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**IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON IN AND FOR
THE COUNTY OF KING**

DANIEL MAHONEY, an individual,

Plaintiff,

v.

EXPEDIA, INC.;

Defendant.

Cause No.:

COMPLAINT

I. COMPLAINT – CLASS ACTION

Plaintiff, Daniel Mahoney, individually and on behalf of all others similarly situated, brings this Class Action Complaint against Defendant Expedia, Inc. (“Expedia”), alleging as follows:

II. NATURE OF ACTION

1. This Class Action Complaint comes during a global pandemic arising from a novel coronavirus, COVID-19. Nationwide lockdowns have sent unemployment to historic levels, and the economic and health effects have imposed great hardship on millions of Americans. National and worldwide travel restrictions have been imposed to protect health and welfare during this public health emergency.

1 2. The pandemic has dramatically impacted travel, particularly air travel,
2 which is down nearly 70% from last year. The ability to travel has been eliminated for
3 many Americans.

4 3. Airlines have slashed flight schedules, resulting in thousands of flight
5 cancellations for millions of passengers.

6 4. Under U.S. law, airline passengers are entitled to a refund if the airline
7 cancels a flight, regardless of the reason the airline cancels the flight.

8 5. Some carriers have honored this requirement, while others have not.

9 6. Some carriers have offered only to rebook and/or provide travel vouchers
10 to passengers whose trips the airlines canceled.

11 7. Many of these carriers market and book their flights to consumers through
12 online travel agencies.

13 8. An online travel agency (OTA) is a web-based marketplace that allows
14 consumers to research and book travel products and services through a single
15 interface.

16 9. When using an OTA, the consumer books his or her flight directly with the
17 OTA rather than the airline.

18 10. The OTA acts as a "middleman" or broker in the transaction between the
19 consumer and the airline.

20 11. The OTA provides the consumer with confirmation of the flight, and
21 provides the consumer with other important notices about the flight thereafter, including
22 delays and cancelations.

23 12. The consumer's primary relationship with respect to his or her flight
24 purchase is with the OTA.

25 13. The OTAs charge a booking fee to the airlines, and often that fee is
26 passed directly to consumers within the price of the flight.

1 14. Millions of American consumers book airline travel through OTAs.

2 15. The largest OTAs have come to possess considerable leverage in the
3 travel marketplace, and most airlines offer flights through OTAs.

4 16. Expedia is the largest OTA in the United States with approximately 70
5 percent of the OTA market. Expedia operates Expedia.com, Orbitz, Hotels.com,
6 Trivago, CheapTickets, Hotwire, HomeAway, and Travelocity.

7 17. During this unprecedented global health and economic crisis, consumers'
8 need for refunds over travel vouchers is pressing. Travel vouchers provide little security
9 in this crisis, particularly where many individuals need money now to pay for basics like
10 food and rent.

11 18. When airlines began cancelling flights in the spring of 2020, customers
12 who had booked their flights through Expedia received notice of the cancellations
13 directly from Expedia.

14 19. Expedia told its customers what their options were, and told its customers
15 to contact Expedia to elect an option.

16 20. However, Expedia does not necessarily provide its customers with refunds
17 for canceled flights.

18 21. If an airline tells Expedia that a refund is not an option, Expedia tells its
19 customer that a refund is not an option.

20 22. In its role as middleman or broker, Expedia manages the consumer's
21 purchase, but refuses to ensure that they receive refunds for canceled flights if an
22 airline does not agree to do so.

23 23. Expedia's actions have financially damaged Plaintiff and the Class
24 Members. Plaintiff requested refunds for tickets on a cancelled flight and was entitled to
25 a refund. But, as with so many other passengers, Expedia denied that request. Expedia
26 has engaged in unfair and deceptive conduct through its policy to refuse refunds,

V. FACTS

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2 30. On March 11, 2020, the World Health Organization declared COVID-19 a
3 pandemic. That same day, U.S. officials announced new travel bans blocking most
4 visitors from continental Europe to the United States.

5 31. Travel restrictions domestically began on March 16, 2020, with many
6 states, counties, and municipalities announcing shelter-in-place orders throughout the
7 weeks that followed.

8 32. Many other countries have instituted similar travel bans and restrictions.
9 At the time of the drafting of this complaint, most European nations have not yet begun
10 permitting Americans to enter their countries.

