

**NO. 2020-10637**

<b>ADAM WALLACH, on behalf of himself</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>and all other similarly situated,</b>	§	
	§	
<b>PLAINTIFFS</b>	§	
<b>v.</b>	§	
	§	<b>HARRIS COUNTY, TEXAS</b>
<b>HOUSTON ASTROS, LLC and</b>	§	
<b>HOUSTON ASTROS MANAGEMENT,</b>	§	
<b>INC.,</b>	§	
	§	
<b>DEFENDANTS</b>	§	<b>152<sup>nd</sup> JUDICIAL DISTRICT</b>

**NO. 2020-11192**

<b>ROGER CONTRERAS, on behalf of himself</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>and all other similarly situated,</b>	§	
	§	
<b>PLAINTIFFS</b>	§	
<b>v.</b>	§	
	§	<b>HARRIS COUNTY, TEXAS</b>
<b>HOUSTON ASTROS, LLC and</b>	§	
<b>HOUSTON ASTROS MANAGEMENT,</b>	§	
<b>INC.,</b>	§	
	§	
<b>DEFENDANTS</b>	§	<b>152<sup>nd</sup> JUDICIAL DISTRICT</b>

**NO. 2020- 11221**

<b>KENNETH YOUNG, on behalf of himself</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>and all other similarly situated,</b>	§	
	§	
<b>PLAINTIFFS</b>	§	
<b>v.</b>	§	
	§	<b>HARRIS COUNTY, TEXAS</b>
<b>HOUSTON ASTROS, LLC and</b>	§	
<b>HOUSTON ASTROS MANAGEMENT,</b>	§	
<b>INC.,</b>	§	
	§	
<b>DEFENDANTS</b>	§	<b>152<sup>nd</sup> JUDICIAL DISTRICT</b>

## **CONSOLIDATED AMENDED CLASS ACTION PETITION AND JURY DEMAND**

“There’s something about baseball, something magical, that will always make it America’s sport, America’s pastime.”

– Micah Chen

“Baseball is about talent, hard work, and strategy. But at the deepest level, it’s about love, integrity, and respect.”

– Pat Gillick

“[Baseball] is the most honest pastime in the world. It has to be, or it could not last a season out. Crookedness and baseball don’t mix.”

– Charles Comiskey

### **TO THE HONORABLE COURT:**

Plaintiffs Adam Wallach, Donald R. Rao, CHA, Inc., Brian Dobbins, Roger Contreras, and Kenneth Young (collectively, “Plaintiffs”), for themselves and all similarly situated individuals and entities, complain of the actions of Defendants Houston Astros, LLC and Houston Astros Management, Inc. (together, “Astros” or “Defendants”), and respectfully show the following:

#### **NATURE OF THE CASE**

1. During the past 4 years, nearly 10 million men, women, and children filled Minute Maid Park to watch the Astros play ball.<sup>1</sup> While some fans only occasionally flocked to the ballpark to partake in America’s favorite pastime, others—many season ticket holders—lived for the game, donning their navy, orange, and white Astros gear with immense pride and a sense

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<sup>1</sup> See Olivia Pulsinelli, *See Where the Houston Astros, All MLB Teams Rank in Home Attendance So Far in 2019*, available at: <https://www.bizjournals.com/houston/news/2019/07/06/see-where-the-houston-astros-all-mlb-teams-rank-in.html> (last visited May 1, 2020).

of community. These fans believed then that their Team, the Astros, “embodied the heart, fight and resiliency of their community.”<sup>2</sup> Little did the fans know, it was all a lie.

2. The Astros won because they cheated. They not only stole signs to gain an unfair advantage in games, they pilfered the respect, dignity, and hard-earned money of their most devoted fans, who believed the Astros played by the rules and won because they earned it, not because they cheated. The dust has since settled on home plate, and no games are now being played, but the Astros fans, including Plaintiffs, once filled with pride and honor for their Team, are grappling with embarrassment, disappointment, shame, and disgrace for a team they once believed represented their community, represented them.<sup>3</sup> These fans, including Plaintiffs, were cheated by the cheaters.

3. This class action is against the Astros on behalf of 2016, 2017, 2018, 2019 and 2020 full and partial season ticket holders (*i.e.*, Season Ticketholder Class Members) for knowingly, intentionally, and deceptively selling season tickets<sup>4</sup> under false pretenses and, in the case of the 2020 Season Ticketholder Subclass Members,<sup>5</sup> failing and refusing to refund the amounts they paid for their post-May 31, 2020 season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services that the Astros systematically debited from

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<sup>2</sup> Arash Markazi, *Astros Fans Shouldn't Feel Guilty About the Joy they Felt During 2017 World Series*, LOS ANGELES TIMES, available at: <https://www.latimes.com/sports/story/2020-01-25/astros-world-series-scandal-title-dodgers-fans-houston> (last visited May 1, 2020).

<sup>3</sup> *Id.* (Fans expressing: “I think the whole cheating scandal brings more shame than honor to Houston. The true fans here in Houston are proud of our teams win or lose, but to cheat is outright disgraceful.”; “I’m breaking up with the Houston Astros . . . the Astros cheated on us.”).

<sup>4</sup> As used in this Consolidated Amended Class Action Petition and Jury Demand, the term “season tickets” includes both full and partial season tickets and post-season tickets.

<sup>5</sup> The Season Ticketholder Class Members and the 2020 Season Ticketholder Subclass Members may collectively be referred to as the “Class Members.”

their bank accounts and payment cards—even as late as March 2020 in the face of the Covid-19 coronavirus pandemic—with full knowledge that the full slate of the Astros’ 2020 home games would not be played in front of fans at Minute Maid Park.

4. Defendants knowingly, intentionally, and deceptively sold Plaintiffs and Season Ticketholder Class Members season tickets with full knowledge that Defendants’ employees and representatives surreptitiously engaged in a sign stealing cheating scheme in violation of Major League Baseball (“MLB”) Rules and Regulations that could result (and has since resulted) in an MLB investigation and severe penalties instituted by MLB that, in turn, resulted in a diminished product in the field—all of which Defendants covered up. The Astros’ surreptitious sign stealing cheating scheme and its illicit coverup is not only outrageous and morally offensive, it is costly. Had Plaintiffs and Season Ticketholder Class Members known about the Astros’ illicit sign stealing cheating scheme and subsequent MLB investigation, they never would have purchased season tickets, post-season tickets, and other goods and/or services from the Astros.

