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8 Attorneys for Plaintiff TESSA NESIS  
9 on Behalf of Herself and All Others Similarly Situated

10  
11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**  
13

14 TESSA NESIS on Behalf of  
Herself and All Others Similarly  
15 Situated, and the General Public and  
Acting in the Public Interest,

16 Plaintiff,

17 vs.

18 DO LAB, INC.; JASON FLEMMING  
19 a/k/a DEDE FLEMMING; JESSE  
FLEMMING; JOSH FLEMMING; and  
20 DOES 1-10, inclusive,

21 Defendants.  
22  
23  
24  
25

Case No. 2:20-cv-03452 DSF  
(PVCx)

FIRST AMENDED CLASS  
ACTION COMPLAINT FOR:

1. THEFT BY FALSE  
PRETENSES (CAL. PENAL  
CODE 496)
2. FRAUD;
3. RESCISSION (CAL. CIV.  
CODE § 1689);
4. VIOLATION OF THE  
CONSUMER LEGAL  
REMEDIES ACT (CIV. CODE §  
1750 *ET SEQ.*); AND
5. UNLAWFUL BUSINESS  
PRACTICES (BUS. & PROF.  
CODE §§ 17200, *ET SEQ.*).

JURY TRIAL DEMANDED

1 Plaintiff, on behalf of herself and all others similarly situated, based on  
2 information and belief, states as follows for her complaint:

3 **NATURE OF THE ACTION**

4 1. Plaintiff brings this class action to recover damages and other relief on  
5 behalf of herself and the Class who were all denied any refunds for their  
6 passes/tickets purchased for the 2020 *Lightning In A Bottle* music festival (“LIB”) by  
7 Do Lab, Inc. (“DLI”) and its owners, Jason “Dede” Flemming, Jesse Flemming, and  
8 Josh Flemming (collectively, “Defendants”).

9 2. Specifically, Defendants violated California law and engaged in  
10 deceptive and unfair practices by including unconscionable terms in their Terms and  
11 Conditions (“Terms”) and not providing Plaintiff and the Class any refunds despite  
12 cancelling LIB. As a result, Plaintiff brings this class action to recover the damages  
13 due to Plaintiff and the following Classes (referred to as, “the Class” or “Class  
14 Members”):

15 **General Class:** *All individuals residing in the United States that*  
16 *purchased one or more passes/tickets to LIB.*

17 **Subclass:** *All individuals residing in the United States that*  
18 *purchased one or more passes/tickets to any of Defendants’*  
19 *events in the last four years that contain a similar or identical*  
20 *Refund Policy.*

21 3. “Passes/tickets” include general admission passes, VIP passes, car and  
22 RV camping passes, boutique camping passes, lightning bus passes, and all other  
23 forms of admission relative to LIB.

24 **PARTIES**

25 4. Plaintiff Tessa Nesis is a resident of the State of Illinois. At all relevant  
26 times, Plaintiff purchased one or more passes/tickets to LIB.

1           5. Defendant Do Lab, Inc. (“DLI” or “Defendant”) is a corporation  
2 organized under the laws of the State of California with its principal place of  
3 business at 1024 Santee Street, Suite 600, Los Angeles, California, 90015. At all  
4 relevant times, DLI was doing business throughout the United States and the State of  
5 California.

6           6. Defendants Jason “Dede” Flemming, Jesse Flemming, and Josh  
7 Flemming (collectively, “The Flemmings”) are each individuals residing in Los  
8 Angeles County. At all relevant times, The Flemmings were principals, officers,  
9 owners or managing agents of DLI.

10           7. Defendants DOES 1 through 10, inclusive, are sued herein under  
11 fictitious names. Their true names and capacities are unknown to Plaintiff at this  
12 time. When their true names and capacities are ascertained, Plaintiff will amend this  
13 complaint by inserting their true names and capacities herein. Plaintiff is informed  
14 and believes and thereon alleges that each of the fictitiously named Defendants is  
15 responsible in some manner for the occurrences herein alleged, and that Plaintiff’s  
16 damages as herein alleged were proximately caused by those Defendants. Each  
17 reference in this complaint to “defendants,” “Defendants,” or a specifically named  
18 Defendant refers also to all Defendants sued under fictitious names.

19           8. Plaintiff is informed and believes and thereon alleges that each of the  
20 defendants designated herein as DOE took part in and participated with Defendants  
21 in all matters referred to herein and was in some manner responsible for the injuries  
22 and losses suffered by Plaintiff.

