

**IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

JACQUELINE MORA RODRIGUEZ;
GABRIEL IVAN SANTOS
Individually And On Behalf Of All Other
Similarly Situated,

Plaintiffs

v.

EMMANUEL PACQUIAO; TOP RANK
INC.; MICHAEL KONCZ; ROBERT
ARUM; TODD DUBOEF; DOES 1-10 and
ABC CORPS 1-10

Defendants

Civil No:

CLASS ACTION COMPLAINT

RULE 23 F.R.CV.P.

JURY TRIAL DEMANDED

Plaintiffs bring this action on behalf of themselves and all others similarly situated against Defendants Emmanuel J. Pacquiao (“Pacquiao”), Top Rank, Inc. (“TRI”), Robert Arum (“Arum”), Todd DuBoef (“DuBoef”) and Michael Koncz (“Koncz”) (collectively, “Defendants”) states:

NATURE OF THE ACTION

1. This is an action for damages relating to Defendants’ failure to disclose the injuries suffered by Defendant Pacquiao prior to the fight between Manny Pacquiao and Floyd Mayweather held May 2, 2015.

2. TRI was one the promoters of the “Fight of the Century” and failed to disclose the injury to the Nevada Athletic Commission (“NAC”) prior to the fight as is required by Nevada law.

3. Defendants further failed to truthfully answer or disclose the information as required on the NAC disclosure form that was filled out by Pacquiao and others, including, Koncz.

4. Pacquiao and other assisting him checked “No” on the NAC questionnaire, which asked if he had a shoulder injury.

5. This action seeks damages and compensation to Plaintiffs and all Class Members from Defendants, including but not limited to interest, disgorgement, costs of suit, treble damages, attorney fees and any other damages deemed just and proper by the Honorable Court.

6. This class action is brought pursuant to Rule 23 of the Federal Rules of Civil Procedure, and pursuant to Law 118 of June 25th, 1971, 32 LPRA sec. 3341-3344, known as the “Law of Class Action for Consumers of Goods and Services (in Spanish “Ley de Acción de Clases para Consumidores de Bienes y Servicios”) as amended by Law 269 of November 16th, 2002. This class action is brought on behalf of all persons who purchased tickets; purchased the pay-per-view event or who wagered money on the event. Excluded from the class are counsel representing the Class and all persons employed by said counsel, governmental entities, Defendants, any entity in which Defendants have a controlling interest, Defendants’ officers, directors, affiliates, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns, any judicial officer presiding over this matter, the members of their immediate families and judicial staff, and any individuals whose interest are antagonistic to other class members.

JURISDICTION AND VENUE

7. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and is a class action in which Plaintiff is a citizen of a state different from Defendants.

8. Venue is proper in this Court pursuant to 28 U.S.C. §1391 in that many of the acts and transactions giving rise to this action occurred in this District.

PARTIES

9. ***Plaintiff*** GABRIEL IVAN SANTOS (“Plaintiff”) is an individual residing in Dorado, Puerto Rico, a citizen of the State of Puerto Rico and a purchaser of the pay-per-view event to the Mayweather-Pacquiao fight held May 2, 2015.

10. ***Plaintiff*** JACQUELINE MORA RODRIGUEZ; (“Plaintiff”) is an individual residing in Bayamón, Puerto Rico, a citizen of the State of Puerto Rico and a purchaser of the pay-per-view event to the Mayweather-Pacquiao fight held May 2, 2015.

11. ***Defendant TPI*** is a Nevada corporation engaged in the business of producing, promoting, and selling tickets to fighting events. Its principal place of business is located in Clark County, Nevada.

12. ***Defendant Arum*** is the Treasurer and Director of TPI and was responsible for actions and decisions that led to the failure of Defendants to disclose Pacquiao’s injuries. Defendant Arum is a resident of Clark County, Nevada.

13. ***Defendant DuBoef*** is the President of TPI and was responsible for actions and decisions that led to the failure of Defendants to disclose Pacquiao’s injuries. Defendant DuBoef is a resident of Clark County, Nevada.