5. Plaintiffs, Season Ticketholder Class Members, and 2020 Season Ticketholder Subclass Members have suffered injury, harm, and damages as a direct and/or proximate result of Defendants’ above-described knowing, intentional, and deceptive wrongful conduct (and continue to do so). Plaintiffs, for themselves and Season Ticketholder Class Members and 2020 Season Ticketholder Subclass Members, assert claims and causes of action against Defendants for fraud by nondisclosure, violations of the Texas Deceptive Trade Practices-Consumer Protection Act, money had and received, and unjust enrichment/assumpsit. Plaintiffs, for themselves and Season Ticketholder Class Members and 2020 Season Ticketholder Subclass Members, seek to recover damages and equitable relief in the form of, *inter alia*, (i) for the Season Ticketholder Class Members, the amounts they paid for 2016, 2017, 2018, 2019, and

2020 season ticket, 2017-2019 post-season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services purchased from the Astros, (ii) for the 2020 Season Ticketholder Subclass Members, the amounts paid for their post-May 31, 2020 season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services, (iii) the diminished value of all Class Members' personal seat licenses, (iv) treble damages, (v) punitive damages, and (vi) attorneys' fees, litigation expenses, and court costs.

### **DISCOVERY PLAN**

6. Plaintiffs, for themselves and Season Ticketholder Class Members and 2020 Season Ticketholder Subclass Members, intend to seek entry of a Level 3 order requiring a discovery control plan tailored to the specific circumstances of this action. TEX. R. CIV. P. 190.4.

### **PARTIES**

7. Plaintiff Adam Wallach is a citizen and resident of Harris County, Texas. Plaintiff Wallach purchased full season tickets for two seats for the 2019 season, playoff tickets, World Series tickets, and the 2019 Promo Pack, which included every gate giveaway for the 2019 season, from Defendants. Plaintiff Wallach suffered injury, harm, and damages (and continues to do so) as a direct and/or proximate result of Defendants' above-described wrongful actions; to wit, knowingly, intentionally, and deceptively selling Plaintiff Wallach season tickets and/or other goods and/or services with full knowledge that Defendants' employees and representatives surreptitiously engaged in the sign stealing cheating scheme that resulted in severe penalties instituted by MLB that, in turn, resulted in a diminished product in the field—all of which Defendants covered up. The Astros' surreptitious sign stealing cheating scheme and its coverup are outrageous and morally offensive to Plaintiff Wallach. Had Plaintiff Wallach known about the Astros' illicit sign stealing cheating scheme, its coverup, and subsequent MLB investigation,

he never would have purchased 2019 season tickets and/or other goods and/or services from the Astros.

8. Plaintiff Donald R. Rao is a citizen and resident of Harris County, Texas. Plaintiff Rao purchased full season tickets for four seats for the 2018-2020 seasons, playoff tickets, and parking from Defendants. Plaintiff Rao suffered injury, harm, and damages (and continues to do so) as a direct and/or proximate result of Defendants' above-described wrongful actions; to wit, knowingly, intentionally, and deceptively selling Plaintiff Rao season tickets and/or other goods and/or services with full knowledge that Defendants' employees and representatives surreptitiously engaged in the sign stealing cheating scheme that resulted in severe penalties instituted by MLB that, in turn, resulted in a diminished product in the field—all of which Defendants covered up. The Astros' surreptitious sign stealing cheating scheme and its coverup are outrageous and morally offensive to Plaintiff Rao. Had Plaintiff Rao known about the Astros' illicit sign stealing cheating scheme, its coverup, and subsequent MLB investigation, he never would have purchased 2018-2020 season tickets and/or other goods and/or services from the Astros. Adding insult to injury, Plaintiff Rao has been further damaged by the Astros' failure and refusal to refund the full purchase price of his post-May 31, 2020 season tickets, parking, and ticket printing services that the Astros systematically debited to his credit card—even as late as March 2020 in the face of the Covid-19 coronavirus pandemic—with full knowledge that the full slate of the Astros' 2020 home games would not be played in front of fans at Minute Maid Park.

9. Plaintiff CHA, Inc. is a Texas corporation with its principal place of business in Brazoria County, Texas. Plaintiff CHA, Inc. purchased Diamond Club full season tickets for two seats for the 2003-2018 seasons and Diamond Lot parking from Defendants. Plaintiff CHA, Inc. suffered injury, harm, and damages (and continues to do so) as a direct and/or proximate result of

Defendants' above-described wrongful actions; to wit, knowingly, intentionally, and deceptively selling Plaintiff CHA, Inc. season tickets and/or other goods and/or services with full knowledge that Defendants' employees and representatives surreptitiously engaged in the sign stealing cheating scheme that resulted in severe penalties instituted by MLB that, in turn, resulted in a diminished product in the field—all of which Defendants covered up. The Astros' surreptitious sign stealing cheating scheme and its coverup are outrageous and morally offensive to Plaintiff CHA, Inc. as an organization. Had Plaintiff CHA, Inc. known about the Astros' illicit sign stealing cheating scheme, its coverup, and subsequent MLB investigation, it never would have purchased 2016-2019 season tickets and/or other goods and/or services from the Astros.

10. Plaintiff Brian Dobbins is a citizen and resident of Harris County, Texas. Plaintiff Dobbins purchased partial season tickets for three seats for the 2016-2019 seasons from Defendants. Plaintiff Dobbins suffered injury, harm, and damages (and continues to do so) as a direct and/or proximate result of Defendants' above-described wrongful actions; to wit, knowingly, intentionally, and deceptively selling Plaintiff Dobbins season tickets with full knowledge that Defendants' employees and representatives surreptitiously engaged in the sign stealing cheating scheme that resulted in severe penalties instituted by MLB that, in turn, resulted in a diminished product in the field—all of which Defendants covered up. The Astros' surreptitious sign stealing cheating scheme and its coverup are outrageous and morally offensive to Plaintiff Dobbins. Had Plaintiff Dobbins known about the Astros' illicit sign stealing cheating scheme, its coverup, and subsequent MLB investigation, he never would have purchased 2016-2019 season tickets and/or other goods and/or services from the Astros.

