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10 Attorneys for Plaintiff JASMINE VANCE, individually  
11 and on behalf of all others similarly situated.

12 **UNITED STATES DISTRICT COURT**  
13 **SOUTHERN DISTRICT OF NEW YORK**

14 **JASMINE VANCE**, individually and  
15 on behalf of all others similarly  
16 situated,

17 Plaintiff,

18 v.

19 **SHOWTIME NETWORKS INC.**,  
20 and **SHOWTIME DIGITAL INC.**

21 Defendants.

Civil Action No.: 1:17-cv-6894

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

**GERAGOS & GERAGOS, APC**  
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**CLASS ACTION COMPLAINT**

1  
2 Plaintiff Jasmine Vance (“Plaintiff”), by and through her attorneys, makes the  
3 following allegations pursuant to the investigation of her counsel and based upon  
4 information and belief, except as to the allegations specifically pertaining to herself,  
5 which are based on her personal knowledge:  
6

7  
8 **NATURE OF THE ACTION**

9 1. This is a class action on behalf of all persons who purchased the  
10 Showtime pay per view (“PPV”) live stream to view the August 26, 2017 Floyd  
11 Mayweather, Jr. vs. Conor McGregor fight and undercard through the Showtime app,  
12 Showtime PPV website, or through any other means or media. As a result of server  
13 failure or other technical failures on Defendants’ part, Plaintiff and the Class were  
14 unable to view the Mayweather fight, and some Class Members were unable to view  
15 substantial portions of the entire Mayweather fight.  
16  
17

18 **THE PARTIES**

19 2. Defendant Showtime Networks Inc. is a corporation organized and  
20 existing under the laws of Delaware, having its principal place of business at 1633  
21 Broadway, New York, New York 10019.  
22

23 3. Defendant Showtime Digital Inc. is a corporation organized and existing  
24 under the laws of the State of Delaware, having its principal place of business at 1633  
25 Broadway, New York, New York 10019. Upon information and belief, Showtime  
26 Digital Inc. is a wholly-owned subsidiary of Showtime Networks, Inc. Showtime  
27  
28

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1 Networks, Inc. and Showtime Digital Inc. will collectively be referred to as the  
2 “Defendants” or “Showtime.”

3 4. Plaintiff Jasmine Vance (“Plaintiff”) is a citizen and resident of the State  
4 of Ohio. Like thousands (or more) of other fight fans across the country, Plaintiff  
5 paid to stream the Mayweather fight live through the Showtime app. Plaintiff was not  
6 able to view the Mayweather fight. Defendants’ PPV service had technical and/or  
7 other failures and did not stream the Mayweather fight. Plaintiff continuously  
8 experienced a screen with an error message while accessing Defendants’ PPV service  
9 and was unable to watch the Mayweather fight.

