

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

MARCY BROOKS, on behalf of herself  
and all others similarly situated,

Plaintiff,

vs.

ULTRA ENTERPRISES INC.,

Defendant.

\_\_\_\_\_ /

**NOTICE OF REMOVAL**

Defendant Ultra Enterprises Inc. (“Ultra”)<sup>1</sup> hereby removes this civil action from the Eleventh Judicial Circuit Court in and for Miami-Dade County, Florida, to the United States District Court for the Southern District of Florida pursuant to the Class Action Fairness Act (CAFA), codified in relevant part at 28 U.S.C. §§ 1332 and 1453. Ultra hereby provides a “short and plain statement of the grounds for removal” pursuant to 28 U.S.C. § 1446(a).<sup>2</sup>

**I. PROCEEDINGS TO DATE**

On May 18, 2020, Plaintiff Marcy Brooks (“Plaintiff”) filed a putative class action complaint (the “Complaint”) in the Eleventh Judicial Circuit Court in and for Miami-Dade County, Florida (the

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<sup>1</sup> Event Entertainment Group, Inc. (“EEG”), not Ultra, is the proper named defendant in this action. Ultra is the entity that owns the *Ultra Music Festival*<sup>®</sup> trademark. Bassett Decl. ¶ 4 (**Ex. 1**). EEG licenses rights from Ultra to exploit the *Ultra Music Festival*<sup>®</sup> trademark in conjunction with producing an annual 3-day music festival in Miami (the “Event”). *Id.* at ¶ 5. EEG is the sole producer of the Event and sells tickets for the Event using a third-party ticketing intermediary. *Id.* at ¶ 6. Ultra is not a party to any ticket sales transactions respecting any Event, including the Event that was scheduled to take place in Miami, Florida on March 20-22, 2020 (the “2020 Event”). *Id.* Undersigned counsel is also counsel for EEG and intends to move to substitute EEG as the proper named defendant upon removal.

<sup>2</sup> In removing this action to federal court, Ultra expressly reserves—and does not in any way waive—its or EEG’s right to move to compel arbitration of the individual class members’ claims.

“Circuit Court”) against Defendant Ultra Enterprises Inc. (“Ultra”). The Complaint was served on Ultra on May 28, 2020. In the Complaint, Plaintiff purports to assert claims against Ultra based on state law. As required by 28 U.S.C. § 1446, copies of all process, pleadings and other papers previously filed with the Circuit Court are attached hereto as follows\*:

Docket from the Eleventh Judicial Circuit as of June 17, 2020	Exhibit 2
Civil Cover Sheet Dated May 18, 2020 (DE 1)	Exhibit 3
Civil Cover Sheet Dated May 15, 2020 (DE 2)	Exhibit 4
Complaint (DE 3)	Exhibit 5
Summons issued to Ultra (undated/unsigned) (DE 4)	Exhibit 6
Summons issued to Ultra (dated/signed) (DE 7)	Exhibit 7
Return of Service for Ultra (DE 8)	Exhibit 8

\* Docket Entries Nos. 5 and 6 are docket text reflecting payment of the filing fee (DE 5) and summons issue fee (DE 6), with no documents attached.

## **II. THIS ACTION MAY BE REMOVED UNDER CAFA**

This Court has original jurisdiction over this case under CAFA pursuant to 28 U.S.C. §§ 1332(d), 1453. Under CAFA, United States District Courts have original jurisdiction over any civil action if: (a) the proposed class contains at least 100 members; (b) none of the primary defendants is a state, state official, or governmental entity; (c) there is diversity between at least one putative class member and one defendant; and (d) the amount in controversy, after aggregating the sum or value of each proposed class member’s claim, exceeds \$5 million, exclusive of interest and costs. 28 U.S.C. § 1332(d). Based on the allegations in the Complaint, which must be taken as true for purposes of removal, and for the reasons set forth below, all requirements of CAFA are satisfied.

**A. The Proposed Class Consists of at Least 100 Members**

Plaintiff seeks to certify a nationwide class comprised of “all those similarly situated ticket holders...who purchased a ticket to concerts that are part of the Ultra Musical Festival 2020.” Compl. ¶ 21. Tens of thousands of tickets to the 2020 Event were sold. Bassett Decl. ¶ 8. In addition, the Complaint alleges the class size is “so numerous that separate joinder of each member is impractical.” Compl. ¶ 22. Accordingly, the aggregate number of class members is greater than 100 persons for purposes of 28 U.S.C. § 1332(d)(5)(B).