11. Plaintiff Roger Contreras is a citizen and resident of Harris County, Texas. Plaintiff Contreras purchased season tickets for two seats for the 2017-2018 seasons and 2017-

2018 post-season tickets from Defendants. Plaintiff Contreras suffered injury, harm, and damages (and continues to do so) as a direct and/or proximate result of Defendants' above-described wrongful actions; to wit, knowingly, intentionally, and deceptively selling Plaintiff Contreras season tickets and/or other goods and/or services with full knowledge that Defendants' employees and representatives surreptitiously engaged in the sign stealing cheating scheme that resulted in severe penalties instituted by MLB that, in turn, resulted in a diminished product in the field—all of which Defendants covered up. The Astros' surreptitious sign stealing cheating scheme and its coverup are outrageous and morally offensive to Plaintiff Contreras. Had Plaintiff Contreras known about the Astros' illicit sign stealing cheating scheme, its coverup, and subsequent MLB investigation, he never would have purchased 2017-2018 season tickets, 2017-2018 post-season tickets, and/or other goods and/or services from the Astros.

12. Plaintiff Kenneth Young is a citizen and resident of Harris County, Texas. Plaintiff Young purchased season tickets for four seats for the 2017-2018 seasons and 2017-2018 post-season tickets from Defendants. Plaintiff Young suffered injury, harm, and damages (and continues to do so) as a direct and/or proximate result of Defendants' above-described wrongful actions; to wit, knowingly, intentionally, and deceptively selling Plaintiff Young season tickets and/or other goods and/or services with full knowledge that Defendants' employees and representatives surreptitiously engaged in the sign stealing cheating scheme that resulted in severe penalties instituted by MLB that, in turn, resulted in a diminished product in the field—all of which Defendants covered up. The Astros' surreptitious sign stealing cheating scheme and its coverup are outrageous and morally offensive to Plaintiff Young. Had Plaintiff Young known about the Astros' illicit sign stealing cheating scheme, its coverup, and subsequent MLB



investigation, he never would have purchased 2017-2018 season tickets, 2017-2018 post-season tickets, and/or other goods and/or services from the Astros.

13. Defendant Houston Astros, LLC is a Texas limited liability company with its principal place of business in Houston, Texas. On information and belief, Defendant Houston Astros, LLC is an affiliate of Defendant Houston Management, Inc., and owned, operated, and/or participated in the management of the Houston Astros Major League Baseball Club during the illicit sign stealing cheating scheme, its coverup, and subsequent MLB investigation (and continues to do so). Defendant Houston Astros, LLC also knowingly, intentionally, and deceptively engaged (and continues to engage) in the above-described wrongful conduct that has directly and/or proximately caused (and continues to cause) Plaintiffs, Season Ticketholder Class Members, and 2020 Season Ticketholder Subclass Members to suffer the above-described injury, harm, and damages. Defendant Houston Astros, LLC has been served with Citation and answered this case.

14. Defendant Houston Astros Management, Inc. is a Texas corporation with its principal place of business in Houston, Texas. On information and belief, Defendant Houston Astros Management, Inc. is an affiliate of Defendant Houston Astros, LLC, and owned, operated, and/or participated in the management of the Houston Astros Major League Baseball Club during the illicit sign stealing cheating scheme, its coverup, and subsequent MLB investigation (and continues to do so). Defendant Houston Astros Management, Inc. also knowingly, intentionally, and deceptively engaged (and continues to engage) in the above-described wrongful conduct that has directly and/or proximately caused (and continues to cause) Plaintiffs, Season Ticketholder Class Members, and 2020 Season Ticketholder Subclass

Members to suffer the above-described injury, harm, and damages. Defendant Houston Astros Management, Inc. has been served with Citation and answered this case.

### **JURISDICTION AND VENUE**

15. This Court has subject matter jurisdiction over Plaintiffs' claims under TEX. GOV'T CODE § 24.007(b).

16. Plaintiffs, for themselves and Season Ticketholder Class Members and 2020 Season Ticketholder Subclass Members, seek damages within the jurisdictional limits of this Court; to wit, monetary relief in excess of \$1,000,000 (TEX. R. CIV. P. 47(c)(5)).

17. This action is not removable to federal court under the Class Action Fairness Act ("CAFA") because this matter satisfies the Local Controversy Exception, the Home-state Controversy Exception, and the Discretionary Exception. In particular, removal is improper because (i) more than two-thirds of Season Ticketholder Class Members and 2020 Season Ticketholder Subclass Members, in the aggregate, are Texas citizens, (ii) Season Ticketholder Class Members and 2020 Season Ticketholder Subclass Members seek significant relief from both Defendants whose alleged conduct forms a significant basis for Plaintiffs,' Season Ticketholder Class Members,' and 2020 Season Ticketholder Subclass Members' claims, and who are Texas citizens, (iii) the principal injuries, harm, and damages resulting from Defendants' alleged wrongful conduct were incurred by Plaintiffs, Season Ticketholder Class Members, and 2020 Season Ticketholder Subclass Members in Texas, and (iv) two-thirds or more of Season Ticketholder Class Members and 2020 Season Ticketholder Subclass Members, in the aggregate, and both Defendants are Texas citizens. 28 U.S.C. § 1332(d)(4). The deadline to remove this action to federal court also has passed and Defendants thus waived any right to remove this matter. 28 U.S.C. § 1446(b).

18. This Court has *in personam* jurisdiction over Defendants because at all relevant times, Defendants, directly and/or through their employees, agents, and representatives resided, were found, and conducted business in Harris County, Texas (and continue to do so).

19. At all relevant times, Defendants, directly and/or through their employees, agents, and representatives, resided, were found, and conducted business in Harris County, Texas (and continue to do so). A substantial part, if not all, of the events giving rise to Plaintiffs,' Season Ticketholder Class Members,' and 2020 Season Ticketholder Subclass Members' claims occurred in Harris County, Texas. Accordingly, venue is proper in Harris County, Texas under TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1); (a)(3).

## **FACTS**

### **I. The Astros' False Claims to Fame.**

20. The Astros continuously and intentionally mislead Class Members into believing that they played a fair game by touting the Astros' success to fans as though it came from great coaching, skilled players, and teamwork—rather than from where it really did—sign stealing.

21. Ironically, for the 2017 baseball season, the Astros adopted the theme “Earn History.” The phrase appeared on drink cups, t-shirts, rally towels, baseball caps, banners, social media outlets, and more. *See* [https://azdailysun.com/news/local/final-world-series-blog-astros-earn-history/article\\_7f41ba28-9c8a-59d3-8e71-6bbd41c3c090.html](https://azdailysun.com/news/local/final-world-series-blog-astros-earn-history/article_7f41ba28-9c8a-59d3-8e71-6bbd41c3c090.html) (last visited May 1, 2020).