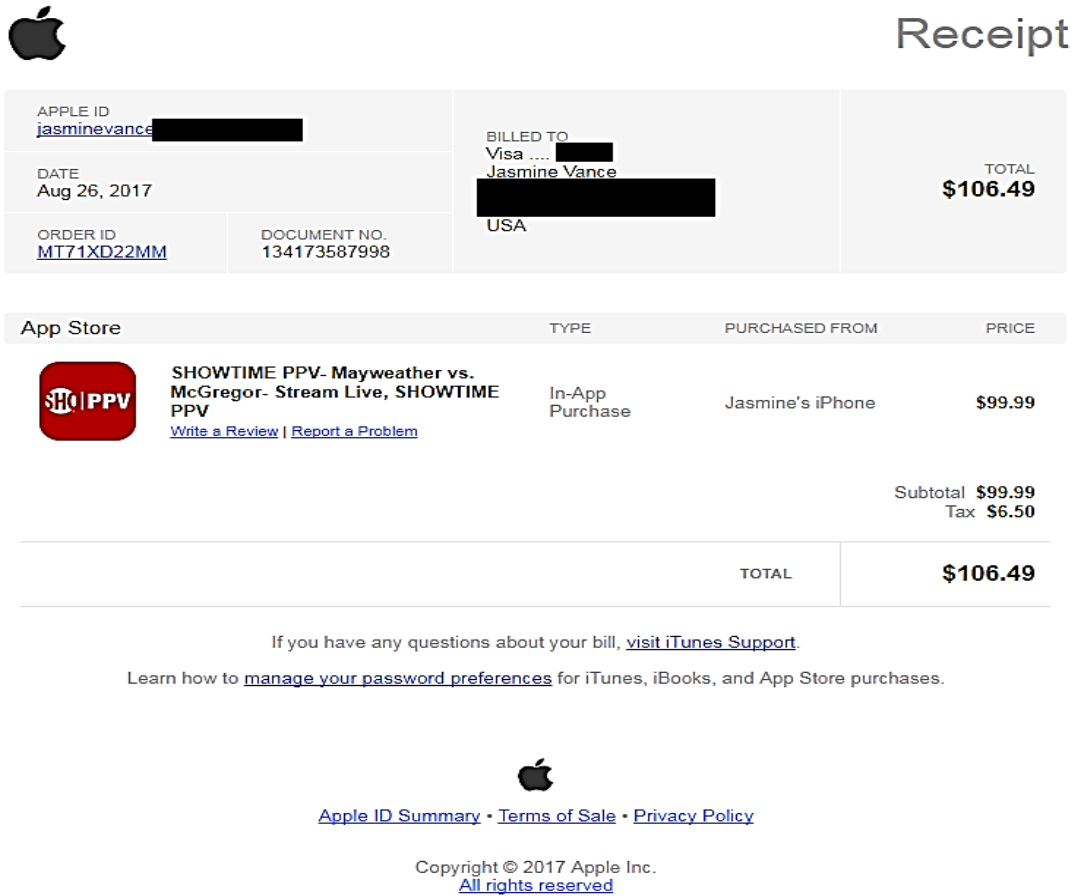
10  
11  
12 **JURISDICTION AND VENUE**

13 14 5. This Court has diversity jurisdiction over this matter pursuant to the  
15 Class Action Fairness Act of 2005, 28 U.S.C. §1332(d), in that the aggregate claims of  
16 Plaintiff and members of the Class exceed the sum or value of \$5,000,000, and  
17 diversity of citizenship exists between at least one member of the proposed Class and  
18 Defendants.

19 20 6. Venue is proper in this Court pursuant to 28 U.S.C. 1391(b) because a  
21 substantial part of the events giving rise to Plaintiff and Class Members claims  
22 occurred in this District as Defendants: (a) have their principal places of business in  
23 this District; (b) are authorized to conduct business in this District and have  
24 intentionally availed itself to the laws within this District; (c) currently do substantial  
25 business in this District; and (d) are subject to personal jurisdiction in this District.  
26  
27  
28

**FACTUAL ALLEGATIONS**

7. On August 26, 2017, in response to Defendants’ offering of the live stream of the Mayweather fight, Plaintiff paid \$99.99 (before tax) for Defendants’ live stream of the Mayweather fight through the Showtime PPV app. Plaintiff’s receipt is shown below:



8. On August 26, 2017, the Mayweather fight took place in Las Vegas, Nevada.


9. The Mayweather fight was advertised and promoted extensively by the Defendants.

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10. Defendants' advertisement in iTunes below represented that consumers could witness history through live streaming access to the most anticipated sporting event of the year.

**iTunes Preview** Overview Music Video Charts

**SHOWTIME PPV- Mayweather vs. McGregor- Stream Live** [View More by This Developer](#)  
 By Showtime Networks Inc.  
 Open iTunes to buy and download apps.



[View in iTunes](#)

This app is designed for both iPhone and iPad

**Free**  
 Category: [Sports](#)  
 Updated: Aug 24, 2017  
 Version: 1.0.1  
 Size: 68.2 MB  
 Language: English  
 Seller: Showtime Digital Inc.  
 ©2017 Showtime Digital Inc., a subsidiary of Showtime Networks Inc. All rights reserved. SHOWTIME and related marks are trademarks of Showtime Networks Inc., a CBS Company.  
**Rated 12+ for the following:**  
 Infrequent/Mild Realistic Violence  
 Infrequent/Mild Profanity or Crude Humor  
 Infrequent/Mild Mature/Suggestive Themes

**Compatibility:** Requires iOS 9.0 or later. Compatible with iPhone, iPad, and iPod touch.

**Description**  
 Witness history with the official SHOWTIME PPV app! Stream Mayweather vs. McGregor LIVE on your iPhone, iPad, or Apple TV (4th generation) for \$99.99. With your purchase, you'll get live streaming access to the most anticipated sporting event of the year as Floyd Mayweather and Conor McGregor take center stage for a once in a lifetime spectacle. Don't miss this epic match for the ages, streaming live on Saturday, August 26 at 9:00pm ET/6:00pm PT.