23           9. Plaintiff is informed and believes and thereon alleges that at all times  
24 herein mentioned each of the Defendants was the agent, servant and/or employee or  
25 occupied other relationships with each of the other named Defendants and at all  
26 times herein mentioned acted within the course and scope of said agency and/or  
27 employment and/or other relationship and each other Defendants has ratified,  
28 consented to, and approved the acts of his/her/its agents, employees, and

1 representatives, and that each actively participated in, aided and abetted, or assisted  
2 one another in the commission of the wrongdoing alleged in this Complaint.

3 **ALTER EGO**

4 10. The Flemmings were doing business as DLI and DLI is an alter ego of  
5 The Flemmings in that there is such a unity of interest between the DLI and The  
6 Flemmings that they are indistinguishable from one another. At all times, The  
7 Flemmings formulated, directed, controlled, had the authority to control, and/or  
8 participated in the acts and practices set forth in this complaint and received a direct  
9 financial benefit from them. As such, an inequitable result would occur if The  
10 Flemmings and DLI are not treated as one and the same.

11 11. In fact, The Flemmings have absconded with millions of dollars from  
12 passes/ticket sales compromising of monies belonging to Plaintiff and the Class and  
13 used that money for purposes other than LIB. LIB was not to take part until end of  
14 May 2020. Yet, the Flemmings would have the Class believe that they sold 10,000-  
15 20,000 tickets and somehow expended all of that money by March 2020, nearly three  
16 months before LIB was to take place. The Flemmings, Plaintiff believes, are laying  
17 the groundwork to dissolve and/or reinvent DLI as a separate entity so as to avoid all  
18 obligations of DLI and abscond with monies belonging to the Class.

19 **JURISDICTION AND VENUE**

20 12. This Court has jurisdiction over the action pursuant to the Class Action  
21 Fairness Act (“CAFA”), 28 U.S.C. § 1332(d), because at least one Class member is  
22 of diverse citizenship from one defendant, there are more than 100 Class members,  
23 and the aggregate amount in controversy exceeds \$5 million, exclusive on interest  
24 and costs.

25 13. This Court has personal jurisdiction over the parties because Plaintiff  
26 submits to the jurisdiction of the Court and Defendants are citizens of this State and  
27 systematically and continually have conducted and continue to conduct business in  
28

1 the County of Los Angeles and the State of California. Defendants also own and  
2 maintain substantial assets in the County of Los Angeles and the State of California.

3 14. Venue is proper within this judicial district under 28 U.S.C. § 1391(b)  
4 because a substantial part of the acts, conduct, events or omissions occurred within  
5 the State of California, within Los Angeles County, and because the Defendants  
6 transact business with consumers who reside in Los Angeles County and the State of  
7 California.

8 **FACTUAL BACKGROUND**

9 15. Since 2004, DLI has been in the business of event production.

10 16. DLI holds an annual event called *Lightning In A Bottle* (“LIB”), which  
11 usually takes place in May.

12 17. The Flemmings characterize DLI -- which is a multimillion dollar event  
13 planning and production company -- as a small, family business run by The  
14 Flemmings.

15 18. Each year, The Flemmings, through DLI, offer for sale a variety of  
16 passes/tickets to experience LIB. The passes/tickets include, but are not limited to  
17 general admission, VIP, car camping, RV camping, boutique camping, lightning bus,  
18 etc.

19 19. Over the years, LIB has grown tremendously in popularity and scope—  
20 **and now greed**. What started as an 800-person event in 2004 has developed into a  
21 25,000-plus person event and continues to grow. Whereas DLI used to rent space to  
22 certain food and service vendors, the corporation now offers these services itself. In  
23 addition to ticket sales revenue, the corporation earns incomes from its own sale of  
24 food, drink, alcohol, upscale camping, RV passes, merchandise, showers and more.

25 20. In March 2020, in light of the COVID-19 crisis, LIB was cancelled.  
26 Unlike other event production companies and concert holders, however, Defendants  
27 greedily and steadfastly refuse to refund any refunds at all for the 10,000-20,000  
28 passes/tickets sold.