**B. No Defendant Is a State, State Official, or Government Entity**

Ultra is not a state, state official, or governmental entity.<sup>3</sup>

**C. This Action Meets the Diversity Requirements of CAFA**

Diversity under CAFA exists if the citizenship of “any member of a class of plaintiffs is a citizen of a state different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). A corporation is deemed to be a citizen of every state “by which it has been incorporated and . . . where it has its principal place of business.” 28 U.S.C. § 1332(c)(1). Ultra is incorporated in Florida, and its principal place of business is in Miami, Florida. Bassett Decl. ¶ 4; *see also* Compl. ¶ 15 (alleging Ultra is a Florida corporation). Thus, for diversity purposes, Ultra is considered a citizen of Florida. On the other hand, upon information and belief, Plaintiff is a citizen of California. *See* Compl. ¶ 2 (alleging Plaintiff resides in California). Thus, since Plaintiff is a citizen of California and Ultra is a citizen of Florida, CAFA’s minimal diversity requirement is satisfied. 28 U.S.C. § 1332(d)(2)(A).<sup>4</sup>

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<sup>3</sup> Nor is EEG a state, state official, or governmental entity.

<sup>4</sup> EEG is likewise incorporated in Florida with its principal place of business in Miami, Florida, *see* Bassett Decl. ¶ 5, and is thus also considered a citizen of Florida.

#### **D. The Amount in Controversy Exceeds \$5 Million**

To remove a case from state court, the defendant must plead only “a short and plain statement of the grounds for removal” setting forth “a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co. v. Owens*, 574 U.S. 81, 81 (2014); 28 U.S.C. § 1446(a).

“The amount in controversy is not proof of the amount the plaintiff will recover. Rather, it is an estimate of the amount that will be put at issue in the course of the litigation.” *Pretka*, 608 F.3d at 751 (quoting *McPhail v. Deere & Co.*, 529 F.3d 947, 956 (10th Cir. 2008)). In addition, “the inclusion of attorney’s fees in the calculation of the amount in controversy is appropriate.” *DO Restaurants, Inc. v. Aspen Specialty Ins. Co.*, 984 F. Supp. 2d 1342, 1346 (S.D. Fla. 2013).

Here, Plaintiff seeks, among other relief, a refund of the purchase price of the tickets purchased by herself and all others similarly situated for the Ultra Musical Festival that was scheduled to take place in Miami, Florida on March 20-22, 2020 (the “2020 Event”). Compl. at 13. Based on the number of 2020 Event tickets sold and the cost of the tickets, the amount in controversy as alleged in Plaintiff’s Complaint exceeds \$5,000,000. Bassett Decl. ¶ 9. While Ultra denies that Plaintiff and the putative class are entitled to any damages, taking Plaintiff’s allegations as true for purposes of removal only, the alleged retail sales of 2020 Event tickets, plus attorneys’ fees and the value of the injunctive relief Plaintiff seeks, in the aggregate, exceed CAFA’s \$5,000,000 amount in controversy requirement. *See Lee-Bolton v. Koppers Inc.*, 848 F. Supp. 2d 1342, 1357 (N.D. Fla. 2011) (“there is little question that the amount in controversy for purposes of CAFA has been satisfied [based on monetary damages alone, and] [t]his ... does not [even] take into account that the amount of attorney’s fees and the value of the claims for injunctive relief also could be factored into the calculus of determining the amount in controversy”). In sum, the \$5,000,000 amount in controversy standard is easily met.

Accordingly, the Court has original jurisdiction over this action under CAFA pursuant to 28 U.S.C. §§ 1332(d), 1453 and this case may be removed to this Court pursuant to 28 U.S.C. § 1441(a).

### **III. VENUE**

Plaintiff's lawsuit is pending in state court in Miami-Dade County, which is within this judicial district and division. *See* 28 U.S.C. § 89(c). Therefore, this Court is the proper venue for removal under 28 U.S.C. §§ 1441(a), 1446(a).