The SHOWTIME PPV app is also your source for everything Mayweather vs. McGregor. Stream pre-fight coverage, explore fighter profiles, and re-live your favorite Floyd Mayweather and Conor McGregor moments with a selection of their classic fights. Plus, get an unprecedented behind-the-scenes look with the first episode of the Emmy® award-winning SHOWTIME series All Access: Mayweather vs. McGregor.

**FEATURES**

- The Main Event - stream Mayweather vs. McGregor LIVE in HD for \$99.99, available for purchase in the US and its territories
- Watch on Your Favorite Devices - purchase the fight and stream it live on your iPhone, iPad or Apple TV (4th generation). One simultaneous stream per purchase, requires iOS 9.0+ or tvOS 10.0+
- News - get the latest videos of pre-fight coverage such as interviews, clips from the world press tour, and live streams of Fight Week events including the official weigh-in
- Behind the Scenes - get an insider look with all episodes of the acclaimed SHOWTIME series All Access: Mayweather vs. McGregor
- Fighter Profiles - get details on the main event and co-feature fighters
- Classic Fights - browse and stream a selected library of classic Floyd Mayweather and Conor McGregor fights
- Spanish Audio - available for the live pay-per-view event

©2017 Showtime Digital Inc., a subsidiary of Showtime Networks Inc. All rights reserved. SHOWTIME and related marks are trademarks of Showtime Networks Inc., a CBS Company. If purchased from Showtime Digital Inc., or an authorized third party distributor in the United States, the pay-per-view event is accessible for viewing solely in the United States and its territories and possessions. Minimum high-speed broadband connection is required for viewing. This website may contain adult content.

Terms of Use: <https://www.showtimeppv.com/legal/terms>

[Showtime Networks Inc. Web Site](#) [SHOWTIME PPV- Mayweather vs. McGregor- Stream Live Support](#)

**What's New in Version 1.0.1**

- Minor bug fixes

11. Defendants also ran other advertisements for the Mayweather fight which made clear that the Mayweather fight could be purchased for viewing live from Showtime.

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1 12. Many articles also announced that the Mayweather fight could be  
2 streamed live through Showtime using the Showtime PPV app, Showtime PPV, or  
3 through other media.

4  
5 13. Unlike past big events like Mayweather vs. Pacquiao in 2015, the  
6 Mayweather fight was the first major fight available on pay-per-view without a cable  
7 subscription.

8  
9 14. On the evening of August 26, 2017, Plaintiff endeavored to access  
10 Defendants' PPV service through an Amazon Fire TV Stick to watch the Mayweather  
11 fight. To her extreme disappointment and frustration, Plaintiff quickly learned that  
12 Defendants' system was defective and unable to stream the Mayweather fight as  
13 Defendants had advertised. Instead of being a "witness to history" as Defendants had  
14 promised, Plaintiff first could not load the app through the Amazon Fire TV Stick,  
15 notwithstanding several attempts and many hours spent on endeavoring to load the  
16 Showtime PPV app to it. Then, Plaintiff downloaded the app to her phone and the  
17 app continuously gave her an error message stating "expected status code in (200-  
18 299), got 429." Due to the problems with Defendants' defective service, Plaintiff was  
19 unable to watch the Mayweather fight.

20  
21  
22  
23 15. Plaintiff had a gathering in her home to watch the Mayweather fight for  
24 which she spent sums on food and beverages, and given the failure of the Defendants  
25 to live stream the Mayweather fight, many of her guests left and Plaintiff was left  
26 with unused food and beverages.  
27  
28

1 16. Plaintiff contacted Defendants for a refund for her purchase and she has  
 2 not received a refund.

3 17. There were at least hundreds of complaints being tweeted by  
 4 Defendants' other PPV customers in real time during the Mayweather fight  
 5 experiencing the same issue with Defendants' defective service. Some examples  
 6 appear below:  
 7

8

9 **Joe McCann** @joemccann · 43m  
The **ufc** app across multiple devices (Roku, iPhone, etc.) are all down. Same with **Showtime's** app  
Streaming is hard  
[#MayweatherVsMcGregor](#)

10

11 **Theresa Arnold** @T\_Dawgie · 29m  
Replying to @SOREL0SER @SurnearFit and 3 others  
**Showtime** app is still down for me

12 **Ace** @AceOfspades5050 · 37m  
**ufc** is the **showtime** app working or is it both the ufc and **showtime** apps that are down?  
[#McGregorVsMayweather](#)

13 **NICK** @nickgrodo · 4m  
UFC TV, **Showtime** app and I'm sure many more apps are down right now. Of course they didn't have enough servers in place for the PPV buys

