

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Margaret Franklin-Chomas v. Internet Referral Services, LLC; Red
Dog Media, Inc.; Ticket Fulfillment Services, L.P.; and Vivid Seats
Inc.

No. 3:24-cv-02320-L-DDL (S.D. Cal. Oct. 14, 2025) · No. 3:24-cv-02320-L-DDL · Decided October 14, 2025

SUMMARY

The United States District Court for the Southern District of California considered defendants’ motion to compel arbitration, stay the action, or dismiss the complaint in a putative consumer class action concerning ticket-resale practices. The court compelled arbitration as to Internet Referral Services, LLC and Ticket Fulfillment Services, L.P., but denied arbitration as to Red Dog Media, Inc. and Vivid Seats Inc. The court also denied the motions to stay and dismiss, including challenges to Article III and statutory standing and the sufficiency of the consumer-protection claims.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	M. James Lorenz
JURISDICTION	United States District Court for the Southern District of California
DECIDED	October 14, 2025
DOCKET	3:24-cv-02320-L-DDL
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved to compel arbitration and to stay or dismiss Plaintiff's claims. The court granted the motion to compel arbitration as to claims against Internet Referral Services, LLC and Ticket Fulfillment Services, L.P., denied arbitration as to Red Dog Media, Inc. and Vivid Seats Inc., denied a stay, and denied dismissal under Rules 12(b)(1) and 12(b)(6).
STANDARD OF REVIEW	For the Rule 12(b)(1) standing challenge, the court applied the prima facie jurisdictional standard because it considered only written materials. For the Rule 12(b)(6) challenge, the court assessed the sufficiency of the complaint, accepted material factual allegations as true, and construed them in Plaintiff's favor, while disregarding legal conclusions and unwarranted inferences. For arbitration, the court

	applied the Federal Arbitration Act and ordinary state-law contract principles.
PRECEDENTIAL VALUE	unpublished district court order; precedential status unknown
PARTIES	Defendants Internet Referral Services, LLC; Red Dog Media, Inc.; Ticket Fulfillment Services, L.P.; and Vivid Seats Inc. v. Margaret Franklin-Chomas

TOPICS

arbitration

subject matter jurisdiction

motions to dismiss

class actions

consumer protection

PRACTICE AREAS

civil procedure

arbitration

consumer protection

contracts

commercial litigation

QUESTIONS PRESENTED

1. Whether the Terms contained a clear and unmistakable delegation of arbitrability to the arbitrator.
2. Whether Internet Referral Services, LLC and Ticket Fulfillment Services, L.P. could enforce the arbitration agreement.
3. Whether Vivid Seats Inc. and Red Dog Media, Inc., as alleged nonsignatories, could enforce the arbitration agreement under party, equitable-estoppel, agency, or third-party-beneficiary theories.
4. Whether the action should be stayed pending arbitration of claims against Internet Referral Services, LLC and Ticket Fulfillment Services, L.P.
5. Whether Plaintiff adequately alleged Article III standing despite receiving a credit-card refund.
6. Whether Plaintiff adequately stated claims under the CLRA, UCL, FAL, and California Ticket Resale Law despite Website disclaimers and the alleged refund.

HOLDINGS

1. The Terms clearly and unmistakably delegated questions concerning the interpretation, applicability, and enforceability of the arbitration agreement to the arbitrator.
2. Internet Referral Services, LLC and Ticket Fulfillment Services, L.P. could enforce the arbitration agreement, including its delegation clause, and the claims against them must be arbitrated.
3. Vivid Seats Inc. failed to prove that it was a party to the Terms or was included within the defined term Vendor.
4. Vivid Seats Inc. and Red Dog Media, Inc. could not compel arbitration under equitable estoppel because Plaintiff's statutory, fraud, and unfair-competition claims were not sufficiently intertwined with the contractual obligations in the Terms.
5. Vivid Seats Inc. and Red Dog Media, Inc. could not compel arbitration under an agency theory because the record did not show the requisite control by a principal over the alleged agent.

6. Vivid Seats Inc. and Red Dog Media, Inc. could not enforce the arbitration agreement as third-party beneficiaries because the contract did not show a clear intent that they benefit from it.
7. The court denied a stay of claims against Vivid Seats Inc. and Red Dog Media, Inc.
8. Plaintiff adequately alleged Article III standing because paying more than she otherwise would have paid, or purchasing a ticket she otherwise would not have purchased, constitutes an economic injury, and a refund did not eliminate the temporary loss of use of her money.
9. Plaintiff adequately alleged statutory standing for her CLRA, UCL, and FAL claims; any mitigation or reduction of damages would not extinguish standing.
10. The court could not dismiss the consumer-protection claims based on contested Website screenshots that were outside the pleadings.
11. Plaintiff plausibly alleged that Defendants could qualify as ticket sellers because they allegedly received compensation for tickets sold through the Website, accepted payment from consumers, and delivered tickets directly to consumers.

