businesses that adhere to the strictures and requirements of the Business &  
2 Professions Code, including the UCL.

3 48. There is a well-defined community of interest in the litigation and the  
4 class members are readily ascertainable:

5 a. Numerosity: Plaintiff is informed and believes and thereon alleges that  
6 during the Class Period, there have been well over one hundred Class  
7 Members. As a result, the Class is so numerous that joinder of all  
8 members is impossible and/or impracticable.

9 b. Typicality: Plaintiff is qualified to, and will, fairly and adequately protect  
10 the interests of each class member with whom they have a well-defined  
11 community of interest, and Plaintiff's claims (or defenses, if any) are  
12 typical of all Class Members as demonstrated herein.

13 c. Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect  
14 the interests of each class member with whom they have a well-defined  
15 community of interest and typicality of claims, as demonstrated herein.  
16 Plaintiff acknowledges that they have an obligation to make known to  
17 the Court any relationship, conflicts or differences with any class  
18 member. Plaintiff's attorneys, the proposed class counsel, are versed in  
19 the rules governing class action discovery, certification, and settlement.  
20 Plaintiff has incurred, and throughout the duration of this action, will  
21 continue to incur costs and attorneys' fees that have been, are, and will  
22 be necessarily expended for the prosecution of this action for the  
23 substantial benefit of each Class Member.

24 d. Superiority: The nature of this action makes the use of class adjudication  
25 superior to other methods. A class action will achieve economies of  
26 time, effort, and expense as compared with individual lawsuits and will  
27 avoid inconsistent outcomes because the same issues can be adjudicated  
28 in the same manner and at the same time for the entire Class. Plaintiff

1 knows of no difficulty that will be encountered in the management of  
2 this litigation or that would preclude its maintenance as a class action.

3 e. Public Policy Considerations: Consumers are often reluctant to assert  
4 their rights out of fear of direct or indirect retaliation and/or prohibitive  
5 costs. Class actions provide the members who are not named in the  
6 complaint with sufficient anonymity to allow them to vindicate of their  
7 rights while simultaneously protecting their privacy and without having  
8 to incur unnecessary costs.

9 49. Defendants’ unscrupulous business practice has been systemic and  
10 willful, and Defendants knew or should have known that their policies, practices, and  
11 procedures are and have been unlawful, unfair, and/or fraudulent.

12 50. Unless the Class is certified, Defendants will retain monies received as  
13 a result of Defendants’ unlawful and deceptive conduct alleged herein. Unless a class-  
14 wide public injunction is issued, Defendants will also likely continue to advertise,  
15 market, and promote its product and services in an unlawful and misleading manner,  
16 and members of the Class will continue to be misled, harmed, and denied their rights  
17 under California law.

18 51. Further, Defendants have acted or refused to act on grounds that are  
19 generally applicable to the class so that declaratory and injunctive relief is appropriate  
20 to the Class as a whole, making class certification appropriate pursuant to Fed. R. Civ.  
21 P. 23.

22 **FIRST CAUSE OF ACTION**

23 **VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT**

24 (Cal. Civ. Code § 1750, *et seq.*)

25 52. Plaintiff incorporates by reference all preceding paragraphs as though set  
26 forth fully herein.

27 53. California Civil Code Section 1750, *et seq.*, entitled the Consumers  
28 Legal Remedies Act (hereinafter “CLRA”), provides a list of “unfair or deceptive”

1 practices in a “transaction” relating to the sale of “goods” or “services” to a  
2 “consumer.”

3 54. The Legislature’s intent in promulgating the CLRA is expressed in Civil  
4 Code Section 1760, which provides, *inter alia*, that its terms are to be “[c]onstrued  
5 liberally and applied to promote its underlying purposes, which are to protect  
6 consumers against unfair and deceptive business practices and to provide efficient and  
7 economical procedures to secure such protection.”

8 55. Defendants’ actions, representations, and conduct have violated, and  
9 continue to violate, the CLRA because they extend to transactions that are intended  
10 to result, or which have resulted, in the sale of services and/or goods to consumers.

11 56. Plaintiffs and other class members are “consumers” as that term is  
12 defined by the CLRA. Civ. Code § 1761(d).

