

1 HRAG KOUYOUMIJAN, SBN 288684
 (hragk@sevenhilllaw.com)
 2 DREW FERRANDINI, SBN 285102
 (drewf@sevenhilllaw.com)
 3 SEVEN HILL LAW, APC
 411 West 7th Street, Suite 310
 Los Angeles, CA 90014
 Telephone: (213) 235-3532
 Facsimile: (213) 488-1588

FILED
 Superior Court of California
 County of Los Angeles

AUG 25 2017

Sherri R. Carter, Executive Officer/Clerk
 By *[Signature]* Deputy

6 Attorney for Plaintiffs Dean Ferrandini, Keefe Ferrandini, on behalf
 7 of themselves and all others similarly situated

8 *322 Highberger*
 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 FOR THE COUNTY OF LOS ANGELES—CENTRAL DISTRICT

BC 673915

11 DEAN FERRANDINI, an individual, KEEFE
 12 FERRANDINI, individually, and on behalf of all
 13 others similarly situated,

14 Plaintiffs,

15 vs.

16 ZUFFA, LLC, a Nevada limited liability
 17 corporation; SHOWTIME NETWORKS, INC., a
 18 New York corporation; UFC, a Nevada
 corporation; and DOES 1 through 100, Inclusive,

19 Defendants.

Case No.

CLASS ACTION COMPLAINT FOR:

(1) Unlawful, Fraudulent and Unfair
 Business Practices in Violation of Business
 and Professions Code Section 17200;

(2) Unfair Advertising Practices in
 Violation of Business and Professions
 Code Section 17500;

(3) Unjust Enrichment;

(4) Breach of Contract.

JURY TRIAL DEMANDED

RECEIPT #: CCH465980128
 DATE PAID: 08/28/17 04:03 PM
 PAYMENT: \$1,000.00
 RECEIVED: \$10

\$1,000.00
 \$0.00
 \$0.00
 \$0.00
 \$0.00

RECEIPT #: CCH465980127
 DATE PAID: 08/28/17 04:02 PM
 PAYMENT: \$435.00
 RECEIVED: \$10

\$435.00
 \$0.00
 \$0.00
 \$0.00
 \$0.00

24 Plaintiffs Dean Ferrandini and Keefe Ferrandini ("Plaintiffs"), on behalf of themselves
 25 and all others similarly situated, allege as follows:

NATURE OF ACTION

26 1. Floyd Mayweather Jr. vs. Conor McGregor was a professional boxing match
 27 between undefeated eleven-time five-division boxing world champion Floyd Mayweather Jr. and
 28

CLASS ACTION COMPLAINT

CIT/CASE: BC673915
 LEA/DEF#:

CIT/CASE: BC673915
 LEA/DEF#:

1 two-division mixed martial arts (MMA) world champion and at-the-time current UFC
2 Lightweight Champion Conor McGregor. The match took place at the T-Mobile
3 Arena in Paradise, Nevada on August 26, 2017. (Hereinafter referred to as "THE EVENT").
4 While the fight between Floyd Mayweather Jr. vs. Conor McGregor was the main attraction,
5 THE EVENT also including undercard fights and as well as high quality segments explaining the
6 background of the fighters,

7 2. Defendants heavily promoted a service known as UFC Fight Pass. This service
8 allowed customers to pay a fee of approximately 100 in order to stream THE EVENT on various
9 platforms (Roku, smart phones, Apple TV, etc.)

10 3. This is a class action arising out of Defendants failure to provide live streaming
11 services to the to thousands of Californians who paid over \$100 for the UFC Fight Pass to watch
12 but were unable to watch the majority of the event live due to Defendants' failure prepare for the
13 high volume of subscribers. Despite the unprecedented effort of Defendants to promote of the
14 event and UFC Fight Pass, Defendants made no corresponding effort to in insure their servers to
15 were as prepared to handle the services advertised.

16 4. Plaintiffs bring this action for relief on behalf of all similarly situated who paid
17 for UFC Fight Pass but were unable to watch the event live as advertised.

18 THE PARTIES

19 5. Plaintiff Dean Ferrandini is a citizen and resident of California. Plaintiff
20 purchased a streaming pass for the Floyd Mayweather verse Connor McGregor fight on August
21 26, 2017.

22 6. Plaintiff Keefe Ferrandini is a citizen and resident of California. Plaintiff
23 purchased a streaming pass for the Floyd Mayweather verse Connor McGregor fight on August
24 26, 2017.

25 7. Plaintiffs are informed and believe, and on that basis allege, Defendant Zuffa,
26 LLC is a limited liability corporation headquartered in Las Vegas, Nevada. Plaintiffs are
27 informed and believe that Defendant has substantial continuous contact with California.