14 **Rose Porti** @asturiasptr · 4m  
Replying to @MDBaStein @stlyanno  
If you bought it at **showtime** PPV it should not go down. Other places yes but not directly with **Showtime** PPV. Download app and request refund

15 **Garrett Gustafson** @Garrett1209 · 4m  
Replying to @GermanV52  
Yea apparently **showtime** and the Ufc tv app and fight pass are all down lol. Her comes a lawsuit

16 **Anne Phan** @AnneP · 6m  
Replying to @AnneP @UFCFightPass  
**@UFCFightPass** Please just help me process a refund at this point. Your app has been down for 1+ hour. I've now bought off **Showtime**

17 **Kevin Surnear, DDC** @SurnearFit · 22m  
Replying to @ufc @UFCFightPass  
Even the entire **showtime** app is down. This is REALLY PISSING ME OFF NOW!!

18 **hydro-san** @hydrocyamic · 23m  
**showtime** app down af

19 **Theresa Arnold** @T\_Dawgie · 26m  
Replying to @vinierloki40 @TayTarrantello @UFCFightPass  
**@showtime** app still down for me

20 **Glenn Hansen** @Cyclone113 · 29m  
**@Showtime** app on Apple TV is down !!!

21 **Dick Vitale** @DickieV  
We r in panic mode / Waited all day for PAY PER VIEW OF FIGHT / not getting it & we can't get anyone on the phone !

22 **Tyler** @TCole95 · 56m  
Replying to @Firas\_Zahabi  
Yes it's down, **showtime** app

23 **Taylor** @xTaylorDenise · 1h  
I'm trying to use this **Showtime** 7 day free trial to watch the Whitney movie but the fight has the app down.

24 **rocket shrimp** @notrobzombie · 1h  
didn't have any strong feelings about the fight tonight until i realized it's the reason the **Showtime** app is down rn

25 **Wesley Windham** @wesleywindham · 1h  
[#MayweatherVsMcGregor](#) **showtime** app is down, **ufc** app is down... never thought I'd say this but I wish I had gone to bdubs

26

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1 18. In addition to the hundreds or more complaints that appeared on Twitter,  
2 numerous complaints about Showtime’s service also appeared on various message  
3 internet message and complaint boards during and after the Mayweather fight.  
4

5 **CLASS ALLEGATIONS**

6 19. Plaintiff brings this class action pursuant to Fed. R. Civ. P. 23(a), (b) (1)  
7 and (b) (3) on behalf of the following consumer class and sub-class:  
8

9 **The Class:** All persons in the United States who purchased  
10 the Showtime PPV live stream of the Mayweather fight, for  
11 viewing through the Showtime PPV app, the Showtime PPV  
12 website, or through any other means or media. Excluded  
13 from the Class are Defendants, their parents, subsidiaries and  
14 affiliates, their directors and officers and members of their  
15 immediate families; also excluded are any federal, state or  
16 local governmental entities, any judicial officers presiding  
17 over this action and the members of their immediate family  
18 and judicial staff, and any juror assigned to this action.

19  
20 **The Sub-Class:**

21 All persons in New York who purchased the Showtime PPV  
22 live stream of the Mayweather fight for viewing through the  
23 Showtime PPV app, Showtime PPV website, or through any  
24 other means or media. Excluded from the Sub-Class are  
25 Defendants, their parents, subsidiaries and affiliates, their  
26 directors and officers and members of their immediate  
27 families; also excluded are any federal, state or local  
28 governmental entities, any judicial officers presiding over



1 this action and the members of their immediate family and  
2 judicial staff, and any juror assigned to this action.

3  
4 20. This action is brought, and may properly be maintained, as a class action  
5 under Fed. R. Civ. P. Rule 23 because there is a well-defined community of interest  
6 in the litigation and the proposed class is easily ascertainable. This action satisfies the  
7 predominance, typicality, numerosity, superiority, and adequacy requirements of  
8 these provisions.  
9

10  
11 (a) **Numerosity:** The plaintiff class is so numerous that the individual joinder of  
12 all members is impractical under the circumstances of this case. While the  
13 exact number of Class Members is unknown to Plaintiff at this time, Plaintiff  
14 is informed and believes, and based thereon alleges, that over one-thousand  
15 (1,000) persons purchased tickets for Defendants' live stream of the  
16 Mayweather fight.

