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15
16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**

18 IN RE: STUBHUB REFUND LITIGATION) Case No. 4:20-md-02951-HSG
19)
20) **CONSOLIDATED CLASS ACTION**
21) **COMPLAINT**
22) JURY TRIAL DEMANDED
23) Hon. Haywood S. Gilliam, Jr., presiding
24)
25)
26)
27)
28)

1 Plaintiffs Angelo Gobaleza, Dianna Gomez, Anjora Hansen, Kenneth Kruger, Brittany
2 McKenzie, Alexis Moran Sandoval, Anthony Fattori, Richard Huante, Anabel Avalos, Deanna Cook,
3 Hazel Dominguez, Matthew Fogg, Dennis Dwyer, Paul Koble, Lisa Molidor, David Dahl, Brian Moore,
4 Jennifer Williams, Casey Moyer, Brendan Carroll, Brittany Knight, Amanda Matlock, Gary Ward,
5 Yolanda Gordils, William Mignault, Jeff Thomas, Josiah Burkhardtsmeier, Bonnie Lee Risch, Scot
6 Hudson, Amy Ebeling, Jim Harris, Katherine Morales, Adjani Janvie Delgado Rivera, Fiana Burshteyn,
7 Brett Allison Kushner, Stephanie Wood, Benjamin Wutz, Candace Reece Cooper, Sheila Green, Laura
8 Lym-Murphy, Julie Metz, Crystal Ashley Davis, Ernie Glaspey, Conrad Markwalder, Reginald
9 McDaniel, Michael Reaggs, Derrick Weaver, Brian Abeyta, Amy Gutierrez, Adam Schiefer, Don
10 Anderson, Emma Goodacre, Bob Kenna, Theresa Gren, Jennifer Lively, and Matthew McMillan
11 (collectively, “Plaintiffs”), by and through their undersigned counsel, file this Consolidated Class Action
12 Complaint against Defendant StubHub, Inc. (“StubHub” or “Defendant”), individually and on behalf of
13 a class of similarly situated individuals, and allege, upon personal knowledge as to their own actions,
14 and upon investigation of counsel as to all other matters, as follows:

15 INTRODUCTION

16 1. Plaintiffs bring this Consolidated Class Action Complaint to stop StubHub’s egregious
17 bait and switch practice that passes the financial hardship of the COVID-19 pandemic to the consumers
18 who are already under dire financial stress as a result of the pandemic. StubHub enticed Plaintiffs and
19 the Class to purchase tickets with its “FanProtect™ Guarantee,” which promised that consumers would
20 get 100% of their money back if events are canceled, and it had built the StubHub brand around this
21 trademarked term for at least fourteen years. But when consumers needed that guarantee the most after
22 COVID-19 caused financial ruin to many in the United States, StubHub unilaterally and surreptitiously
23 redefined the terms of the guarantee so that it could keep the cash it collected for ticket prices and service
24 fees rather than return it to the consumers as originally promised, despite being recently acquired by
25 Viagogo for \$4 billion. Instead, StubHub began offering useless credits that may well expire prior to the
26 end of the pandemic. Plaintiffs beseech the Court to force StubHub to comply with the terms of the
27 bargain it made and return the cash back to the consumers who purchased tickets for events that have
28 been or will be canceled.

1 2. Furthermore, Plaintiffs ask the Court to issue an order to prevent StubHub from
2 unilaterally changing the terms of the “FanProtect™ Guarantee” to revoke the 100% money back term
3 in the event of a cancellation, as it originally meant and has meant for at least fourteen years.

4 3. As the COVID-19 pandemic rages on with no predictable end in sight, StubHub continues
5 to mislead consumers into purchasing tickets for events that are currently scheduled but may well be
6 canceled because of the pandemic or other reasons by continuing to publicize and market the
7 “FanProtect™ Guarantee” without clear and conspicuous disclosures that this guarantee no longer means
8 a cash refund (as it has for at least fourteen years) and because StubHub further fails to disclose its
9 position that it can unilaterally change the meaning of that guarantee at any time. Consumers who can
10 afford to purchase entertainment tickets continue to do so under the erroneous assumption that the
11 “FanProtect™ Guarantee” means what it originally meant for at least 14 years: 100% cash back in the
12 event of a cancellation. Plaintiffs beseech the Court to order StubHub to disseminate clear, conspicuous,
13 and prolific corrective advertising to educate consumers that when they purchase tickets with StubHub,
14 they will not get cash back, may get the expiring credits StubHub currently offers, or may get something
15 else or even nothing at all, because StubHub continues to assert that it has the right to change the
16 definition of this guarantee unilaterally at any time.