KEY QUOTATIONS

“The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute arising out of or relating to the interpretation, applicability, enforceability or of these Terms, including, but not limited to, any claim that all or any part of this agreement to arbitrate on these terms is void or voidable.” (at 6)

“Plaintiff’s claims are not “intimately founded in and intertwined” with the underlying contract obligations in the Terms.” (at 9)

“Even “the temporary loss of use of one’s money constitutes an injury in fact for purposes of Article III.”” (at 12)

FACTUAL BACKGROUND

Plaintiff purchased a ticket for the Lakeside Rodeo through Tickets-Center.com, a ticket-resale marketplace operated through relationships among the Defendants. She alleged that the Website and its search-engine advertising misrepresented the Website as the venue's actual ticket site, falsely suggested that tickets were limited or nearly sold out, and sometimes resulted in counterfeit or undelivered tickets. Plaintiff agreed to online Terms containing an arbitration clause, class-action waiver, and delegation clause, but asserted that her consumer-protection and fraud claims were not subject to arbitration as to all Defendants.

PROCEDURAL HISTORY

Plaintiff filed a putative class action asserting claims under California consumer-protection and ticket-resale statutes, common-law fraud, and unjust enrichment. Defendants jointly moved to compel arbitration, stay or dismiss the action, or alternatively dismiss the complaint. The district court decided the motions on the papers and issued this order.

DISPOSITION

CASES CITED

- Lifescan, Inc. v. Premier Diabetic Servs., Inc., 363 F.3d 1010, 1012 (9th Cir. 2004)
- Momot v. Mastro, 652 F.3d 982, 986-88 (9th Cir. 2011)
- Ingle v. Circuit City Stores, Inc., 328 F.3d 1165, 1170 (9th Cir. 2003)
- Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 21 n.23, 24-25 (1983)
- Caremark LLC v. Chickasaw Nation, 43 F.4th 1021, 1029 (9th Cir. 2022)
- First Options of Chi., Inc. v. Kaplan, 514 U.S. 938, 944 (1995)
- Henry Schein, Inc. v. Archer & White Sales, Inc., 586 U.S. 63, 65 (2019)
- Brennan v. Opus Bank, 796 F.3d 1125, 1130 (9th Cir. 2015)
- Mohamed v. Uber Techs., Inc., 848 F.3d 1201, 1209 (9th Cir. 2017)
- Rent-A-Center, W., Inc. v. Jackson, 561 U.S. 63, 68 (2010)
- Pinnacle Museum Tower Assn. v. Pinnacle Mkt. Dev. (US), LLC, 55 Cal. 4th 223, 236 (2012)
- Kramer v. Toyota Motor Corp., 705 F.3d 1122, 1128 (9th Cir. 2013)
- Mundi v. Union Sec. Life Ins. Co., 555 F.3d 1042, 1047 (9th Cir. 2009)
- Murphy v. DirecTV, Inc., 724 F.3d 1218, 1229-34 (9th Cir. 2013)
- Rajagopalan v. NoteWorld, LLC, 718 F.3d 844, 847 (9th Cir. 2013)
- Westra v. Marcus & Millichap Real Estate Inv. Brokerage Co., 129 Cal. App. 4th 759, 765 (2005)
- Sonora Diamond Corp. v. Superior Ct., 83 Cal. App. 4th 523, 541 (2000)
- DeSuza v. Andersack, 63 Cal. App. 3d 694, 699 (1976)
- Nguyen v. Tran, 157 Cal. App. 4th 1032, 1036 (2007)
- GECCMC 2005-C1 Plummer St. Off. Ltd. P'ship v. JPMorgan Chase Bank, Nat. Ass'n, 671 F.3d 1027, 1033 (9th Cir. 2012)
- United States ex rel. Newton v. Neumann Caribbean Int'l, Ltd., 750 F.2d 1422, 1427 (9th Cir. 1985)
- Cal. Crane Sch., Inc. v. Google LLC, 621 F. Supp. 3d 1024, 1033-34 (N.D. Cal. 2022)
- Chandler v. State Farm Mut. Auto. Ins. Co., 598 F.3d 1115, 1122 (9th Cir. 2010)
- Pride v. Correa, 719 F.3d 1130, 1139 (9th Cir. 2013)
- Societe de Conditionnement en Aluminium v. Hunter Eng'g Co., 655 F.2d 938, 942 (9th Cir. 1981)
- Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992)
- Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc., 528 U.S. 167, 185 (2000)
- Bates v. UPS, 511 F.3d 974, 985 (9th Cir. 2007)
- Mazza v. Am. Honda Motor Co., 666 F.3d 581, 595 (9th Cir. 2012)
- Van v. LLR, Inc., 962 F.3d 1160, 1164 (9th Cir. 2020)
- Clayworth v. Pfizer, Inc., 49 Cal. 4th 758, 789 (2010)
- Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001)

- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 557, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011)
- Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996)
- Roberts v. Corrothers, 812 F.2d 1173, 1177 (9th Cir. 1987)
- Pareto v. FDIC, 139 F.3d 696, 699 (9th Cir. 1998)
- Khoja v. Orexigen Therapeutics, Inc., 899 F.3d 988, 988, 998-99 (9th Cir. 2018)
- Branch v. Tunnell, 14 F.3d 449, 454 (9th Cir. 1994), overruled on other grounds by Galbraith v. County of Santa Clara, 307 F.3d 1119, 1125-26 (9th Cir. 2002)
- Galbraith v. County of Santa Clara, 307 F.3d 1119, 1125-26 (9th Cir. 2002)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 Case No.: 3:24-cv-02320-L-DDL MARGARET FRANKLIN-CHOMAS, an
12 individual, on behalf of herself and all ORDER GRANTING IN PART AND 13 other
individuals, DENYING IN PART MOTION TO COMPEL ARBITRATION; 14 Plaintiff,
DENYING MOTION TO STAY; AND 15 v. DENYING MOTION TO DISMISS 16 INTERNET
REFERRAL SERVICES, LLC; RED DOG MEDIA, INC.; [ECF No. 26.]

