

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

State of Minnesota, by its Attorney General,
Keith Ellison,

Case Type: Other Civil
(Consumer Protection)

Plaintiff,

CONSENT JUDGMENT AND ORDER

v.

StubHub, Inc.,

Defendant.

CONSENT JUDGMENT AND ORDER

Plaintiff, State of Minnesota, by its Attorney General, Keith Ellison (“Attorney General” or “Plaintiff”) and Defendant, StubHub, Inc., (“StubHub”), have agreed to the stipulations and terms of this Consent Judgment and Order (“Judgment”) as final adjudication of this civil action by the Court without the taking of proof and without trial, without this Judgment constituting evidence of or an admission by StubHub, regarding any issue of law or fact alleged in the Complaint, and without StubHub admitting any liability, and with all parties having waived their right to appeal.

This Judgment is entered in connection with the investigation of StubHub undertaken by the Attorneys General of the States and Commonwealths of Arizona, Arkansas, Colorado, Indiana, Maryland, Minnesota, New Hampshire, Ohio, Virginia, Wisconsin, and the District of Columbia (“States”) pursuant to each of the States’ respective Consumer Protection Laws, including unfair and deceptive trade acts or practices statutes. This Judgment is entered into solely for the purposes of settlement and to avoid incurring costs associated with litigation.

CONSENT JUDGMENT AND ORDER

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PARTIES

1.

The Attorney General is authorized to enforce the State's consumer protection laws as alleged in Plaintiff's civil enforcement action.

2.

Defendant StubHub is a Delaware corporation with its principal office or place of business located at 199 Fremont Street, San Francisco, California 94105.

DEFINITIONS

3.

For purposes of this Judgment, the following definitions apply:

- (a). "Buyer" means any individual who purchased one or more event tickets on StubHub's ticket marketplace: (1) on or before March 25, 2020 and (2) resided in Minnesota at the time of purchase or purchased a ticket for an event in Minnesota.
- (b). "Clear and Conspicuous" means that a disclosure is made in such size (*i.e.*, shall be of at least equal prominence to the representation triggering the disclosure), color, contrast, location, duration, and/or audibility that it is difficult to miss (*i.e.*, easily noticeable, readable, understandable, and/or capable of being heard). A disclosure may not contradict or be inconsistent with any other information with which it is presented. If a disclosure modifies, explains or clarifies other information with which it is presented, then the disclosure must be presented in proximity to the information it modifies, explains, or clarifies, in a manner that is readily noticeable, readable, and understandable, and not obscured in any manner. In addition:
 - (1) The disclosure must be made through the same means, whether audio, visual, or both, through which the representation triggering the disclosure is made.

- (2) An audio disclosure shall be delivered in a volume and cadence sufficient for a consumer to hear and comprehend it.
 - (3) A visual statement or disclosure by its size, contrast, location, the length of time it appears, and other characteristics, must stand out so that it is easily noticed; shall remain on the screen for a duration sufficient for a consumer to read and comprehend it; and
 - (4) In a disclosure, the disclosure shall appear in a type-size, font, appearance, and location sufficient for a consumer to read and comprehend it.
- (c). “Eligible Buyer” means any Buyer who: (1) purchased a ticket to a cancelled event prior to StubHub’s refund policy change on March 25, 2020; (2) has not already received a full cash refund from StubHub or through a credit card chargeback; (3) was defaulted to a credit refund; and (4) has not used credit equal to 100% of their original order amount.
- (d). “Express Informed Consent” means an affirmative act or statement giving unambiguous assent following a Clear and Conspicuous disclosure of material facts.
- (e). “Product or service” means any good or service, including the operation of a ticket marketplace.

BACKGROUND

4.