22. Two signs at Minute Maid Park explained the theme. One sign, positioned along the tunnel connecting the clubhouses and offices, read:

What does it really mean to make history? To do something that has never been done. To write your name in the books? There's only one way—you've got to earn it. We're talking about respect and creating a legacy. So who cares what everyone else says? History won't remember them. Stay relentless. Unleash greatness and create your own destiny. For Houston, for H-Town, for the H. It's time to show the world who we are. Earning our place in history together.

*Id.*



23. The other sign explaining the “Earn History” theme was on the wall of the Club

Level of the stadium:

Nothing in life comes easy. You have to work for it. Sweat for it. Bleed for it. Dig out every grounder, grind to the last out and treat every play like Game 7 is on the line. We leave everything on the field. Every play, every inning, every game. First ones in. Last ones out. Nothing is free. Everything is earned. We’re here to earn it.

*Id.*

24. The pitch was a powerful sales tool. Fans connected with the premise that success must be earned—relying on the Astros’ promise to “earn” their place in baseball history. As one

fan recounted the slogan:

The Astros slogan of "Earn History" sounded like just another cliché sports hashtag when I first heard it. Yeah, winning the World Series means it's the first in Astros history, the first in Texas history, etc. That's great, but every team has a cute slogan, right? But as I pondered the depths of my soul following the most amazing routine grounder the second ever, I realized there was more to Earn History. Maybe it also means that this club has finally earned our history. The history of every fan who has waited for this moment. Every fan who grew up cheering for the orange and blue (and brick red) (and navy and gold). Every fan who inherited their loyalty to the Astros from our fathers and mothers, aunts and uncles, grandparents. The history that includes the heartbreaks of the past, the expectations never fulfilled, the

Hall of Famers who, through all of their individual greatness, could never bring home that ultimate team accomplishment.

See [http://www.astroscounty.com/2017/11/what-earn-history-means-to-me.html?utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3A+AstrosCounty+%28Astros+County%29](http://www.astroscounty.com/2017/11/what-earn-history-means-to-me.html?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+AstrosCounty+%28Astros+County%29) (last visited May 1, 2020).

25. When the Astros won the 2017 World Series (before the world knew how), the Astros organization changed the slogan from “Earn History” to “History Earned,” pretending that the win was a result of hard work and one that the Astros earned rather than stole:



26. The Astros’ 2017 Championship Rings claimed to represent that “it’s what’s inside that counts.” See <https://www.mlb.com/astros/fans/ring-ceremony>. The ring features the organization’s “rallying cry, ‘EARNED HISTORY.’ It is placed so that, when shaking another hand, the recipient can clearly see that the Astros earned their World Series title and place in history.” *Id.*

## The arbor of the Championship Ring shows that it's what's inside that counts.

- The inside of the ring features a specialty arbor showcasing the results of each playoff series in the Astros playoff journey.
- The arbor of the ring features the organization's rallying cry, "EARNED HISTORY." It is placed so that, when shaking another hand, the recipient can see clearly that the Astros earned their World Series title and place in history.



27. The concept that hard work and earning the win was the Astros' truth was enticing to fans and Class Members, who bought into the Astros' rallying cry and promise that their success was indeed, *earned*. Of course, the Astros knew that it was nothing more than farce, but it was such a profitable unifying theme that the Astros spouted it at every turn, emblazoned it on every cup, and used it every way they could as a widespread marketing tool to promote sales of season tickets and other goods and services:



See [https://azdailysun.com/news/local/final-world-series-blog-astros-earn-history/article\\_7f41ba28-9c8a-59d3-8e71-6bbd41c3c090.html](https://azdailysun.com/news/local/final-world-series-blog-astros-earn-history/article_7f41ba28-9c8a-59d3-8e71-6bbd41c3c090.html) (last visited May 1, 2020).

28. Had Class Members who purchased season tickets and other goods and services from Defendants known that that Astros weren't really earning the wins, but stealing them, they would not have made such purchases.

29. The Astros capitalized on the fact that Class Members and fans believed their team earned the 2017 World Series title and season ticket prices soared after the win. See <https://www.chron.com/news/houston-texas/houston/article/Houston-Astros-ticket-buyers-notice-dynamic-12938782.php> (last visited May 1, 2020). For example, before the sign stealing cheating scheme, when the Astros played by the rules, the average ticket price at Minute Maid Park was just \$66 on the secondary market—after they cheated, and won, the average ticket price for the 2018 season was \$87. *Id.* In 2019, season ticket prices jumped as much as 150%. Thus, there can be no doubt the Astros profited from their cheating by artificially padding their record, and using it to justify the increased season ticket prices.



30. Regular press releases also highlighted the Astros' wins, obviously omitting the fact that they cheated to achieve those wins. Each press release concluded with a call to Astros fans and Class Members to purchase more tickets; to wit:

August 8, 2018



The first-place Astros return home after a successful 6-2 road trip to host the AL West rival **Seattle Mariners** for four games, beginning tomorrow, **Aug. 9 through Sunday, Aug. 12**. The Astros are 6-3 against the Mariners so far this season, with 10 games remaining between the two clubs. Following the four-game series, the Astros will host the **Colorado Rockies** for a two-game set, **Aug. 14-15**. Houston enters the six-game homestand with a 5.5 game lead in the AL West Division over the Oakland A's and lead the Majors in run differential at +202. The 2018 Astros have posted their best 115-game record in franchise history at 73-42, besting their previous record set last year by two games (71-44).

Fans can secure potential 2018 Postseason tickets by purchasing 2019 Season Tickets, available now by emailing [seasontickets@astros.com](mailto:seasontickets@astros.com) or calling **713-259-8402**. Limited group tickets, suite rentals and single game tickets for the remainder of the 2018 season are available now, but going quickly. Tickets can be purchased online at [www.astros.com/tickets](http://www.astros.com/tickets) or by phone, toll free, at **1-877-9ASTROS (1-877-927-8767)**.

See <https://www.mlb.com/astros/press-release/astros-legends-weekend-highlights-upcoming-six-game-homestand-vs-marin-289460270?t=astros-press-releases> (last visited May 1, 2020).

31. The Astros also regularly represented to Class Members that the reason they won was because of skill. For instance, in the June 18, 2018 Press Release announcing Astros' General Manager Jeff Luhnow's contract extension, the Astros represented to fans that their wins were attributable to smart trades, drafting, coaching, and managing:

Luhnow was hired by the Astros as the 12th General Manager in franchise history on Dec. 7, 2011, inheriting a club that had lost 106 games that season. Upon taking the job, Luhnow was clear about the path he had envisioned. His plan was to start by building the best minor league system in baseball through trades and the draft. Utilizing younger, homegrown talent would be a key to sustaining long-term success. By the 2014 season, just two short seasons after Luhnow took control, the Astros farm system had catapulted into being ranked as one of the best in baseball by virtually every sports media outlet. The Major League club was also showing improvement by 2014, as that season's Astros team won 19 more games than in the previous season.

