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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE STUBHUB REFUND LITIGATION

Case No. 4:20-md-02951-HSG

**DEFENDANT STUBHUB, INC.'S NOTICE
OF MOTION AND COMBINED
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
RENEWED MOTION TO COMPEL
ARBITRATION AND MOTION TO
DISMISS**

[Filed concurrently with Supplemental
Declaration of Todd Northcutt and [Proposed]
Orders]

Judge: Hon. Haywood S. Gilliam, Jr.
Date: May 5, 2022
Time: 2:00 p.m.
Courtroom: 2

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on May 5, 2022, at 2:00 p.m., or as soon thereafter as the matter may be heard, before the Honorable Haywood S. Gilliam, Jr. of the United States District Court for the Northern District of California, in Courtroom 2, of the above-entitled Court, located at 1301 Clay Street, Oakland, California, Defendant StubHub, Inc. (“StubHub”) will and hereby does renew its motion to the Court for an order compelling arbitration of all non-California statutory causes of action for relief asserted against StubHub by the eight Plaintiffs not previously compelled to arbitration (the “Remaining Plaintiffs”) in the Consolidated Class Action Complaint filed on or about January 8, 2021 (the “Complaint” or “CAC”) based on the valid and binding arbitration clause in the StubHub Marketplace Global User Agreement (“User Agreement” or “StubHub User Agreement”) that Remaining Plaintiffs were on notice of and agreed to by using StubHub. StubHub further moves this Court for an order dismissing Remaining Plaintiffs’ California and non-California statutory causes of action and negligent misrepresentation cause of action for relief asserted against StubHub.

The Renewed Motion to Compel Arbitration should be granted pursuant to the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*, because transactions with StubHub are governed by the StubHub User Agreement. Indeed, the operative arbitration clause in the User Agreement has already been upheld by this Court. (ECF No. 62.) The Remaining Plaintiffs who were not previously compelled to arbitration by this Court were clearly notified of the User Agreement and assented to its terms when they created their StubHub accounts and/or signed into their StubHub accounts. Because the User Agreement contains a binding class action waiver and arbitration provision governing the instant dispute, the claims alleged in the Complaint should be sent to arbitration on an individual basis and this lawsuit either dismissed or stayed. Punctuating the appropriateness of compelling arbitration is the fact that the Remaining Plaintiffs expressly sue to enforce the StubHub User Agreement and are therefore estopped from challenging the arbitration provision as unconscionable.

The Motion to Dismiss should be granted for multiple reasons, as set forth in StubHub’s memorandum filed herewith. First, Remaining Plaintiffs Koble and Wutz lack standing to pursue

1 their claims against StubHub as they have not alleged an injury in fact. Second, all Remaining
2 Plaintiffs lack statutory standing to assert their California statutory claims because they fail to plead
3 reliance. The negligent misrepresentation claim fails for the same reason. Third, Remaining
4 Plaintiffs' California Consumers Legal Remedies Act ("CLRA") claim further fails because they do
5 not allege a misrepresentation that existed at the time of sale, as required to state a claim. Finally,
6 Remaining Plaintiffs' reliance on the User Agreement's choice of California law provision precludes
7 their non-California statutory claims.

8 StubHub bases its Renewed Motion to Compel Arbitration and its Motion to Dismiss on this
9 Notice, the accompanying Memorandum of Points and Authorities, all pleadings and papers filed in
10 this action, the argument of counsel, and any other matters that may come before the Court.

11 Dated: January 24, 2022

Respectfully submitted,

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