17 TICKET FULFILLMENT SERVICES, 18 L.P.; and VIVID SEATS INC., 19 Defendants. 20
Pending before the Court is Defendants Internet Referral Services, LLC (“IRS”); 21 Red Dog
Media, Inc. (“Red Dog”); Ticket Fulfillment Services, L.P. (“TFS”); and Vivid 22 Seats Inc.’s
 (“Vivid Seats,” collectively “Defendants”), motion to compel arbitration and 23 dismiss or stay
litigation, or alternatively, dismiss.

(ECF No. 26.) Plaintiff Margaret 24 Franklin-Chomas (“Plaintiff”) opposed (ECF No. 34), and
Defendants replied (ECF No. 25 37). Each party initially lodged their moving and opposition
briefs with redacted sections 26 alongside a motion to seal, which the Court subsequently denied.
(ECF No. 38.) Each 27 28 1 1 party refiled the sealed briefs. (ECF Nos. 39, 40, 41.)

The Court decides the matter on 2 the papers submitted without oral argument. See Civ. L. R.
7.1(d.1). For the reasons set 3 forth below, Defendants’ motion to compel arbitration is granted in
part and denied in 4 part, their motion to stay is denied, and motion to dismiss is denied. 5 A.
BACKGROUND 6 Plaintiff brings this action against Defendants after buying a ticket for the
Lakeside 7 Rodeo, taking place on April 22, 2022, from the website Tickets-Center.com (the 8
“Website”).¹ The Website is a ticket resale marketplace.

Plaintiff alleges that the 9 Website and its advertising on search engines contain misrepresentations
that lead 10 consumers to believe they are buying tickets from the actual venue instead of resale 11

tickets. Plaintiff alleges that once on the Website, Defendants lead consumers to believe 12 that tickets are limited and almost sold out when they are not, enabling them to charge a 13 premium.

Plaintiff also alleges that some of the tickets sold on the Website, including the 14 ones that she bought, are either counterfeit or never actually provided to the consumer. 15 According to Plaintiff's allegations, IRS owns and operates the Website in 16 conjunction with Red Dog. Red Dog "manages" the Website, including creating, 17 maintaining, and operating it.

TFS is a wholly owned subsidiary of Vivid, and the 18 Website is operated through a Vivid platform by and through TFS. Additionally, Vivid, 19 by and through TFS, manages, processes, and verifies all ticket sales and handles all 20 customer service for the Website. 21 Plaintiff brings suit against Defendants for: (1) unfair and deceptive practices in 22 violation of the Consumers Legal Remedies Act ("CLRA"), Cal. Civ.

Code §§ 1750, et 23 seq.; (2) violation of the Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 24 17200, et seq.; (3) violation of the False Advertising Law ("FAL"), Cal. Bus. & Prof. 25 26 1 All background facts, unless otherwise noted, are taken from the complaint. (ECF 27 No. 1.) 28 2 1 Code §§ 17500, et seq.; (4) violation of the Ticket Resale Law, Cal. Bus. & Prof.

Code 2 §§ 22500 et seq.; (5) common law fraud; and (6) unjust enrichment. Defendants jointly 3 filed the instant motion seeking to compel arbitration and stay or dismiss the case, or 4 alternatively, to dismiss the case. 5 B. MOTION TO COMPEL ARBITRATION 6 Defendants move to compel arbitration pursuant to the terms of Plaintiff's 7 purchase agreement. Plaintiff opposes the motion.

8 1. Contractual Provisions 9 When Plaintiff purchased the ticket, she checked a box indicating that she 10 understood and agreed to the "Terms & Privacy Policy" (the "Terms").² (ECF No. 16- 2 11 ("Landier Decl.") ¶ 19.)

The Terms were available via a hyperlink next to the box 12 Plaintiff checked and contained an arbitration clause and class-action waiver. (Id.) The 13 first paragraph contained the following language, noted in bold and all capitals. 14 Please review these Terms carefully: 15 **IMPORTANT: THESE TERMS CONTAIN A MANDATORY ARBITRATION 16 PROVISION THAT, AS FURTHER SET FORTH BELOW, REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE 17 DISPUTES.**

THIS MEANS THAT YOU (AS WELL AS THE BELOW NAMED 18 COMPANY AND VENDOR) ARE EACH GIVING UP THE RIGHT TO SUE EACH OTHER IN COURT OR IN CLASS ACTIONS OF ANY KIND. IN 19 ARBITRATION THERE IS NO JUDGE OR JURY AND THERE IS LESS 20 DISCOVERY AND APPELLATE REVIEW THAN IN COURT. 21 (Id. ¶ 16.) Further down the Terms provided more details about arbitration and class 22 actions: 23 23.

Dispute Resolution: 24 25 26 2 Neither party provided the full text of the Terms. Defendants provided excerpts in 27 the Landier Declaration. 28 3 1 23.1 Arbitration and Waiver of Trial by Jury: You, on the one hand, and Company and Vendor, on the other hand, each agree that any and all disputes, 2 controversies, or claims arising out of or relating to: (i) these Terms; (ii) your use 3 of or access to this Website; (iii) Company's and Vendor's services; or (iv) any tickets or other items viewed through this Website shall be resolved exclusively 4 through final and binding arbitration in Chicago, Illinois, rather than in court.