Luhnow's plan also included complementing a young Astros roster with established veterans once the club became competitive. In 2015, the addition of key veterans

through trades and free agent signings played a major role in the Astros earning their first playoff berth in 10 seasons. Luhnow also hired AJ Hinch as manager prior to the 2015 season, another decision that would be a key to the club's success. In the 2015 AL Wild Card Game, Houston earned a dramatic victory over the Yankees at Yankee Stadium before being eliminated by the eventual World Series Champion Royals.

In 2017, Luhnow crafted a roster that had just the right blend of veteran leadership (Carlos Beltrán, Brian McCann, Charlie Morton, Josh Reddick, Justin Verlander) to go along with some of the brightest young stars in the game (Jose Altuve, Alex Bregman, Carlos Correa, Lance McCullers, Jr., George Springer), with the end result being a World Series title for the Houston Astros. For his efforts, Luhnow was named the 2017 MLB Esurance Executive of the Year.

In 2018, the Astros are once again in the thick of the playoff race, occupying first or second place in their division for virtually the entire season to this date. Due in large part to Luhnow's offseason acquisition of Gerrit Cole, the Astros have had the top starting rotation in baseball this season and lead the Majors in overall ERA.

*Id.*, <https://www.mlb.com/astros/press-release/astros-general-manager-jeff-luhnow-receives-contract-extension-281807850?t=astros-press-releases> (last visited May 1, 2020). While the Astros go to great lengths to discuss their master plan of success, never once do they mention that their victories were the result of coordinated cheating efforts. And the reason is obvious; if the Astros revealed their true sign stealing cheating scheme to their fans and Class Members, ticket sales—including season ticket sales—would drastically decline.

32. The Astros also touted their “skill and firepower” to entice Class Members to purchase tickets:

### HOUSTON ASTROS TICKET INFORMATION

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This is a great time to get out to an Astros game. The team that brought [Major League Baseball](#) to Texas has been taking the American League by storm, showing off the skill and firepower that turned [Houston](#) into the Crush City and won the 2017 [World Series](#). Astros tickets give you the chance to see for yourself what baseball's latest sensation brings to the diamond.

#### Aiming for the Stars

Established in 1962 as the Colt .45s, the team joined the New York Mets as the first expansion franchises in the National League after a years-long fight to bring Major League Baseball to the Lone Star State. They found their modern name 3 years later, as the Space Race heated up and they moved into the brand-new Astrodome.

Along with introducing the world to AstroTurf and pioneering the spectacle of baseball under a roof, the Astros featured stars like Nolan Ryan, César Cedeño, and José Cruz. Despite decades of struggles on the field and attempts to move the team, the Astros kept climbing. They brought the World Series to Texas for the first time in 2005, but got swept by the [Chicago White Sox](#), and their last years in the National League featured some of the worst records in the team's history.

New management and a new home in the American League saw the 'Stros come rocketing back, becoming the first team to win the pennant in both leagues on their way to win it all. Today, a visit to [Minute Maid Park](#) is one of the best [things to do](#) in Houston, and you can see for yourself what makes an Astros game an experience you shouldn't miss.

*See* <https://www.expedia.com/event-tickets/houston-astros-tickets.p> (last visited M1, 2020).

33. In a June 18, 2018 press conference, Jeff Luhnow and Astros majority owner and Chairman, Jim Crane, proclaimed that they won because they created an environment where they had a team capable of winning multiple championships. *See* <https://www.facebook.com/Astros/videos/astros-press-conference/10160375708105431/> (last visited May 1, 2020).

34. In an August 30, 2018 Press Release, when announcing the contract extension of Manager AJ Hinch, Jim Crane attributed the Astros' success to the fact that Hinch “knows the game extremely well, he knows his players and knows how to win. We have had a lot of success over the past three seasons, and AJ is a big reason.” *See* <https://www.mlb.com/astros/press-release/astros-extend-contract-of-manager-aj-hinch-292630662?t=astros-press-releases> (last visited May 1, 2020).

35. In a September 13, 2018 Press Release, the Astros announced the promotion of Brandon Taubman to Assistant General Manager. *See* <https://www.mlb.com/astros/press->

release/astros-promote-brandon-taubman-to-assistant-general-manager-294503688?t=astros-press-releases (last visited May 1, 2020). The Astros claimed that Taubman’s “efforts over the years were instrumental in helping the Astros win their first World Series Championship in 2017. He has also been an essential figure in helping the Astros become perennial contenders at the Major League level, while still maintaining a top-ranked farm system.” *Id.*

36. Previously, in a 2016 television commercial, the Astros displayed two players, Altuve and Correa, represented to fans, and Class Members that “As the heart of the Astros’ infield they know that to turn two in the pros, takes next-level teamwork.”



<https://www.ispot.tv/ad/A5JK/mlb-com-this-altuve-and-correa-know-teamwork#> (last visited May 1, 2020).

37. The Astros also directly falsely denied that they had violated or were violating MLB rules against electronic sign stealing, falsely stating that their suspected efforts to place an individual with a camera in a position to view into the opposing team’s dugout was solely to make sure that the opposing team was not cheating:

We do it every stadium we go into. We dispatch someone from the travel party to go out into center field, look at a particular area that might be suspicious or a certain monitor. I'm sure other clubs do this as well, but we're just trying to protect ourselves the best we can.

Jeff Luhnow (October 17, 2018). See Bob Nightengale, *MLB clears Astros of cheating*, *Houston GM Jeff Luhnow says team was 'playing defense,'* USA TODAY (Oct. 17, 2018), <https://www.usatoday.com/story/sports/mlb/2018/10/17/astros-cleared-cheating-signstealing-jeff-luhnow-mlb-playoffs/1675379002/> (last visited Feb. 13, 2020).

38. In fact, as detailed herein, the Astros had sent the individual to Fenway Park to engage in electronic sign stealing.