28 8. Plaintiffs are informed and believe, and on that basis allege, Defendant UFC is a

1 corporation headquartered in Las Vegas, Nevada. Plaintiffs are informed and believe that
2 Defendant has substantial continuous contact with California.

3 9. Plaintiffs are informed and believe, and on that basis allege, Defendant Showtime
4 Networks, Inc. is a corporation headquartered in New York, New York. Plaintiffs are informed
5 and believe that Defendant has substantial continuous contact with California.

6 10. Plaintiffs are currently ignorant of the true names and capacities, whether
7 individual, corporate, associate, or otherwise, of the defendants sued herein under the fictitious
8 names Does 1 through 100, inclusive, and therefore, sue such defendants by such fictitious
9 names. Plaintiffs will amend this complaint to allege the true names and capacities of said
10 fictitiously named defendants when their true names and capacities have been ascertained.

11 11. Plaintiffs are informed and believe and thereon allege that each of the fictitiously
12 named Doe defendants are legally responsible in some manner for the events and occurrences
13 alleged herein, and for the damages suffered by Plaintiffs and members of the class.

14 12. As sued herein, "Defendant" shall mean the above-named Defendant, including
15 all entities through which it does business and its predecessors, successors, affiliates,
16 representatives, attorneys, employees, and/or assigns who, in concert and/or acting as agents for
17 one another, engaged in the conduct complained of herein.

18 **GENERAL ALLEGATIONS**

19 13. Plaintiffs are informed and believe, and on that basis allege, that all defendants,
20 including the fictitious Doe defendants, were at all relevant times acting as actual agents,
21 conspirators, ostensible agents, partners and/or joint venturers and employees of all other
22 defendants, and that all acts alleged herein occurred within the course and scope of said agency,
23 employment, partnership, joint venture, conspiracy and/or enterprise, and with the express and/or
24 implied permission, knowledge, consent, authorization and ratification of their co-defendants;
25 however, this allegation is pleaded as an "alternative" theory wherever not doing so would result
26 in a contradiction with other allegations.

27 14. All allegations in this complaint are based on information and belief and/or are
28 likely to have evidentiary support after a reasonable opportunity for further investigation or

1 discovery. Whenever allegations in this complaint are contrary or inconsistent, such allegations
2 shall be deemed alternative.

3 **JURISDICTION AND VENUE**

4 15. This Court has jurisdiction over the entire action by virtue of the fact that this is a
5 civil action wherein the matter in controversy, exclusive of interest and costs, exceeds the
6 jurisdictional minimum of the Court. The acts and omissions complained of in this action took
7 place in the State of California. Venue is proper because this is a class action, the acts and/or
8 omissions complained of took place, in whole or in part within the venue of this Court, and/or
9 one or more defendants reside within the venue of this court.

10 **FACTUAL ALLEGATIONS**

11 16. For months leading up widely advertised as being one of the biggest sporting
12 events ever. As a former head of HBO pay-per-view sales told Variety "There's never been an
13 event like it before and there may never be one like it again... When you look at these type of
14 events, they're more than just sporting events. They're true entertainment spectacles. This has all
15 the characteristics of a great spectacle where people can get together in large numbers and watch
16 together like a Super Bowl party."¹

17 17. Plaintiffs were intrigued by the hype surrounding the fight and decided to order
18 THE EVENT with UFC Fight Pass to watch on their Roku 3 with the official UFC application.

19 18. On August 26, 2017 Plaintiffs Dean Ferrandini and Keefe Ferrandini purchased
20 streaming passes from Defendants to view the highly anticipated boxing match between Floyd
21 Mayweather and Connor McGregor, as well as several undercard boxing matches.

22 19. The streaming pass cost Plaintiffs approximately \$110.00.

23 20. Plaintiffs were initially able to attempted to log into the application at
24 approximately 4:30 pm. They were able to watch the weigh-in and the pre-fight interviews. The
25 live stream of THE EVENT did not start until 6pm.

26
27
28 ¹ <http://variety.com/2017/tv/news/mcgregor-mayweather-fight-boxing-preview-1202536008/> (accessed August 27, 2016)

21. When Plaintiffs attempted to log into the application at 6 pm. They received an error message. They attempted to call consumer support but were never connected to any person.

22. Plaintiffs attempted several times over the next few hours but were unable to log into the application.

23. By the time, the application started to work, the title match between Floyd Mayweather Jr. vs. Conor McGregor was well underway. Instead of enjoying the event they had paid for Plaintiffs spent the majority of the evening frustrated and on the phone trying to get through to customer service.

