

**IN THE CIRCUIT COURT OF THE
THIRTEENTH JUDICIAL CIRCUIT IN AND
FOR HILLSBOROUGH COUNTY, FLORIDA**

MALCOLM SCOTT,
individually and on behalf of
all others similarly situated.

Plaintiffs,

v.

CASE NO.:

NETFLIX, INC.

Defendant.

_____ /

AMENDED CLASS ACTION

COMPLAINT

60 million Americans were hyped to see “Iron” Mike Tyson, “The Baddest Man on the Planet” versus You Tuber-turned-prizefighter Jake Paul. What they saw was “The Baddest Streaming on the Planet.”

Netflix delivered the first punch of the night, to its customers, with unrelenting “buffering” and blocked coverage. The most hyped fight in boxing history turned out to be a “record night,” not for the fight(s) but for the money Netflix stole.

Netflix admitted “many technical challenges” arose from the “stability of the stream” for the “majority of viewers” but claimed they were “tackled brilliantly.” This does not seem like a very well “scripted” response. Of the over 100,000 people complaining on-line Netflix appears to be the only one that described this fight night as “brilliant.”

NATURE OF THE ACTION

1. 60 million households were part of a record-breaking night for Netflix as they attempted to tune in to see “The Baddest Man on the Planet” 58-year-old “Iron” Mike Tyson fight 27-year-old Jake Paul on Friday, November 15, 2024.¹ (Tyson/Paul “Fight Night”) The fight was distributed by Netflix to over 6,000 bars and restaurants across the United States. This was a record for commercial distribution of a combat sports.²

2. Family and friends across America were eagerly waiting for the highly anticipated fight between Tyson and Paul, in addition to 3 undercard fights, all to begin at 8:00 p.m. Instead, the boxing fans along with the average Americans wanting to see a legend in what would most likely be his last fight, were faced with legendary problems, including: no access, streaming glitches, and buffering issues. These caused Plaintiffs to “bite their gloves” in frustration as they did not get what they bargained for as they missed large portions of the fight(s); if not the fight all together. Tens of thousands of Netflix users reported issues accessing the streaming service to the long-awaited showdown between the two famous fighters. By 9:46 p.m., roughly 97,000 reports had been received. NBC Chicago contacted Netflix for a response to the troubles and was told, in part, “Nothing to comment on at this time...”³

¹ <https://www.hollywoodreporter.com/tv/tv-news/mike-tyson-jake-paul-fight-viewed-60-million-households-1236063886/>

² *id*

³ <https://www.nbcchicago.com/news/local/netflix-users-report-streaming-issues-ahead-of-mike-tyson-jake-paul-fight/3602481/>

3. Netflix plan subscriptions range from \$6.99 to \$22.99 a month (pre-tax).⁴ Subscribers of Netflix were angered and disappointed after some reported Netflix crashed repeatedly throughout the fight. “The fight was ‘unwatchable,’ for most viewers.”⁵

4. Instead of providing the programming its viewers pay for every month Netflix was completely unprepared and unable to “fix” the issues.

5. Plaintiffs, individually and on behalf of the Class defined below of similarly situated persons, bring this Class Action Complaint and allege the following against Defendant Netflix, Inc, (“Defendant”), based upon personal knowledge with respect to Plaintiff and on information and belied derived from, among other things, investigation of counsel and review of public documents as to all other matters.

6. Plaintiffs bring this class action against Defendant for Defendant’s failure to fulfill contractual obligations, and engaging in deceptive trade practices, as they continued billing for services not delivered, and charging and collecting fees for a product that was not delivered. Plaintiffs seek, among other things, orders requiring Defendant to supply services or reimburse Class Members for being unable to deliver on a highly advertised program which was included in Plaintiffs’ subscription to Netflix, Inc.

⁴ <https://www.netflix.com>

⁵ <https://www.bbc.com/news/articles/c8xpyg2lr28o>

7. On Friday, November 15, 2024, Netflix customers experienced massive streaming issues and should have known better because it's happened before. They were woefully ill-prepared.

8. As a result of Defendant's failure to follow contractually agreed upon standards, Plaintiffs and Class Members received only a diminished value of the services Defendant was to provide, or no value at all.

9. Accordingly, Plaintiffs, individually and on behalf of all others similarly situated, alleges claims Breach of Contract, and violation of Florida's Deceptive and Unfair Trade Practices Act (FDUPTA) and Florida's Consumer Collection Practices Act (FCCPA).

JURISDICTION AND VENUE

10. This Court has general jurisdiction over Defendant, which conducts substantial business within Florida, and thus has significant, continuous, and pervasive contacts with the State.

11. Violations described in the Complaint occurred while Plaintiffs was in Tampa, Florida.

PARTIES

12. Plaintiff, is a citizen and resident of Hillsborough County, Florida.

13. At all times relevant to this complaint, Plaintiffs were customers of Netflix, Inc., and experienced the live streaming issues.