1           21. In addition, the Refund Policy in the Terms includes unconscionable  
2 and illusory terms and conditions:

3           REFUNDS AND EXCHANGES

4           ALL SALES ARE FINAL. NO REFUNDS WILL BE GRANTED FOR  
5 ANY REASON. EVENT DATE AND TIME SUBJECT TO CHANGE.  
6 ALL RIGHTS RESERVED. IF THE EVENT FOR WHICH THIS  
7 TICKET IS ISSUED IS RESCHEDULED OR CANCELLED, THE  
8 HOLDER SHALL NOT BE ENTITLED TO A REFUND EXCEPT AS  
9 OTHERWISE REQUIRED BY LAW. INSTEAD, THE HOLDER  
10 SHALL HAVE THE RIGHT, EXCEPT AS OTHERWISE  
11 PROVIDED, (1) IF THE EVENT IS RESCHEDULED TO A DATE  
12 AND TIME WITHIN TWELVE MONTHS OF THE DATE AND  
13 TIME ORIGINALLY SCHEDULED, TO USE THIS TICKET TO  
14 ATTEND THE EVENT AT THE RESCHEDULED DATE AND  
15 TIME, OR (2) IF THE EVENT IS NOT RESCHEDULED WITHIN  
16 TWELVE MONTHS OF THE DATE AND TIME ORIGINALLY  
17 SCHEDULED, TO EXCHANGE THIS TICKET TO ANOTHER  
18 EVENT THAT IS DESIGNATED BY MANAGEMENT AS THE  
19 OFFICIAL REPLACEMENT EVENT FOR THE CANCELLED  
20 EVENT.

21           (See Exhibit A, Terms and Conditions.)

22           22. Under California Law, a contract is unenforceable as illusory when one  
23 of the parties has the unfettered or arbitrary right to modify or terminate the  
24 agreement or assumes no obligations thereunder. (*Asmus v. Pacific Bell* (2000) 23  
25 Cal.4th 1, 15-16.)

26           23. Defendants' Terms render the contract between Defendants and the  
27 purchasers illusory because Defendants retain complete and unfettered control to  
28

1 modify or terminate the agreement without assuming any obligations towards  
2 Plaintiff and the Class.

3 24. On or about March 13, 2020, Defendants cancelled LIB and made zero  
4 efforts to refund Plaintiff and the Class' money.

5 25. Instead, on or about March 13, 2020, The Flemmings embarked on a  
6 campaign of misrepresentations aimed at the hearts and kindness of the Class to steal  
7 their money:

8 A. "The Do LaB is a small, family run business and we humbly ask  
9 for your patience as we determine our next steps."

10 B. "It is important for everyone to understand that Lighting in a  
11 Bottle is owned and operated as a small family business, as it has  
12 since the beginning."

13 C. "The reason we are not able to offer refunds is that we are an  
14 independent company, we have no deep pockets or outside  
15 investors."

16 D. "At this time all of the money that was brought in through ticket  
17 sales was already paid out on non-refundable deposits, building  
18 materials, and staff to bring the festival to life."

19 26. On or about March 24, 2020, Plaintiff's counsel initiated (but did not  
20 file) a predecessor action (*Rutledge v. Do Lab, Inc.*) against DLI for their refusal to  
21 refund tickets. In direct response to that proposed lawsuit, DLI refunded that  
22 Plaintiff in a misunderstood attempt to defeat the class action.

23 27. As a result of Defendants failure to refund the entire Class not just the  
24 plaintiff in the previous unfiled action, this action was filed on April 14, 2020. Upon  
25 filing of this action, Plaintiff immediately sent a courtesy copy to Defendants and  
26 Defendants acknowledged receipt within the same hour.

27 28. Once again, in direct response to Plaintiff and her counsel's efforts,  
28 Defendants changed their tune but not their end-game—to continue to retain Plaintiff

1 and the Class' monies. Keeping in line with their "sympathy play" on the Class, they  
2 now make the following misrepresentations:

- 3 A. [T]icket sales, in a good year, cover the festival's bills and we  
4 rely on other sales at our festival to make our profit."
- 5 B. When it became clear to us that the event was going to be  
6 canceled, we were mid-production and had spent nearly all of the  
7 ticket money on LIB. We faced a heartbreaking truth: we do not  
8 have enough money to issue full refunds to all of you. We  
9 therefore announced that there would be no refunds.
- 10 C. ***Notwithstanding our prior announcement***, we remain committed  
11 to getting a full refund to everyone who wants one. We have  
12 worked together with the music agents and artists, and are  
13 thankful to announce that a vast majority of the artists, despite  
14 having incurred their own non-refundable expenses in planning  
15 for their LIB performances, are returning their deposits in an  
16 effort to help us in this time of crisis.
- 17 D. Our goal is to build the largest pool of money possible so that we  
18 can then use it to help refund ticket purchasers. However, we  
19 need you to understand the situation, and that is ***if the majority of***  
20 ***our community request refunds, it may mean the end of Do LaB***  
21 because the pool will be far too small to refund everyone, and that  
22 debt will be crushing.