5 SPECIFICALLY, YOU HEREBY AGREE TO WAIVE ALL RIGHTS AND CLAIMS TO A TRIAL BY JURY. The Federal Arbitration Act governs the 6 interpretation and enforcement of these Terms to arbitrate.... The arbitrator, and 7 not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute arising out of or relating to the interpretation, applicability, 8 enforceability or of [Sic] these Terms, including, but not limited to, any claim that 9 all or any part of this agreement to arbitrate on these terms is void or voidable.

The arbitrator will decide the substance of all claims in accordance with the laws of the 10 state of Illinois. The arbitrator's award will be final and binding, and judgment on 11 the award rendered by the arbitrator may be entered in a court having jurisdiction thereof. 12 13 (Id. ¶ 17.)

The arbitration clause also contained an opt-out provision: "If you do not wish 14 to be bound by this agreement to arbitrate, you must notify us in writing within thirty (30) 15 days after the date that you first accessed this Website." (Id.)

The first paragraph of the 16 Terms, set forth in all caps, together with Paragraph 23 of the Terms are hereafter 17 referred to as the "Arbitration Agreement" or "Agreement." 18 2. Legal Standard 19 The parties agree that the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1 et seq., 20 governs Defendants' motion to compel arbitration.

Under the FAA, a district court 21 determines, (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether 22 the agreement encompasses the dispute at issue. *Lifescan, Inc. v. Premier Diabetic 23 Servs., Inc.*, 363 F.3d 1010, 1012 (9th Cir. 2004).³ 24 25 26 27 3 Internal citations and quotation marks may be removed unless otherwise noted. 28 4 1 In opposing Defendant's motion, Plaintiff argues that the arbitration agreement is 2 invalid under California law, and that Vivid and Red Dog cannot enforce the agreement.

3 Defendants contend that the Agreement covers all Defendants, that the issue whether the 4 agreement is enforceable was delegated to the arbitrator, and that the agreement is not 5 invalid under California law. 6 "[A]rbitration is fundamentally a matter of contract." *Momot v. Mastro*, 652 F.3d 7 982, 986 (9th Cir. 2011). "To evaluate the validity of an arbitration agreement, federal 8 courts should apply ordinary state-law principles that govern the formation of contracts." 9 *Ingle v. Circuit City Stores, Inc.*, 328 F.3d 1165, 1170 (9th Cir.

2003). If the court is 10 satisfied “that the making of the arbitration agreement or the failure to comply with the 11 agreement is not in issue, the court shall make an order directing the parties to proceed to 12 arbitration in accordance with the terms of the agreement.” 9 U.S.C. § 4. 13 “[G]ateway issues of arbitrability presumptively are reserved for the court.” 14 Momot, 652 F.3d at 987. “[A]ny doubts concerning the scope of arbitrable issues should 15 be resolved in favor of arbitration.” Moses H. Cone Mem’l Hosp. v. Mercury Constr.

16 Corp., 460 U.S. 1, 24–25 (1983). 17 Even though judicial resolution, not arbitration, is presumptive forum for disputes 18 about arbitrability, “parties may agree to delegate them to the arbitrator.” Momot, 652 19 F.3d at 987. “A delegation clause is a clause within an arbitration provision that 20 delegates to the arbitrator gateway questions of arbitrability, such as ... whether the 21 arbitration provision is enforceable at all.” Caremark LLC v. Chickasaw Nation, 43 F.4th 22 1021, 1029 (9th Cir.

2022). 23 “Courts should not assume that the parties agreed to arbitrate arbitrability unless 24 there is clear and unmistakable evidence that they did so.” First Options of Chi., Inc. v. 25 Kaplan, 514 U.S. 938, 944 (1995). “When the parties’ contract delegates the arbitrability 26 question to an arbitrator, the courts must respect the parties’ decision as embodied in the 27 contract.” Henry Schein, Inc. v. Archer & White Sales, Inc., 586 U.S. 63, 65 (2019).

28 5 1 3. The Delegation Clause 2 As a threshold issue, the Court must first determine whether the Arbitration 3 Agreement delegates the authority to decide issues of arbitrability to the arbitrator. A 4 court must determine whether the underlying agreement “clearly and unmistakably” 5 delegated the questions of arbitrability to the arbitrator. Brennan v. Opus Bank, 796 F.3d 6 1125, 1130 (9th Cir.

2015). “When the parties’ contract delegates the arbitrability 7 question to an arbitrator, a court may not override the contract... even if the court thinks 8 that the argument that the arbitration agreement applies to a particular dispute is wholly 9 groundless.” Henry Schein, Inc., 586 U.S. at 65. 10 The Arbitration Agreement provides that: 11 The arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute arising out of or relating to the 12 interpretation, applicability, enforceability or of these Terms, including, but not 13 limited to, any claim that all or any part of this agreement to arbitrate on these terms is void or voidable.

14 15 (Landier Decl. ¶ 17.) This provision clearly contemplates delegating the issue of 16 arbitrability to the arbitrator. See Mohamed v. Uber Techs., Inc., 848 F.3d 1201, 1209 17 (9th Cir. 2016) (clear and unmistakable delegation when the arbitration agreement 18 authorized the arbitrator to “decide issues relating to the ‘enforceability, revocability, or 19 validity of the Arbitration Provision’”); see also Momot, 652 F.3d at 988 (clear and 20 unmistakable delegation

when the contract authorized the arbitrator to decide “the 21 validity or application of any of the provisions of” the arbitration clause).

