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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

CAMERON PARK, individually, and
on behalf of all others similarly situated,

Plaintiff,

v.

ZUFFA, LLC, NEULION, INC., and,
DOES 1-100, inclusive,

Defendants.

Case No. 2:17-cv-02282 -APG-VCF

**AMENDED CLASS ACTION
COMPLAINT**

(Jury Trial Demanded)

Cameron Park (“Plaintiff”), by and through undersigned counsel, on behalf of himself and all others similarly situated, brings the following Class Action Complaint against ZUFFA, LLC and NEULION, INC. (collectively “Defendants”), based upon information as belief and the investigation of counsel, except for information based on personal knowledge, and hereby alleges as follows:

PREAMBLE

1
2 1. The August 26, 2017 boxing match between Floyd Mayweather
3 (“Mayweather”) and Conor McGregor (“McGregor”) was billed to the American
4 public (and worldwide) as one of the biggest prize fights ever and dubbed by UFC,
5 the media and others as “The Money Fight” and “The Biggest Fight in Combat
6 Sports History” (hereinafter the “Fight”). The Fight was unique as, for the first
7 time, it pitted a boxing champion (Mayweather), against an ultimate
8 fighting/mixed martial arts champion (McGregor), adding significant intrigue and
9 hype to the sporting event. The Fight, ultimately won by Mayweather with a
10 technical knockout in the 10th round, is believed to have been one of the highest
11 grossing and most watched fights in boxing history.¹

12 2. Apart from the gate receipts, hundreds of thousands of boxing fans
13 paid money to see the Fight on pay-per-view (“PPV”) broadcasts, including those
14 offered through Defendants’ internet and media outlets and platforms, such as
15 UFC.com, UFC.tv, and UFC’s smartphone application (the “app”). PPV sales
16 alone are believed to have exceeded \$300 million for the Fight.²

17 3. Reviews of the Fight were generally positive with commentators and
18 fans indicating that it was an exciting sporting event, especially compared to
19 Mayweather’s previous May 2015 fight against Manny Pacquiao, which was
20 universally criticized and panned due to general lack of excitement largely

21
22 ¹ Martin Rogers, *Floyd Mayweather beats Conor McGregor with 10th round TKO in 'The*
23 *Money Fight'*, USA TODAY (Aug. 28, 2017, 12:56 AM),
24 [https://www.usatoday.com/story/sports/boxing/2017/08/26/floyd-mayweather-beats-conor-](https://www.usatoday.com/story/sports/boxing/2017/08/26/floyd-mayweather-beats-conor-mcgregor-tko-money-fight/605806001/)
25 [mgregor-tko-money-fight/605806001/](https://www.usatoday.com/story/sports/boxing/2017/08/26/floyd-mayweather-beats-conor-mcgregor-tko-money-fight/605806001/). See also, Brian Mazique, *The Estimated Purses for*
26 *Floyd Mayweather Vs. Conor McGregor Fight Are Staggering*, FORBES (Jun 16, 2017, 2:32 PM),
27 [https://www.forbes.com/sites/brianmazique/2017/06/16/the-estimated-purses-for-floyd-](https://www.forbes.com/sites/brianmazique/2017/06/16/the-estimated-purses-for-floyd-mayweather-vs-conor-mcgregor-fight-are-staggering/#3299add33d00)
28 [mayweather-vs-conor-mcgregor-fight-are-staggering/#3299add33d00](https://www.forbes.com/sites/brianmazique/2017/06/16/the-estimated-purses-for-floyd-mayweather-vs-conor-mcgregor-fight-are-staggering/#3299add33d00) (estimating Mayweather to
earn at least \$100 million, increasing up to four times that amount if the event hits its monetary
metrics, and McGregor raking in at least \$30 million, though both fighters signed confidentiality
agreements that restrict them from revealing the financial details publicly).

² Michael Blaustein, *Mayweather-McGregor was a \$700 million behemoth*, N.Y. POST (Aug. 28,
2017, 12:14 PM), <http://nypost.com/2017/08/28/mayweather-mcgregor-was-a-700m-behemoth/>.

1 resulting from Pacquiao’s undisclosed shoulder injury and inability to compete to
2 his fullest ability.³

3 4. Prior to the Fight, Mayweather told the public that he owed them
4 something “to write that wrong” as a result of the lackluster Pacquiao fight.⁴
5 Mayweather and McGregor engaged in a promotional tour and other promotional
6 appearances. Promoters and Defendants marketed the Fight heavily to fans and
7 PPV customers. All of this added to the hype and excitement the participating
8 boxers, promoters, broadcasters, and Defendants all aimed to capitalize on
9 financially.

10 5. While the August 26, 2016 Mayweather – McGregor fight was an
11 exciting sporting event that millions of sports fans wanted to see, with significant
12 hype and pent-up demand, a major problem arose prior to the Fight. Consumers,
13 like Plaintiff and members of the Class, who purchased the PPV Fight from
14 Defendants via UFC, UFC.com, UFC.tv, the UFC app, and/or other platforms
15 operated by Defendants at the required price (\$99.95), were unable to actually
16 watch the complete Fight under the license purchased due to technical difficulties
17 and insufficient bandwidth and downloading problems, frustrating their PPV
18 transactions and ability to receive what they paid for. In turn, Plaintiff and the
19 Class lost the ability to participate in and enjoy the event and worldwide spectacle
20 that, by purchasing, exceeded the \$99.95 purchase price in value. Instead of
21 enjoying the event in real time, Class members only saw blank television screens

22
23 ³ See generally, Mike Downey, *Mayweather vs. McGregor: Worth every penny*, CNN (Aug. 27,
24 2017, 12:44 PM), [http://www.cnn.com/2017/08/27/opinions/mayweather-mcgregor-opinion-
25 downey/index.html](http://www.cnn.com/2017/08/27/opinions/mayweather-mcgregor-opinion-downey/index.html) (last visited Sept. 26, 2017) (“That thing in a boxing ring Saturday night in
26 Las Vegas turned out to be totally real. Floyd Mayweather vs. Conor McGregor was a genuine,
27 honest-to-goodness fight... But did those who paid to see it get their money's worth? Yes, they
28 really, really did.”).

26 ⁴ Scott Rafferty, *Floyd Mayweather: ‘I Feel Like I Owe Fans’ for Disappointing Manny
27 Pacquiao Fight*, Rolling Stone (Aug. 16, 2017),
28 [http://www.rollingstone.com/sports/news/mayweather-vs-mcgregory-owes-boxing-fans-for-
pacquiao-fight-w498023](http://www.rollingstone.com/sports/news/mayweather-vs-mcgregory-owes-boxing-fans-for-pacquiao-fight-w498023).

1 and instead spent that time in complete frustration trying to get the PPV download
2 to work while the 12 rounds ticked away – an exercise in futility, they only later
3 came to learn, due to the system overload. As reported in the aftermath of the
4 Fight, thousands of consumers who purchased the fight through UFC, UFC.com,
5 UFC.tv, the UFC app, and/or other platforms operated by Defendants were denied
6 the ability to see the entire Fight broadcast due to widespread “outages” allegedly
7 as a result of the high demand.⁵

8 6. Upon information and belief, the broadcast outages occurred due to
9 system overload and insufficient bandwidth and download capacity, among other
10 technical deficiencies, whereby Defendants sold more PPV packages to consumers
11 in the Class than they knew or should have known their broadcast/download
12 system could realistically handle and process without experiencing widespread
13 interference and outages.

14 7. Watching a live sporting event where long, short, unannounced, or
15 other sporadic outages occur completely ruins the viewing experience and
16 frustrates the ability of the viewer (and his/her guests) to enjoy the PPV product
17 purchased and experience it to the fullest and intended extent.

18 8. Being denied the ability to watch a live sporting event in real time
19 after purchasing it for a significant price and then learning the outcome through
20 media reports, or watching a replay or highlights with knowledge of the outcome,
21 is of less (or negative) value and damaging to true sports fans, as people in the
22

23 ⁵ Adi Joseph, *UFC.tv crashed two hours before Mayweather-McGregor, and everyone freaked*
24 *out*, USA TODAY (Aug. 26, 2017, 9:51 PM), [http://ftw.usatoday.com/2017/08/mayweather-vs-](http://ftw.usatoday.com/2017/08/mayweather-vs-mcgregor-streaming-ufc-tv-ppv-pay-per-view-time-online-watch)
25 *mcgregor-streaming-ufc-tv-ppv-pay-per-view-time-online-watch*. See also, A.J. Perez, *Struggled*
26 *to Stream the “The Money Fight”? UFC.tv customers urged to contact NeuLion*, MMA Junkie
27 (Aug. 27, 2017), available at: [http://mmajunkie.com/2017/08/struggled-stream-the-money-fight-](http://mmajunkie.com/2017/08/struggled-stream-the-money-fight-ufc-customers-contact-neulion)
28 [ufc-customers-contact-neulion](http://mmajunkie.com/2017/08/struggled-stream-the-money-fight-ufc-customers-contact-neulion); Jon Fingas, *Demand for Mayweather-McGregor fight crashed*
pay-per-view servers, Engadget (Aug. 27, 2017), available at:
<https://www.engadget.com/2017/08/27/mayweather-mcgregor-fight-crashes-ppv-servers/>.