23 (See Exhibit B, April 15, 2020 Email to the Class (emphasis added).)

24 29. Defendants conduct of preying on the Class to steal their money does  
25 not stop there: Defendants next ask the Class to simply donate their money to  
26 Defendants or let them keep it for two years:

27 If your life has been touched or changed in an unforgettable way by  
28 Lightning in a Bottle, please help us make it through to the other side.



Specifically, we ask that you either:

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2  
3 **1. Support the Future of LIB With a Gift.**

4 If you want our organization to continue to exist and you are able to,  
5 please gift your 2020 purchase to our shared future. If you can choose  
6 this option we would be forever grateful.

7 Or,

8 **2. Transfer Your 2020 Ticket to a Ticket for 2021 or 2022.**

9 If you can transfer your 2020 ticket to either 2021 or 2022, please do so.  
10 If you are able and willing, please consider choosing 2022 instead of  
11 2021. As an incentive to choose 2022, you will receive a free VIP  
12 upgrade for each 2020 festival pass. If the majority of you choose 2021,  
13 it will create an extremely challenging set of financial circumstances for  
14 us next year. Your understanding and willingness to work with us on  
15 this is appreciated beyond measure. Thank you.

16 (See Exhibit B.)

17 30. Option 3, which they heavily discourage the Class from taking, is some  
18 refund at some future unknown date:

19 **3. Join the Pool to Receive a Refund.**

20 If you truly cannot do either option 1 or 2, please sign up for a refund by  
21 April 29th at 12pm. Once the refund registration window closes, we will  
22 understand how many full refunds we can pay, and whether we need to  
23 offer partial refunds. Refunds will not be immediate. We cannot give an  
24 estimate as to when, but will communicate as we get clarity.

25 31. Defendants then closeout on this latest part of their campaign to steal  
26 the Class' money by returning to their theme of preying on the Class' sympathies for  
27 Defendants:  
28

1 We understand that this is a big request of all of you, and far from a  
2 perfect resolution. But we also know that you care about LIB as much  
3 as we do, and that we likely cannot keep it afloat without your  
4 cooperation. We want to support you, and are asking you to support us.  
5 And, if you have any other creative ideas or solutions that we might  
6 have missed, please let us know at:  
7 [questions2020@lightninginabottle.org](mailto:questions2020@lightninginabottle.org)

8 (See Exhibit 2.)

9 32. Defendants’ deceit does not end there. The refund “option” presents  
10 another volley of illusory obligations to avoid providing a *full* refund:

- 11 A. **Defendants will first doge the refund by claiming they could**  
12 **not find it:** “If we are not able to find your order, or the info  
13 entered below does not match the order number’s info, we will  
14 not be able to process the refund.”
- 15 B. **Next, to the extent they locate the record, Defendants will**  
16 **decide how much to refund:** “As to final refund amount, we  
17 will use *best efforts* to gather the largest pool of money possible  
18 so we can distribute it pro rata to the customers who have opted  
19 into the refund pool. . . . [T]here is a possibility, based on the  
20 amount of money in the pool and the number of customers  
21 requesting a refund, that you may only receive a partial refund.”
- 22 C. **Defendants will decide when, if ever, the refunds will actually**  
23 **be made:** “Totaling all the refund requests after the deadline will  
24 take time to obtain the largest amount of funding for the pool as  
25 possible and we cannot give you an estimate as to how long it  
26 will take to receive your refund.”
- 27 D. **Then there are the two final kickers—(1) you must take**  
28 **affirmative action and (2) provide a release:** “For non-

1 responders of the options provided, the credit of your ticket  
2 purchase will be applied to the forgo refund option. . . . By  
3 selecting ‘I agree’ below and submitting the form, you are  
4 acknowledging you have fully read, understand and agree to the  
5 Disclaimer and the option that you have chosen, that you are of  
6 legal age to consent to this agreement, and are choosing this  
7 option in exchange for a release of claim against Do Lab, Inc. and  
8 its employees arising from your purchase of a ticket to Lightning  
9 In A Bottle 2020 and the cancellation of the event.