24. Plaintiffs did not receive the services for which they paid for and expected.

25. Defendants have not refunded any money to Plaintiffs even though Defendants knew the patrons who purchased the streaming passes were unable to access the live streaming of the Event due to technical failures.

CLASS ACTION ALLEGATIONS

26. Plaintiffs bring this action on their own behalf and on behalf of all persons similarly situated pursuant to Code of Civil Procedure section 382. Plaintiffs seek to represent the following class:

All individuals residing in California, who were unable to watch any, or all, of the Event live due to technical failures of Defendants' streaming services to handle the expected high volume of consumers.

27. Upon information and belief, the scope of this class definition, including its temporal scope, may be further refined after discovery of Defendants' and/or third party records.

28. Excluded from the Class are governmental entities, Defendant, any entity in which Defendant has a controlling interest, and Defendant's officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded from the Class is any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

29. Plaintiffs' claims are typical of the claims of the class. Plaintiffs are members of the class they seek to represent. Plaintiffs are members of a class of consumers, and the

1 members of this class of consumers were similarly situated and similarly affected by the conduct
2 alleged of Defendants and incurred similar damage, as alleged in this complaint, as a result of the
3 conduct of Defendants. Members of the class are ascertainable from Plaintiffs description of the
4 class and/or Defendants' records and/or records of third parties accessible through discovery.

5 30. The representative Plaintiffs will fairly and adequately represent the members of
6 the class and have no interests which are antagonistic to the claims of the class. The Plaintiffs'
7 interests in this action are antagonistic to the interests of Defendants, and they will vigorously
8 pursue the claims of the class.

9 31. The representative Plaintiffs have retained counsel who are competent and
10 experienced in consumer class action litigation, and have successfully represented consumers in
11 complex class actions.

12 32. Common questions of law and fact impact the rights of each member of the class
13 and a common remedy by way of permissible damages, restitutionary disgorgement and/or
14 injunctive relief is sought for the class.

15 33. There are numerous and substantial questions of law and fact common to all
16 members of the class which will predominate over any individual issues. These common
17 questions of law and fact include, without limitation:

- 18 a. Whether Defendants provided the services contracted for with the UFC
19 Fight Pass;
- 20 b. Whether Defendants invested sufficient resources in their streaming
21 services knowing the high volumes of customers expected;
- 22 c. Whether Defendants falsely represented that its streaming services had
23 characteristics, uses, benefits, or quantities that it does not have;
- 24 d. Whether Defendant's representations regarding UFC Fight Pass were
25 fraudulent under Business & Professions Code section 17200;
- 26 e. Whether Defendants' representations regarding UFC Fight Pass unfair
27 under Business & Professions Code section 17200;
- 28 f. Whether Defendants' representations regarding UFC Fight Pass unlawful

under Business & Professions Code section 17200;

g. Whether Defendants' representations regarding UFC Fight Pass unlawful under Business & Professions Code section 17500;

h. Whether Defendants, through its conduct, has been unjustly enriched to the detriment of Plaintiff and the Class.

34. A class action provides a fair and efficient method, if not the only method, for adjudicating this controversy. The substantive claims of the representative Plaintiffs and the class are nearly identical and will require evidentiary proof of the same kind and application of the same law.

35. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, because class members number in at least the thousands and individual joinder is impracticable. The expense and burden of individual litigation would make it impracticable or impossible for proposed class members to prosecute their claims individually. Trial of Plaintiffs' and the class members' claims are manageable. Unless a class is certified, Defendants will be unjustly enriched at the expense of class members.

36. There is no plain, speedy or adequate remedy other than by maintenance of this class action because Plaintiffs are informed and believe that damage to each member of the class is relatively small, making it economically unfeasible to pursue remedies other than by way of a class action.

37. The persons in the class are so numerous that the joinder of all such persons individually in this case is impracticable, and the disposition of their claims in this case and as part of a single class action lawsuit, rather than hundreds or thousands of individual lawsuits, will benefit the parties and greatly reduce the aggregate judicial resources that would be spent if this matter were handled as hundreds or thousands of separate lawsuits.

38. Plaintiffs know of no difficulty that will be encountered in the management of this litigation, which would preclude its maintenance of a class action.

39. Defendants have acted on grounds generally applicable to the entire class, thereby making final injunctive relief or corresponding declaratory relief appropriate with respect to the

1 class as a whole. Prosecution of separate actions by individual members of the class would
2 create the risk of inconsistent or varying adjudications with respect to individual members of the
3 class that would establish incompatible standards of conduct for the Defendants.