## **II. Sign Stealing in Baseball.**

39. Sign stealing in baseball is the observance and communication of the signs given by the opposing team's catcher to the pitcher regarding the pitches to be thrown to the batter. Sign stealing has been around as long as baseball has existed. But the Astros' conduct far exceeds acceptable boundaries. In 1899, for example, the Phillies were discovered stealing signs by using binoculars in center field, and then relaying the information to the third base coach – not so different from how the Astros stole signs 126 years later. Tom Verducci, *How MLB Handled Sign Stealing Before Punishing Astros*, SPORTS ILLUSTRATED, Jan. 23, 2020, <https://www.si.com/mlb/2020/01/23/sign-stealing-history-astros-red-sox> (last visited Apr. 25, 2020).

40. Sign stealing has evolved over the years, from the 1909 Highlanders (former player stationed behind the centerfield fence with binoculars) to the 1948 Indians (a spy in the scoreboard with binoculars) to the 1990s with the White Sox ("eye in the sky" used to steal signs leading to an anti-surveillance rule) and the 1999 Indians (camera mounted on the centerfield wall). *Id.*

41. It has long been illegal in MLB to utilize mechanical or electronic equipment to steal the opposing team's signs. Sign stealing in this manner, in fact, was addressed in the 1961 National League Winter Meetings, wherein sign stealing using any "mechanical device" to steal signs was banned. *Majors Ban Mechanical Pilfering of Enemy Signs*, NEW YORK DAILY NEWS, April 1, 1962, at page 134, <https://www.newspapers.com/image/456921337/> (last visited April 25, 2020). In 1961, National League president Warren Giles further warned that teams would be subject to forfeit any wins gained by using sign stealing devices. Tom Verducci, *How MLB Handled Sign Stealing Before Punishing Astros*, SPORTS ILLUSTRATED, January 23, 2020, <https://www.si.com/mlb/2020/01/23/sign-stealing-history-astros-red-sox> (last visited April 25, 2020).

42. What's more, the MLB Rules specifically "prohibit the use of electronic equipment during games and state that no such equipment 'may be used for the purpose of stealing signs or conveying information designed to give a Club an advantage.'" January 13, 2020 Statement of Commissioner Robert Manfred, at page 2. And, a 2001 MLB memorandum forbade teams from using electronic equipment to communicate during games, especially for the purpose of sign stealing:

Please be reminded that the use of electronic equipment during a game is restricted. No club shall use electronic equipment, including walkie-talkies and cellular telephones, to communicate to, or with, any on-field personnel, including those in the dugout, bullpen, field and – during the game – the clubhouse. *Such equipment may not be used for the purpose of stealing signs or conveying information designed to give the club an advantage.*

Ken Rosenthal, *Red Sox crossed a line, and baseball's response must be firm*, THE ATHLETIC (Sept. 5, 2017), <https://web.archive.org/web/20191117195037/https://theathletic.com/94995/2017/09/05/red-sox-crossed-a-line-and-baseballs-response-must-be-firm/> (last visited April 25, 2020) (emphasis added). These warnings, however, clearly did not deter the Astros from knowingly, intentionally, and deceptively engaging in the sign stealing cheating scheme

and its coverup, deceiving Plaintiffs, Season Ticketholder Class Members, and 2020 Season Ticketholder Subclass Members in the process.

### **III. Origin of the Astros' illicit sign stealing cheating scheme: "Codebreaker."**

43. As reported by the Wall Street Journal, in 2016, Astros third baseman Alex Bregman mentioned to video room staffers that other teams were better at stealing signs when runners were on second base than the Astros. *See* Jared Diamond, *The Astros' Front Office Created Codebreaker. The Players Took It From There*, WALL ST. J. (Feb. 12, 2020), <https://www.wsj.com/articles/the-astros-front-office-created-codebreaker-the-players-took-it-from-there-11581508800?mod=searchresults&page=1&pos=4> (last visited April 25, 2020).

44. The conversation eventually resulted in Derek Vigoa, then an intern and now the Astros' director of team operations, delivering a PowerPoint presentation to General Manager Jeff Luhnow in September 2016 featuring a slide devoted to an Excel-based application programmed with an algorithm that could decode opposing catchers' signs. *Id.* It was called "Codebreaker." *Id.*

45. This was the beginning of what has turned into one of the biggest cheating scandals in American sports history. During the 2017 and 2018 seasons (and possibly longer), Astros baseball operations employees and video room staffers used Codebreaker to illegally steal signs, which were then relayed to batters in real time.

46. The way Codebreaker worked was simple: Someone would watch an in-game live feed and log the catcher's signs and type of pitch thrown into the spreadsheet. *Id.* With this information, Codebreaker determined how the signs corresponded to different pitches. *Id.* Once decoded, the information would be communicated through intermediaries to a baserunner, who would relay them to the hitter. *Id.*

47. Once Codebreaker went into action, the people most interested in sign stealing were Carlos Beltrán and bench coach Alex Cora. *Id.*<sup>6</sup> But the involvement of numerous Astros players and executives in the sign stealing cheating scheme existed from the get-go.

48. For example, Luhnow acknowledged to investigators that he recalled Vigoa's Codebreaker PowerPoint presentation and even asked questions about how it worked. *See* Jared Diamond, "Dark Arts" and "Codebreaker": The Origins of the Houston Astros' Cheating Scheme WALL ST. J. (Feb. 7, 2020), [https://www.wsj.com/articles/houston-astros-cheating-scheme-dark-arts-codebreaker-11581112994?mod=article\\_inline](https://www.wsj.com/articles/houston-astros-cheating-scheme-dark-arts-codebreaker-11581112994?mod=article_inline) (last visited April 25, 2020).

49. Vigoa told investigators that he presumed Luhnow knew it would be used in games because that was "where the value would be," according to the letter. *Id.*

50. But Vigoa's PowerPoint presentation wasn't the only time Astros employees say Luhnow was informed about Codebreaker. *Id.* Tom Koch-Weser, the Astros' director of advance information, said he discussed Codebreaker with Luhnow in one to three meetings after the 2016 season. *Id.* Koch-Weser told MLB that Luhnow "giggled" at the title and appeared "excited" about it. *Id.* Koch-Weser also said that Luhnow sometimes entered the Astros' video room during road games and made comments, such as "You guys Codebreaking?" *Id.*

51. Other Astros employees told MLB's investigators that they believed Luhnow knew about Codebreaker. *Id.* Matt Hogan, now the Astros' manager of pro scouting analysis, told MLB investigators there was no effort to hide the use of Codebreaker in front of Luhnow

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<sup>6</sup> Beltrán, who retired after the 2017 campaign, was the only player named in MLB Commissioner Rob Manfred's public report for his involvement in the sign stealing scheme. It cost Beltrán his job as manager of the New York Mets before he even worked a single game. Cora was fired as the manager for the Boston Red Sox. Manfred is expected to level severe discipline against Cora when he releases MLB's findings regarding allegations of similar cheating by the Red Sox in 2018.