1 Class who paid a record high \$99.95 PPV price would generally be. A large part
2 of the value of live sports, supporting prices that consumers pay to view it, is the
3 unknown and unpredictable nature of the events' progression and eventual
4 outcome of the match. Defendants' conduct here ruined this for Class members and
5 turned their night into a frustrating and embarrassing experience. A straight refund
6 of the PPV purchase price, even if made, would not and does not fully compensate
7 Class members for the injury suffered.

8 9. Defendants marketed and sold the Fight to the Class as if the \$99.95
9 purchase price was a value purchase: *i.e.*, if Class members purchased the PPV for
10 that price, they would receive at least that in entertainment value by being able to
11 watch and participate in the unique and unprecedented "Biggest Fight in Combat
12 Sports History."

13 10. Every aspect and reasonable interpretation of Defendants'
14 advertisement and promotion of the PPV Fight was that if consumers paid the
15 \$99.95 price for the PPV they would receive and be able to view, uninterrupted,
16 without doubt, the complete and uninterrupted Fight broadcast in real time.
17 Defendants' inability to ultimately provide a complete and uninterrupted PPV
18 broadcast of the Fight to the Class was not due to unforeseen circumstances or an
19 act of nature, but instead from pure greed – namely, Defendants' desire to keep
20 selling more and more and more PPV's to record sales levels, stretching the
21 bandwidth and download capacity of the PPV system to the brink and beyond,
22 irrespective of the risks they were creating for the Class of consumers.
23 Defendants' conduct in this regard was reckless and in disregard to the rights of
24 their customers in the Class.

25 11. Ultimately the system overloaded and crashed from excessive sales
26 and downloads. Plaintiff and Class members obtained only sporadic, interrupted
27 clips, or were unable to view the Fight at all.

28 12. As a result, Plaintiff's contracts for the PPV broadcast were breached.

1 13. Defendants also engaged in deceptive and misleading acts marketing
2 and selling the PPV on UFC.tv as, *inter alia*, they knew or should have known that
3 the PPV systems' capacity was exceeded and could not adequately handle the
4 volume of PPV sales ultimately reached without suffering outages, compromising
5 the PPV purchases of consumers, and yet they continued to sell new packages to
6 Class members in order to maximize their revenues.

7 14. Despite this, Defendants have not rectified the problem and made
8 Plaintiff and all Class members whole by refunding all Class members their PPV
9 purchase and providing other necessary relief such as additional compensation for
10 their injury, loss, frustrating experience, ruined evening, and embarrassment, as
11 well as reimbursement of other amounts spent by Class members in relation to the
12 Fight, such as for food, drink, and other costs associated with hosting and
13 entertaining guests.⁶ While Class members purchasing the PPV of the Fight
14 expected to participate in the hype and enjoy watching a highly entertaining event
15 marketed as “The Biggest Fight in Combat Sports History” and designed to be the
16 centerpiece of a night’s entertainment, purchased at a near record price (which
17 post-fight media reports largely confirm was a good competition worth the high
18 PPV purchase price for those consumers not in the Class who actually were able to
19 view it), Class members here were completely deprived of this to their detriment,
20 frustration, and lost time and money. Given this, a straight refund of the PPV
21

22
23 ⁶ See A. J. Perez, *UFC, NeuLion mum on potential refunds for fans unable to stream*
24 *Mayweather-McGregor fight*, MMA Junkie (Aug. 28, 2017), available at:
25 <http://mmajunkie.com/2017/08/ufc-neulion-floyd-mayweather-conor-mcgregor-fight-refunds>
26 (last visited Sept. 27 2017) (“The UFC and its streaming partner, NeuLion, have yet to address
27 how – and even if – they will compensate customers who paid \$100 for Saturday’s Floyd
28 Mayweather vs. Conor McGregor fight and were prevented from viewing it due to technical
issues. The main event was delayed due to what Showtime, the fight’s primary broadcaster,
described as “scattered outages,” but the majority of the problems appeared to be with UFC’s
app that runs on several different platforms and not the outages referenced by Showtime.”)

1 purchase price alone does not make Plaintiff or the members of the Class whole.
2 Each Class member is owed more than a straight refund of the PPV purchase price.

3 15. Based on the foregoing, and as further alleged below, this class action
4 lawsuit seeks damages, restitution, and other relief for persons who paid money for
5 the PPV of the Fight through UFC’s app and/or through UFC.tv. Those consumers,
6 like Plaintiff, were denied the benefit of their bargain and as a result, damages,
7 restitution, and other relief is appropriate and necessary. Because of Defendants’
8 conduct, described further within, members of the Class were injured and incurred
9 financial loss while Defendants profited and were unjustly enriched.

10 **PARTIES**

11 16. Plaintiff Cameron Park is an individual who resides in the State of
12 California. Plaintiff is a “person” as defined by Cal. Bus. & Prof. Code §17201.

13 17. Plaintiff, like members of the Class, paid money to view the PPV
14 broadcast Mayweather-McGregor fight held on August 26, 2017 via UFC.tv or the
15 UFC app and suffered the loss of money, financial injury, and other damage as a
16 result of the acts and omissions of Defendants described herein. Had Defendants
17 not conducted the deceptive and unfair acts alleged herein, and not omitted
18 material facts regarding system capacities, Plaintiff would not have parted with his
19 money to watch the Fight purchased from Defendants (and/or their agents), and
20 would not have been injured.

21 18. The Class, as defined below, consists of Plaintiff and all other
22 persons who paid money nationwide to watch the Mayweather-McGregor fight
23 held August 26, 2017, via UFC, UFC.com, UFC.tv, the UFC app, and/or other
24 platforms operated by Defendants.

25 19. The California Subclass, as defined below, consists of Plaintiff and
26 all other persons who paid money in California to watch the Mayweather-

1 McGregor fight held August 26, 2017, via UFC, UFC.com, UFC.tv, the UFC app,
2 and/or other platforms operated by Defendants.

3 20. Defendant Zuffa, LLC (“Zuffa”) is an American sports promotion
4 company specializing in mixed martial arts. It was founded in January 2001 in Las
5 Vegas, Nevada, by Station Casinos executives Frank Fertitta III and Lorenzo
6 Fertitta to be the parent entity of the Ultimate Fighting Championship (“UFC”)
7 after they purchased it from the Semaphore Entertainment Group. The word
8 “Zuffa” is an Italian word meaning “fight”.

9 21. Zuffa is formed under the laws of Nevada, and is located at 2960 W.
10 Sahara Avenue, Las Vegas, Nevada, 89102. It may be served with process by
11 serving its registered agent, L and R Service Company of Nevada, LLC at 3993
12 Howard Hughes Parkway, Suite 600, Las Vegas, Nevada 89169.

13 22. Upon information and belief, Zuffa’s sole managing member is
14 currently UFC Holdings, LLC (“UFC Holdings”). Upon information and belief,
15 UFC Holdings, LLC is located in Nevada at 2960 W. Sahara Avenue, Las Vegas,
16 Nevada, 89102, and is formed under the laws of Delaware and/or Michigan. The
17 citizenship of the members of UFC Holdings, LLC is presently unknown.

18 23. Until recently, Zuffa’s members were Lorenzo Fertitta, Frank
19 Fertitta, and other Nevada residents, including UFC President Dana White. *See*,
20 Fertitta Decl. (Sept. 27, 2010) (Doc. 13-2) in *Zuffa, LLC v. Pavia Holdings, LLC*,
21 No. 2:10-cv-1427-MMD-NJK (D. Nev.).

22 24. Zuffa was established in December 2000 and has maintained its
23 headquarters in Las Vegas, Nevada since that time. Almost all of Zuffa’s officers
24 and employees with responsibility for negotiating and executing contracts and
25 conducting business relationships with fighters, event venues, sponsors,
26 merchandisers, and other business partners, are based in Las Vegas. These
27 officers and employees include Chairman and CEO Lorenzo Fertitta, President
28 Dana White, Senior Executive Vice President and Chief Operating Officer Ike

1 Lawrence Epstein, Executive Vice President and Chief Legal Officer Kirk
2 Hendrick, Senior Vice President of Event Development and Operations Peter
3 Dropick, and Senior Vice President of Global Marketing Partnerships, Mike
4 Mossholder all of whom live and work in the District of Nevada.

5 25. Upon information and belief, in 2016 Zuffa was sold in whole or
6 part to UFC Holdings, LLC, WME Entertainment Parent, LLC, and/or related
7 entities.⁷ Despite any change in ownership, Zuffa continues to conduct business
8 as Ultimate Fighting Championship, UFC, UFC.com, UFC.tv, and the UFC app,
9 without interruption, including that involving the sale and marketing of PPV
10 packages of the Fight to Plaintiff and the Class in Nevada. *See, e.g., Zuffa, LLC*
11 *d/b/a/ Ultimate Fighting Championship v. Grigoryan*, No. 2:17-cv-04290-SVW-
12 JEM (C.D. Cal. June 9, 2017) (Doc. 1) (a 2017 filing alleging that Zuffa, LLC
13 continues to sell PPV broadcasts to consumers).