### **IV. TIMELINESS**

Ultra was served on May 28, 2020 and is filing this Notice within thirty (30) days from the date that the Complaint was served on it. Accordingly, this Notice of Removal is timely filed. *See* 28 U.S.C. § 1446(b).

### **V. CONSENT**

A class action "may be removed [under CAFA] by any defendant without the consent of all defendants." *Lowery v. Ala. Power Co.*, 483 F.3d 1184, 1196 (11th Cir. 2007) (quoting 28 U.S.C. § 1453(b)). In any event, and in light of the fact that EEG is the proper named defendant here and that Ultra intends to move to substitute EEG as the proper named defendant upon removal, undersigned counsel is also counsel for EEG and is authorized to represent that EEG consents to the removal of this action.

### **VI. NOTICE**

As required by 28 U.S.C. § 1446(d), Ultra will serve written notice of this Notice of Removal on Plaintiff, and Ultra will file a copy of this Notice of Removal with the clerk of the Circuit Court.

**CONCLUSION**

For the foregoing reasons, Defendant Ultra Enterprises Inc. respectfully requests that this action, previously pending in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, be removed to this Court, and that this Court proceed as if this case had been originally initiated in this Court.

Dated: June 17, 2020.

Hildy M. Sastre (Florida Bar No. 026492)  
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Michael L. Mallow (*pro hac vice* forthcoming)  
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T: (305) 358-5171

*Attorneys for Defendant Ultra Enterprises Inc.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 17<sup>th</sup> day of June 2020, I served a true and correct copy of the foregoing document via electronic mail on all parties and counsel of record listed below.

Marcus W. Corwin  
Florida Bar No. 0764647  
CORWIN LAW  
MARCUS W. CORWIN, P.A.  
6001 Broken Sound Parkway NW, Suite 404  
Boca Raton, FL 33487  
Telephone: (561) 482-3636  
E-Mail: mcorwin@corwinlawfirm.com

***Counsel for Plaintiff***

By: /s/ Hildy M. Sastre  
Hildy M. Sastre

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

MARCY BROOKS, on behalf of herself and all others similarly situated.

(b) County of Residence of First Listed Plaintiff LOS ANGELES COUNTY  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

MARCUS W. CORWIN, ESQ., MARCUS W. CORWIN, P.A.  
6001 BROKEN SOUND PARKWAY NW SUITE 404, BOCA RATON,  
FL 33487; TELEPHONE: 561-482-3636

**DEFENDANTS**

ULTRA ENTERPRISES INC.

County of Residence of First Listed Defendant MIAMI-DADE COUNTY  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

HILDY M. SASTRE, ESQ., SHOOK, HARDY & BACON LLP,  
CITIGROUP CENTER SUITE 3200, 201 SOUTH BISCAYNE BLVD.  
MIAMI, FL 33131; TELEPHONE: 305-358-5171

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question  
(U.S. Government Not a Party)
- ☒ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                                   |   | PTF                        | DEF                                   |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☒ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. 1332(d)

Brief description of cause:

Putative class action seeking refund for Ultra Musical Festival rescheduled due to COVID-19 government order.

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE ROBERT N. SCOLA

DOCKET NUMBER 1:20-CV-22185

DATE

06/17/2020

SIGNATURE OF ATTORNEY OF RECORD

Hildy M. Sastre

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE



## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

IN THE CIRCUIT COURT FOR THE  
ELEVENTH JUDICIAL CIRCUIT IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA

MARCY BROOKS, on behalf of herself  
and all others similarly situated,

Plaintiff,

Case No.:

Judge:

vs.

ULTRA ENTERPRISES INC.,  
Defendant.

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**CLASS ACTION COMPLAINT**

COMES NOW the Plaintiff, MARCY BROOKS, as Class Representative, and sues  
Defendant, ULTRA ENTERPRISES INC., a Florida corporation, and all those similarly situated  
CLASS MEMBERS, and in support thereof states as follows:

**JURISDICTION, PARTIES, AND VENUE**

1. This is a class action pursuant to Florida Rule of Civil Procedure 1.220(b)(1), (2) and/or (3), seeking damages in excess of Fifteen Thousand Dollars (\$15,000.00), exclusive of interest, costs, and attorney fees.
2. Plaintiff MARCY BROOKS (hereinafter "BROOKS") is an individual over the age of 18 residing in the State of California and is sui juris.
3. At all times relevant hereto, Defendant ULTRA ENTERPRISES INC., (hereinafter "ULTRA") is a Florida corporation authorized to do and doing business in Miami-Dade County, Florida.