Defendant operates an online marketplace for secondary tickets to live events. Tickets purchased on Defendant’s marketplace are backed by its refund policy for cancelled events, which, prior to March 25, 2020 provided consumers a cash refund for tickets purchased to cancelled

events. In early March 2020, COVID-19 was declared a global pandemic and there was widespread cancellation of live in-person events, including events for which Minnesota consumers had purchased tickets on StubHub's marketplace. On or about March 12, 2020, Defendant notified consumers that they could choose to receive a credit in lieu of a cash refund, but that cash refunds remained the default. On or about March 25, 2020, Defendant made the decision to change its refund policy for cancelled events, no longer provided cash refunds to all customers but instead consumers were defaulted to a credit refund. On or about May 3, 2021, Defendant announced that it would provide Eligible Buyers a cash refund, with the ability to elect an account credit in lieu of a refund ("StubHub Refund Program").

5.

Defendant represents and warrants to Plaintiff that it is providing restitution to Eligible Buyers consistent with the StubHub Refund Program and Paragraph 12 of this Judgment.

6.

Defendant contends that it was unable to refund all Eligible Buyers prior to May 3, 2021 due to the unforeseen impact that the global COVID-19 pandemic had on its business and the live in-person event industry, including a near complete loss of revenue and an inability to recoup cash refunds from ticket sellers, and an order from the United Kingdom's Competition and Markets Authority, preventing Defendant from merging or even communicating about StubHub's business with its new parent company, viagogo, which purchased Defendant in February 2020.

7.

Plaintiff and Defendant agree to and do not contest the entry of this Judgment and further agree that this Court has jurisdiction over this matter and waive all rights to appeal or otherwise challenge or contest the validity of this Consent Judgment and Order.

8.

At all times relevant to this matter Defendant engaged in commerce affecting consumers in Minnesota. Therefore, Defendant is subject to the State's consumer protection laws.

INJUNCTIVE RELIEF

Now therefore, the relief in paragraphs 9 through 15 below is ordered:

COMPLIANCE WITH STATE CONSUMER PROTECTION LAW

9.

IT IS ORDERED that Defendant shall comply with the Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43-.48 and the Consumer Fraud Act, Minn. Stat. §§ 325F.68-.694 in connection with the advertising, promotion, offering for sale, or sale of tickets for live events and shall not make misrepresentations regarding its cancellation or refund policies, including the total costs; any material restrictions, limitations, or conditions; or any other material aspect of the policies.

10.

Defendant shall not make any misrepresentation, expressly or implied, about any material aspect of the nature or terms of any refund, cancellation, exchange, or credit policy, including, but not limited to, the ability of a consumer to obtain a full or partial refund, or the circumstances in which a full or partial refund will be granted to the consumer.

11.

Defendant shall honor its refund, cancellation, exchange, credit, or repurchase policy, express or implied, in effect at the time of each sale, unless such refund policy has been subsequently modified by agreement between the Defendant and the consumer with the consumer's Express Informed Consent.

12.

Within 60 days of Defendant verifying that an event for which an Eligible Buyer purchased tickets prior to March 25, 2020, has been canceled, or that an Eligible Buyer's tickets will not be honored because of capacity restrictions, Defendant shall initiate payment of a cash refund to the Eligible Buyer for the full amount of the ticket order, including any taxes and fees (less any of the amount already redeemed from the credit), unless, prior to the initiation of the payment of the cash refund, an Eligible Buyer informs Defendant that the Eligible Buyer prefers a credit. Notwithstanding the foregoing, Defendant shall initiate payment of a cash refund within 15 days of an express request for a cash refund made by an Eligible Buyer through Defendant's standard customer service channels.

COOPERATION WITH ATTORNEY GENERAL

13.

IT IS FURTHER ORDERED that no later than ninety (90) days after entry of this Judgment, Defendant must submit to Plaintiff a detailed report regarding the StubHub Refund Program. The report shall include, at a minimum, the following information for each Eligible Buyer included in the StubHub Refund Program:

- (a) the name, address, email address, and phone number of each Eligible Buyer who purchased the ticket(s);
- (b) the name of the event for which the ticket(s) was/were purchased;
- (c) the date of the event for which the ticket(s) was/were purchased;
- (d) the number of tickets purchased by the Eligible Buyer;
- (e) the purchase price of the ticket(s);
- (f) the amount of any refund paid to the consumer;
- (g) the amount of any credit the consumer elected to receive; and
- (h) the date that any refund or credit was issued.