14 26. At all relevant times Zuffa has been in the business of, among other
15 things, promoting live mixed martial arts (MMA) bouts in the U.S. and
16 elsewhere, under the trade names of the Ultimate Fighting Championship® or
17 UFC®. Under the UFC trademark, which is wholly owned by Zuffa, Zuffa
18 promotes professional MMA events for live audiences as well as live television,
19 internet, and PPV broadcasts, and licenses, markets, sells and distributes UFC
20 licensed merchandise and/or promotional materials including, but not limited to,

21 ⁷ *See Moody's assigns UFC Holdings, LLC a B2 CFR and the 1st lien term loan a B1 rating;*
22 *outlook Stable*, July 22, 2016 ([https://www.moodys.com/research/Moodys-assigns-UFC-](https://www.moodys.com/research/Moodys-assigns-UFC-Holdings-LLC-a-B2-CFR-and-the-PR_352576)
23 [Holdings-LLC-a-B2-CFR-and-the-PR_352576](https://www.moodys.com/research/Moodys-assigns-UFC-Holdings-LLC-a-B2-CFR-and-the-PR_352576)) (“Moody's Investors Service (Moody's)
24 assigned VGD Merger Sub LLC (aka UFC Holdings, LLC (UFC)) a B2 corporate family rating
25 (CFR) and the proposed \$150 million revolver and \$1,300 million 1st lien term loan a B1
26 (LGD3) rating. The outlook is stable. The use of proceeds is to help fund the acquisition of
27 Zuffa LLC (UFC Holdings, LLC will be the rated entity following the close of the transaction)
28 by WME Entertainment Parent, LLC (WME Parent) in partnership with Silver Lake Partners
and Kohlberg Kravis Roberts & Co....UFC Holdings, LLC (aka Zuffa, LLC) is the world's
leading promoter of mixed martial arts (MMA) sports competition events. MMA is an
individual combat sport with international appeal, which combines techniques from various
combat sports and martial arts, including boxing, karate, judo, jiu-jitsu, kickboxing, and
wrestling and is governed by the "Unified Rules of MMA". Revenues for 2015 were over \$600
million.”).

1 tickets to bouts, live and taped television programming, broadcasts over an
2 internet subscription service, sponsorships and other merchandise including video
3 games, action figures, gyms, fitness products, athletic equipment, apparel,
4 footwear, hats, photographs, toys, collectibles, trading cards, and digital media
5 products.

6 27. Zuffa owns and operates, directly or indirectly, UFC, the UFC.com
7 and UFC.tv websites, and the UFC app for mobile phones and devices. *See*,
8 Terms of Use, *available at*: <http://www.ufc.com/termsOfUse>. Through these
9 websites, apps, and other social media outlets and platforms, PPV packages for
10 the Fight were sold to Plaintiff and the members of the Class.

11 28. Ultimate Fighting Championship is owned, operated, and/or the alter
12 ego of Zuffa. On its website (<http://www.ufc.com/discover/ufc>), UFC presents
13 itself to the public as an “organization” owned by Zuffa and further states:

14 The fastest growing sports organization in the world, the Ultimate
15 Fighting Championship® (UFC®), started in 1993 as a professional
16 mixed martial arts (MMA) organization. UFC has revolutionized the
17 fight business, and today stands as the world's leading MMA
18 promoter, offering the premier series of MMA sports events that have
19 sold out some of the biggest arenas and stadiums across the globe.

20 The UFC organization follows a rich history and tradition of
21 competitive MMA dating back to the Olympic Games in Athens.
22 About 80 years ago, a Brazilian form of MMA known as Vale Tudo
(anything goes) sparked local interest in the sport. Today, the UFC
23 has evolved into an organization where hybrid athletes are required to
24 know various disciplines in order to compete at an elite level in a
25 regulated environment where safety is paramount. UFC athletes are
26 skilled in many forms of martial arts, including karate, jiu-jitsu,
27 boxing, kickboxing, grappling, wrestling, sumo and other combat
28 sports.

Owned and operated by Zuffa, LLC, headquartered in Las Vegas and
with offices in London, Toronto and Singapore, UFC produces more
than 40 live events annually and is the largest Pay-Per-View event
provider in the world, broadcast in over 129 countries and territories,
to nearly 800 million TV households worldwide, in 28 different
languages. UFC content is also distributed commercially in the United
States to bars and restaurants through Joe Hand Promotions, in
English throughout Canada via Premium Sports Broadcasting Inc. and
in French throughout Quebec via Interbox.

In 2011, the UFC burst into the mainstream with a landmark seven-

1 year broadcast agreement with FOX Sports Media Group. The
2 agreement includes four live events broadcast on the FOX network
3 annually, with additional fight cards and thousands of hours of
4 programming broadcast on FOX properties FOX Sports 1 and FOX
Sports 2. This also includes the longest-running sports reality show on
television, The Ultimate Fighter®, which airs on FOX Sports 1 in the
United States.

5 The UFC also connects with tens of millions of fans through its
6 website, UFC.com, as well as social media sites Facebook, Instagram
7 and Twitter. UFC President Dana White is considered one of the most
8 accessible and followed executives in sports, with over two million
9 followers on Twitter.

10 In 2014, UFC launched UFC FIGHT PASS™, a digital subscription
11 service with exclusive live events, thousands of fights on-demand and
12 original content. The UFC organization also licenses over 100 UFC
13 GYM® locations

14 The UFC organization also licenses over 100 UFC GYM® locations,
15 and owns UFC.TV® (offering live event broadcasts and video on-
16 demand around the world), UFC FIT® (an in-home fitness and
17 nutrition program), UFC Magazine, and has a videogame franchise
18 with EA SPORTS, UFC Fight Club®, UFC Fan Expo®, UFC branded
19 apparel, DVDs and Blu-rays and Topps Trading Cards. For more
20 information, visit UFC.com and follow UFC at Facebook.com/UFC,
21 Twitter and Instagram: @UFC

22 29. On the same website UFC also states: “The UFC also holds the
23 distinction as the largest live Pay-Per-View event provider in the world.”

24 30. On the UFC.com website is a portal for consumers to access
25 UFC.com and purchase the PPV of the Fight. *See*, <https://www.ufc.tv/events>.

26 31. UFC.com, UFC.tv, and the UFC app are owned, operated, and/or the
27 alter egos of Zuffa.

28 32. UFC, UFC.com, UFC.tv, and the UFC app are controlled by Zuffa.
Zuffa holds itself out to the public and conducts business as “UFC,” “Ultimate
Fighting Championship,” “UFC.com,” “UFC.tv,” and the UFC app, and are in all
respects the alter egos of UFC, UFC.com, UFC.tv, and the UFC app.

33. Zuffa, directly or through UFC and/or other alter ego entities it
controlled, contracted with NeuLion, Inc. to provide services that allow Plaintiff
and members of the Class to access and view its content, including the PPV of the
Fight via UFC, UFC.com, UFC.tv, the UFC app, and/or other platforms operated

1 by Defendants. *See*, UFC Terms of Use, *available at*:
 2 <http://www.ufc.com/termsOfUse> (“We have contracted with NeuLion, Inc. to
 3 provide services that provide You (the subscriber who pays a fee) with the ability
 4 to access and view our content.”).

5 34. Defendant NeuLion, Inc. (“NeuLion”) a technology product and
 6 service provider specializing in the broadcasting, distribution, and monetization of
 7 live and on-demand digital video content to Internet-enabled devices. NeuLion is
 8 a Delaware corporation with principle offices located at 1600 Old Country Road,
 9 Plainview, New York 11803. It may be served with process by service on its
 10 registered agent Corporation Service Company at 251 Little Falls Drive,
 11 Wilmington, Delaware 19808.

12 35. NeuLion live streamed the Mayweather vs. McGregor fight for
 13 several global rights holders worldwide, including UFC[®], Sky Sports, Sky New
 14 Zealand, and Eleven Sports Network.

15 36. NeuLion promoted the Fight as “The Biggest Fight in Combat Sports
 16 History” on its website. *See generally*, <http://www.neulion.com/>.

17 37. As reported on NeuLion’s website on August 23, 2017
 18 ([http://www.neulion.com/ViewArticle.dbml?DB_OEM_ID=30000&ATCLID=21](http://www.neulion.com/ViewArticle.dbml?DB_OEM_ID=30000&ATCLID=211662790)
 19 [1662790](http://www.neulion.com/ViewArticle.dbml?DB_OEM_ID=30000&ATCLID=211662790)):

20 *NeuLion to Live Stream Mayweather vs. McGregor Fight for Several*
 21 *Global Rights Holders, Including UFC[®], Sky Sports, Sky New Zealand*
and Eleven Sports Network

22 PLAINVIEW, NY -- August 23, 2017 - NeuLion, Inc. (TSX: NLN), a
 23 leading technology product and service provider specializing in the
 24 broadcasting, distribution and monetization of live and on-demand
 25 digital video content to Internet-enabled devices, today announced
 26 that it will live stream the Mayweather vs. McGregor[®] fight for several
 27 global rights holders, worldwide, including UFC[®], Sky Sports, Sky
 28 New Zealand and Eleven Sports Network. Each of these global rights
 holders will be using the NeuLion Digital Platform for the live
 streaming of the four-fight SHOWTIME PPV event, taking place
 Saturday, Aug. 26 at T-Mobile Arena in Las Vegas.