4. Venue is proper in Miami-Dade County, Florida because the contract at issue was entered into and/or performed in Miami-Dade County, Florida, and the cause of action arose and/or accrued in Miami-Dade County, Florida.
5. All conditions precedent to the maintenance of this action have occurred, have been performed, or have been waived.

#### **GENERAL ALLEGATIONS**

6. On or about January 14, 2020, BROOKS purchased, for valuable consideration in the amount of \$525.60, one ticket to attend a music festival on Friday, March 20, 2020 through Sunday, March 22, 2020, organized and presented by Defendant ULTRA.
7. The terms and conditions printed on the face of the aforesaid ticket stated that the music festival presented by Defendant, ULTRA, was to occur at Bayfront Park, in downtown Miami, Florida, commencing on March 20, 2020.
8. The above ticket was purchased from Defendant ULTRA, by BROOKS, for valuable consideration. All other similarly-situated ticket holders also purchased their tickets from Defendant ULTRA for the March 2020 festival.
9. BROOKS and all other ticket holders for the event believed that the music festival was going to occur from March 20, 2020, through March 22, 2020, based on Defendant ULTRA's representations and guarantees. Defendant ULTRA's representation regarding the start of the performance was material to Brooks' and all other class members' agreement to purchase the tickets.
10. On March 3, 2020, around six weeks after Brooks purchased her ticket, Defendant ULTRA formally announced that it would cancel its music festival set to occur later that month, and for which BROOKS and other ticket holders had purchased their tickets in

exchange for hundreds of dollars. *See, e.g.*, Joey Flechas, “Ultra’s March festival cancelled over coronavirus fears in Miami, sources say,” Miami Herald, March 4, 2020, available at <https://www.miamiherald.com/news/local/community/miami-dade/downtown-miami/article240878956.html> (accessed May 13, 2020).

11. Defendant ULTRA sent BROOKS an email informing her that she would not be refunded for her ticket purchase for the 2020 music festival. Rather, Defendant ULTRA would keep the ticket money, and allow BROOKS to choose to attend the ULTRA 2021 or ULTRA 2022 Miami Festival. On information and belief, all other ticket holders for the ULTRA 2020 Miami Festival also received this email.
12. The email ULTRA sent BROOKS stated, “ALL tickets purchased will of course remain valid and will be honored at either the 2021 or 2022 Ultra Miami event, at your option. You will have 30 days to choose which Ultra Miami event you want to attend. Additionally, we are also working to offer a digital online Ultra experience as soon as possible.”
13. At the time Defendant ULTRA cancelled the 2020 Miami festival, Defendant did not offer refunds to ticketholders, including but not limited to BROOKS, who could not or did not want to attend a festival starting in 2021 or 2022, a full year or two years after the event BROOKS and other ticketholders paid for and planned on.
14. Indeed, on or around Thursday, March 12, 2020, BROOKS directly requested a refund for her ticket from ULTRA. She received an email response back, stating “We understand your frustration with the news of Ultra Music Festival having to reschedule their festival . . . . Unfortunately . . . tickets are non-refundable.”



15. Due to the change in the scheduled event dates from 2020 to either 2021 or 2022, all tickets purchased by BROOKS and all CLASS MEMBERS suffered an extreme loss in value, making it impossible for BROOKS and all CLASS MEMBERS to recover the amount paid for said tickets by reselling them in any form or fashion. Further, many individuals who purchased tickets did not live in the Miami, Florida area, and would suffer the extra burden of rescheduling travel and lodging in order to attend a festival at some point in the future, which dates had not even been determined. BROOKS, for example, resides in California, and has been forced to cancel travel plans, and would be obligated to incur the cost of rescheduling flights and accommodations for any future festival.
16. Plaintiff BROOKS and all other ticket holders of the ULTRA Music Festival 2020 in Miami, Florida, have been damaged as a direct and proximate result of the change in planned event dates from March 20-22, 2020, as printed on the tickets and promised to the ticket holders by Defendant ULTRA, to an unforeseen date in 2021 or 2022, and by Defendant ULTRA's policy of not issuing refunds.
17. Defendant ULTRA worked with event promoter Event Entertainment Group, Inc. ("Event Entertainment") to promote the 2020 festival.
18. The Terms of Use on Event Entertainment's website purport to bar class action lawsuits.
19. Neither Plaintiff BROOKS nor any other ticket holder class members agreed to the Terms of Use on Event Entertainment's website.
20. Event Entertainment's Terms of Use for the ticket holders for the ULTRA Music Festival 2020, as listed on their website, are unenforceable under Florida law.