Accordingly, 22 the issue of arbitrability of the claims is delegated to the arbitrator for all parties who can 23 enforce the arbitration agreement. 24 4. Enforceability as to IRS and TFS 25 When arbitrability is clearly and unmistakably delegated to the arbitrator, a court 26 must enforce that delegation clause “in the absence of some other generally applicable 27 contract defense, such as fraud, duress, or unconscionability.” *Mohamed*, 848 F.3d at 28 6 1 1209; *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 68 (2010).

Plaintiff does not 2 contend that any of these exceptions apply to the delegation clause. Plaintiff also does 3 not contend that IRS and TFS are not parties to the Terms & Privacy Policy. 4 Plaintiff argues that Defendants waived their right to delegate arbitrability to the 5 arbitrator by arguing that the Arbitration Agreement is valid under California law.

6 However, in their motion to compel, Defendants argue that “if the parties entered into a 7 valid agreement to arbitrate that delegates the question of arbitrability and other issues to 8 an arbitrator—the Court must compel arbitration.” (ECF No. 26 (“Mot.”) at 14.) Further, 9 they argue that “there can be no dispute that the arbitration agreement applies—including 10 to the threshold question of arbitrability.” (Id. at 17.)

That Defendants also argue in the 11 alternative that the arbitration agreement is valid under California law does not waive the 12 issue of delegation. Accordingly, as to IRS and TFS, the Court must compel arbitration 13 for all issues, including the issue of arbitrability. 14 5. Enforceability for Vivid and Red Dog 15 Defendants argue that Vivid Seats is a party to the Terms, and that, regardless, both 16 Vivid Seats and Red Dog can compel arbitration under equitable estoppel, agency, and 17 third-party beneficiary theories.

The Court will consider each of these arguments in turn. 18 First, the parties disagree whether Vivid Seats is a party to the Terms. The Terms 19 identify four parties: “you,” who is the consumer, the “Company,” which is IRS, the 20 third-party ticket resellers, who are not relevant here, and the “Vendor” (Landier Decl. ¶ 21 17.) Both parties agree that TFS is a “Vendor,” but Defendants also argue that Vivid 22 Seats is included as a “Vendor.” As the party seeking to compel arbitration, the burden is 23 on Vivid Seats to prove it is a “Vendor” and therefore a party to the Agreement.

See 24 *Pinnacle Museum Tower Assn. v. Pinnacle Mkt. Dev. (US), LLC*, 55 Cal. 4th 223, 236 25 (2012) (“The party seeking arbitration bears the burden of proving the existence of an 26 arbitration agreement.”). 27 28 7 1 Vivid Seats points to Plaintiff’s CLRA demand letter, which refers to both Vivid 2 Seats and TFS as the “Vendor.” (ECF No. 26-4, Ex. 1 (“Vivid [Seats], through its 3 subsidiary TFS, is the vendor for and operates the website.”) It also points to the 4

complaint, which states that “Vivid [Seats], by and through TFS, manages, verifies, and 5 processes, all ticket orders,” and “Vivid [Seats], by and through TFS, ensures fulfillment 6 of all ticket orders, including delivery of tickets.” (Compl. ¶¶ 30-31.)

Neither Plaintiff’s 7 counsels’ inadvertent statement (see ECF No. 34 (“Response”) at 14), nor allegations in 8 the complaint are evidence that Vivid Seats is the “Vendor.” Accordingly, Vivid Seats 9 has not met its burden to show it is a party to the Arbitration Agreement. 10 Alternatively, Plaintiff argues Vivid Seats’s definition of “Vendor” is contradictory 11 to the Terms, which identify the “Vendor” as “a third-party,” not third-parties.

Plaintiff 12 also points to the declaration of Bryce Landier, the President and CEO of Red Dog, who 13 stated that 14 Neither Red Dog nor Referral Services sells tickets to users. Instead, the Website provides information about tickets offered by third-party ticket 15 resellers for various live events, concerts, and shows. This information is 16 supplied to the Website by a third-party vendor, Defendant Ticket Fulfillment Services, L.P. (“TFS”).

17 18 (Landier ¶ 4.) Landier also states that “[t]he Terms & Privacy Policy expressly identify 19 and explain the functions of the Website operated by Referral Services and of the 20 checkout webpage hosted and operated by the vendor and Referral Services,” and that 21 “Referral Services has a contract with TFS.” (Id. ¶¶ 5-6.) Based on the Landier 22 declaration, Plaintiff argues that TFS is the singular “Vendor” in the Terms.

If 23 Defendants wanted Vivid Seats to be a party to the Terms, including the Arbitration 24 Agreement, they could have easily defined both TFS and Vivid Seats as the “Vendor,” 25 yet they choose not to. Accordingly, Vivid Seats cannot compel arbitration as a party to 26 the Agreement. 27 28 8 1 Second, Vivid Seats and Red Dog argue that they are entitled to enforce the 2 Arbitration Agreement under the doctrine of equitable estoppel. “A litigant who is not a 3 party to an arbitration agreement may invoke arbitration under the FAA if the relevant 4 state contract law allows the litigant to enforce the agreement.” *Kramer v. Toyota Motor 5 Corp.*, 705 F.3d 1122, 1128 (9th Cir.