This once-in-a-lifetime event brings together the worlds of boxing and
 MMA and has captured the imagination of sports fans throughout the

1 globe from the initial announcement of the world tour and now
2 leading up to fight night.

3 The NeuLion Digital Platform will be handling the authentication and
4 purchasing of the Pay-Per-View (PPV) as fans visit each of the four
5 services, including UFC.TV, Sky Sports Box Office, Sky Fan Pass
6 and the Eleven Sports Network's OTT service. NeuLion will also
7 ensure that each of these services delivers the fight into each of the
8 rights holders' respective licensed territories.

9 “These partners recognize the value of our depth of global experience
10 and continued focus on delivering outstanding quality,” said Roy
11 Reichbach, President and CEO of NeuLion. “To be working with four
12 fantastic NeuLion partners for the streaming, purchasing, and fan
13 experience for one of the largest online events of the year, is very
14 exciting for us.”

15 NeuLion has also designed and developed the consumer experience
16 that UFC, Sky Sports, Sky New Zealand and Eleven Sports Network
17 fans will interact with as they watch the live streaming of the fight on
18 web, mobile, tablet and other connected devices.

19 UFC, the world's premier mixed martial arts organization, is offering
20 the fight to fans through UFC.TV, Sky Sports is offering the live fight
21 as part of their Sky Box Office service, Sky New Zealand is offering
22 the fight on Sky Fan Pass and Eleven Sports Network is offering the
23 fight through their digital service. NeuLion will be delivering and
24 monitoring the live event from its technical operations centers located
25 in New York and London.

26 About NeuLion

27 NeuLion, Inc. (TSX: NLN) offers solutions that power the highest
28 quality digital experiences for live and on-demand content in up to 4K
on any device. Through its end-to-end technology platform, NeuLion
enables digital video management, distribution and monetization for
content owners worldwide including the NFL, NBA, World Surf
League, Univision Deportes, Euroleague Basketball and
others. NeuLion powers the entire video ecosystem for content
owners and rights holders, consumer electronic companies, and third
party video integrators through its MainConcept business. NeuLion's
robust consumer electronics licensing business enables its customers
like Sony, LG, Samsung and others to stream secure, high-quality
video seamlessly across their consumer devices. NeuLion is
headquartered in Plainview, NY. For more information about
NeuLion, visit www.NeuLion.com.

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1 different from Defendant NeuLion. Diversity jurisdiction under 28 U.S.C.
2 §1332(d) therefore exists.

3 41. In addition, the amount in controversy exceeds \$5,000,000 exclusive
4 of interest and costs. Therefore, both diversity and the damages threshold under
5 CAFA are met and this Court has original jurisdiction.

6 42. Venue is proper in this District pursuant to 28 U.S.C. § 1391 for at
7 least the following reasons: (i) Defendant Zuffa is a resident of Las Vegas,
8 Nevada; (ii) the Fight occurred within this judicial district at the T-Mobile Arena,
9 and the PPV broadcast at issue emanated from that site; (iii) NeuLion entered the
10 state of Nevada to participate in the broadcast and distribution of the PPV of the
11 Fight at the T-Mobile arena to Plaintiff and the Class; (iv) UFC, UFC.com,
12 UFC.tv, and the UFC app are operated in and from Nevada; and (v) Defendant
13 Zuffa, UFC, and UFC.com’s Terms of Use state that lawsuits are properly filed
14 and venued in courts of competent jurisdiction in Las Vegas/Clark County,
15 Nevada. *See*, <http://www.ufc.com/termsOfUse>.

16 **FACTUAL ALLEGATIONS**

17 43. At all times relevant, Plaintiff has been an individual residing within
18 the State of California and City of Los Angeles.

19 44. At all times relevant Defendants, and each of them, conducted
20 business nationwide, including in the States of California and Nevada, including
21 that related to PPV sales of the Fight broadcast.

22 45. Plaintiff and other Class members paid money to watch the Fight on
23 PPV, after months of hype, promotional appearances, and advertisements by
24 Defendants. The standard charge for the PPV of the Fight was \$99.95, plus any
25 applicable tax – the amount paid by Plaintiff. The Fight was one of the highest
26 priced events of any kind sold in pay-per-view history. The Fight was promoted
27 as “The Biggest Fight in Combat Sports History” and “The Money Fight” by
28 UFC, the media, and others. *See e.g.*, T. Gerbasi, *Road to May-Mac: Dana White*

1 *Talks Biggest Fight in Combat Sports History*, UFC News (Aug. 10, 2017),
2 available at: [http://www.ufc.com/news/Road-to-Mayweather-McGregor-Dana-](http://www.ufc.com/news/Road-to-Mayweather-McGregor-Dana-Speaks?id)
3 [Speaks?id](http://www.ufc.com/news/Road-to-Mayweather-McGregor-Dana-Speaks?id), (last visited Sept. 26, 2017). See also, M. Emons, *Floyd Mayweather v*
4 *Conor McGregor: The biggest fight in combat sports or a farce?* BBC (June 15,
5 2017), available at: <http://www.bbc.com/sport/boxing/40285344> (last visited
6 Sept. 26, 2017):

7 **How big will the fight be?**

8 White, for one, is in no doubt.

9
10 He said: "It's definitely going to be the biggest fight ever in combat
11 sports history and probably going to be the biggest pay day ever. All
12 sides involved are pretty happy with their deals."

13 The T-Mobile Arena holds 20,000 people, so the fighters will be
14 performing live in front of less than a quarter of the 90,000 people
15 who watched Anthony Joshua's thrilling win over Wladimir Klitschko
16 in their world heavyweight title clash at Wembley Stadium in April.
17 However, the money will come not only from the live gate, but also
18 through international television distribution, sponsorships, closed
19 circuit and merchandise sales.

20 When Mayweather fought Filipino Manny Pacquiao in May 2015, the
21 fight attracted a record of 4.4 million American pay-per-view sales,
22 with the event generating more than \$500m (£392.7m) in gross
23 worldwide receipts.

24 Tickets will be in extremely short supply. Only 1,000 of 16,500
25 tickets were put on general sale for the Mayweather v Pacquiao fight
26 at the MGM Grand - and some were then sold online for as much as
27 £94,000. The rest of the tickets went to fighters, sponsors and
28 promoters.

Such was the demand, hotels and bars charged people to watch the
action on big-screen televisions.

1 Stephen Espinoza, executive vice-president of American television
2 station Showtime Sports, said fans will pay to watch the McGregor-
3 Mayweather fight because of the novelty.

4 "The sky is the limit," he said. "There is nothing to compare it against.
5 No-one has seen this type of competition in the ring."

6 "We're not only drawing fans from the universe of boxing fans and the
7 universe of MMA fans. We've actually tapped into the audience that
8 really doesn't follow either sport."

9 46. Three days, prior to the Fight, on August 23, 2017, Plaintiff paid
10 \$99.95 to UFC to purchase the PPV of the Fight. Plaintiff's receipt stated: "Fight
11 Pass,null,Mayweather vs McGregor,partyId:1813935,orderId:3802076". In doing
12 so, Plaintiff entered into a contract to receive the PPV broadcast in exchange for
13 the payment made. Plaintiff fulfilled his end of the bargain, and otherwise fulfilled
14 all conditions precedent, by paying the \$99.95 charge, as did all other Class
15 members.

16 47. In anticipation of the Fight and in reliance on the contractual
17 promises made by Defendants, Plaintiff expended valuable time and money (on
18 food, beverages, and the like) to host his friends at his home for a private viewing
19 party.

20 48. Defendants sought to sell a record number of PPV packages and
21 maximize revenue. PPV sales continued through the start of the opening round.

22 49. Upon information and belief, the Fight was postponed for some time
23 in order to process still incoming PPV orders.

24 50. Defendants were ill-equipped to provide the number of PPV
25 broadcasts that were sold to all consumers who purchased them.

26 51. As a result of system overloads and other technical problems,
27 Plaintiff and many other Class members who purchased the PPV, were unable to
28 log on, download, and/or otherwise view the entire PPV broadcast without
interruption, frustration, inconvenience, and loss of time. As *USA Today* reported,

1 “The main event was delayed due to what Showtime, the fight’s primary
2 broadcaster, described as ‘scattered outages,’ but the majority of the problems
3 appeared to be with UFC’s app that runs on several different platforms and not the
4 outages referenced by Showtime.”⁸

5 52. “UFC Fight Pass”, the digital streaming service of UFC (and also
6 controlled and operated by Zuffa and/or UFC), sent a tweet on Twitter, on August
7 26, 2017 at 6:26 PM stating: “Due to overwhelming traffic you may be
8 experiencing log in issues. This will be resolved shortly.”