17 **OVERVIEW OF DEFENDANT’S UNLAWFUL PRACTICES**

18 4. This case arises during a time of hardship for so many Americans, with each day bringing
19 different news of the efforts to combat the novel coronavirus. Beginning in early March 2020, social
20 distancing, shelter-in-place orders, and efforts to “flatten the curve” prompted the nationwide
21 cancellation of sporting events, concerts, and other large gatherings as most of the country locked down.
22 StubHub is the “world’s largest ticket marketplace” and, for at least fourteen years prior to COVID-19,
23 had made a “FanProtect™ Guarantee” that ticket purchasers like Plaintiffs would receive full cash
24 refunds for canceled events. The COVID-19 cancellations and StubHub’s trademarked guarantee should
25 have meant that StubHub ticketholders like Plaintiffs were promptly refunded their hard-earned
26 money—money consumers now need more than ever in a time when many of StubHub’s customers have
27 lost their jobs and are suffering financial hardship. Yet after the pandemic hit, StubHub retroactively

1 FanProtect™ Guarantee. Instead, StubHub began offering expiring coupons for future purchases on its
2 website. And if this practice is not stopped by the Court, there is nothing to prevent StubHub from yet
3 again redefining this guarantee to mean whatever suits StubHub.

4 5. This is a bait and switch on a global scale. The FanProtect™ Guarantee is the bedrock of
5 StubHub's business model and has been part of its marketing since at least 2006. In February 26, 2020,
6 just weeks before the pandemic hit, at a hearing before the House of Representatives Committee on
7 Energy and Commerce, Stephanie Burns, StubHub's Vice President and General Counsel, testified that
8 "StubHub's FanProtect Guarantee is the hallmark of our business and it is why we have earned the trust
9 of fans around the globe."¹ And in October 2019, for example, Defendant's website stated in multiple
10 places that "[y]ou'll get a refund if your event is canceled and not rescheduled."²

11 6. The whole point of the FanProtect™ Guarantee is that it placed the risk of loss onto
12 StubHub. This assumption of risk is what allowed StubHub to convert the largely underground scalper
13 market into more than \$1 billion in annual revenue and to be acquired for \$4 billion in February 2020
14 by Viagogo. The consuming public relied on this guarantee in purchasing their tickets from StubHub.
15 Yet the truth is that StubHub's assumption of the risk turned out to be hollow. As soon as the risk
16 materialized, the company went back on its agreement with consumers *en masse*. To be sure, the
17 COVID-19 pandemic is a catastrophic event beyond StubHub's control, but the inescapable reality is
18 that the costs of this catastrophe must fall on the party that explicitly assumed the risk. This is precisely
19 what risk-assumption commercial insurance is for, and the profit StubHub received in its acquisition was
20 for, and it is precisely why StubHub has for years guaranteed that the cancellation risks would fall on
21 itself rather than consumers.

22 7. In the early days of COVID-19, StubHub appeared to be taking the high road. On March
23 8, 2020, StubHub's President emailed StubHub customers to "personally reach[] out to you regarding
24 the current Coronavirus situation" because "[w]e know it's an unsettling time for everyone and our hearts
25

26 ¹ Available at <https://docs.house.gov/meetings/IF/IF02/20200226/110588/HHRG-116-IF02-Wstate-BurnsS-20200226.pdf>.

27 ² Defendant recently scrubbed StubHub's website of these references but Google's cache prevented
28 these items' erasure from the Internet

1 go out to those impacted.” The email’s subject line was “Coronavirus Update: We have your back” and
2 was meant to reassure customers that “**StubHub is here for you.**” (Emphasis in original.) Consistent
3 with StubHub’s FanProtect™ Guarantee, the email also emphasized that “[i]f you bought tickets on
4 StubHub to an event that is canceled, you have two options:

5 **1. Receive a full refund of your purchase**

6 **2. Receive a coupon for 120% of your original purchase**

7 (Emphasis in original.)

8 8. Yet just days later, StubHub changed tack, abandoning its longstanding FanProtect™
9 Guarantee and starting to refuse consumers’ refund requests. On March 25, 2020, without so much as an
10 email to consumers, StubHub surreptitiously changed the terms of its FanProtect™ Guarantee on the
11 backpages of its website, then stating that “if the event is canceled and not rescheduled, you will get a
12 refund or credit for use on a future purchase, as determined in StubHub’s sole discretion (unless a refund
13 is required by law).”

14 9. On March 27, 2020, Sports Business reporter Darren Rovell tweeted³ about StubHub’s
15 new policy and observed as follows:

16 Instead of full refunds for canceled events, they changed it to a COUPON
17 worth 20% more than the value of the ticket. As pointed out by
18 @don_shano, this is not only absurd (fans deserve their \$ back), it’s
unethical and likely illegal.

19 10. StubHub responded that “[w]e appreciate our fans & want to create an offer of value
20 given the difficult circumstances. To thank fans for their patience we are offering 120% credit. We will
21 continue to provide refunds to buyers where required by law. This model is common practice in a number
22 of industries.”⁴

23 11. This was public relations drivel. As one consumer noted “[t]he funny part about this is
24 that there’s a 20% surcharge/fee for tickets, so basically @StubHub is just waiving a fee for a future
25

26
27 ³ Available at: <https://twitter.com/stubhub/status/1243738305658830851>.

28 ⁴ *Id*

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