11 33. As airlines announced flight cancellations (combined with decreased
12 bookings), some took a variety of steps to make it difficult, if not impossible, for
13 consumers to receive any refund on pandemic cancelled flights.

14 34. Despite its role as middleman or broker in its customers' purchase of air
15 travel on these airlines, Expedia did not intervene or take steps to ensure that its
16 customers were given the right to receive a refund on pandemic cancelled flights. It did
17 so despite consumers' right to receive a refund for canceled flights, even with
18 nonrefundable tickets.

19 35. According to the United States Department of Transportation's April 3,
20 2020, Enforcement Notice, if any airline cancels a flight, passengers are entitled to
21 receive a full refund.

22 36. This notice was issued to "remind" both U.S. and foreign carriers that,
23 during the pandemic, their "obligation to refund passengers for cancelled or significantly
24 delayed flights remains unchanged."
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1 37. The DOT's notice pointed out that this obligation to promptly refund airfare
2 for flights that a carrier cancels is "longstanding," citing *Enhancing Airline Passenger*
3 *Protections*, 76 Fed. Reg. 23110-01 (April 25, 2011).

4 38. However, many airlines have attempted to keep passenger money
5 through providing travel credits, not refunds.

6 39. When customers purchased tickets from Expedia on flights that were later
7 canceled, Expedia has not taken steps to ensure its customers have the option of
8 receiving a full refund.

9 40. According to the Department of Transportation, it is an unfair or deceptive
10 practice for an OTA to "fail[] or refus[e] to make proper refunds promptly when service
11 cannot be performed as contracted." 14 C.F.R. § 399.80(l).

12 41. Expedia's failure to ensure customers refunds contradicts such
13 established transportation requirements that operate for the benefit and protection of
14 OTA consumers, and constitutes an unfair or deceptive trade practice under
15 Washington law.

16 42. On or about December 6, 2019, Plaintiff Mahoney purchased a round trip
17 ticket from San Francisco to Milan from Expedia, on flights provided by TAP Air
18 Portugal.

19 43. According to his itinerary supplied by Expedia, he was to depart on
20 July 19, 2020, and return on July 27, 2020.

21 44. Plaintiff was charged a total of \$905.08 for these flights.

22 45. On May 24, 2020, Expedia notified Plaintiff by email that the airline had
23 "made an involuntary schedule change" and "unfortunately your original flight is no
24 longer operating."

1 46. Expedia told Plaintiff it had “worked closely with TAP Portugal to come up
2 with comparable flight options” and requested his “immediate response to this email
3 with the option [he] would like to proceed.”

4 47. Expedia gave Plaintiff only one option:

5 **OPTION 1**

6 Depending on TAP Portugal policy, you may request a full refund for your
7 ticket. If you choose this option, you’ll need to make a new booking
 based on the flights and prices currently available.

8 48. Expedia also promised to “contact [Plaintiff] first by phone, then by email
9 if the option you choose is no longer available.”

10 49. The day after receiving this email, Plaintiff went to Expedia’s website and
11 initiated a “chat” conversation with an Expedia agent. He requested a refund of his
12 purchase for the canceled flight. The agent said that he would instead receive a
13 voucher for his purchase price for use with American Airlines, valid until December 31,
14 2020. The agent indicated that the airline would not provide a refund. Plaintiff said he
15 wanted a refund, and the agent disconnected the chat.

16 50. Plaintiff promptly initiated a second chat with a second Expedia agent.
17 The second agent said the same thing as the first. The agent said that the airline would
18 only provide a voucher. Plaintiff indicated he believed he had a legal right to a refund.
19 The second agent disconnected the second chat with the Plaintiff.

20 51. Plaintiff spent between 30 and 60 minutes engaged in these two chats
21 with Expedia, to no effect.

22 52. Plaintiff then called Expedia. After reaching an Expedia agent, the agent
23 told Plaintiff the same thing the previous agents had—that that the airline was not
24 offering a refund but only a voucher for use on American Airlines. This agent said the
25 voucher would be valid until December 31, 2021. Again, when Plaintiff asserted he had
26 a right to and wanted a refund, the agent disconnected the call.