9 53. Later at 9:08 PM on August 28, 2017, UFC Fight Pass tweeted:
10 “Apologies for any tech difficulties logging onto <http://UFC.TV>. Please find an
11 alternative provider here: <http://s.sho.com/2izXNhh>.”

12 54. Thousands of consumers who purchased the fight through UFC.com,
13 UFC.tv, UFC’s app, and/or other platforms and media outlets operated by
14 Defendants were denied the ability to see the entire Fight broadcast uninterrupted
15 due to widespread “outages.” *See* n.5, *supra*. The problem was widespread and not
16 limited or unique to Plaintiff.

17
18
19
20 ⁸ A. J. Perez, *UFC ‘disappointed’ by technical difficulties for Mayweather-McGregor; no word*
21 *on refunds*, USA TODAY (Aug. 28, 2017, 8:50 PM),
22 [https://www.usatoday.com/story/sports/boxing/2017/08/28/ufc-floyd-mayweather-conor-](https://www.usatoday.com/story/sports/boxing/2017/08/28/ufc-floyd-mayweather-conor-mcgregor-fight-technical-difficulties/610713001/)
23 [mgregor-fight-technical-difficulties/610713001/](https://www.usatoday.com/story/sports/boxing/2017/08/28/ufc-floyd-mayweather-conor-mcgregor-fight-technical-difficulties/610713001/). *See also*, Jon Fingas, *Demand for*
24 *Mayweather-McGregor fight crashes pay-per-view servers*, Engadget (Aug. 27, 2017), available
25 *at*: <https://www.engadget.com/2017/08/27/mayweather-mcgregor-fight-crashes-ppv-servers/>
26 (“Numerous reports have revealed that servers across the US crashed or buckled under demand
27 for the fight, creating outages serious enough that organizers delayed the fight to make sure
28 people could tune in. Mayweather himself said that pay-per-view servers in California and
Florida crashed, while Showtime and UFC failed to load, ran into login trouble and otherwise
couldn't keep up with interest.”); Michael Blaustein, *Mayweather-McGregor was a \$700 million*
behemoth, N.Y. POST (Aug. 28, 2017, 12:14 PM), [http://nypost.com/2017/08/28/mayweather-](http://nypost.com/2017/08/28/mayweather-mcgregor-was-a-700m-behemoth/)
[mgregor-was-a-700m-behemoth/](http://nypost.com/2017/08/28/mayweather-mcgregor-was-a-700m-behemoth/) (“In the end, UFC Fight Pass, the promotion’s online
streaming service, was so popular on fight night that its servers in California and Florida
crashed.”).

1 55. Defendants’ failure to deliver the complete and uninterrupted PPV
2 broadcast to all consumers who purchased it, including Plaintiff and the Class,
3 caused them harm, injury, damage, and out-of-pocket loss.

4 56. Due to the lost time, frustration and ruined evening where they were
5 shut out of viewing the “The Biggest Fight in Combat Sports History” after
6 Defendants’ promotion and hype convinced them it was worth no less than
7 \$99.95, *inter alia*, Plaintiff’s and each Class member’s injuries exceed the \$99.95
8 PPV purchase price.

9 57. By failing to deliver the complete and uninterrupted PPV broadcast
10 of the Fight to all consumers who purchased it, Defendants breached contracts
11 with Plaintiff and members of the Class. In addition, Defendants engaged in
12 deceptive and misleading conduct, violating applicable consumer protection laws.

13 58. Plaintiff and the Class were denied the benefit of their bargain
14 because they did not receive the complete and uninterrupted PPV broadcast of the
15 Fight after paying for it.

16 59. Plaintiff, like other reasonable consumers in the Class who purchased
17 the PPV, placed value on the broadcast of the Fight and expected to have an
18 enjoyable night valued at more than the \$99.95 PPV purchase price, and at least
19 no less than the \$99.95 price. In addition, Plaintiff, like other Class members,
20 invested in food, drinks, and the like in order to best enjoy the evening and
21 entertain guests who were invited to their homes. This type of activity is both
22 expected, reasonably foreseeable, and encouraged by Defendants when marketing
23 the PPV of the Fight in the manner they did.

24 60. Defendants knew or should have known of the restrictions and
25 limitations on their broadcast and download capacity and not sold an excessive
26 number of PPV packages that caused the system to crash and experience outages
27 to the detriment of Plaintiff and the Class.

1 61. By failing to disclose to consumers in the Class that excessive
2 number of PPV packages would be sold, Defendants denied Plaintiff an important
3 opportunity to view the Fight through alternative, more reliable means from the
4 outset.

5 62. Plaintiff and the Class, paying a premium price for the PPV (one of
6 the highest prices ever for a PPV of a fight), reasonably relied on Defendants to
7 provide a complete and uninterrupted broadcast of the entire Fight programming
8 via PPV. Defendants failed to do this. Defendants knew or should have
9 reasonably foreseen that outages would occur once of the number of PPV
10 purchasers exceeded a certain capacity threshold that made outages certain,
11 foreseeable, or at least significantly more likely. Defendants' intentional or
12 reckless disregard for this, so to maximize their profits through continued sales,
13 was unfair and deceptive. Given the nature of a live, unique sporting event like the
14 Fight, Defendants knew or should have known that if outages occurred due to
15 system overloads, the PPV broadcast would be compromised, interrupted portions
16 of the live broadcast could not be recreated or reshowed for those that missed it,
17 and Plaintiff and the Class would be injured.

18 63. Sports fans like those in the Class are deprived of value and harmed
19 when they miss live broadcast events, learn the outcome of a sporting event
20 without experiencing it live, and learn scores or view replays.

21 64. Through their conduct, Defendants improperly and deceptively
22 induced thousands of other consumers in the Class to purchase the Fight, and
23 generated hundreds of millions of dollars and revenues in ill-gotten gains due to
24 their deception such that Defendants were unjustly enriched.

25 65. Given their superior and exclusive knowledge about the system
26 capacity and shortfalls, as well as PPV sales levels, Defendants had a duty to tell
27 consumers like Plaintiff the risks of outages presented, and at a reasonable point,
28 to suspend further PPV sales to best protect the interests of consumers that had

1 already made the investment. Instead, Defendants kept selling more and more
2 PPV packages up and through the opening bell of the Fight, despite knowingly
3 exceeding system capacity.

4 66. Defendants' conduct and omissions described herein, *inter alia*: (a)
5 breached contracts with Plaintiff and the Class; (b) constitute unlawful, unfair,
6 deceptive, and fraudulent conduct under the consumer protection laws set forth
7 below; (c) breached implied warranties of merchantability; and (d) caused
8 Defendants to be unjustly enriched at the expense of Plaintiff and the Class.

9 **CLASS ALLEGATIONS**

10 67. Plaintiff brings this action on his own behalf and on behalf of all
11 others similarly situated (the "Class"). The Class is defined to include: "Plaintiff
12 and all other persons nationwide who paid money to watch the Mayweather-
13 McGregor fight held on August 26, 2017, via UFC, UFC.com, UFC.tv, the UFC
14 app, and/or other platforms operated by Defendants." Within the Class is a State
15 Subclass.

16 68. Plaintiff represents, and is a member of, the California Subclass (or
17 the "Subclass") defined to include: "All persons in the State of California that paid
18 money to watch the Fight on pay-per-view, purchased through UFC, UFC.com,
19 UFC.tv, the UFC app, and/or other platform operated by Defendants."

20 69. Excluded from the Class and Subclass are: (a) any officers, directors
21 or employees of Defendants; (b) any judge assigned to hear this case (or spouse or
22 family member of any assigned judge); (c) any employee of the Court; and (d) any
23 juror selected to hear this case. Plaintiff reserves the right to modify or amend the
24 definition of the proposed Class and Subclass before the Court determines
25 whether certification is appropriate.

26 70. All requisite elements for class certification under Fed. R. Civ. P.
27 23(a), 23(b)(1), 23(b)(2), and 23(b)(3) are satisfied.

1 71. Plaintiff does not know the exact number of persons in the Class and
2 Subclass, but given the reported PPV revenues from the Fight and California’s
3 population, believes them to be in the several thousands, making joinder of all
4 these actions impracticable.

5 72. The identity of the individual members is ascertainable through
6 Defendants’ and/or Defendants’ agents’ records or by public notice.