14. ***Defendant Koncz*** is the advisor of Pacquiao and was responsible for actions and decisions that led to the failure of Defendants to disclose Pacquiao’s injuries. Defendant Koncz resides in the Philippines.

15. ***Defendant Pacquiao*** was responsible for actions and decisions that led to the failure of Defendants to disclose his injuries. Defendant Pacquiao resides in California and is, upon information and belief, also a citizen of the Philippines.

16. Upon information and belief, Defendants Does 1-10 and ABC Corp. 1-10 are fictitious names for various entities or persons whose true identity are unknown to the Plaintiff at this time that were responsible for actions and decisions that led to the failure of Defendants to disclose Pacquiao's injuries. Once the true identities of said defendants are known the Plaintiff will seek leave of the Court to amend his complaint to name said defendants.

FACTUAL ALLEGATIONS

17. Defendant Pacquiao is a Filipino world champion professional boxer who has won eight world championships.

18. Defendant Pacquiao was named "Fighter of the Decade" for the 2000s by the Boxing Writers Association ("BWAA") and the World Boxing Organization. Defendant Pacquiao also won BWAA's "Fighter of the Year" award for the years 2006, 2008 and 2009.

19. According to *Forbes*, Pacquiao was the 14th highest paid athlete in the world as of 2013.

20. On May 2, 2015, a fight was scheduled between Pacquiao and Floyd Mayweather, Jr. at the MGM Grand in Las Vegas, Nevada. Hyped as the "Fight of the Century," the event was a much sought after ticket, and drew hordes of celebrities and boxing aficionados.

21. The fight promoter was TRI, the country's premiere boxing promotions company.

22. Both Pacquiao and Mayweather received massive paychecks – reported to be approximately more than \$100 million each – for the fight. Upon information and belief, TRI also profited handsomely from the fight.

23. The fight was broadcast on pay-per-view, and so many individuals and businesses signed up for the event that pay-per-view was unable to meet the full demand. The average cost for an individual broadcast was approximately \$100.00, while businesses such as bars and restaurants paid many times that amount.

24. Mayweather prevailed in a unanimous decision. Spectators were underwhelmed by the fight, with champion boxer Mike Tyson terming it the “Dud of the Century.”

25. After the fight, it was revealed that Pacquaio was suffering from a very significant shoulder injury, making him unable to fight to his full ability. On May 4, 2015, Los Angeles orthopedic surgeon Dr. Neal ElAttrache told ESPN that Pacquaio has a “significant tear” in his rotator cuff that will require surgery and require him to be away from the ring for 9-12 months.

26. When the Nevada State Athletic Commission administered the prefight examination on Pacquaio on the Friday afternoon before the fight, Pacquaio was given a questionnaire. Among the questions was: “Have you had any injury to your shoulders, elbows, or hands that needed evaluation or examination?” Under penalty of perjury, Pacquaio replied no.

27. To the contrary, one of Pacquaio’s sparring partners has allegedly reported that Pacquaio was in fact injured a few weeks prior to the fight, and that the injury was so severe that Pacquaio could not continue to spar and both boxers were sent home.

28. As a result of the injury, Pacquaio allegedly requested an injection of Toradol (a non-steroidal prescription medication) and the numbing drug lidocaine before the fight. That request was blocked by the NAC.

29. Defendants have allegedly admitted that Pacquaio was not 100% healthy on the night of the fight, and Pacquaio later told the *L.A. Times* that he reinjured his shoulder in the fourth round of the fight. Pacquaio could face disciplinary action, including fine or suspension, as a result of his misrepresentation on the questionnaire.

CLASS ACTION ALLEGATIONS

30. Plaintiffs brings this lawsuit on behalf of himself and the proposed Class members under Rule 23(b)(2) and (3) of the Federal Rules of Civil Procedure and pursuant to Law 118 of June 25th, 1971, 32 LPRA sec. 3341-3344, known as the “Law of Class Action for Consumers of

Goods and Services (in Spanish “Ley de Acción de Clases para Consumidores de Bienes y Servicios”) as amended by Law 269 of November 16th, 2002. The proposed nationwide Class consists of:

All persons who purchased a pay-per-view broadcast of the Mayweather-Pacquiao fight, which took place in Las Vegas, Nevada on May 2, 2015.