14.

IT IS FURTHER ORDERED that Defendant shall notify Plaintiff at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this

Judgment, including, but not limited to: a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Judgment; the proposed filing of a bankruptcy petition; or a change in the corporate name or address.

15.

One year after the date of the entry of this Judgment, Defendant must submit a compliance report, sworn under penalty of perjury, in which Defendant must:

- a. Identify the primary physical, postal, and email address and telephone number, as designated points of contact, which Plaintiff may use to communicate with Defendant;
- b. Identify all of the Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
- c. Describe the activities of each business, including the products and services offered, the means of advertising, marketing, and sales, and refund or credit policies; and,
- d. Describe in detail whether and how Defendant is in compliance with each provision of this Judgment, including a discussion of all of the changes Defendant has made to comply with the Judgment.

RELEASE

16.

Plaintiff hereby releases Defendant and its Principals in their capacities as officers, directors, or employees of Defendant from any and all civil claims that could be asserted by the Attorney General under the Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43-.48 and the Consumer Fraud Act, Minn. Stat. §§ 325F.68-.694, prior to the effective date of this Judgment that relate to, or are based on Defendant's failure to refund Eligible Buyers who purchased tickets to live events using Defendant's marketplace prior to March 25, 2020, whose events were subsequently cancelled ("Released Claims"). Nothing contained in this paragraph

shall be construed to limit the ability of the Attorney General to enforce the obligations that Defendant, its officers, subsidiaries, affiliates, agents, representatives, employees, successors, and assigns have under this Judgment, including any claim for costs, attorneys' fees, and any other relief the Attorney General is entitled to seek pursuant to the Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43-.48 and the Consumer Fraud Act, Minn. Stat. §§ 325F.68-.694 as part of an action brought to enforce this Judgment.

17.

Plaintiff specifically reserves and excludes the following forms of liability from the Released Claims:

- a. Any violation of the Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43-.48 and the Consumer Fraud Act, Minn. Stat. §§ 325F.68-.694 in connection with the StubHub Refund Program; and,
- b. A Buyer's inability to use credits provided pursuant to the StubHub Refund Program due to event cancellations and capacity restrictions.

18.

Notwithstanding any term of this Judgment, any and all of the following forms of liability are specifically reserved and excluded from the Released Claims:

- a. Any criminal liability that Defendant has or may have in the State of Minnesota;
- b. Any civil or administrative liability that Defendant has or may have to the State of Minnesota under any statute, regulation or rule not expressly covered by the release in the preceding paragraph 16, including but not limited to, any and all of the following claims:
 1. State or federal antitrust violations,
 2. State or federal securities violations, and
 3. State or federal tax claims.

19.

This release shall be binding only upon Defendant and does not extend to, release, cover, or in any way apply to any entities on whose behalf Defendant acted as an agent or business associate or on whose behalf it engaged in debt collection activities.

PAYMENT TO STATE

20.

Judgment is hereby rendered against Defendant and in favor of the Plaintiff in the total amount of three hundred nine thousand one hundred fifty dollars (\$309,150.00). Any money received by the Attorney General pursuant to this paragraph may be distributed to consumers by the Attorney General in his sole discretion pursuant to Minn. Stat. § 8.31. Monies received by the Attorney General pursuant to this paragraph may also be used for settlement administration expenses, including payment to a settlement administrator. Any remaining funds shall be remitted to the general fund of the State of Minnesota pursuant to Minn. Stat. § 8.31.

21.

Collection of the monetary amount described in paragraph 20 above is suspended subject to the provisions noted below:

- a. Plaintiff's agreement to suspend collection of this Judgment is premised on the truth and accuracy of the information provided by Defendant.
- b. Suspension of Judgment will be lifted if, upon motion filed by the Plaintiff on or before eighteen (18) months from the date of the entry of this Judgment, this Court finds that Defendant has failed to comply with the requirements of paragraphs 9 through 15.
- c. If the suspension is lifted, the Judgment amount shall become immediately due and payable to Plaintiff.

22.