7 73. There is a well-defined community of interest in the questions of law
8 and fact involved affecting the members of the Class and Subclass. The questions
9 of law and fact common to the Class and Subclass predominates over questions
10 affecting only individual Class and Subclass members, and include, but are not
11 limited to, the following:

- 12 a. Whether Defendants’ practices are deceptive and misleading
13 and violate applicable consumer protection laws set forth
14 below;
 - 15 b. Whether the conduct of Defendants, as alleged herein,
16 constitutes unlawful practices that occurred in connection with
17 the sale and or advertisement of goods and services, within the
18 meaning of the Nevada Deceptive Trade Practices Act (the
19 “NDTPA”), Nev. Rev. Stat. § 598.0915 *et seq.* and Nev. Rev.
20 Stat. § 41.600(1);
 - 21 c. Whether Defendants breached Class members’ contracts for
22 the PPV;
 - 23 d. Whether Defendants’ practices and sale of PPV packages of
24 the Fight that could not be fully viewed, as described herein,
25 breached implied warranties of merchantability;
 - 26 e. Whether Defendants were unjustly enriched at the expense of
27 Plaintiff and the Class;
- 28

- 1 f. Whether Defendants knew or should have known of system
- 2 capacities and sold excessive PPV packages;
- 3 g. Whether Nevada law applies to the Class and whether
- 4 Defendants' practices, described herein, violated Nevada
- 5 consumer protection statutes, contract, and other laws;
- 6 h. The correct measure of damages and other relief available to
- 7 the Class; and
- 8 i. Whether straight refunds of the PPV purchase price fully and
- 9 adequately compensates Class members for their injuries and
- 10 loss.

11 74. Plaintiff will fairly and adequately protect the interest of the Class
12 and Subclass. Plaintiff is a member of the Class and any Subclass. Plaintiff has
13 retained the undersigned counsel who are experienced in consumer class action
14 litigation and are competent to represent the Class and Subclass.

15 75. Plaintiff's claims are typical of the claims of the Class and Subclass
16 which all arise from the same operative facts involving Defendants' practices.

17 76. A class action is a superior method for the fair and efficient
18 adjudication of this controversy.

19 77. Classwide damages are essential to induce Defendants to comply
20 with the laws as alleged in the Complaint.

21 78. Class and Subclass members are unlikely to prosecute such claims on
22 an individual basis since the individual damages are small. Management of these
23 claims is likely to present significantly fewer difficulties than those presented in
24 many class claims, *e.g.*, securities fraud.

25 79. Defendants have acted on grounds generally applicable to the Class
26 and Subclass thereby making appropriate final declaratory relief with respect to
27 the Class and Subclass as a whole.

1 80. Members of the Class and Subclass are likely to be unaware of their
2 rights.

3 81. Plaintiff contemplates providing notice to the putative Class and
4 Subclass members by direct mail in the form of a postcard, via email, and via
5 publication.

6 82. Plaintiff requests certification of a hybrid class combining the
7 elements of Fed. R. Civ. P. 23(b)(3) for monetary damages and Fed. R. Civ. P.
8 23(b)(1) and/or 23(b)(2) for equitable relief.

9 **INTENT**

10 83. All acts of Defendants described within were done intentionally and
11 purposefully with a goal towards maximizing their profits and gain at the expense
12 of Plaintiff, the Class, and the Subclass.

13 **FIRST CAUSE OF ACTION**
14 **Nevada Deceptive Trade Practices Act**
15 **Nev. Rev. Stat. § 598.0915 *et seq.***
16 **(on behalf of all Class members)**

17 84. Plaintiff incorporates by reference each allegation set forth above.

18 85. This claim, which asserts violations of the Nevada Deceptive Trade
19 Practices Act (the “NDTPA”), Nev. Rev. Stat. § 598.0915 *et seq.* and Nev. Rev.
20 Stat. § 41.600(1), is asserted against each of the Defendants based on their
21 conduct described above.

22 86. Plaintiff, each of the members of the Class, and each of the
23 Defendants are “persons,” within the meaning of sections 598.0915 and 598.0923
24 of the NDTPA.

25 87. Plaintiff and the members of the Class are “victim[s] of consumer
26 fraud” within the meaning of Nev. Rev. Stat. § 41.600(1).

27 88. PPV packages purchased are goods, commodities, and/or services
28 within the meaning of NDTPA. Federal and state statutes classify paid cable

1 broadcasts as a “programming service.” *See, e.g.*, 47 U.S.C.A. § 522; 47 C.F.R. §
2 76.5(ff).

3 89. The conduct of Defendants, as alleged herein, constitutes unlawful
4 practices that occurred in connection with the sale and or advertisement of goods
5 and services, within the meaning of the NDTPA.

6 90. Defendants’ deceptive omissions, concealment, and suppression of
7 material fact, as described within, violated the NDTPA by:

- 8 a. Representing that goods or services for sale or lease were of a
9 particular standard, quality, or grade, or that such goods were
10 of a particular style or model, despite knowing that such
11 goods or services were of another standard, quality, grade,
12 style, or model, Nev. Rev. Stat. § 598.0915(7);
- 13 b. Advertising goods or services for sale or lease with intent not
14 to supply reasonably expectable public demand, unless the
15 advertisement discloses a limitation of quantity, Nev. Rev.
16 Stat. § 598.0915(10);
- 17 c. Failing to make delivery of goods or services for sale or lease
18 within a reasonable time or to make a refund for the goods or
19 services, if he or she allows refunds, Nev. Rev. Stat. §
20 598.092(4); and
- 21 d. Knowingly failing to disclose a material fact in connection
22 with the sale or lease of goods or services, Nev. Rev. Stat. §
23 598.0923(2).

24 91. As described herein, Defendants violated these provisions of
25 NDTPA by engaging in unfair or deceptive acts or practices in the conduct of any
26 trade or commerce.

27 92. Defendants sold PPV packages of the Fight to Plaintiff and the Class
28 when they knew or should have known that their broadcast systems had a finite

1 capacity and that selling excessive packages would cause the system to crash and
2 overload so that Class members would be periodically shut out of the broadcast
3 and denied the ability to see the complete broadcast of the Fight.

4 93. Instead of being upfront with consumers about its underpowered
5 service, Defendants caused a likelihood of confusion and misunderstanding as to
6 the source and quality of the HD video consumers would see on fight night.
7 Defendants misrepresented the quality and grade of video consumers would see
8 using its platforms and app, and knowingly failed to disclose that their system
9 was defective with respect to the amount of bandwidth available and that
10 Defendants' service would materially fail to conform to the quality of HD video
11 Defendants promised.

12 94. Despite the foregoing, PPV packages continued to be sold up until
13 the opening bell of the Fight, overloading the system and causing outages. In
14 turn, Plaintiff and the Class could not view the entire Fight broadcast and were
15 denied the benefit of their bargains and incurred other losses and injuries.

16 95. Defendants violated the NDTPA in at least the following respects:

- 17 a. Through common omissions of material fact, Defendants
18 represented that the viewerships sold for the Fight (the PPV)
19 had characteristics, ingredients, and benefits which they do
20 not have;
- 21 b. Through common omissions of material fact, Defendants
22 represented that the viewerships sold for the Fight (the PPV)
23 were of a particular standard, quality or grade when they were
24 of another;
- 25 c. Through common omissions of material fact, Defendants
26 advertised the PPV viewerships for the Fight with intent not to
27 sell them as advertised; and
- 28 d. Through common omissions of material fact, Defendants

1 represented that the PPV viewerships for the Fight were
2 supplied in accordance with previous representations when
3 they were not.

4 96. Defendants knew, or should have known, that its omissions of facts
5 about system capacities and overload risks were material to reasonable
6 consumers like those in the Class. Had Class members been advised that the
7 Defendants' systems risked overloading and crashing they would have taken
8 different action, such as watching the Fight through alternative means available;
9 not purchasing the Fight for the high price charged; or demanding in advance that
10 Defendants limit total PPV sales to a manageable number that would not cause
11 the system to overload.

12 97. By way of the foregoing, Defendants deprived Plaintiff and
13 members of the Class the benefit of their bargain.

14 98. Defendants' acts and practices alleged herein were intended to and
15 did result in the sale of pay-per-view orders in violation of the NDTPA, which
16 Defendants' benefitted financially from.

17 99. At all relevant times herein, Defendants had a duty to disclose
18 material facts to the Class, including those regarding the limitations of their
19 systems and limited ability to deliver PPV packages in the volumes at issue.

20 100. Facts regarding the limitations of Defendants' systems and limited
21 ability to deliver PPV packages in the volumes at issue were within the exclusive
22 control of Defendants and unable to be otherwise acquired by the Plaintiff and
23 the members of the Class prior to the commencement of the Fight by reasonable
24 means, yet were intentionally withheld and concealed by Defendants so as not to
25 disrupt sales.

26 101. Even after Class members started to complain and report problems
27 with the PPV download and outages on August 26, 2017, but before the
28 commencement of the main event bout between Mayweather and McGregor,

1 Defendants continued to sell even more PPV packages for Defendants’ financial
2 gain, without disclosure, but making the overload problem worse and increasing
3 the risk that Class members would be unable to view the Fight.

4 102. Defendants knew that reasonable consumers, like those in the Class,
5 would want to know about the outage and overload problem when deciding
6 whether or not to purchase the PPV of the Fight from Defendants at the high
7 price advertised. By concealing and suppressing that information, Defendants
8 denied consumers in the Class the ability to make a rational and informed
9 purchasing decision as to the purchase of the PPV package of the Fight from
10 Defendants. By the time Class members learned facts regarding the outages and
11 overloads, and that the Fight could not be viewed on Defendants’ platforms, it
12 was largely too late – the main bout had started.