31. **Numerosity**. The class consists of tens of thousands of consumers. Therefore, the members of the Class are so numerous that their individual joinder is impracticable. The precise number of Class members is unknown to Plaintiff.

32. **Existence and Predominance of Common Questions of Law and Fact**. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting only individual Class members. These common legal and factual questions include, but are not limited to, the following: (a) whether Defendants falsely, deceptively, and misleadingly represented Pacquiao’s health status prior to the May 2, 2015 fight.

33. **Typicality**. Plaintiff’s claims are typical of the claims of the members of the Class and Plaintiff has the same claims as those of the other Class members.

34. **Adequacy of Representation**. Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff has retained counsel highly experienced in complex consumer class action litigation, and Plaintiff intends to prosecute this action vigorously. Plaintiff has no adverse or antagonistic interests to those of the Class.

35. **Superiority**. A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members is small compared to the burden and expense that would be entailed by individual litigation of their claims against Defendants. It would thus be virtually impossible for

the members of the Class, on an individual basis, to obtain effective redress for the wrongs done to them. Furthermore, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, a class action provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances here.

COUNT I

FRAUD/INTENTIONAL MISREPRESENTATION

36. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

37. Plaintiff, and each member of the Class, paid a significant amount of money to watch what was represented as the “Fight of the Century.”

38. Unknown to Plaintiff and the Class members, Defendant Pacquiao was injured, rendering him unable to fight to his full ability.

39. Defendants intentionally and wrongfully concealed Pacquiao’s injury from Plaintiff and the Class members in order to receive millions of dollars in compensation.

40. As a result of Defendants’ fraud and intentional misrepresentations, Plaintiff and the Class members have suffered damages.

41. As a result of Defendants’ deceit, the contract entered by Plaintiffs and the proposed Class members to watch the fight is null and void pursuant to articles 1221 and 1222 of the PR Civil Code, 31 LPRA sec. 3408 and 3409.

COUNT II

UNJUST ENRICHMENT

42. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above as though fully set forth herein.

43. As a result of the unlawful conduct described herein, Defendants have been unjustly enriched at the expense of Plaintiff and the other members of the Class.

44. Specifically, Defendants' unfair and unlawful actions, as described herein, have enabled Defendants to receive money and other benefits in violation of the law at the expense of Plaintiff and the other members of the Class.

45. Defendants' receipt and retention of this financial benefit is unfair and improper under the circumstances.

46. As such, Defendants should be required to disgorge the money they retained as a result of its unjust enrichment.

COUNT III

**DETERMINATION OF DAMAGES PURSUANT TO LAW OF CLASS ACTION
FOR CONSUMER OF GOODS AND SERVICES, 32 L.P.R.A. 3341 et seq.**

47. Plaintiff re-alleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

48. damages. Plaintiff, and each member of the Class, paid a significant amount of money to watch what was represented as the "Fight of the Century."

49. Unknown to Plaintiff and the Class members, Defendant Pacquiao was injured, rendering him unable to fight to his full ability.

50. Defendants intentionally and wrongfully concealed Pacquiao's injury from Plaintiff and the Class members in order to receive millions of dollars in compensation.

51. As a result of Defendants' fraud and intentional misrepresentations, Plaintiff and the Class members have suffered damages.

52. As a result of Defendants' deceit, the contract entered by Plaintiffs and the proposed Class members to watch the fight is null and void.

53. As result of Defendants' deceit, Plaintiff and the proposed class member are entitled to recover damages pursuant to the procedural mechanism provided by the Law of Class Action for Consumer of Goods and Services, 32 L.P.R.A. 3341 et seq. and pertinent sections of the Civil Code of Puerto Rico.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment:

- A. Certifying the Class as requested herein;
- B. Awarding Plaintiffs and the proposed Class members' damages;
- C. Awarding restitution and disgorgement of Defendants' revenues to Plaintiffs and the proposed Class members;
- D. Awarding attorneys' fees and costs, as establish by Law 118 of June 25th, 1971, as amended.
- F. Providing such further relief as may be just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: May 8th, 2015

Respectfully submitted,

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