STATEMENT OF FACTS

14. Plaintiffs and Class Members have been a paying subscriber to Netflix, Inc. services under a valid and enforceable contract.

15. Netflix, Inc., as part of its contractual obligations, agreed to provide access to live streaming.

16. Netflix, Inc., on numerous occasions, billed the Plaintiffs for access to its streaming services, but has failed to deliver the services as contracted.

17. Despite repeated complaints Defendant refused to address these issues and offer refunds and/or discounts.

18. Plaintiffs and Class Members have suffered monetary loss due to the charging for services not rendered and has been subjected to undue inconvenience and frustration.

CLASS ACTION ALLEGATIONS

19. Plaintiffs and Class Members bring this suit as a class action on behalf of themselves and on behalf of all others similarly situated who executed contracts with Defendant but are not receiving the bargained-for services.

20. The Class that Plaintiff seeks to represent is defined as follows:

A. All individuals in the United States who are current customers of Defendant, whose access to the November 15th Tyson/Paul Fight Night was diminished by the buffering issues throughout the fight(s).

B. All individuals in the United States who are current customers of Defendant, whose access to the November 15th Tyson/Paul Fight Night was blocked.

C. Plaintiffs allege a subclass of Florida consumers who were charged the entirety of their bill, despite not receiving the live streaming services they paid for in violation of the FCCPA and UDTPA

21. Excluded from the Class and Subclass are the officers, directors, and legal representatives of Defendant, and the judges and court personnel in this case and any members of their immediate families.

22. Numerosity. The Class and Subclass Members are so numerous that joinder of all Members is impractical. While the exact number of Class Members is unknown to Plaintiffs at this time, based on information and belief, it is estimated to be at or above 50,000,000.

23. Commonality. There are questions of law and fact common to the Class and Subclass, which predominate over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

- a. Whether Plaintiff and class had a valid contract with Netflix, Inc., for the provision of live streaming services.
- b. Whether Defendant failed to provide the services they were contractually obligated to provide.
- c. Whether Plaintiff and the class suffered damages as a result of Defendant's breach.
- d. Whether Defendant engaged in unfair or deceptive practices by billing for live streaming services they were unable to provide.

e. Whether Defendant engaged in other conduct which can reasonably be used to harass Florida consumers.

24. Typicality. Plaintiffs' claims are typical of those of other Class and Subclass Members. Plaintiffs' claims are typical of those of the other Class Members because, *inter alia*, all Members of the Class were injured through the common misconduct of Defendant. Plaintiffs are advancing the same claims and legal theories on behalf of themselves and all other Class Members, and there are no defenses that are unique to Plaintiffs. The claims of Plaintiffs and those of Class Members arise from the same operative facts and are based on the same legal theories.

25. Policies Generally Applicable to the Class. This class action is also appropriate for certification because Defendant has acted or refused to act on grounds generally applicable to the Class, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the Class and Subclass Members, and making final injunctive relief appropriate with respect to the Class as a whole. Defendant's policies challenged herein apply to and affect Class Members uniformly and Plaintiffs' challenge of these policies hinges on Defendant's conduct with respect to the Class as a whole, not on facts or law applicable only to Plaintiffs.

26. Adequacy of Representation. Plaintiff will fairly and adequately represent and protect the interests of the Class and Subclass in that they have no disabling conflicts of interest that would be antagonistic to those of the other

Members of the Class and Subclass. Plaintiffs seek no relief that is antagonistic or adverse to the Members of the Class and the infringement of the rights and the damages they have suffered are typical of other Class Members. Plaintiffs have retained counsel experienced in complex consumer class action litigation and in particular privacy class litigation, and Plaintiffs intend to prosecute this action vigorously.

27. Superiority of Class Action. The class litigation is an appropriate method for fair and efficient adjudication of the claims involved. Class action treatment is superior to all other available methods for the fair and efficient adjudication of the controversy alleged herein; it will permit a large number of class members to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, and expense that hundreds of individual actions would require. Class action treatment will permit the adjudication of relatively modest claims by certain class members who could not individually, afford to litigate a complex claim against large corporations, like Defendant. Further, even for those class members who could afford to litigate such a claim, it would still be economically impractical and impose a burden on the courts.

28. The nature of this action and the nature of laws available to Plaintiffs and the Class make the use of the class action device a particularly efficient and appropriate procedure to afford relief to Plaintiffs and the Class for the wrongs alleged because Defendant would necessarily gain an unconscionable advantage

since Defendant would be able to exploit and overwhelm the limited resources of each individual Class Member with superior financial and legal resources; the costs of individual suits could unreasonably consume the amounts that would be recovered; proof of a common course of conduct to which Plaintiffs were exposed is representative of that experienced by the Class and will establish the right of each Class Member to recover on the cause of action alleged; and individual actions would create a risk of inconsistent results and would be unnecessary and duplicative of this litigation.