**CLASS ACTION ALLEGATIONS**

21. Pursuant to Florida Rules of Civil Procedure 1.220(b)(1), (2), and/or (3), BROOKS, together with such other individuals that may join this action as class representatives, brings this action on her own behalf and on behalf of all those similarly situated ticket holders throughout the United States of America who purchased a ticket to concerts that are part of the ULTRA Music Festival 2020 (the “Class”).
22. The number of class members are so numerous that separate joinder of each member is impractical.
23. This action poses questions of law and fact that are common to and affect the rights of all members of the Class.
24. Based on the facts and circumstances set forth herein, BROOKS’ claims are typical of the claims of the members of the Class.
25. Other individual plaintiffs may elect to join this action upon such grounds as the Court may set forth and these individuals will likewise have issues that are common to those of all other Class members.
26. Common questions of fact and law exist as to all members of the class and such questions predominate over any questions solely affecting any individual member of the Class.
27. Based on the facts and circumstances set forth herein, BROOKS will fairly and adequately protect and represent the interests of each member of the Class.
28. BROOKS has retained the undersigned attorneys who are experienced in handling class actions. As a result, the undersigned is qualified and experienced in class action litigation and will adequately protect the interests of the Class.

29. BROOKS bring this class action under Florida Rule of Civil Procedure 1.220(b)(1) because the prosecution of separate claims or defenses by or against individual class members would create a risk of either (a) inconsistent or varying adjudications concerning individual class members which would establish incompatible standards of conduct for the party opposing the class; or (b) adjudications concerning individual class members which would, as a practical matter, be dispositive of the interests of other class members who are not parties to the adjudications, or substantially impair or impede the ability of other class members who are not parties to the adjudications to protect their interests.
30. BROOKS also bring this class action under Florida Rule of Civil Procedure 1.220(b)(2) as a result of the Defendant's actions or omissions set forth herein, which actions are generally applicable to all Class members thereby making determination of damages appropriate to the Class as a whole.
31. BROOKS also brings this class action under Florida Rule of Civil Procedure 1.220(b)(3) because common questions of fact and law exist to all class members and such questions predominate over any questions solely affecting any individual class member, and class treatment of this action is superior to other available methods for fair and efficient adjudication of this controversy.

**COUNT I – BREACH OF CONTRACT**

32. Plaintiff re-alleges paragraphs 1 through 31 of this Complaint as though fully set forth herein.
33. Plaintiff BROOKS, and all other Class members entered into a valid and enforceable written contract with Defendant ULTRA, for a music festival that was promised to begin

on March 20, 2020, and which was scheduled to run through March 22, 2020, which promises were contained in printed representations on tickets sold for valuable consideration.

34. BROOKS and all other Class members fully performed under the Contract (**Exhibit A**) by paying valuable consideration to Defendant ULTRA. BROOKS' ticket receipt shows payment of the full purchase price demanded by Defendant ULTRA.
35. In breach of said Contract, Defendant ULTRA failed to provide BROOKS and all other Class members with a music festival that ran from March 20, 2020 through March 22, 2020, instead stating that they would offer a festival on an uncertain date in 2021 or 2022.
36. As a direct and proximate result of said breach, BROOKS and all other Class members have suffered actual and consequential damages including, but not limited to, loss of consideration paid and the devaluation of the ticket if they wished to resell the ticket.

WHEREFORE, Plaintiff BROOKS, individually and on behalf of all Class members, demands judgment against Defendants ULTRA for actual and consequential damages, as well as attorney fees and costs pursuant to the Contract or other Florida or Federal law, pre- and post-judgment interest as permitted by law, and any other relief that this Court deems just and proper.