1 59. The definition of the Class is unambiguous. Plaintiff is a member of the
2 Class he seeks to represent. Class Members can be notified of the class action through
3 ticketing contact information and/or address lists maintained in the usual course of
4 business by Defendant.

5 60. Under Rule 23(a)(1), Class Members are so numerous and geographically
6 dispersed that the individual joinder of all Class Members is impracticable. The total
7 number of members of the proposed Class is greater than 100 and likely in the tens or
8 hundreds of thousands.

9 61. Expedia has acted or refused to act on grounds generally applicable to
10 Plaintiff and the Class Members, making appropriate final injunctive relief and
11 declaratory relief regarding the Class under Rule 23(b)(2).

12 62. Plaintiff shows that common questions of law and fact predominate over
13 the questions affecting only individual Class Members under Rule 23(a)(2) and (b)(3).
14 Some of the common legal and factual questions include:

- 15 a. Whether Defendant engaged in the conduct alleged;
16 b. Whether Defendant has a policy and/or procedure of denying refunds to Class
17 Members for cancelled flights;
18 c. Whether Defendant's policy and/or procedure of denying refunds to passengers
19 on cancelled flights is unfair or deceptive under Washington law;
20 d. Whether Washington law applies to the claims of all Class members nationwide;
21 e. The nature and extent of damages and other remedies to which the conduct of
22 Defendant entitles the Class Members.

23 63. Defendant engaged in a common course of conduct giving rise to the legal
24 rights sought to be enforced by the Class Members. Similar or identical statutory
25 violations and deceptive business practices are involved. Individual questions pale by
26 comparison to the numerous common questions that predominate.

1 64. The injuries sustained by the Class Members flow, in each instance, from
2 a common nucleus of operative facts under Rule 23(a)(2) – Defendant’s misconduct. In
3 each case Defendant sold tickets on flights that were cancelled yet denied refunds to
4 Class Members for such cancelled flights.

5 65. The Class Members have been damaged by Defendant’s misconduct
6 through Expedia’s practice of denying refunds to Class Members for such cancelled
7 flights.

8 66. Plaintiff’s claims are typical of the claims of the other Class Members as
9 required by Rule 23(a)(3). Plaintiff paid for airline tickets and did not receive a refund for
10 his cancelled flight.

11 67. Plaintiff and his counsel will fairly and adequately protect the interests of
12 the Class as required by Rule 23(a)(4). Plaintiff is familiar with the basic facts that form
13 the bases of the Class Members’ claims. Plaintiff’s interests do not conflict with the
14 interests of the other Class Members he seeks to represent. Plaintiff has retained
15 counsel competent and experienced in class action litigation and intends to prosecute
16 this action vigorously. Plaintiff’s counsel has successfully prosecuted complex class
17 actions, including consumer protection class actions. Plaintiff and Plaintiff’s counsel will
18 fairly and adequately protect the interests of the Class Members.

19 68. Consistent with Rule 23(b)(3), the class action device is superior to other
20 available means for the fair and efficient adjudication of the claims of Plaintiff and the
21 Class Members. The relief sought per individual members of the Class is small given
22 the burden and expense of individual prosecution of the potentially extensive litigation
23 necessitated by the conduct of Defendant. It would be virtually impossible for the Class
24 Members to seek redress individually. Even if the Class Members themselves could
25 afford such individual litigation, the court system could not.

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VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class Members request that the Court enter an order or judgment against Defendant including:

A. Certification of the action as a class action under Rules 23(b)(2) and/or 23(b)(3) of the Civil Rules, appointment of Plaintiff as Class Representative, and appointment of his counsel as Class Counsel;

B. Damages and refunds in the amount of unrefunded monies paid for tickets sold by Defendant for flights that have been canceled;

C. Actual damages, statutory damages, punitive or treble damages, and such other relief as provided by law;

D. Pre-judgment and post-judgment interest on such monetary relief;

E. Other appropriate injunctive relief as permitted by law or equity, including an order enjoining Defendant to obtain and issue refunds for cancelled flights;

F. The costs of bringing this suit, including reasonable attorney's fees; and

G. All other relief to which Plaintiff and members of the Class may be entitled by law or in equity.

IX. JURY DEMAND

Plaintiff demands trial by jury on his own behalf and on behalf of the Class Members.

Dated: July 29, 2020

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