13 57. The tickets that Plaintiff and Class Members purchased from Defendants  
14 are a “good” and/or “service” within the meaning of the CLRA. Cal. Civ. Code §  
15 1761(a), (b)

16 58. The acts and practices described herein were intended to result in the  
17 resale of tickets to consumers. Such acts and practices violated, and continue to  
18 violate, the CLRA, Violation, as follows:

- 19 a. Misrepresenting the source, sponsorship, approval, or certification of  
20 goods or services; Civ. Code § 1770(a)(2);
- 21 b. Representing that goods or services have sponsorship, approval,  
22 characteristics, ingredients, uses, benefits, or quantities that they do not  
23 have or that a person has a sponsorship, approval, status, affiliation, or  
24 connection that the person does not have, Civ. Code § 1770(a)(5);
- 25 c. Representing that goods or services are of a particular standard, quality,  
26 or grade, or that goods are of a particular style or model, if they are of  
27 another; Civ. Code § 1770(a)(7);
- 28

- 1 d. Advertising goods or services with intent not to sell them as advertised;
- 2 Civ. Code § 1770(a)(9);
- 3 e. Representing that a transaction confers or involves rights, remedies, or
- 4 obligations which it does not have or involve, or which are prohibited by
- 5 law; Civ. Code § 1770(a)(14);
- 6 f. Representing that the subject of a transaction has been supplied in
- 7 accordance with a previous representation when it has not. Civ. Code §
- 8 1770(a)(16); and
- 9 g. Inserting an unconscionable provision in the contract, Civ. Code §
- 10 1770(a)(19).

11 59. Defendants acted knowingly and willfully.

12 60. Defendants violated Civil Code Section 1770(a)(2), (5), (7), (9), (14) &  
13 (16) by marketing and representing a “100% Buyer Guarantee” for its products and  
14 services that would protect customers’ transactions, including by providing a full  
15 refund for cancellation. Despite such assurances, on information and belief,  
16 Defendants deny refunds to customers, including Plaintiff, for indefinitely postponed  
17 events that are effectively cancelled.

18 61. Defendants also violated Civil Code Section 1770(a)(19) by including a  
19 provision in their Terms & Conditions that prevents customers from obtaining a  
20 refund for postponed or rescheduled events in violation of, *inter alia*, Business &  
21 Professions Code §§ 22506 & 22507.

22 62. On information and belief, Defendants’ violations of the CLRA, as set  
23 forth herein, were done with awareness of the fact that the conduct alleged was  
24 wrongful and motivated solely by Defendants’ self-interest, monetary gain, and  
25 increased profit. Plaintiff further alleges that Defendants engaged in such unfair and  
26 deceptive conduct despite knowing the harm that would result to Plaintiff and Class  
27 Members.

28 63. Plaintiff suffered an “injury in fact” when Defendants retained Plaintiff’s

1 money, despite the effective cancellation of the event for which it was paid and as a  
2 result of Defendants' false and misleading representations, as set forth on Defendants'  
3 website and other advertising media, in violation of California law as explained  
4 above.

5 64. As a direct and proximate result of Defendants' conduct, Plaintiff and  
6 members of the putative Class are entitled to a declaration that Defendants violated  
7 the CLRA.

8 65. On or about March 22, 2021, by and through Plaintiff's counsel of  
9 record, Defendants were served with notice of the alleged CLRA violations via  
10 certified mail, which asked Defendants to correct, repair, replace, or otherwise rectify  
11 the goods and services alleged to be in violation. This correspondence advised  
12 Defendants that such action must be taken within thirty (30) calendar days.

13 66. Plaintiff and the putative Class are also entitled to, and seek, injunctive  
14 relief prohibiting such conduct in the future.

15 67. This cause of action is for injunctive relief only at this time, and Plaintiff  
16 reserves the right to amend the Complaint to assert actual, punitive, and statutory  
17 damages against Defendants pursuant to Cal. Civ. Code § 1782.

18 68. Plaintiff purchased his tickets online from his home in San Diego  
19 County, California. A true and correct copy of Plaintiff's Declaration of Venue,  
20 pursuant to Civ. Code § 1780(d) and Code Civ. Proc. § 2015.5, is attached as **Exhibit**  
21 **A**.