4 40. Without a class action, Defendants will likely retain the benefit of its wrongdoing
5 and will continue a course of action, which will result in further damages to Plaintiff and the
6 class. Plaintiff envisions no difficulty in the management of this action as a class action.

7 **FIRST CAUSE OF ACTION**

8 **(Unfair Competition Laws—Business & Professions Code §§17200 *et. seq.*)**

9 **(By Plaintiffs and all class members against all Defendants)**

10 41. Plaintiffs and the class re-allege and incorporate by reference the allegations
11 contained in the preceding paragraphs of this complaint, as though fully set forth herein.

12 42. Business & Professions Code § 17200, prohibits any unfair competition,
13 including any unlawful, unfair or fraudulent business act or practice, and any unfair, deceptive,
14 untrue or misleading advertising and, any other act prohibited by Business & Professions Code
15 §§ 17500, *et. seq.*

16 43. Business & Professions Code § 17500 provides that it is unlawful for any person,
17 firm, corporation, or association, or any employee thereof to intentionally directly, or indirectly
18 perform services, professional or otherwise, or to induce the public to enter into any obligation
19 relating thereto, to make or disseminate in any manner any statement which is untrue or
20 misleading, or which, by the exercise of reasonable care should be known to be untrue or
21 misleading. Defendants represented to Plaintiffs and class members that for a fee of
22 approximately \$110.00, Plaintiffs and class members would have the continuous and
23 uninterrupted high-definition stream of the Event; however, Plaintiffs and class members alike
24 were deprived of the services for which they paid for and expected when the stream was
25 unavailable due to technical issues known by Defendants.

26 44. Defendants' conduct amounts to "unfair" business practices within the meaning of
27 the Act. Defendants encouraged as many customers as possible to sign up to their services, while
28 knowing they had invested insufficient resources to provide those services. As described herein,

1 Defendant's business practices are unethical, oppressive, and offend established public policies.

2 45. Defendant's conduct as alleged herein also constitutes "fraudulent" business
3 practices. Defendants encouraged as many customers as possible to sign up to their services,
4 while knowing they had invested insufficient resources to provide those services.

5 46. Further Defendant has engaged in an "unlawful" practices, including but not
6 limited to, violating the Consumer Legal Remedies Act §§ 1770 (a)(5), 1770(a)(9). Additionally,
7 Defendant's unlawful conduct includes, but is not limited to, violations of California Insurance
8 Code section 790.03(b), for making or disseminating or causing to be made or disseminated false
9 and misleading statements such as representing to Plaintiff and class members.

10 47. As a result of Defendant's unfair, fraudulent, and unlawful business practices, and
11 untrue and misleading statements, Plaintiff has suffered injury-in-fact and damage. The impact
12 of Defendant's practices is in no way mitigated by any justification, reason or motive.

13 48. Each of these grounds for recovery under this cause of action (i.e., unfair,
14 unlawful or fraudulent) are alleged in the alternative.

15 49. Plaintiff and the class are informed and believe and on that basis allege that the
16 unlawful, unfair, or fraudulent practices alleged in this complaint are continuing in nature and are
17 widespread practices engaged in by Defendant.

18 50. As a result of the aforementioned conduct, Plaintiffs and Class members are
19 entitled to equitable relief, including restitution of all charges and disgorgement of profits,
20 attorneys' fees and costs, and permanent injunctive relief to prevent such conduct in the future.

21 **SECOND CAUSE OF ACTION**

22 **(Unfair Competition Laws—Business & Professions Code §§17200 *et. seq.*)**

23 **(By Plaintiffs and all class members against all Defendants)**

24 51. Plaintiffs and the class re-allege and incorporate by reference the allegations
25 contained in the preceding paragraphs of this complaint, as though fully set forth herein.

26 52. California's False Advertising Law ("FAL") also protects consumers and
27 competitors by promoting fair competition in commercial markets for goods and services,
28 making it unlawful for "any person,... corporation... or any employee thereof with intent directly

1 or indirectly to dispose of real or personal property or to perform services... or to induce the
2 public to enter into any obligation relating thereto, to make or disseminate... before the public in
3 this state,... in any newspaper or other publication... or in any other manner or means whatever...
4 any statement, concerning that real or personal property or those services... which is untrue or
5 misleading, and which is known, or which by the exercise of reasonable care should be known, to
6 be untrue or misleading...."

7 53. To state a claim for false advertising, a plaintiff must show that (1) statements in
8 the advertising are untrue or misleading, and, that (2) Defendants knew, or by the exercise of
9 reasonable care should have known, that the statements were untrue or misleading. (*People v.*
10 *Lynam* (1967) 253 Cal.App.2d 959, 965.) Defendants' knowledge of the falsity of the
11 advertisement is not an element of a section 17500 offense, and both negligent and intentional
12 dissemination of misleading advertising are prohibited.