2013). Under California law of equitable estoppel, 6 a non-signatory may compel arbitration of a signatory’s claims where “the claims [are] 7 intertwined with the contract providing for arbitration.” *Mundi v. Union Sec. Life Ins. 8 Co.*, 555 F.3d 1042, 1047 (9th Cir. 2009).

As “generally only signatories to an arbitration 9 agreement are obligated to submit to binding arbitration, equitable estoppel of third 10 parties in this context is narrowly confined.” *Murphy v. DirecTV, Inc.*, 724 F.3d 1218, 11 1229 (9th Cir. 2013). 12 Defendants argue that Plaintiff’s claims “hinge entirely on the order through the 13 Website that triggered the Terms & Privacy Policy...” (Mot. at 18.)

The Court 14 disagrees. Plaintiff's claims are not "intimately founded in and intertwined" with the 15 underlying contract obligations in the Terms. See *Murphy*, 724 F.3d at 1230. Plaintiff 16 does not bring contractual claims against Defendants, but false advertising, fraud, and 17 unfair competition claims. While Plaintiff's "claims on some abstract level require the 18 existence of the [Terms], the law is clear that this is not enough for equitable estoppel." 19 *Id.* (finding customer agreement was not the basis for fraud claims and so equitable 20 estoppel does not apply); see also *Rajagopalan v. NoteWorld, LLC*, 718 F.3d 844, 847 21 (9th Cir.

2013) (rejecting equitable estoppel where the "statutory claims that are separate 22 from the contract itself"). 23 Third, Vivid Seats and Red Dog argue that they are entitled to enforce the 24 arbitration agreement through an agency relationship.

In California, 25 A nonsignatory to an agreement to arbitrate may be required to arbitrate, and may invoke arbitration against a party, if a preexisting confidential 26 relationship, such as an agency relationship between the nonsignatory and 27 28 9 1 one of the parties to the arbitration agreement, makes it equitable to impose the duty to arbitrate upon the nonsignatory.

2 3 *Westra v. Marcus & Millichap Real Estate Inv. Brokerage Co.*, 129 Cal.App.4th 759, 765 4 (2005). "Agency requires that the principal maintain control over the agent's actions." 5 *Murphy*, 724 F.3d at 1232; see also *DeSuza v. Andersack*, 63 Cal.App.3d 694, 699 (1976) 6 ("The right of the alleged principal to control the behavior of the alleged agent is an 7 essential element which must be factually present in order to establish the existence of 8 agency, and has long been recognized as such in the decisional law.").

9 Defendants argue that Plaintiff's allegations that "Red Dog is the 'manager' of 10 IRS," and that "all IRS business is handled by Red Dog," is sufficient to show an agency 11 relationship between IRS and Red Dog. (citing Compl. ¶¶ 24, 25.) Defendants further 12 argue that Plaintiff's allegations that "TFS is a wholly-owned subsidiary of Vivid 13 [Seats]" and "information on the Website is supplied by Vivid [Seats], by and through 14 TFS, and Vivid [Seats], by and through TFS, hosts and operates the webpage that 15 provides checkout services for the Website" is sufficient to show an agency relationship 16 between TFS and Vivid Seats. (citing Compl. ¶¶ 29, 24.)

17 However, a wholly owned subsidiary is not automatically an agent of its parent 18 without a further showing of full control of the subsidiary by the parent. See *Sonora 19 Diamond Corp. v. Superior Ct.*, 83 Cal. App. 4th 523, 541 (2000). Further, none of the 20 allegations show the requisite control to establish an agency relationship. See *Murphy*, 21 724 F.3d at 1232.

22 Finally, Vivid Seats and Red Dog argue they are entitled to enforce the Arbitration 23 Agreement as third-party beneficiaries. In California, "[e]xceptions in which an 24 arbitration agreement may be enforced by or against nonsignatories include where a 25 nonsignatory is a

third[-]party beneficiary of the agreement.” *Nguyen v. Tran*, 157 26 Cal.App.4th 1032, 1036 (2007).

However, it is not enough that a third party benefits 27 from the contract, “the parties to the contract must have expressly intended that the third 28 10 1 party would benefit.” *Murphy*, 724 F.3d at 1234. Defendants have presented no 2 evidence that Plaintiff, who wished to buy a ticket to the rodeo, expected or intended 3 unnamed third parties to benefit. While IRS and TFS may have intended Vivid Seats and 4 Red Dog to benefit, the contract itself must show “clear intent” that all of the parties 5 intended for the third parties to benefit.

See GECCMC 2005-C1 *Plummer St. Off. Ltd. 6 P’ship v. JPMorgan Chase Bank, Nat. Ass’n*, 671 F.3d 1027, 1033 (9th Cir. 2012). 7 Accordingly, Vivid Seats and Red Dog cannot use this exception to compel arbitration. 8 As Vivid Seats and Red Dog are unable to show under any theory that they can 9 enforce the Terms as non-parties, the motion to compel arbitration is denied as to them.

10 C. MOTION TO STAY 11 Defendants argue that if, as the Court holds, all Defendants cannot enforce the 12 arbitration agreement, the Court should stay the case pending arbitration to avoid 13 piecemeal litigation. The Court has the discretionary authority to stay remaining claims 14 pending the outcome of an arbitration proceeding. *Moses H. Cone Memorial Hosp. v. 15 Mercury Const.*

Corp., 460 U.S. 1, 21 n. 23 (1983). However, this is not the case where a 16 court compels arbitration of certain claims against one defendant and retains jurisdiction 17 over other claims against the same defendant.