Unless a motion is filed by Plaintiff pursuant to paragraph 21(b) of this Judgment within eighteen (18) months after the date of the entry of this Judgment, the suspended payment shall be deemed satisfied and permanently forgiven.

NOTICES

23.

Unless otherwise provided, any notices or documents required to be sent to the Parties pursuant to this Judgment (including requests related to the Cooperation requirements of paragraphs 13 through 15) shall be sent to the following address via overnight courier and electronic mail (unless after the Effective Date, a different address is communicated in writing by the party requesting a change of designee or address):

- a. For the Attorney General: Caitlin Micko, Assistant Attorney General , Minnesota Attorney General's Office, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101.
- b. For Defendant: Marty Linne, General Counsel, StubHub, Inc., 199 Fremont Street, 4th Floor, San Francisco, CA 94105, mlinne@stubhub.com.

GENERAL PROVISIONS

24.

The terms of this Judgment are not intended to be construed as an admission or concession or evidence of liability or wrongdoing on the part of Defendant.

25.

The terms of this Judgment shall not be construed as an admission or concession or any other evidence that the Uniform Deceptive Trade Practices Act, Minn. Stat. §§ 325D.43-.48 and the Consumer Fraud Act, Minn. Stat. §§ 325F.68-.694 applies to the Defendant or Defendant's business activities.

26.

Acceptance and entry of this Judgment is not an approval of any of Defendant's business practices and Defendant is enjoined from making any representations regarding approval.

27.

Defendant will not participate in any activity to form a separate entity for the purpose of engaging in acts or practices prohibited by this Judgment or for any other purpose that would circumvent this Judgment.

28.

Subject to the release included herein, nothing in this Judgment shall be construed to limit the authority of the Attorney General to protect the interests of the State or its citizens, or to enforce any laws, regulations, or rules against Defendant.

29.

The Attorney General does not settle, release, or resolve any claim against Defendant or any other person or entity involving any private causes of action, claims, and remedies including, but not limited to, private causes of action, claims, or remedies provided for under Minn. Stat. section 8.31.

30.

Nothing in this Judgment waives or affects any claims of sovereign immunity by the State.

31.

Defendant expressly waives any rights, remedies, appeals, or other interests related to a jury trial or any related or derivative rights under the Minnesota or United States Constitutions or other laws as to this Judgment.

32.

If any provision of this Judgment shall be held unenforceable, the Judgment shall be construed as if such provision did not exist.

33.

This Judgment may be executed in counterparts, that, together, will constitute one whole document.

34.

This Judgment is being entered along with judgments in the following States: Arizona, Arkansas, Colorado, Indiana, Maryland, New Hampshire, Ohio, Virginia, Wisconsin, and the District of Columbia, to resolve multiple state investigations into StubHub's refund practices. Within thirty (30) days of this Judgment's entry, Defendant shall provide a copy of this Judgment, or a judgment entered into with one of the other settling states, provided that state's judgment does not contain any terms that are materially different from this Judgment, to each of its officers and directors, owners, applicable agents, and any other employees with managerial responsibilities or who otherwise participate in cancellation or refund policy or advertising decisions of the Defendant. Defendant shall, within forty-five (45) days of this Judgment's entry, provide a certification under oath to the Attorney General that affirms compliance with this paragraph.

35.

All costs associated with this action and Judgment shall be borne by the party incurring same.

36.

This Judgment sets forth the entire agreement between the parties.

ORDER

Having reviewed the terms of the foregoing Consent Judgment, which is incorporated herein by reference, and which the Court finds reasonable and appropriate, it is SO ORDERED.

JUDGE OF DISTRICT COURT

THERE BEING NO REASON FOR FURTHER DELAY, LET JUDGMENT BE ENTERED IMMEDIATELY.

For Defendant, StubHub, Inc., by:

By: /s/ Marty Linne
 Marty Linne, General Counsel

Date: September 10, 2021

Counsel for Defendant, StubHub, Inc.:

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For Plaintiff, State of Minnesota, by:

By: s/Caitlin Micko

Date: September 14, 2021

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