22 69. Pursuant to California Civil Code § 1780(a)(2), Plaintiff seeks a public  
23 injunction to enjoin Defendants' unlawful methods, acts, and practices alleged herein.  
24 If the injunctive relief is not granted, and Defendants are permitted to continue to  
25 engage in these practices, California's consumers will continue to suffer harm.

26 70. Plaintiff also requests an award of reasonable attorneys' fees and costs  
27 pursuant to Civ. Code § 1780(d).

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1 **SECOND CAUSE OF ACTION**

2 UNFAIR COMPETITION LAW

3 (Cal. Bus. & Prof. Code § 17200, *et seq.*)

4 71. Plaintiff incorporates by reference all preceding paragraphs as though  
5 fully stated herein.

6 72. The UCL prohibits any unfair, fraudulent, or unlawful business act or  
7 practice. Bus. & Prof. Code § 17200.

8 73. Plaintiff and Defendants are each a “person” as defined by California  
9 Business & Professions Code § 17201.

10 74. Plaintiff is also “a person who has suffered injury in fact and has lost  
11 money or property as a result of the unfair competition” authorized to seek relief for  
12 violations of the UCL. Bus. & Prof. Code § 17204.

13 75. Actions for relief under the UCL may be based on any business act or  
14 practice that is unlawful, unfair, or fraudulent. Bus. & Prof. Code § 17200, *et seq.*  
15 Such claims must allege that the Defendants’ conduct caused or was likely to cause  
16 substantial injury.

17 76. Defendants’ policies, practices, and procedures alleged herein amount to  
18 conduct that is prohibited under the UCL.

19 77. Furthermore, Plaintiff and Class Members have suffered injury in fact  
20 and been deprived of monies as a result of Defendants’ unlawful refund policy.  
21 Defendants’ conduct is thus substantially injurious to Plaintiff and Class Members,  
22 and Plaintiff seeks to enforce important rights affecting the public interest within the  
23 meaning of Code of Civil Procedure § 1021.5.

24 78. The amounts due to Plaintiff and Class Members can be readily  
25 determined from Defendants’ records. Plaintiff and the putative Class are entitled to  
26 injunctive relief, including in the form of an order from this Court directing  
27 Defendants to cease and desist from the unfair, fraudulent, and/or unlawful conduct,  
28 and restitution of monies due and unfairly obtained by Defendants.



1 85. California’s Business & Professions Code provides that “[a]ny partial or  
2 full deposit received by a ticket seller on a future event for which tickets are not  
3 available shall be refundable except for a service charge of not more than 10 percent  
4 until tickets for the event are actually available.” Bus. & Prof. Code § 22506.

5 86. The Business & Professions Code provides further that “[t]he ticket price  
6 of any event which is canceled, postponed, or rescheduled shall be fully refunded to  
7 the purchaser by the ticket seller upon request.” Bus. & Prof. Code § 22507.

8 87. Plaintiff is informed and believes, and thereon alleges, that Defendants’  
9 uniform policy provides in pertinent part that purchases are only refundable if the  
10 event is officially cancelled, in violation of California law.

11 88. Moreover, the harm to Plaintiff and Class Members of being wrongfully  
12 denied the refund of monies paid outweighs the utility, if any, of Defendants’ policies  
13 and practices.

14 89. Defendants’ conduct described herein threatens an incipient violation of  
15 California’s consumer protection laws, violates the policy or spirit of such laws,  
16 and/or otherwise significantly threatens or harms competition by avoiding procedures  
17 intended by the Legislature to protect California’s consumers.

18 90. Defendants have been unjustly enriched as a direct result of their  
19 unlawful business practices as alleged herein and will continue to benefit, including  
20 by gaining an unfair competitive advantage, if allowed to retain the monies paid.

21 91. Plaintiff seeks equitable relief, including an order enjoining Defendants’  
22 unlawful business practices that threaten future injury to the general public.

23 **UNFAIR**

24 92. Defendants’ policies, practices, and procedures as alleged herein  
25 constitute unfair business practices under the UCL. Bus & Prof. Code § 17200.

26 93. In order to satisfy the “unfair” prong of the UCL, a plaintiff may show  
27 that the business practice(s) at issue is contrary to a predicate public policy and  
28 “tethered to specific constitutional, statutory, or regulatory provisions.” *Drum v. San*

1 *Fernando Valley Bar Assn.*, 182 Cal. App. 4th 247, 257 (2010).