13 103. Plaintiff and members of the Class relied on Defendants’ conduct
14 and omissions, to the extent one can reasonably rely on statements omitted,
15 concealed, and not otherwise made.

16 104. Defendants were in a position to communicate the concealed facts to
17 Plaintiff and the Class, through their various platforms, social media and the like,
18 but failed to do so prior to the start of the Fight.

19 105. As a direct result of Defendants’ actions and omissions of material
20 facts, Plaintiff and Class members did not obtain the value of the goods,
21 merchandise, and/or services for which they paid; were induced to make
22 purchases that they otherwise would not have; lost their ability to make an
23 informed and reasoned purchasing decision; and/or to demand and receive a
24 refund before the Fight.

25 106. By way of the foregoing, Defendants have engaged in the knowing
26 concealment, suppression, and omission of material facts with intent that others
27 act upon such concealment, suppression, and omission, in connection with the
28 sale or advertisement of any merchandise. Through their uniform concealment

1 and suppression of material facts, Defendants engaged in deceptive conduct
2 which created a likelihood of confusion or misunderstanding on the part of the
3 Plaintiff and Class members.

4 107. The NDTPA is, by its express terms, a cumulative remedy, such that
5 remedies under its provisions can be awarded in addition to those provided under
6 separate statutory schemes and/or common law remedies, such as those alleged in
7 the other Counts of this Amended Complaint.

8 108. Under the NDPTA and Nev. Rev. Stat. § 41.600(1), Plaintiff and
9 members of the Class have standing to pursue this claim because they suffered an
10 ascertainable loss resulting from Defendants' conduct and are victims of
11 consumer fraud.

12 109. As a direct and proximate cause of Defendants' omissions, which
13 constitute deceptive trade practices and/or consumer fraud, as herein alleged,
14 Plaintiff and Class members have been damaged and suffered ascertainable losses
15 measured by the cost of the pay-per-view showing, and other out-of-pocket
16 expenses, thereby entitling them to recover compensatory damages, restitution,
17 disgorgement, refunds of moneys, interest, treble damages, punitive damages,
18 reasonable attorneys' fees, filing fees, and the costs of prosecuting this class
19 action, as well as any and all other relief that may be available at law or equity.

20 110. The provision of sporadic refunds of the \$99.95 PPV purchase price,
21 or in part, to certain limited member(s) of the Class does not fully compensate
22 those Class members for their total losses, nor does it relieve Defendants of their
23 liability to the Class. Any such relief is incomplete and is not accepted in full
24 satisfaction of these claims.

25 111. Notice to Class members describing the problem, along with refunds
26 and other monetary relief should be provided to Plaintiff and all Class members.

1 112. Based on the foregoing, Plaintiff and all Class members are entitled
2 to damages, declaratory and injunctive relief, and well as all other relief deemed
3 just and equitable in the circumstances and as allowable by law.

4 **SECOND CAUSE OF ACTION**
5 **Violation of the California Legal Remedies Act**
6 **Cal. Civ. Code § 1750, *et seq.***
7 **(on behalf of the California Subclass only)**

8 113. Plaintiff incorporates by reference each allegation set forth above.

9 114. This cause of action is asserted in the alternative to the First Cause of
10 Action only.

11 115. This cause of action is brought pursuant to the Consumers Legal
12 Remedies Act, California Civil Code § 1750, *et seq.* (the “CLRA”) because
13 Defendants’ actions and conduct described herein constitute transactions that have
14 resulted in the sale or lease of goods or services to consumers.

15 116. Plaintiff and each member of the California Subclass are consumers
16 as defined by California Civil Code § 1761(d).

17 117. PPV packages purchased are goods and services within the meaning
18 of Civil Code § 1761(a). Federal and state statutes classify paid cable broadcasts
19 as a “programming service.” *See, e.g.*, 47 U.S.C.A. § 522 and (6); 47 C.F.R. §
20 76.5 (ff); Cal. Pub. Util. Code § 5830 (c); Cal. Bus. & Prof. Code § 22770; Cal.
21 Gov’t Code § 53088.6.

22 118. Defendants sold PPV packages of the Fight to Plaintiff and the
23 California Subclass when they knew or should have known that their broadcast
24 systems had a finite capacity and that selling excessive packages would cause the
25 system to crash and overload so that California Subclass members would be
26 periodically shut out of the broadcast and denied the ability to see the complete
27 broadcast of the Fight.

28 119. Instead of being upfront with consumers about its underpowered
service, Defendants caused a likelihood of confusion and misunderstanding as to

1 the source and quality of the HD video consumers would see on fight night.
2 Defendants misrepresented the quality and grade of video consumers would see
3 using its platforms and app, and knowingly failed to disclose that their system was
4 defective with respect to the amount of bandwidth available and that Defendants'
5 service would materially fail to conform to the quality of HD video Defendants
6 promised.

7 120. Despite the foregoing, PPV packages continued to be sold up until
8 the opening bell, overloading the system and causing outages. In turn, Plaintiff
9 and the California Subclass could not view the entire Fight broadcast and were
10 denied the benefit of their bargain.

11 121. Defendants violated the CLRA in at least the following respects:

- 12 a. in violation of § 1770(a)(5) and through common omissions
13 of material fact, Defendants represented that the viewerships
14 sold for the Fight (the PPV) had characteristics, ingredients,
15 and benefits which they do not have;
- 16 b. in violation of § 1770(a)(7) and through common omissions of
17 material fact, Defendants represented that the viewerships sold
18 for the Fight (the PPV) were of a particular standard, quality
19 or grade when they were of another;
- 20 c. in violation of §1770(a)(9) and through common omissions of
21 material fact, Defendants advertised the PPV viewerships for
22 the Fight with intent not to sell them as advertised; and
- 23 d. in violation of §1770(a)(16) and through common omissions
24 of material fact, Defendants represented that the PPV
25 viewerships for the Fight were supplied in accordance with
26 previous representations when they were not.

27 122. Defendants knew, or should have known, that its omissions of facts
28 about system capacities and overload risks were material to reasonable consumers

1 like those in the California Subclass. Had California Subclass members been
2 advised that the Defendants' systems risked overloading and crashing they would
3 have taken different action, such as watching the Fight through alternative means
4 available; not purchasing the Fight for the high price charged; or demanding in
5 advance that Defendant limit total PPV sales to a manageable number that would
6 not cause the system to overload.

7 123. The provision of sporadic refunds of the \$99.95 PPV purchase price,
8 or in part, to certain limited member(s) of the Subclass does not fully compensate
9 the California Subclass or those Class members for their total losses, nor relieve
10 Defendants of their liability to the California Subclass. Any such relief is
11 incomplete and is not accepted in full satisfaction of these claims.

12 124. Notice to California Subclass members describing the problem, along
13 with refunds and other monetary relief should be provided to Plaintiff and all
14 California Subclass members.

15 125. Based on the foregoing, Plaintiff and all California Subclass
16 members are entitled to declaratory relief, disgorgement, and restitution of
17 Defendants' revenues associated with their conduct, or such portion of those
18 revenues as the Court may find equitable.

19 126. Plaintiff has complied with Cal. Civ. Code § 1782(a) by notifying
20 Defendants in writing, by certified mail, of the violations alleged herein and
21 demanded that Defendants remedy those violations. If Defendants fail to rectify
22 problems detailed above and give notice to all affected consumers within 30 days
23 of the date of written notice pursuant to Cal. Civ. Code § 1782, Plaintiff will
24 amend this complaint to add claims for actual, punitive, and statutory damages
25 pursuant to the CLRA.

26
27 **THIRD CAUSE OF ACTION**
28 **Violation of the Unfair Competition Law**
Cal. Bus. & Prof. Code § 17200 *et seq.*

(on behalf of the California Subclass only)

1 127. Plaintiff incorporates by reference each paragraph set forth above.

2 128. This cause of action is asserted in the alternative to the First Cause of
3 Action only.

4 129. Actions for relief under the Unfair Competition Law, Bus & Prof.
5 Code §17200 *et seq.* (“UCL”) may be based on any business act or practice that
6 falls within the broad definition of the UCL. Such violations of the UCL occur as
7 a result of unlawful, unfair or fraudulent business acts and practices.

8 130. The UCL prohibits any “unfair...business act or practice.”

9 131. In order to satisfy the “unfair” prong of the UCL, a consumer must
10 show that the injury: (1) is substantial; (2) is not outweighed by any
11 countervailing benefits to consumers or competition; and, (3) is not one that
12 consumers themselves could reasonably have avoided.

13 132. Defendants’ acts, omissions, misrepresentations, and practices as
14 alleged herein constitute “unfair” business acts and practices within the meaning
15 of the UCL in that its conduct is substantially injurious to consumers, offends
16 public policy, and is immoral, unethical, oppressive, and unscrupulous as the
17 gravity of the conduct outweighs any alleged benefits attributable to such conduct.
18 There were reasonably available alternatives to further Defendants’ legitimate
19 business interests other than the conduct described herein.