10 (See Exhibit C, Refund Option.)

11 33. It is important to note that the refund “option” was made available after  
12 and as direct result of Plaintiff’s efforts in filing and pursuing this action.

13 34. In the end, each of the Defendants’ conduct and misrepresentations are  
14 part of their campaign to misuse the trust of their loyal customers, discourage their  
15 loyal customers from pursuing their rights, and to abscond with their money.

16 35. Plaintiff and the Class performed all obligations and conditions required  
17 of them.

18 **CLASS ALLEGATIONS**

19 36. Description of the Class: Plaintiff brings this Class action on behalf of  
20 themselves and the Classes defined as follows:

21 **General Class:** *All individuals residing in the United States that*  
22 *purchased one or more passes/tickets to LIB.*

23 **Subclass:** *All individuals residing in the United States that*  
24 *purchased one or more passes/tickets to any of Defendants’*  
25 *events in the last four years that contain a similar or identical*  
26 *Refund Policy.*

27 37. Excluded from the Classes are governmental entities, any entity in  
28 which Defendant had a controlling interest, and Defendant’s officers, directors, and

1     salaried and exempt employees. Also excluded from the Classes is any judge,  
2     justice, or judicial officer presiding over this matter and the members of their  
3     immediate families and judicial staff.

4             38. Plaintiff reserves the right to modify the Classes' description and the  
5     Classes' period based on the results of discovery.

6             39. Numerosity: The proposed Classes are so numerous that individual  
7     joinder of all its members is impracticable. As the factual allegations demonstrate,  
8     thousands of persons are members of the Classes. While the exact number and  
9     identities of the members of the Classes are unknown at this time, such information  
10    can be ascertained through appropriate investigation and discovery. The disposition  
11    of the claims of the members of the Classes in a single class action will provide  
12    substantial benefits to all parties and to the Court.

13            40. Common Questions of Law and Fact Predominate: There are many  
14    questions of law and fact common to the representative Plaintiff and the Classes, and  
15    those questions substantially predominate over any questions that may affect  
16    individual Class members. Common questions of fact and law include, but are not  
17    limited to, the following:

- 18            a. Whether Defendants' Refund Policy is illusory or includes  
19            unconscionable terms;
- 20            b. Whether Defendants' Refund Policy violates the CLRA;
- 21            c. Whether Defendants engaged in unlawful, unfair, or fraudulent  
22            business practices in violation of Business and Professions Code  
23            § 17200 *et seq.*;
- 24            d. The nature and extent of damages, restitution and disgorgement,  
25            and other remedies to which Plaintiff and the members of the  
26            Classes are entitled.

27            41. Typicality: Plaintiff's claims are typical of the claims of the members  
28    of the Classes. Plaintiff and all members of the Classes have been similarly affected

1 by Defendant's common course of conduct which failed to provide Plaintiff and the  
2 Classes rest and meal periods.

3 42. Adequacy of Representation: Plaintiff will fairly and adequately  
4 represent and protect the interests of the Classes. Plaintiff has retained counsel with  
5 substantial experience in prosecuting complex and class action litigation. Plaintiff  
6 and her counsel are committed to vigorously prosecuting this action on behalf of the  
7 Classes, and have the financial resources to do so. Neither Plaintiff nor her counsel  
8 has any interests adverse to those of the Classes.

9 43. Superiority of a Class Action: Plaintiff and the members of the Classes  
10 suffered, and will continue to suffer, harm as a result of Defendants' unlawful and  
11 wrongful conduct. A class action is superior to other available methods for the fair and  
12 efficient adjudication of the controversy. Individual joinder of all members of the  
13 Classes is impractical. Even if individual Class members had the resources to pursue  
14 individual litigation, it would be unduly burdensome to the courts in which the  
15 individual litigation would proceed. Individual litigation magnifies the delay and  
16 expense to all parties in the court system of resolving the controversies engendered  
17 by Defendants' common course of conduct. The class action device allows a single  
18 court to provide the benefits of unitary adjudication, judicial economy, and the fair  
19 and equitable handling of all class members' claims in a single forum. The conduct  
20 of this action as a class action conserves the resources of the parties and of the  
21 judicial system, and protects the rights of the Classes. Furthermore, for many, if not  
22 all, class members, a class action is the only feasible mechanism that allows them an  
23 opportunity for legal redress and justice.