2 94. California provides protections for the states' consumers as a matter of  
3 public policy. *See, e.g., Am. Online, Inc. v. Superior Court*, 90 Cal. App. 4th 1, 15  
4 (2001), *as modified* (July 10, 2001) ("The CLRA was enacted in an attempt to  
5 alleviate social and economic problems stemming from deceptive business  
6 practices.").

7 95. Defendants' acts and practices willfully and knowingly deprive  
8 consumers, including Plaintiff and Class Members, of monies to which Defendants  
9 are not entitled and are contrary to an important public policy.

10 96. Plaintiff is informed and believed, and based thereon alleges, that, at all  
11 relevant times, Defendants are and were advised by skilled lawyers and other  
12 professionals, employees, and advisors regarding the requirements of California's  
13 consumer protection laws and the UCL.

14 97. Defendants' policies, practices, and procedures were thus willful and  
15 intentional and, as discussed above, resulted in substantial injury to Plaintiff and Class  
16 Members.

17 98. Defendants' unfair business practices have a tendency to harm the  
18 general public and will continue unless enjoined, in that, on information and belief,  
19 Defendants refuse to refund money to consumers who purchased tickets for live  
20 events that have been effectively cancelled in violation of California law. Bus & Prof.  
21 Code §§ 22506, 22507, *supra*.

22 **FRAUDULENT**

23 99. Defendants' policies, practices, and procedures as alleged herein  
24 constitute fraudulent business practices under the UCL. Bus & Prof. Code § 17200.

25 100. In order to satisfy the "fraudulent" prong of the UCL, a plaintiff must  
26 show actual reliance on allegedly deceptive or misleading statements. Bus. & Prof.  
27 Code § 17200. For purposes of the UCL, a plaintiff must show that "the  
28 misrepresentation was an immediate cause of the injury-producing conduct."

1 *Swafford v. Int'l Bus. Machines Corp.*, 383 F. Supp. 3d 916, 936 (N.D. Cal. 2019)  
2 (quotations and citation omitted).

3 101. Defendants' refund policy is misleading in that it misrepresents  
4 consumers' rights under California law. Bus. & Prof. Code §§ 22506, 22507. The acts  
5 and practices described herein are thus fraudulent under the UCL.

6 102. Plaintiff reserves the right to allege further conduct that constitutes other  
7 fraudulent business acts or practices. Such conduct is ongoing and continues to this  
8 date.

9 **THIRD CAUSE OF ACTION**

10 **BREACH OF CONTRACT**

11 103. Plaintiff incorporates by reference all preceding paragraphs as though set  
12 forth fully herein.

13 104. A contract was formed between Plaintiff and Class Members and  
14 Defendants with respect to online ticket resale.

15 105. The contract that governs the transactions at issue in this case includes  
16 Defendants' refund policy in effect as of the date of Plaintiff's purchase.

17 106. Plaintiff and the Class performed their obligations under the contract by  
18 providing valuable consideration for valid tickets.

19 107. Defendants breached the contract by their persistent refusal to provide  
20 refunds to canceled, indefinitely postponed, and/or rescheduled events as required by  
21 California state law, including *inter alia*, Business & Professions Code §§ 22506 and  
22 22507.

23 108. Defendants' breaches were willful and not the result of mistake or  
24 inadvertence.

25 109. As a result of Defendants' breaches of the contract, Plaintiff and other  
26 Class Members have been damaged in an amount to be determined at trial.

27 110. Plaintiff, on behalf of himself and other Class Members, seeks to rescind  
28 the agreements relative to the subject tickets sales, including pursuant to Civil Code

1 § 1689(b).

2 **FOURTH CAUSE OF ACTION**

3 UNJUST ENRICHMENT

4 111. Plaintiff incorporates by reference all preceding paragraphs as though set  
5 forth fully herein.

6 112. “Under California law, the elements of unjust enrichment are: (a) receipt  
7 of a benefit; and (b) unjust retention of the benefit at the expense of another.” *Valencia*  
8 *v. Volkswagen Grp. Of Am. Inc.*, No. 15-CV-00887-HSG, 2015 WL 4747533 at \*8  
9 (N.D. Cal. Aug. 11, 2015).