20 133. Here, Defendants’ conduct has caused injury to Plaintiff and
21 members of the California Subclass. Plaintiff and members of the California
22 Subclass have suffered injury in fact due to Defendants’ unilateral decision to
23 suppress and withhold highly material information about their PPV broadcast
24 capacity so as to induce consumers to purchase the Fight. Thus, Defendants’
25 conduct has caused substantial injury to Plaintiff and members of the California
26 Subclass.

1 134. Moreover, Defendants’ conduct as alleged herein solely benefits
2 Defendants while providing no benefit of any kind to any consumer. Such
3 deception utilized by Defendants convinced Plaintiff and members of the
4 California Subclass that the money paid for the PPV of the Fight was reasonable
5 fair market value, when in fact Defendants knew that they were selling an inferior
6 product. Thus, the injury suffered by Plaintiff and the members of the California
7 Subclass is not outweighed by any countervailing benefits to consumers.

8 135. Finally, the injury suffered by Plaintiff and members of the
9 California Subclass is not an injury that these consumers could reasonably have
10 avoided. After Defendants falsely represented, withheld, and suppressed
11 information pertaining to the Fight and limited broadcast/download capacity,
12 Defendants continued to encourage consumers to purchase the Fight for the high
13 PPV price charged. These consumers suffered injury in fact due to Defendants’
14 charging of high rates, for such an inferior product, which was rendered inferior
15 by Defendants’ own material omissions. As such, Defendants took advantage of
16 their position of perceived power and exclusive knowledge in order to deceive
17 Plaintiff and the California Subclass members to purchase the PPV of the Fight in
18 such high quantities. Therefore, the injury suffered by Plaintiff and members of
19 the California Subclass is not an injury which these consumers could reasonably
20 have avoided. Plaintiff reserves the right to allege further conduct which
21 constitutes other unfair business acts or practices. Such conduct is ongoing and
22 continues to this date.

23 136. Based on the foregoing, Defendant’s conduct has violated the
24 “unfair” prong of California Business & Professions Code § 17200.

25 137. California Business & Professions Code § 17200 also prohibits any
26 “fraudulent...business act or practice.”

27 138. In order to prevail under the “fraudulent” prong of the UCL, a
28 consumer must allege that the fraudulent business practice was likely to deceive

1 members of the public. The test for “fraud” as contemplated by the UCL is
2 whether the public is likely to be deceived. Unlike common law fraud, a § 17200
3 violation can be established even if no one was actually deceived, relied upon the
4 fraudulent practice, or sustained any damage.

5 139. Here, not only were Plaintiff and the California Subclass members
6 likely to be deceived, but these consumers were actually deceived by Defendants.
7 Such deception is evidenced by the fact that Defendants failed to disclose their
8 PPV broadcast/download capacity limitations, a fact that would have been
9 material to any reasonably minded consumer, including Plaintiff, in their
10 determination of whether to purchase the PPV of the Fight on Defendants’
11 platforms, and at what price. Plaintiff’s reliance upon Defendants’ deceptive
12 omissions is reasonable due to the unequal bargaining powers and knowledge of
13 Defendants and Plaintiff. For the same reason, it is likely that Defendants’
14 fraudulent business practice would deceive other members of the public.

15 140. Based on the foregoing, Defendants’ conduct has violated the
16 “fraudulent” prong of California Business & Professions Code § 17200.

17 141. California Business and Professions Code § 17200, *et seq.* also
18 prohibits “any unlawful...business act or practice.”

19 142. As explained above and below with respect to the CLRA claim,
20 Defendants deceived Plaintiff and other California Subclass members by actively
21 concealing the PPV broadcast/download capacity limitations, which caused the
22 system to overload and crash, and rendered the complete PPV broadcast
23 inaccessible to Plaintiff and the California Subclass.

24 143. These omissions by Defendants are therefore an “unlawful” business
25 practice or act under Business and Professions Code §17200, *et seq.*

26 144. Defendants’ systematic and widespread breach of contract is also an
27 unlawful business practice.
28

1 145. Every aspect and reasonable interpretation of Defendants’
2 advertisement and promotion of the PPV of the Fight was that if consumers paid
3 the \$99.95 price for the PPV they would receive and be able to view,
4 uninterrupted, without doubt, the complete Fight broadcast. Defendants’ inability
5 to ultimately provide the California Subclass a complete and uninterrupted PPV
6 broadcast of the Fight was not due to unforeseen circumstances or an act of
7 nature, but instead from greed – namely, Defendants’ desire to keep selling more
8 and more and more PPV’s, stretching the download capacity of the system to the
9 brink and beyond, pushing revenue to record levels, irrespective of the risks they
10 were creating insofar as being unable to deliver what they sold to the California
11 Subclass.

12 146. The provision of sporadic refunds of the \$99.95 PPV purchase price,
13 or in part, to certain limited member(s) of the California Subclass does not fully
14 compensate the California Subclass or those Class members for their total losses,
15 nor relieve Defendants of their liability to the California Subclass. Any such relief
16 is incomplete and is not accepted in full satisfaction of these claims.

17 147. Defendants used false advertising, marketing, and misrepresentations
18 to induce Plaintiff and California Subclass members to purchase the PPV
19 broadcast of the Fight. Had Defendants not falsely advertised, marketed, or
20 misrepresented the ability to deliver the PPV broadcast of the Fight, Plaintiff and
21 California Subclass members would not have purchased the Fight on Defendants’
22 platforms. Defendants’ conduct, therefore, caused and continues to cause
23 economic harm to Plaintiff and California Subclass members.

24 **FOURTH CAUSE OF ACTION**
25 **Breach of Contract**
26 **(on behalf of all Class Members)**

27 148. Plaintiff incorporates by reference each allegation set forth above.
28

1 149. Plaintiff and each Class member entered into a contract with
2 Defendants and/or their agents.

3 150. Plaintiff and each Class member paid the common price demanded
4 (approximately \$99.95), in exchange for a license to view the PPV of the Fight.

5 151. Plaintiff and each Class member paid the demanded price in
6 exchange for a fully operational and complete PPV broadcast of the entire Fight
7 program (the main card and all undercards), not a partial, intermittent, delayed, or
8 otherwise incomplete broadcast.

9 152. Defendants failed to provide a complete broadcast of the Fight to
10 Plaintiff and other members of the Class, depriving them of the benefit of their
11 bargain.

12 153. Defendants breached their contracts with Plaintiff and the Class,
13 causing injury, harm, and financial loss, as described further herein.

14 154. The provision of sporadic refunds of the \$99.95 PPV purchase price,
15 or in part, to certain limited member(s) of the Class does not fully compensate the
16 Class or those Class members for their total losses, nor relieve Defendants of their
17 liability to the Class. Any such relief is incomplete and is not accepted in full
18 satisfaction of these claims.

19 155. Notice to Class members describing the problem, along with refunds
20 and other monetary relief should be provided to Plaintiff and all Class members.

21 156. As a result of the foregoing, damages and other appropriate relief are
22 due to Plaintiff and the Class, including refunds of the amounts paid for the PPV.
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FIFTH CAUSE OF ACTION
Unjust Enrichment/Money Had and Received
(on behalf of all Class Members)

157. Plaintiff incorporates by reference each allegation set forth above.

158. Through the above described acts and conduct, Defendants received money, directly or indirectly, from Plaintiff and the Class which in equity and good conscious they cannot and should not retain.

159. Through the above described acts and conduct, Defendants have been unjustly enriched at the expense of Plaintiff and the Class.

160. Defendants' continued retention of these sums is unjust.

161. Based on the foregoing, Defendants should be required to disgorge all such profits, and provide restitution and/or damages as may be available at law or equity.

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SIXTH CAUSE OF ACTION
Breach of Implied Warranty of Merchantability
(on behalf of all Class Members)

162. Plaintiff incorporates by reference each allegation set forth above.

163. Plaintiff and Class members purchased PPV broadcast package and paid money directly to Defendants. Plaintiff and the Class were the intended end users and intended and foreseeable viewers/users of the PPV packages sold. Alternatively, Plaintiff and the Class were intended third party beneficiaries of the PPV packages sold.

164. Through the above conduct, Defendants breached the implied warranty of merchantability with respect to the PPV broadcast packages sold.

165. The PPV broadcast packages sold were intended and expected to operate so that all purchasers, including Plaintiff and the Class, would be able to easily download, start, and view the entire broadcast of the Fight without interruption or delay.

- 1 F. For notice to the Class describing the problem and their ability to
- 2 secure refunds and other relief, all costs of such to be paid by
- 3 Defendants;
- 4 G. All reasonable and necessary attorneys' fees and costs provided by
- 5 statute, common law, equity, or the Court's inherent power;
- 6 H. For equitable and declaratory relief; and,
- 7 I. Any and all other relief that this Court deems just and proper at law or
- 8 equity.

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Respectfully submitted,
LIPSON, NEILSON, COLE, SELTZER &
GARIN, P.C.

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