

1 Tina Wolfson (SBN 174806)
Theodore W. Maya (SBN 223242)
2 Bradley K. King (SBN 274399)
AHDOOT & WOLFSON, PC
3 2600 West Olive Avenue, Suite 500
Burbank, California 91505
4 Telephone: (310) 474-9111
Facsimile: (310) 474-8585
5 twolfson@ahdootwolfson.com
tmaya@ahdootwolfson.com
6 bking@ahdootwolfson.com

Tiasha Palikovic (*pro hac vice*)
Steven L. Wittels (*pro hac vice*)
J. Burkett McInturff (*pro hac vice*)
WITTELS MCINTURFF PALIKOVIC
18 Half Mile Road
Armonk, New York 10504
Telephone: (914) 319-9945
Facsimile: (914) 273-2563
tpalikovic@wittelslaw.com
slw@wittelslaw.com
jbm@wittelslaw.com

7 Henry J. Kelston (*pro hac vice*)
AHDOOT & WOLFSON, PC
8 125 Maiden Lane, Suite 5C
New York, NY 10038
9 Telephone: (310) 474-9111
10 Facsimile: (310) 474-8585
hkelston@ahdootwolfson.com

Andrew W. Ferich (*pro hac vice*)
AHDOOT & WOLFSON, PC
201 King of Prussia Rd., Suite 650
Radnor, PA 19087
Telephone: (310) 474-9111
Facsimile: (310) 474-8585
aferich@ahdootwolfson.com

11
12 *Plaintiffs' Interim Co-Lead Counsel*

13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **OAKLAND DIVISION**

16 IN RE STUBHUB REFUND LITIGATION

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

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO DEFENDANT
STUBHUB, INC.'S RENEWED (AND
AMENDED RENEWED) MOTION TO
COMPEL ARBITRATION AND MOTION
TO DISMISS**

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

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- I. INTRODUCTION 1
- II. ARGUMENT 3
 - A. StubHub’s Renewed Motion to Compel Arbitration Should Be Denied. *(Responding to Def.’s Point IV.a.i.)*..... 3
 - 1. StubHub’s Latest “Investigation” Fails to Show Mobile Users Agreed to Arbitrate. 3
 - a. Defendant Does Not—and Cannot—Prove that the Mobile Checkout Screen Disclosure Was Sufficient 3
 - b. Defendant Fails to Prove that the Registration Screen Disclosures Were Sufficient. 7
 - i. Defendant Provides No Evidence of the Registration Sign-Up Screen or the Applicable UA for any of the Non-Android Mobile User Plaintiffs 7
 - ii. The Registration Sign-Up Screen Provided to Android Mobile User Plaintiffs Did Not Provide Sufficient Notice of the UA. 7
 - c. Defendant’s New Argument About the Sufficiency of Website Sign-Ins Is Unavailing. 8
 - 2. This Court Has Already Rejected Defendant’s Equitable Estoppel Argument and There Is No Reason to Revisit Its Decision. *(Responding to Def.’s Point IV.a.ii.)*..... 10
 - B. Plaintiffs’ CCAC Is Well-Pleaded and StubHub’s Motion to Dismiss Should Be Denied in its Entirety. *(Responding to Def.’s Point IV.b.i.)*..... 11
 - 1. Plaintiffs Wutz and Koble Have Standing. *(Responding to Def.’s Point IV.b.i.)*..... 12
 - a. Plaintiff Wutz Adequately Alleges Money Damages. 12
 - b. Plaintiff Koble Adequately Alleges Money Damages 13
 - 2. The Mobile Users Have Sufficiently Demonstrated Statutory Standing and Pleaded Their Claims with Particularity. *(Responding to Def.’s Point IV.b.ii.)*..... 15
 - a. Plaintiffs Have Sufficiently Pleaded Reliance. 15
 - b. The CCAC Meets the Requisite Level of Particularity. 18
 - 3. The Mobile User Plaintiffs’ CLRA Claims Should Be Sustained. *(Responding to Def.’s Point IV.b.iii.)* 19

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. Plaintiffs’ Negligent Misrepresentation Claim Should Be Sustained. (*Responding to Def.’s Point IV.b.iv.*) 24

5. Plaintiffs’ Non-California Statutory Claims Are Pleaded in the Alternative. (*Responding to Def.’s Point IV.b.v.*) 25

III. CONCLUSION 26

TABLE OF AUTHORITIES

Cases

Airtourist Holdings LLC v. HNA Group,
 No. C 17-04989 JSW, 2018 WL 3069444 (N.D. Cal. Mar. 27, 2018) 11

Baird v. BlackRock Institutional Tr. Co., N.A.,
 403 F. Supp. 3d 765 (N.D. Cal. 2019) 13

Bakhtiar v. FCA US LLC,
 No. 20-CV-06522-ODW (JEMx), 2021 WL 4776260 (C.D. Cal. Oct. 13, 2021)..... 22

Bentley v. The Control Grp. Media Co.,
 No. 19-CV-2437-DMS-RBB, 2020 WL 3639660 (S.D. Cal. July 6, 2020)..... 11

Beyer v. Symantec Corp.,
 333 F. Supp. 3d 966 (N.D. Cal. 2018) 20

Brock v. Concord Auto. Dealership LLC,
 No. 14-CV-01889-HSG, 2016 WL 829074 (N.D. Cal. Mar. 3, 2016) 14