17 (b) **Commonality:** Common questions of law and fact exist as to all members of  
18 the plaintiff class and predominate over any questions that affect only  
19 individual members of the class. The common questions of law and fact  
20 include, but are not limited to:

- 21 (i) Whether Defendants engaged in deceptive conduct about the live  
22 stream of the Mayweather fight;
- 23 (ii) Whether Defendants breached any contractual obligations to ticket  
24 buyers of the live stream of the Mayweather fight; and
- 25 (iii) Whether Defendants were unjustly enriched by taking and keeping  
26 money for a service that was not provided.

27 (c) **Typicality:** Plaintiff's claims are typical of the claims of the Class Members.  
28 Plaintiff

1 and the members of the class sustained damages arising out of Defendants'  
2 wrongful conduct as alleged herein.

3 (d) **Adequacy:** Plaintiff will fairly and adequately protect the interests of the  
4 members of the class. Plaintiff has no interest that is adverse to the interests  
5 of the other Class Members.

6 (e) **Superiority:** A class action is superior to other available means for the fair  
7 and efficient adjudication of this controversy. Because individual joinder of  
8 all members of the class is impractical, class action treatment will permit a  
9 large number of similarly situated persons to prosecute their common claims  
10 in a single forum simultaneously, efficiently, and without unnecessary  
11 duplication of effort and expense that numerous individual actions would  
12 engender. The expenses and burdens of individual litigation would make it  
13 difficult or impossible for individual members of the class to redress the  
14 wrongs done to them, while important public interests will be served by  
15 addressing the matter as a class action. The cost to and burden on the court  
16 system of adjudication of individualized litigation would be substantial, and  
17 substantially more than the costs and burdens of a class action. Class  
18 litigation would also prevent the potential for inconsistent or contradictory  
19 judgments.

20 (f) **Public Policy Considerations:** When a company or individual engages in  
21 wrongful conduct with large swaths of consumers, it is often difficult or  
22 impossible for the vast majority of those consumers to bring individual  
23 actions against the offending party. Many consumers are either unaware that  
24 redress is available, or unable to obtain counsel to obtain that redress for  
25 financial or other reasons. Class actions provide the class members who are  
26 not named in the complaint with a vehicle to achieve vindication of their  
27 rights. The members of the class are so numerous that the joinder of all  
28 members would be impractical and the disposition of their claims in a class

1 action rather than in individual actions will benefit the parties and the court.  
2 There is a well-defined community of interest in the questions of law or fact  
3 affecting the Class in that the legal questions are common to the Class  
4 Members. The factual questions relating to Defendants' wrongful conduct  
5 and their ill-gotten gains are also common to the Class Members.

6  
7 **COUNT I**  
8 **(BREACH OF CONTRACT)**

9  
10 21. Plaintiff repeats and realleges each and every allegation contained in all  
11 the foregoing paragraphs as if fully set forth herein..

12 22. Plaintiff and the Class entered into contracts with Defendants to view the  
13 Mayweather fight through Defendants' live stream in exchange for money. Plaintiff  
14 and the Class provided payment to Defendants in consideration for Defendants'  
15 promise to provide a live stream of the Mayweather fight.  
16

17  
18 23. Instead, Defendants breached the contracts by failing to provide a  
19 complete viewing of the Mayweather fight.

20 24. As a result of Defendants' breach of contract, Plaintiff and the Class  
21 have been damaged thereby.  
22

23 **COUNT II**  
24 **(VIOLATION OF NEW YORK GBL § 349)**

25  
26 25. Plaintiff repeats and realleges each and every allegation contained in all  
27 the foregoing paragraphs as if fully set forth herein.  
28

1           26. New York General Business Law Section 349 (“GBL § 349”) declares  
2 unlawful “[d]eceptive acts or practices in the conduct of any business, trade, or  
3 commerce or in the furnishing of any service in this state . . . .”  
4

5           27. Defendants were and are doing business in the State of New York and  
6 thus are subject to New York law for the incidents described in this action.  
7

8           28. Defendants misleadingly, inaccurately, and deceptively presented their  
9 live streaming service of the Mayweather fight to consumers.  
10

11           29. Defendants’ improper and deceptive consumer-oriented conduct is  
12 misleading in a material way in that it, *inter alia*, induced consumers, including  
13 Plaintiff, to purchase Defendants’ live streaming service of the Mayweather fight.  
14 Defendants made their untrue and/or misleading statements and representations  
15 willfully, wantonly, and with reckless disregard for the truth.  
16

17           30. As a result of Defendants’ acts and omissions, Plaintiff and the Class  
18 were damaged when they paid to watch the Mayweather fight and were unable to do  
19 so.  
20

21           31. Defendants’ deceptive and misleading practices constitute a deceptive  
22 act and practice in the conduct of business in violation of New York General Business  
23 Law §349(a) and Plaintiff and the Class have been damaged thereby.  
24  
25  
26  
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**COUNT III**

**(VIOLATION OF NEW YORK GBL § 350)**

1  
2  
3  
4       32. Plaintiff repeats and realleges each and every allegation contained in all  
5 the foregoing paragraphs as if fully set forth herein.