when he visited the video room. *Id.* In fact, he told them, “it would have been something to show we were working and get validation of our work.” *Id.* Koch-Weser also used the term “dark arts” to describe Codebreaker in the Astros’ Advanced Scouting Department’s 2019 budget Excel spreadsheet. *Id.*

52. A May 24, 2017 email entitled “Road Notes (April-May),” sent by Koch-Weise to Luhnow and others included six underlined topic headings; the fifth one was called, “The System”—a reference to what Koch-Weser described to investigators as “all kinds of covert operations,” including sign-stealing. *Id.* Luhnow responded to that email a day later: “These are great, thanks.” *Id.* He wrote another response email to Koch-Weiser about three hours later. “How much of this stuff do you think [Hinch] is aware of?” *Id.*

53. The May 24, 2017 email also highlights Cora and Beltrán’s roles. *See* Jared Diamond, *The Astros’ Front Office Created Codebreaker. The Players Took It From There*, WALL ST. J. (Feb. 12, 2020). “I don’t want to electronically correspond too much about ‘the system’ but Cora/Cintron<sup>7</sup>/Beltran have been driving a culture initiated by Bregman/Vigoa last year and I think it’s working,” Koch-Weser wrote. *Id.* “I have no proof that it has worked, but we get real good dope on pitchers tipping and being lazy. That information, if it’s not already, will eventually yield major results in our favor once players get used to the implementation.” *Id.*

54. An August 26, 2017 email sent by Koch-Weser to several colleagues in the Astros front office, including Luhnow, included an update on the state of the team’s “dark arts, sign-stealing department.” *Id.* Utility man Marwin González, Koch-Weser wrote, was having great success with the information procured by the Astros’ illicit efforts, cutting down on his rate of

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<sup>7</sup> Alex Cintrón, the Astros’ current hitting coach, was an Astros assistant coach in 2017. On information and belief, he was involved in transmitting information from the video room to the dugout.

swinging at pitches out of the strike zone. *Id.* But somebody else was actually having trouble with it: veteran outfielder Carlos Beltrán. *Id.*

55. “Beltrán, who is the godfather of the whole program, ironically just swings at everything after taking a strike and probably does the worst with the info,” Koch-Weser wrote. *Id.* The Astros’ rule-breaking permeated the organization, involving executives, coaches, and players. And it all started with an Excel-based application internally named “Codebreaker” designed to decode opposing catchers’ signs.

#### **IV. The Banging Scheme.**

56. On information and belief, starting around June 2017, the sign stealing cheating scheme was expanded and embellished by Astros players. *Id.* They started watching a live game feed on a monitor near the dugout and then bang on a trash can to communicate the coming pitch to the batter. *Id.* The “banging scheme” lasted at least through the 2017 World Series, which the Astros won over the Los Angeles Dodgers. *Id.*

57. Cora and Beltrán were the most responsible for implementing the banging scheme. *Id.* On further information and belief, Cora had a tech worker install the monitor the Astros’ players watched before banging on the trash can.<sup>8</sup> *Id.*

58. But while the banging scheme started with Cora and Beltrán, it quickly spread. *Id.* In a January 2, 2020 letter to Luhnaw, Manfred said that, “Most or all Astros players were active participants in the Banging Scheme by the conclusion of the 2017 World Series,” which ended

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<sup>8</sup> Koch-Weser and other Astros video room staffers told MLB investigators that they were not aware of the Astros’ banging scheme until September 2017, when Danny Farquhar, then a Chicago White Sox pitcher, noticed the banging noise emanating from the Astros’ dugout. *Id.* Manfred later wrote in his report that the incident caused a sense of “panic,” so a group of Astros players removed the monitor near the dugout and hid it in an office. *Id.*

with Houston winning in seven games over the Los Angeles Dodgers. *Id.* “The Banging Scheme was so prevalent,” Manfred wrote, “that witnesses regularly describe that everyone in and around the Astros dugout was presumptively aware of it.” *Id.*

59. Koch-Weser’s August 26, 2017 email that called Beltrán the “godfather,” which was quoted in Manfred’s letter to Luhnow, referred to the video room sign-stealing operation. *Id.* It singled out González as particularly benefiting from it. “Marwin I’d say does the best job with getting this info,” Koch-Weser wrote. *Id.*

60. González had by far his best season in 2017, hitting .303 with a .907 OPS in 455 at-bats, up from his career totals of .264 and .737, respectively. He also set personal bests with 23 home runs and 90 RBIs. Tony Adams, an Astros fan who watched 8,274 pitches from 58 home games during the 2017 season and logged every instance he could hear a banging sound, heard banging on 147 pitches thrown to González, the most of anybody on the team. *Id.* “We’ve seen huge declines from him in chase and swing rates,” Koch-Weser wrote. *Id.*

## **V. MLB Commissioner Rob Manfred’s Report.**

61. On November 12, 2019, former Astros pitcher Mike Fiers publicly alleged in an article published by Ken Rosenthal and Evan Drellich of The Athletic that the Astros had engaged in sign-stealing methods in 2017 that violated MLB Rules. Fiers’ allegations created significant concern among many other MLB baseball clubs regarding the Astros’ adherence to the MLB Rules and the principles of sportsmanship and fair competition.

62. As a result, MLB Commissioner Rob Manfred initiated an investigation covering 2016-2019. During the investigation, MLB investigators interviewed 68 witnesses, including 23 current and former Astros players. Some witnesses were interviewed multiple times. The investigators also reviewed tens of thousands of emails, Slack communications, text messages, video clips, and photographs. Certain Astros employees’ cellphones were imaged and searched.

63. On January 13, 2020, Manfred issued his report, detailing the following findings and penalties. See <https://www.crawfishboxes.com/2020/1/13/21064270/mlb-commissioner-rob-manfreds-full-statement-on-the-houston-astros-sign-stealing-investigation> (last visited Apr. 25, 2020).