24 44. Adjudication of individual class members' claims with respect to the  
25 Defendants would, as a practical matter, be dispositive of the interests of other  
26 members not parties to the adjudication, and could substantially impair or impede the  
27 ability of other class members to protect their interests.

**FIRST CAUSE OF ACTION**

**THEFT BY FALSE PRETENSES (CAL. PENAL CODE § 496(C))**

**(Against All Defendants)**

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4 45. The preceding paragraphs of this Complaint are realleged and  
5 incorporated by reference. Plaintiff asserts this claim on behalf of herself and the  
6 Classes.

7 46. California Penal Code § 496(c) reads: “Any person who has been  
8 injured by a violation of subdivision (a) or (b) may bring an action for three times the  
9 amount of actual damages, if any, sustained by the plaintiff, costs of suit, and  
10 reasonable attorney's fees.” Section 496(a) makes receiving, buying, or withholding  
11 property “that has been obtained in any manner constituting theft” an act punishable  
12 by imprisonment. In turn, section 496(c), applies that statute in civil cases. (*Bell v.*  
13 *Feibush* (2013) 212 Cal.App.4th 1041.)

14 47. From March 13, 2020 and continuing to the present, Defendants have  
15 retained, and refused to return, money (passes/tickets sales) from Plaintiff and the  
16 Class by theft by false pretenses.

17 48. From March 24, 2020, and continuing to the present, Plaintiff demanded  
18 return of said money.

19 49. Defendants continue to wrongfully withhold the money.

20 50. As a result of Defendants’ wrongful acts and omissions, Plaintiff and  
21 the Class have suffered damages the amount in excess of \$5,000,000.

22 51. In addition, California Penal Code §496(c) provides for treble damages  
23 and attorneys’ fees and costs.

24 52. Defendants are subject to exposure for punitive damages based upon  
25 their acts of malice, oppression and fraud as those words are used and defined in  
26 Civil Code § 3294.

**SECOND CAUSE OF ACTION**  
**FRAUD – IN THE PERFORMANCE**  
**(Against All Defendants)**

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4       53. The preceding paragraphs of this Complaint are realleged and  
5 incorporated by reference. Plaintiff asserts this claim on behalf of herself and the  
6 Classes.

7       54. At all relevant times, and specifically from between March 13, 2020 and  
8 continuing to the present, Defendants (via The Flemmings) communicated  
9 misrepresentations of material facts to, and concealed material facts from, Plaintiff,  
10 including, but not limited to the following: that they did not have money to refund  
11 Plaintiff and the Class as specified in paragraphs 24 through 34.

12       55. The misrepresentations and concealments, as specified in paragraphs 24  
13 through 34, were made and ratified by each defendant.

14       56. The representations and concealments made by Defendants, as alleged  
15 above, were erroneous, false, and fraudulent and were made by them with the  
16 intention and purpose that Plaintiff would rely and be deceived by them.

17       57. Plaintiff justifiably relied on the Defendants' representations and  
18 concealments. Had Plaintiff known the true facts (e.g., that Defendants have  
19 Plaintiff and the Class' money but do not intend on returning it), Plaintiff would have  
20 conducted herself differently by, *inter alia*, taking actions such as filing suit, sooner.

21       58. As a legal result of Defendants' fraud and deceit, Plaintiff has suffered  
22 (and continues to suffer) substantial injury and damage.

23       59. Plaintiff is also entitled to exemplary and/or punitive damages as a  
24 result of acts and omissions by Defendants which were malicious, fraudulent and/or  
25 oppressive in nature as those words are defined in Civil Code § 3294.  
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**THIRD CAUSE OF ACTION**  
**RESCISSION (CAL. CIV. CODE § 1689)**  
**(Against All Defendants)**

60. The preceding paragraphs of this Complaint are realleged and incorporated by reference. Plaintiff asserts this claim on behalf of himself and the Classes.

61. Plaintiff and the Class seek, pursuant to Civil Code § 1689(b), to rescind the agreements and contracts relative to the passes/tickets on the following grounds: “(3) If the consideration for the obligation of the rescinding party becomes entirely void from any cause; . . . (4) If the consideration for the obligation of the rescinding party, before it is rendered to him, fails in a material respect from any cause; . . . (6) If the public interest will be prejudiced by permitting the contract to stand;” and other causes and grounds according to proof.