10 113. Plaintiff and Class Members conferred substantial monetary benefits on  
11 Defendants by paying monies for event tickets.

12 114. Defendants have accepted and intentionally retained those benefits at the  
13 expense of Plaintiff and other Class Members, despite knowing that the tickets were  
14 not usable as purchased.

15 115. Defendants induced Plaintiff and Class Members to use Defendants’  
16 services and purchase products through false and misleading advertising. As a result,  
17 Defendants have been unjustly enriched by retaining the monies paid by Plaintiff and  
18 other Class Members for events that were cancelled, postponed, and/or rescheduled.  
19 Equity requires Defendants to provide refunds to Plaintiff and Class Members.

20 **FIFTH CAUSE OF ACTION**

21 CONVERSION

22 116. Plaintiff incorporates by reference all preceding paragraphs as though set  
23 forth fully herein.

24 117. At the time of cancellation, postponement, and/or rescheduling of the  
25 events for which they purchased tickets, Plaintiff and the Class owned and had a right  
26 to possess funds in the amounts paid.

27 118. Defendants intentionally and substantially interfered with property  
28 belonging to Plaintiff and other Class Members by taking possession of, refusing to

1 refund, denying access to, and/or refusing to return monies paid after a demand was  
2 made for its return.

3 119. Plaintiff and other Class Members did not consent to Defendants'  
4 withholding their property.

5 120. As a result of Defendants' actions, Plaintiff and Class Members were  
6 harmed, and Defendants' refusal to refund monies rightfully owned by Plaintiff and  
7 Class Members was a substantial factor in causing their harm.

8 121. As a result of Defendants' conduct, Plaintiff and other Class Members  
9 have been damaged in an amount to be determined at trial.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff respectfully requests that the Court grant the  
12 following relief against Defendants, and each of them:

- 13 a. That this action be certified as a Class Action;
- 14 b. Appointing Plaintiff as the representative of the Class;
- 15 c. Appointing the law firms representing Plaintiff as Class Counsel;
- 16 d. That the Court find and declare that Defendants have violated the CLRA  
17 and UCL and committed unfair, unlawful, and/or fraudulent business  
18 practices;
- 19 e. An order requiring imposition of a constructive trust and and/or  
20 disgorgement of Defendants' ill-gotten gains and to pay restitution to  
21 Plaintiff and Class Members and to restore to Plaintiff and Class  
22 Members all funds acquired by means of any act or practice declared by  
23 this court to be an unlawful, fraudulent, or unfair business act or practice  
24 and/or constituting unfair competition;
- 25 f. A temporary, preliminary and/or permanent order for public injunctive  
26 relief requiring Defendants to cease the conduct alleged herein, including  
27 making false and/or misleading statement/s concerning the ticket refunds  
28 that are in violation of California law;

- 1 g. Distribution of any monies recovered on behalf of the Class via fluid
- 2 recovery or *cy pres* recovery, where necessary and as applicable, to
- 3 prevent Defendants from retaining the benefits of their wrongful conduct;
- 4 h. Entry of an order enjoining Defendants from continuing the unlawful,
- 5 fraudulent, and unfair business practices alleged in this Complaint and
- 6 directing Defendants to inform consumers of their rights under Bus. &
- 7 Prof. Code § 22507;
- 8 i. A temporary, preliminary and/or permanent order requiring Defendant
- 9 to cease withholding monies paid by Plaintiff and Class Members for
- 10 live events that were cancelled, postponed indefinitely, or rescheduled;
- 11 j. Statutory, compensatory, and/or punitive damages in an amount to be
- 12 determined at trial;
- 13 k. Restitution, or any other equitable relief the Court may deem just and
- 14 proper;
- 15 l. Actual compensatory damages in an amount to be proven at trial;
- 16 m. Pre- and post-judgment interest;
- 17 n. Reasonable attorneys' fees and costs of the suit, including expert witness
- 18 fees; and,
- 19 o. Such further relief as the Court may deem just and proper.

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**TRIAL BY JURY**

Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a jury trial on all issues so triable.

Date: March 23, 2021

Respectfully Submitted,  
LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman  
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