Under such circumstances, efficiencies 18 may be gained by a stay. See *United States ex rel. Newton v. Neumann Caribbean Int’l, 19 Ltd.*, 750 F.2d 1422, 1427 (9th Cir. 1985). Even if this Court were to stay adjudication of 20 Plaintiff’s claims against Vivid Seats and Red Dog, the results of the arbitration 21 proceedings against IRS and TFS would not be binding against Vivid Seats and Red Dog.

22 See *Cal. Crane Sch., Inc. v. Google LLC*, 621 F. Supp. 3d 1024, 1033-34 (N.D. Cal. 23 2022) (denying motion to stay non-arbitrable claims in part because the parties will need 24 to litigate claims regardless of what happens in the arbitration and any findings of fact or 25 law in the arbitration are not binding on the court).

Accordingly, Defendants’ motion to 26 stay is denied. 27 28 11 1 D. MOTION TO DISMISS 2 1. Subject Matter Jurisdiction 3 Defendants filed a motion to dismiss for lack of standing pursuant to Federal Rule 4 of Civil Procedure 12(b)(1). See *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 5 1115, 1122 (9th Cir. 2010) (noting that, “[b]ecause standing and ripeness pertain to 6

federal courts' subject matter jurisdiction, they are properly raised in a Rule 12(b)(1) motion to dismiss").

Such a motion can be facial in nature or factual. *Pride v. Correa*, 871 F.3d 1130, 1139 (9th Cir. 2013). Where a factual attack is made and a court considers only written materials, a plaintiff need only establish a prima facie case of jurisdiction. *Societe de Conditionnement en Aluminium v. Hunter Eng'g Co.*, 655 F.2d 1193, 942 (9th Cir. 1981). For Article III standing, a plaintiff must show: (1) an injury in fact, (2) a sufficient causal connection between the injury and the conduct complained of (i.e., traceability), and (3) a likelihood that the injury will be redressed by a favorable decision.

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). "[A] plaintiff must demonstrate standing separately for each form of relief sought," *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 185 (2000) – "whether it be injunctive relief, damages or civil penalties." *Bates v. UPS*, 511 F.3d 974, 985 (9th Cir.

2007). Defendants argue that Plaintiff has failed to show injury in fact for purposes of Article III standing because she ultimately received a refund from her credit card company for the rodeo tickets. Plaintiff alleges that she "paid more for the ticket than she otherwise would have, and would only have been willing to pay less, or unwilling to purchase it at all, absent the misleading representations." (Compl. ¶ 59.)

This is sufficient to allege economic injury. See *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 595 (9th Cir. 2012) (When "Plaintiffs contend that class members paid more for [a product] than they otherwise would have paid, or bought it when they otherwise would not have done so" they have suffered an Article III injury in fact). Further, that Plaintiff was refunded by her credit card company does not undermine her standing.

Even "the temporary loss of use of one's money constitutes an injury in fact for purposes of Article III." *Van v. LLR, Inc.*, 962 F.3d 1160, 1164 (9th Cir. 2020). Accordingly, Defendants' motion to dismiss for lack of Article III standing is denied. 2. Failure to State a Claim Alternatively, Defendants filed a Rule 12(b)(6) motion to dismiss for failure to state a claim.

A Rule 12(b)(6) motion tests the sufficiency of the complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). A pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).

Therefore, plaintiffs must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); see also Fed. R. Civ. P. 12(b)(6). The plausibility standard demands more than "a formulaic recitation of the elements of a cause of action," or "'naked assertions' devoid of 'further factual enhancement.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 557).

Instead, the complaint “must contain allegations of underlying facts 17 sufficient to give fair notice and to enable the opposing party to defend itself effectively.” 18 *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). 19 In reviewing a Rule 12(b)(6) motion to dismiss, “[a]ll allegations of material fact 20 are taken as true and construed in the light most favorable to the nonmoving party.” 21 *Cahill v. Liberty Mut.*

Ins. Co., 80 F.3d 336, 337–38 (9th Cir. 1996). However, a court 22 need not take legal conclusions as true merely because they are cast in the form of factual 23 allegations. See *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987). Similarly, 24 “conclusory allegations of law and unwarranted inferences are not sufficient to defeat a 25 motion to dismiss.” *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir.

1998). 26 27 28 13 1 a. Statutory Standing 2 Defendants argue that Plaintiff lacks statutory standing for their CLRA, UCL, and 3 FAL claims because she received a refund from her credit card company. That Plaintiff 4 may ultimately be unable to prove a right to damages (or, here, restitution) does not demonstrate that it lacks standing to argue for its entitlement to 5 them.

The doctrine of mitigation, where it applies, is a limitation on liability 6 for damages, not a basis for extinguishing standing. This is so because mitigation, while it might diminish a party's recovery, does not diminish the 7 party's interest in proving it is entitled to recovery. 8 *Clayworth v. Pfizer, Inc.*, 49 Cal. 4th 758, 789 (2010).

Accordingly, Plaintiff has 9 statutory standing for her CLRA, UCL, and FAL claims. 10 b. Consumer Confusion 11 Relying on the disclaimers on their Website, Defendants next argue that no 12 reasonable consumer would be misled. Plaintiff alleges three main categories of 13 misrepresentations.