#### **COUNT II – PROMISSORY ESTOPPEL**

37. Plaintiff re-alleges paragraphs 1 through 31 of this Complaint as though fully set forth herein.
38. Defendant ULTRA represented to BROOKS and all Class members that the tickets they were buying were for a music festival that was promised to begin on March 20, 2020, and which was scheduled to run through March 22, 2020, that was contrary to a later-



asserted position that a music festival would be offered on an undetermined date in 2021 or 2022.

39. BROOKS and all Class members reasonably relied on said representation that the concert would begin on March 20, 2020 when they bought their tickets to the ULTRA Music Festival 2020.
40. Defendants ULTRA changed their position by changing the start time of the next music festival would be on an unspecified date in 2021 or 2022, to the detriment of BROOKS and all similarly situated Class members, including but not limited to, the inability or inconvenience to attend a concert starting at least a year and possibly two years later, on a date not specified, as well as the devaluation of the tickets if they wished to resell the tickets, and the inability to obtain a refund for the tickets.
41. Plaintiff BROOKS and all Class members have suffered damages as a result of the actions of Defendant ULTRA.

WHEREFORE, Plaintiff BROOKS, individually and on behalf of all Class members, demands judgment against Defendant ULTRA for actual and consequential damages, as well as attorney fees and costs pursuant to the Contract or other Florida or Federal law, pre- and post-judgment interest as permitted by law, and any other relief that this Court deems just and proper.

### **COUNT III – NEGLIGENT MISREPRESENTATION**

42. Plaintiff re-alleges paragraphs 1 through 31 of this Complaint as though fully set forth herein.
43. At all times material hereto, Defendants represented to BROOKS and all other Class members that they were buying a ticket to a music festival that would begin on March 20, 2020.

44. Said representation was made for the purpose of inducing Plaintiffs to purchase tickets to the ULTRA Music Festival 2020.
45. As a result of said representation, BROOKS and all Class members were induced into purchasing said festival tickets.
46. Defendant had a duty of reasonable care to provide BROOKS and all other ticket holders with a festival that began on March 20, 2020.
47. As a result of said misrepresentation, BROOKS and all Class members suffered actual and consequential damages, including but not limited to, loss of consideration paid for the tickets caused by the inability or inconvenience to attend a festival beginning on an undetermined date in 2021 or 2022, the devaluation of the tickets if they wished to resell the tickets, and the inability to obtain a refund for the tickets.

WHEREFORE, Plaintiff BROOKS individually, and on behalf of all Class members, demands judgment against Defendants ULTRA for actual and consequential damages, as well as attorney fees and costs pursuant to the Contract or other Florida or Federal law, pre- and post-judgment interest as permitted by law, and any other relief that this Court deems just and proper.

#### **COUNT IV – DECEPTIVE AND UNFAIR TRADE PRACTICES**

48. Plaintiff re-alleges paragraphs 1 through 31 of this Complaint as though fully set forth herein.
49. This is an action for damages under Florida Statutes Sec. 501.201, et.al., otherwise known as the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”).
50. FDUTPA renders unlawful unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.

51. At all times material hereto, Defendant ULTRA, solicited, advertised, offered, and provided goods and services by way of selling, promoting, and performing live music concerts, and thereby was engaged in a trade or commerce as defined by FDUTPA.
52. Defendant engaged in unconscionable, unfair, and/or deceptive trade practices by advertising, offering, and promoting a public music festival, promised to begin on March 20, 2020, taking individuals' money to attend said advertised festival, cancelling the festival, and then failing to provide Plaintiff BROOKS and all Class members with the option of receiving a refund.
53. By switching the start date from March 20, 2020 to an undetermined date in 2021 or 2022, Defendant caused the tickets to become devalued, prevented BROOKS and other ticket holders from selling the tickets and recover the value of the tickets at the time the concert time was changed, and prevented BROOKS and other ticket holders from receiving a refund for the amount paid.
54. Said actions were committed for various concerts and/or festivals in Florida and throughout the United States sufficiently to be considered a regular business practice.
55. The FDUTPA is intended to protect the consuming public and legitimate business enterprises from those who engage in unfair and deceptive acts or practices in the conduct of any trade or commerce.
56. At all times relevant hereto, Plaintiff BROOKS, as well as all Class member ticketholders, were legitimate consumers as defined by Florida Statutes Sec. 501.203 and are entitled to seek the underlying relief.
57. The acts committed by Defendant ULTRA are unlawful acts or practices as defined by Florida Statutes Sec. 501.204.