Chevron Products Co. v. Advance Corrosion Technologies & Training, LLC,
 No. 20-CV-09095-CRB, 2021 WL 2156467 (N.D. Cal. May 27, 2021)..... 25

Czyzewski v. Jevic Holding Corp.,
 137 S. Ct. 973 (2017)..... 13

Davidson v. Kimberly-Clark Corp.,
 889 F.3d 956 (9th Cir. 2018) 13, 14

Gallagher v. Chipotle Mexican Grill, Inc.,
 No. 15-CV-03952-HSG, 2016 WL 454083 (N.D. Cal. Feb. 5, 2016)..... 15, 17

In re Oil Spill by Oil Rig “Deepwater Horizon” in Gulf of Mexico, on Apr. 20, 2010,
 No. MDL 2179, 2021 WL 3684306 (E.D. La. Aug. 19, 2021) 13

In re Tobacco II Cases,
 46 Cal. 4th 298 (2009) 15, 18

Jones v. Nutiva, Inc.,
 No. 16-CV-00711-HSG, 2016 WL 5210935 (N.D. Cal. Sept. 22, 2016)..... 16

Kowalsky v. Hewlett-Packard Co.,
 No. 10-CV-02176-LHK, 2011 WL 3501715 (N.D. Cal. Aug. 10, 2011)..... 20

Larson v. Speetjens,
 No. C 05-3176 SBA, 2006 WL 2567873 (N.D. Cal. Sept. 5, 2006)..... 11

Lazar v. Superior Court,
 12 Cal. 4th 631 (1996) 18

Maestas v. Wal-Mart Stores, Inc.,
 No. 2:16-cv-02597-KJM-KJN, 2018 WL 1518762 (E.D. Cal. Mar. 28, 2018)..... 19, 23

Manzarek v. St. Paul Fire & Marine Ins. Co.,
 519 F.3d 1025 (9th Cir. 2008) 12

1	<i>McCarthy v. Toyota Motor Corp.</i> ,	
2	No. 8:18-cv-00201-JLS-KES, 2018 WL 6318841 (C.D. Cal. Sept. 14, 2018).....	23
3	<i>McGill v. Citibank, N.A.</i> ,	
4	2 Cal. 5th 945 (2017)	11
5	<i>Moore v. Apple, Inc.</i> ,	
6	73 F. Supp. 3d 1191 (N.D. Cal. 2014)	20
7	<i>Murphy v. DirecTV, Inc.</i> ,	
8	724 F.3d 1218 (9th Cir. 2013)	11
9	<i>Neu v. Terminix Intern., Inc.</i> ,	
10	No. C 07-6472 CW, 2008 WL 2951390 (N.D. Cal. 2008).....	23
11	<i>Patterson v. RW Direct, Inc.</i> ,	
12	382 F. Supp. 3d 938 (N.D. Cal. 2019)	23
13	<i>Resnick v. Hyundai Motor Am., Inc.</i> ,	
14	No. CV 16–00593–BRO (PJWx), 2017 WL 1531192 (C.D. Cal. Apr. 13, 2017)	24
15	<i>Robinson v. J.M. Smucker Co.</i> ,	
16	No. 18-CV-04654-HSG, 2019 WL 2029069 (N.D. Cal. May 8, 2019).....	19
17	<i>Rothman v. Equinox Holdings</i> ,	
18	No. 2:20-cv-09760-CAS-MRWx, 2021 WL 124682 (C.D. Cal. Jan. 13, 2021)	17, 18
19	<i>Rubenstein v. The Gap, Inc.</i> ,	
20	14 Cal. App. 5th 870 (2017)	24
21	<i>Sabbag v. Cinnamon</i> ,	
22	No. 5:10-CV-02735-JF HRL, 2010 WL 8470477 (N.D. Cal. Dec. 10, 2010).....	21
23	<i>Schneider v. Chipotle Mexican Grill, Inc.</i> ,	
24	No. 16-CV-02200-HSG, 2016 WL 6563348 (N.D. Cal. Nov. 4, 2016).....	14
25	<i>Shultz v. TTAC Publ'g, LLC</i> ,	
26	No. 20-CV-04375-HSG, 2020 WL 6937818 (N.D. Cal. Oct. 26, 2020)	6, 8
27	<i>SI 59 LLC v. Variel Warner Ventures, LLC</i> ,	
28	29 Cal. App. 5th 146 (2018)	25
	<i>Smith v. Keurig Green Mountain, Inc.</i> ,	
	393 F. Supp. 3d 837 (N.D. Cal. 2019)	15, 18
	<i>Snarr v. Cento Fine Foods Inc.</i> ,	
	No. 19-CV-02627-HSG, 2019 WL 7050149 (N.D. Cal. Dec. 23, 2019)	18
	<i>Stewart v. Electrolux Home Prod., Inc.</i> ,	
	304 F. Supp. 3d 894 (E.D. Cal. 2018).....	20, 23, 24
	<i>United States v. United Healthcare Ins. Co.</i> ,	
	848 F.3d 1161 (9th Cir. 2016)	18
	<i>Van v. LLR, Inc.</i> ,	
	962 F.3d 1160 (9th Cir. 2020)	14

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.