29. The litigation of the claims brought herein is manageable. Defendant's uniform conduct, the consistent provisions of the relevant laws, and the ascertainable identities of Class and Subclass Members demonstrates that there would be no significant manageability problems with prosecuting this lawsuit as a class action.

30. Adequate notice can be given to Class and Subclass Members directly using information maintained in Defendant's records.

31. Unless a Class-wide injunction is issued, Defendant may continue in its failure to properly fulfill the contract between Defendant and Class Members, and Defendant may continue to act unlawfully as set forth in this Complaint.

32. Further, Defendant has acted or refused to act on grounds generally applicable to the Class and Subclass and, accordingly, final injunctive or corresponding declaratory relief with regard to the Class Members as a whole is appropriate under the Federal Rules of Civil Procedure.

FIRST CAUSE OF ACTION
Breach of Contract (On behalf of the Class)

33. Plaintiffs restate and reallege paragraphs 1 through 32 above as if fully set forth herein.

34. Plaintiffs had a valid and enforceable contract with Netflix, Inc., which is evidenced by the subscription agreement or terms of service.

35. Defendant had a contractual obligation to provide live streaming services as part of their service.

36. Plaintiffs assert that Defendant did not have a legal excuse or justification for its failure to provide the services as contracted.

37. As a result of Netflix Inc.'s breach of contract, the plaintiff has suffered damages in the form of monetary loss due to charges for undelivered services and has experienced inconvenience and frustration. The plaintiff seeks legal remedies, including restitution for the chargers and an order requiring Netflix, Inc. to fulfill its contractual obligations by providing the live streaming services as agreed upon in the contract.

SECOND CAUSE OF ACTION
Florida's Unfair and
Deceptive Trade Practices
(On behalf of the Subclass)

38. Plaintiffs restate and reallege paragraphs 1 through 32 above as is fully set forth herein.

39. Plaintiffs and the Class Members are "consumers." Fla. Stat. §

501.203(7).

40. Netflix, Inc, engaged in unfair or deceptive acts or practices by billing plaintiffs for services they were unable to provide.

41. This deceptive act had an impact on Plaintiffs as consumers and caused them to suffer monetary loss due to charges for undelivered services and has experienced inconvenience and frustration.

42. Plaintiffs seek, among other things, an order from the court requiring Netflix, Inc to cease these deceptive practices and to provide the live streaming services in working order promptly. Additionally, Plaintiffs may request reimbursement for the period of time they paid for these live streaming services, and they were not provided by Defendant.

THIRD CAUSE OF ACTION
Florida Consumer Collection Practices Act
(On behalf of the Florida Subclass)

43. Plaintiffs hereby incorporate by reference the allegations contained in paragraphs 1-32 of this Complaint.

44. Plaintiffs bring this claim individually and on behalf of the proposed sub- Class against Defendant.

45. At all times relevant to this action Defendant is subject to and must abide by the law of Florida, including Florida Statute § 559.72.

46. “Debtor” or “consumer” means any natural person obligated or allegedly obligated to pay any debt. Florida Statute § 559.55(8).

47. At all times relevant to this action Plaintiff and members of the Sub-Class were “debtors” or “consumers.”

48. Netflix, Inc. violated Florida Statute § 559.72(7) by willfully engaging in conduct which can reasonably be expected to abuse or harass the debtor or any member of his or her family.

49. Netflix, Inc. violated Florida Statute § 559.72(9) by attempting to enforce a debt that Netflix, Inc. knows is not legitimate, or assert the existence of some. Other right when that person knows that right does not exist.

50. Netflix, Inc. knew the debts they sought to collect were not legitimate, because Defendant had actual knowledge, they were not providing the contractually obligated services, they were required to supply.

51. Netflix Inc.’s actions have directly and proximately resulted in Plaintiffs prior and continuous sustaining of damages as described by Florida Statute §559.77.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs on behalf of themselves and all others similarly situated, pray for relief as follows:

- a. For an Order certifying the Class as defined herein, and appointing Plaintiff and their Counsel to represent the Class;
- b. For equitable relief enjoining Defendant from engaging in the wrongful conduct complained of herein pertaining to the breach

of contract.

- c. For an award of damages, including actual, nominal, and consequential damages, as allowed by law in an amount to be determined;
- d. For an award of attorneys' fees, costs and litigation expenses as allowed by law;
- e. For prejudgment interest on all amounts awarded; and
- f. Such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

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

Dated: November 21, 2024

Respectfully submitted,

/s/ Billy Howard

Billy Howard, Esq.

Florida Bar No. 0103330

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