6       33. N.Y. Gen. Bus. Law § 350 provides, in part, as follows: “False  
7 advertising in the conduct of any business, trade or commerce or in the furnishing of  
8 any service in this state is hereby declared unlawful.  
9

10       34. N.Y. Gen. Bus. Law § 350-a(1) provides, in part, as follows:  
11 “The term ‘false advertising, including labeling, of a commodity, or of the kind,  
12 character, terms or conditions of any employment opportunity if such advertising is  
13 misleading in a material respect. In determining whether any advertising is  
14 misleading, there shall be taken into account (among other things) not only  
15 representations made by statement, word, design, device, sound or any combination  
16 thereof, but also the extent to which the advertising fails to reveal facts material in the  
17 light of such representations with respect to the commodity or employment to which  
18 the advertising relates under the conditions proscribed in said advertisement, or under  
19 such conditions as are customary or usual . . .”  
20  
21  
22  
23

24       35. Defendants were and are doing business in the State of New York and  
25 thus are subject to New York law for the incidents described in this action.

26       36. Defendants’ advertisements contain untrue and materially misleading  
27  
28

1 statements concerning Defendants’ live streaming service of the Mayweather fight  
2 inasmuch as it misrepresented that live streaming would be provided.

3 37. Defendants knew and should have known their system was not able to  
4 provide the service that the Class Members purchased, based on Defendants’ available  
5 bandwidth and subscriber numbers. Defendants intentionally misrepresented that it  
6 could provide the service and knowingly failed to disclose that their system was  
7 defective and unable to provide the service.  
8  
9

10 38. Plaintiff and the Class have been injured inasmuch as they relied upon  
11 the advertising and paid a fee for the live streaming service of the Mayweather fight  
12 which—contrary to Defendants’ representations—was not provided. Accordingly,  
13 Plaintiff and the Class received less than what they bargained and/or paid for.  
14

15 39. Defendants’ advertising induced the Plaintiff and the Class to buy  
16 Defendants’ live streaming service of the Mayweather fight.  
17

18 40. Defendants made their untrue and/or misleading statements and  
19 representations  
20 willfully, wantonly, and with reckless disregard for the truth.  
21

22 41. Defendants’ conduct constitutes violations of N.Y. Gen. Bus. Law § 350.  
23  
24  
25

26 ///

27 ///

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**COUNT IV**  
**(UNJUST ENRICHMENT)**

42. Plaintiff repeats and realleges each and every allegation contained in all the foregoing paragraphs as if fully set forth herein.

43. Plaintiff and members of the Class conferred benefits on Defendants by purchasing the live streaming service.

44. Defendants have been unjustly enriched in retaining revenues derived from Plaintiff's and Class Members' purchases of the live streaming service.

45. As a matter of justice and equity, Defendants should not be able to retain the pay-per-view fees they charged Plaintiff and the Class Members for live streaming services that were never provided or received. Plaintiff and the Class Members are entitled to restitution based on Defendants' unjust enrichment as alleged in this complaint.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable.

///  
///

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that this Court:

A. Certify this action as a class action under Rule 23 of the Federal Rules of Civil Procedure, appoint Plaintiff as the Class representative, and appoint the undersigned as Class counsel;

B. Issue a Judgment finding in favor of Plaintiff and the Class on all counts asserted herein;

C. Order Defendants to pay Plaintiff and other members of the Class all actual, consequential, statutory and/or treble damages and punitive damages in an amount to be determined at trial, including restitution, interest, and disgorgement of all amounts paid by Plaintiff and other members of the Class to Defendants for the Mayweather Fight, as well as any applicable interest;

D. Issue an order granting Plaintiff's reasonable costs, expenses and attorney's fees including expert fees; and

E. Grant in favor of Plaintiff and the Class such other relief as may be just and proper.

DATED: September 11, 2017

**GERAGOS & GERAGOS, APC**

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Attorneys for Plaintiff JASMINE VANCE,  
individually and as the representative of a class  
of similarly-situated persons