13 54. As described herein, Defendants knew that they did not have the technical
14 capability to handle the high volume of consumers expected for this event. However, they
15 continued to advertise and prompted the Fight Pass service knowing they could not provide live
16 streaming of the event.

17 55. As a result of the aforementioned conduct, Plaintiffs and Class members are
18 entitled to equitable relief, including restitution of all charges and disgorgement of profits,
19 attorneys' fees and costs, and permanent injunctive relief to prevent such conduct in the future.

20 **THIRD CAUSE OF ACTION**

21 **(Unjust Enrichment)**

22 **(By Plaintiffs and all class members against all Defendants)**

23 56. Plaintiff re-alleges and incorporates herein by reference the allegations contained
24 in the preceding paragraphs of this complaint, as though fully set forth herein.

25 57. Defendants has been unjustly enriched at the expense of Plaintiff and the Class
26 and to the detriment of Plaintiff and members of the Class. Defendants have been, and continues
27 to be, unjustly enriched as a result of the unfair, unlawful and/or wrongful advertisement of its
28 streaming services. Plaintiff and members of the class are entitled to recover from Defendant all

1 amounts wrongfully collected and improperly retained by Defendant, plus interest thereon.

2 58. Defendants has unjustly retained and failed to refund to Plaintiff and the members
3 of the class the amounts wrongfully collected from them and, under the circumstances, has been
4 unjustly enriched.

5 59. Plaintiff and members of the class are entitled to recover from Defendant all
6 amounts wrongfully collected and improperly retained by Defendant, plus interest thereon.

7 60. Accordingly, Plaintiff and members of the Class seek full disgorgement and
8 restitution of the Defendant's enrichment, benefits and ill-gotten gains acquired as a result of the
9 unlawful and/or wrongful conduct alleged herein.

10 **FOURTH CAUSE OF ACTION**

11 **(Breach of Contract)**

12 **(By Plaintiffs and all class members against all Defendants)**

13 61. Plaintiff re-alleges and incorporates herein by reference the allegations contained
14 in the preceding paragraphs of this complaint, as though fully set forth herein.

15 62. Plaintiffs purchased on UFC Fight Pass from Defendant in order to watch the
16 EVENT live. Plaintiffs have performed all their obligations under agreement.

17 63. Defendants breached these contract by failure to provide the service promised.

18 64. As a direct and proximate result of the breach of contract by Defendants, Plaintiffs
19 have suffered damages as herein alleged.

20 65. Defendant knew Plaintiff and Class Members were senior citizens within the
21 meaning of California Civil Code section 1761(f), and that they were substantially more
22 vulnerable to its conduct than other members of the public because of their advanced age and
23 diminished capacity to understand complicated financial matters. Defendant was aware of the
24 probable consequence of its despicable conduct and its conduct resulted in substantial irreparable
25 damages. Plaintiff and Class members are entitled to treble damages under California Civil Code
26 section 3345.

27 66. Defendant's conduct was undertaken by Defendant's officers or managing agents
28 responsible for underwriting and claims supervision, operations, communications and decisions.

1 Conduct of the managing agents and individuals was undertaken on behalf of Defendant. And
2 Defendant had advanced knowledge of these actions and conduct which it ratified, authorized
3 and approved.

4 **PRAYER FOR RELIEF**

5 Wherefore, Plaintiff and members of the class pray for judgment as follows:

- 6 1. For general, special, and consequential damages according to proof;
7 2. For statutory damages;
8 3. For any and all other relief available under Business and Professions Code
9 sections 17200 and 17500, *et. seq.*, including but not limited to disgorgement of
10 profits received and/or restitution;
11 4. For an injunction prohibiting Defendant from engaging in the unlawful, unfair, and
12 fraudulent practices alleged herein;
13 5. For pre-judgment interest; and
14 6. For such other and further relief as the Court deems just and proper.

15
16 DATED: August 28, 2017

SEVEN HILL LAW, APC

17
18
19 By: 

Hrag Kouyoumjian
Drew Ferrandini
Attorney for Plaintiff

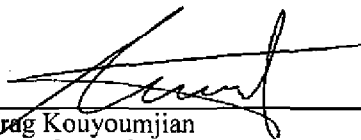
DEMAND FOR JURY TRIAL

Plaintiffs hereby demands trial by jury of all claims and causes of action in this lawsuit.

DATED: August 28, 2017

SEVEN HILL LAW, APC

By:


Hrag Kouyoumjian
Drew Ferrandini
Attorneys for Plaintiffs