58. As a direct and proximate result of Defendant's actions, BROOKS and all Class members suffered actual and consequential damages, including but not limited to, loss of consideration paid for the tickets caused by the inability or inconvenience to attend a festival starting on an undefined date in 2021 or 2022, the devaluation of the tickets if they wished to resell the tickets, and the inability to obtain a refund for the tickets.
59. Plaintiff has been required to retain the undersigned to represent her, and all Class members, in this matter and is obligated to pay reasonable attorney's fees for the legal services being provided on their behalf.

WHEREFORE, Plaintiff BROOKS individually, and on behalf of all Class members, demands judgment against Defendant ULTRA for actual damages, as well as attorney fees and costs pursuant to Florida Statutes Sec. 501.2105, (FDUTPA) or other Florida or Federal law, pre- and post-judgment interest as permitted by law, and any other relief that this Court deems just and proper.

#### **COUNT V – UNJUST ENRICHMENT**

60. Plaintiff re-alleges paragraphs 1 through 31 of this Complaint as though fully set forth herein.
61. BROOKS and all other Class members purchased tickets to the ULTRA Music Festival 2020 to start on March 20, 2020 and run through March 22, 2020, later changed to an unspecified date in 2021 or 2022 by Defendant ULTRA.
62. BROOKS and all other Class members were not offered refunds for their tickets, and therefore either forced to attend a concert at a time that was not bargained for or not attend the concert and lose the value of the tickets.



63. BROOKS and all other Class members also suffered a devaluation of the tickets due to the change in start date to a year or more later, and were not able to sell the tickets for the amounts paid for the tickets or receive refunds for the tickets.
64. Defendant ULTRA has been unjustly enriched by not offering refunds and instead keeping the money paid by BROOKS and all other Class members, or by the persons who originally bought tickets and sold the tickets to BROOKS and other Class members.
65. Defendant ULTRA should be forced to refund to Plaintiffs BROOKS and the other Class members the amounts charged for the tickets, as Plaintiffs did not receive the value of what was purchased.

WHEREFORE, Plaintiff BROOKS individually, and on behalf of all Class members, demands judgment against Defendant ULTRA for actual and consequential damages, as well as attorney fees and costs pursuant to the Contract or other Florida or Federal law, pre- and post-judgment interest as permitted by law, and any other relief that this Court deems just and proper.

#### **COUNT VI – INJUNCTIVE RELIEF**

66. Plaintiff re-alleges paragraphs 1 through 31 of this Complaint as though fully set forth herein.
67. Plaintiff and the other ticket holder Class members will suffer irreparable injury if Defendant ULTRA is permitted to continue to sell tickets for, and then cancel or postpone, its music festivals without refunding the tickets.
68. Plaintiff and the other ticket holder Class members have a clear legal right to the refund of their tickets for the violations alleged in COUNTS I-V, above, and to request that the Court discontinue its unlawful business practices as outlined above.
69. Plaintiff and the other ticket holder class members have no other adequate remedy at law.

70. Plaintiff and the other ticket holder Class members are likely to succeed on the merits of the claims as presented to a jury at trial.

71. The injunctive relief requested by Plaintiff and the other ticket holder Class members would not be contrary to the interest of the public generally.

WHEREFORE, Plaintiff BROOKS individually, and on behalf of all Class members, demands that the Court grant an injunction against Defendant ULTRA, both ordering them to cease their business of selling tickets for music festivals, and requiring them to refund ticket holders for the cost of the valuable consideration paid for the ULTRA Music Festival 2020. Plaintiff BROOKS, individually, and on behalf of all Class members, also requests attorney fees and costs pursuant to the Contract or other Florida or Federal law, pre- and post-judgment interest as permitted by law, and any other relief that this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby requests a trial by jury on all issues triable by jury.

Dated: May 18, 2020

Respectfully submitted,

/s/ Marcus W. Corwin

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