First, Plaintiff alleges that Defendants’ “advertising ... lead[s] 14 consumers to believe that they are visiting the actual ticket site for the venue where the 15 event is taking place.” (Compl. ¶ 2.) Second, she alleges that “Defendants further entice 16 them to purchase tickets by misrepresenting that the tickets are limited or almost sold out 17 when such statements are false or misleading.” (Id. ¶ 3.)

Third, she alleges that “[i]n 18 many instances, the tickets that Defendants ‘sell’ are counterfeit or are never actually 19 provided.” (Id. ¶ 5.) 20 To dispute Plaintiff's claims, Defendant offers screenshots that purportedly 21 represent the Website the day Plaintiff viewed and purchased her tickets. These 22 screenshots are not part of Plaintiff's complaint, but Defendants argue that they can 23 nevertheless be considered in the motion to dismiss.

(See Mot. at 18 n.5.) 24 “Generally, district courts may not consider material outside the pleadings when 25 assessing the sufficiency of a complaint under Rule 12(b)(6)....” *Khoja v. Orexigen 26 Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018).

However, “a court may take 27 28 14 1 judicial notice of matters of public record,” *id.* at 999, and of “documents whose contents 2 are alleged in a complaint and whose authenticity no party questions, but which are not 3 physically attached to the pleading,” *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994), 4 overruled on other grounds by *Galbraith v. Cnty.*

Of Santa Clara, 307 F.3d 1119, 1125– 5 26 (9th Cir. 2002); see also Fed. R. Evid. 201. A judicially noticed fact must be one not 6 subject to reasonable dispute in that it is either (1) generally known within the territorial 7 jurisdiction of the trial court or (2) capable of accurate and ready determination by resort 8 to sources whose accuracy cannot reasonably be questioned.

Fed. R. Evid. 201(b). 9 Plaintiff challenges the authenticity of Defendants’ screenshots. Plaintiff notes that 10 some of the screenshots are dated in August of an unknown year, but Plaintiff purchased 11 her tickets in April of 2022. (Response at 27.) Further, Plaintiff notes that Defendants’ 12 screenshots are small snippets of the Website and therefore cannot be viewed in context.

13 (*Id.*) The Ninth Circuit has warned that “use of extrinsic documents to resolve competing 14 theories against the complaint risks premature dismissals of plausible claims that may 15 turn out to be valid after discovery.” *Khoja*, 899 F.3d at 988. At this stage, it would be 16 improper to dismiss Plaintiff’s claims based on contested screenshots. Defendants’ 17 arguments which rely on the screenshots are therefore rejected.

18 c. Ticket Resale Law 19 Finally, Defendants argue that Plaintiff’s reliance on the Ticket Resale Law is 20 unavailing because the Website displays data from a platform for third-party ticket sellers 21 and Defendants themselves are not ticket sellers.

The Ticket Resale Law makes it 22 “unlawful for a ticket seller to represent that he or she can deliver or cause to be delivered 23 a ticket at a specific price or within a specific price range and to fail to deliver within a 24 reasonable time or by a contracted time the tickets at or below the price stated or within 25 the range of prices stated.” Cal. Bus. & Prof.

Code § 22502.2. The statute defines a 26 “ticket seller” as “any person who for compensation, commission, or otherwise sells 27 admission tickets.” *Id.* § 22503. The law also provides that “[i]t shall be unlawful for a 28 15 1 ticket seller to contract for the sale of tickets or accept consideration for payment in full 2 or for a deposit for the sale of tickets unless [t]he ticket seller has a written contract to 3 obtain the offered ticket at a certain price from a person in possession of the ticket or 4 from a person who has a contractual right to obtain the ticket from the primary 5 contractor.” *Id.* § 22502.1.

6 Plaintiff argues that the language of section 22502.1 contemplates a ticket 7 marketplace like the Website as an “intermediary between the person in possession of the 8 ticket [and] the purchaser of the ticket.” (Response at 31.) Plaintiff argues that the 9 allegation that “Defendants receive a

commission and/or compensation for every ticket sold on their website,” (Compl. ¶ 125) fits within the statutory definition of ticket sellers.

11 Based on Plaintiff’s allegation, Defendants could plausibly qualify as a ticket seller 12 under section 22502.1 as Plaintiff alleges that consumers pay Defendants directly for the 13 tickets, and consumers receive the tickets in a digital form directly from Defendants. (Id. 14 ¶¶ 126-128.)

Therefore, unlike a forum where buyers and sellers directly deal with each 15 other, Plaintiff allegedly bought the tickets from Defendants as an intermediary. 16 Accordingly, Defendants’ motion to dismiss the Ticket Resale Law claim is denied. 17 C. CONCLUSION 18 For the reasons stated above, it is ordered as follows: 19 1. Defendants’ motion to compel arbitration is granted as to the claims asserted 20 against Internet Referral Services, LLC and Ticket Fulfillment Services, L.P.

In all other 21 respects, their motion to compel arbitration is denied. 22 2. Defendants’ motion to stay is denied. 23 3. Defendants’ motion to dismiss is denied. 24 // 25 // 26 // 27 // 28 16 1 IT IS SO ORDERED. 2 ||Dated: October 14, 2025 4 Wy James seas 5 United States District Judge 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 17 3:24-cv-02320-L-DDL