62. Because the consideration due Plaintiff and the Class has failed, Plaintiff and the Class are entitled to the return of all monies paid to Defendants and request the same by way of compensatory damages. (Civ. Code § 1691.)

63. Plaintiff and the Class intend service of the summons and complaint in this action to serve as notice of rescission of the Agreement.

**FOURTH CAUSE OF ACTION**  
**VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT**  
**(CIVIL CODE § 1750 ET SEQ.)**

**(Against All Defendants)**

64. The preceding paragraphs of this Complaint are realleged and incorporated by reference. Plaintiff asserts this claim on behalf of herself and the Classes.

65. Defendants are a “corporations” as defined by California Civil Code section 1761(c). Plaintiff and Class members are “consumers” within the meaning of California Civil Code section 1761(d).





1           73. This cause of action is brought on behalf of Plaintiff and members of  
2 the general public pursuant to California Business and Professions Code section  
3 17200 *et seq.* which provides that “unfair competition shall mean and include any  
4 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue  
5 or misleading advertising and any act prohibited by Chapter 1 (commencing with  
6 Section 17500) of Part 3 of Division 7 of the Business and Professions Code.”

7           74. Defendants’ above-described deceptive and misleading acts and  
8 practices have deceived and/or are likely to deceive Plaintiff and other Class  
9 members.

10           75. Plaintiff and the Classes were, in fact, deceived as to the terms and  
11 conditions of services provided by Defendants.

12           76. The actions described herein constitute a violation of California  
13 Business and Professions Code section 17200, *et seq.* Specifically, Defendants have  
14 engaged in acts in violation of law, including, but not limited to violations of  
15 Business and Professions Code section 17200 *et seq.*, and California Civil Code §§  
16 1770 (a (14) and (19)).

17           77. Plaintiff and Class members have suffered actual harm as a result of  
18 Defendants’ misrepresentations and/or omissions. Plaintiff and the Class have  
19 suffered injury in fact and have lost money as a result of such unfair and unlawful  
20 business practices. Such injuries and losses include, but are not limited to, the full  
21 value and amounts paid for the passes/tickets.

22           78. Plaintiff and the Class seek restitution, injunctive relief and all other  
23 relief from Defendants allowed under §17200, *et seq.* Plaintiff and the Class also  
24 seek attorneys’ fees pursuant to Cal. Code Civ. Proc. §1021.5, as well as such other  
25 and further relief as the Court deems just and proper.

**PRAYER FOR RELIEF**

1  
2 WHEREFORE, Plaintiff and members of the Classes request that the Court  
3 enter an order or judgment against the Defendants as follows:

4 1. Certification of the Class and appointment of Plaintiff as Class  
5 Representative and her counsel of record as Class Counsel;

6 2. Adjudge and decree that each Defendant has engaged in the conduct  
7 alleged herein;

8 3. Enjoin and restrain each Defendant and their officers, agents, servants  
9 and employees, and those in active concert or participation with them, from  
10 continuing or engaging in such conduct or other conduct having similar purpose or  
11 effect;

12 4. For injunctive relief prohibiting the violations of the Consumers Legal  
13 Remedies Act alleged in the complaint unless and until such time as the complaint is  
14 amended to include claims for damages pursuant to the notice and time limitations  
15 provided for by California Civil Code 1780(b);

16 5. Award of treble damages pursuant to Cal. Penal Code § 496(c) and *Bell*  
17 *v. Feibush* (2013) 212 Cal.App.4th 1041;

18 6. Award to Plaintiff and the Classes attorneys' fees and other costs of suit  
19 to the extent permitted by law;

20 7. Award general and special damages, according to proof;

21 8. Award of punitive damages;

22 9. Award restitution and all other relief allowed under §17200, *et seq.* to  
23 Plaintiff and the Classes; and

24 10. As to all causes of action, such other and further relief as the Court may  
25 deem just and proper.

1 Dated: April 16, 2020

GERAGOS LAW GROUP  
SINA LAW GROUP

2  
3  
4 By: 

5 MATTHEW J. GERAGOS  
Attorney for Plaintiff and the Classes

6  
7 **DEMAND FOR JURY TRIAL**

8 Plaintiff demands a trial by jury in this action.

9 Dated: April 16, 2020

GERAGOS LAW GROUP  
SINA LAW GROUP

10  
11  
12 By: 

13 MATTHEW J. GERAGOS  
Attorney for Plaintiff and the Classes