**A. The Astros' MLB Rules violations in the 2017 season.**

64. “At the beginning of the 2017 season, employees in the Astros’ video replay review room began using the live game feed from the center field camera to attempt to decode and transmit opposing teams’ sign sequences (*i.e.*, which sign flashed by the catcher is the actual sign) for use when an Astros runner was on second base. Once the sign sequence was decoded, a player in the video replay review room would act as a “runner” to relay the information to the dugout, and a person in the dugout would notify the players in the dugout or signal the sign sequence to the runner on second base, who in turn would decipher the catcher’s sign and signal to the batter from second base.” *Id.*

65. “Early in the season, Alex Cora, the Astros’ Bench Coach, began to call the replay review room on the replay phone to obtain the sign information. On at least some occasions, the employees in the replay review room communicated the sign sequence information by text message, which was received on the smart watch of a staff member on the bench, or in other cases on a cell phone stored nearby. Approximately two months into the 2017 season, a group of players, including Carlos Beltrán, discussed that the team could improve on decoding opposing teams’ signs and communicating the signs to the batter. Cora arranged for a video room technician to install a monitor displaying the center field camera feed immediately outside of the Astros’ dugout. (The center field camera was primarily used for player

development purposes and was allowed under MLB rules at the time when used for that purpose.)” *Id.*

66. “Witnesses have provided largely consistent accounts of how the monitor was utilized. One or more players watched the live feed of the center field camera on the monitor, and after decoding the sign, a player would bang a nearby trash can with a bat to communicate the upcoming pitch type to the batter. (Witnesses explained that they initially experimented with communicating sign information by clapping, whistling, or yelling, but that they eventually determined that banging a trash can was the preferred method of communication.). Players occasionally also used a massage gun to bang the trash can. Generally, one or two bangs corresponded to certain off-speed pitches, while no bang corresponded to a fastball. Witnesses consistently describe this new scheme as player-driven, and with the exception of Cora, non-player staff, including individuals in the video replay review room, had no involvement in the banging scheme.” *Id.*

67. “However, witnesses made clear that everyone proximate to the Astros’ dugout presumptively heard or saw the banging. In addition to players using the monitor installed near the dugout to decode signs, employees in the Astros’ replay review room continued to decode sign sequences using the monitors in the room and communicate those sequences to the dugout for use when a runner was on second base. Both methods of sign stealing were used by the team in parallel throughout the 2017 season. In August 2017, the Boston Red Sox were caught transmitting sign information from their replay review room to individuals in the dugout wearing smart watches. The incident received significant media attention, and [Manfred] issued a press release on September 15, 2017 announcing the fine of the Red Sox (and a fine of the New York Yankees for improperly using the replay review room phone) that stated in relevant part:

At the outset, it is important to understand that the attempt to decode signs being used by an opposing catcher is not a violation of any Major League Baseball Rule or Regulation. Major League Baseball Regulations do, however, prohibit the use of electronic equipment during games and state that no such equipment “may be used for the purpose of stealing signs or conveying information designed to give a Club an advantage.” Despite this clear Regulation, the prevalence of technology, especially the technology used in the replay process, has made it increasingly difficult to monitor appropriate and inappropriate uses of electronic equipment. Based on the investigation by my office, I have nonetheless concluded that during the 2017 season the Boston Red Sox violated the Regulation quoted above by sending electronic communications from their video replay room to an athletic trainer in the dugout.”

*Id.*

68. “Following the issuance of the press release announcing the results of the Red Sox investigation, [Manfred] issued a memorandum that same day to all Clubs reiterating the rules regarding the use of electronic equipment to steal signs, and putting all Clubs on notice that future violations would be taken extremely seriously by [his] office. [Manfred] specifically stated in the memorandum that the General Manager and Field Manager of Clubs would be held accountable for any violations of the rules in the future. Thus, all Clubs were put on notice as of September 15, 2017 that any use of electronic equipment to steal signs would be dealt with more severely by my office. Notwithstanding the publicity surrounding the Red Sox incident, and the September 15th memorandum that I sent to all Clubs, the Astros continued to both utilize the replay review room and the monitor located next to the dugout to decode signs for the remainder of the regular season and throughout the Postseason.” *Id.*

**B. The Astros’ MLB Rules violations in subsequent seasons.**

69. “During the 2017-2018 offseason, and following a discussion at the General Managers’ Meetings, the Commissioner’s Office notified Clubs that the phone connecting the replay review room and the dugout would be monitored to ensure that it was not used for any purpose other than discussing a challenge of a play on the field. In addition, in March 2018, Joe

Torre issued a memorandum to all Clubs that expanded upon the prohibition against using electronic equipment to steal signs. The memorandum stated in relevant part:

Major League Baseball Regulation 1-1 prohibits all uniformed personnel, clubhouse staff and equipment staff from using or possessing telephones or similar electronic devices, including any type of walkie-talkies, mobile phones, ‘smart watches’ (e.g., Apple watches), laptop computers, tablets or other communication devices, in or near the dugout, in the bullpens or on the playing field once batting practice has begun. MLBR 1-1 also prohibits the use of such devices in the clubhouse within 30 minutes of the start of a game. The prohibition includes the use of any electronic equipment that has the capability to receive electronic messages by any person occupying the bench or in the bullpen.

\* \* \*

Electronic equipment, including game feeds in the Club replay room and/or video room, may never be used during a game for the purpose of stealing the opposing team’s signs. In this respect, MLBR 1-1 expressly provides that “under no circumstance may electronic equipment or devices be used for the purpose of stealing signs or conveying other information designed to give a Club a competitive advantage.” **To be clear, the use of any equipment in the clubhouse or in a Club’s replay or video rooms to decode an opposing Club’s signs during the game violates this Regulation.** ... Clubs (and Club employees) who are found to have utilized equipment in the replay or video rooms for such purposes during a game will be subject to discipline by the Commissioner’s Office.”

*Id.* (emphasis in original).

70. “Prior to the 2018 season, and with MLB approval, the Astros relocated their replay review system to a video room located much closer to the dugout, as is the case in many ballparks throughout the league. The investigation uncovered no evidence that Astros players utilized the banging scheme in 2018. However, the Astros’ replay review room staff continued, at least for part of the 2018 season, to decode signs using the live center field camera feed, and to transmit the signs to the dugout through in-person communication. At some point during the 2018 season, the Astros stopped using the replay review room to decode signs because the

players no longer believed it was effective. The investigation did not reveal any attempt by the Astros to utilize electronic equipment to decode and transmit signs in the 2018 Postseason.” *Id.*

71. “Prior to the 2019 season, the Commissioner’s Office issued a revised policy governing sign stealing, which, among other things, included the placement of individuals retained by the Commissioner’s Office in the Club’s replay review rooms to ensure that no rules violations occurred (a practice that began in the 2018 Postseason). The investigation revealed no violations of the policy by the Astros in the 2019 season or 2019 Postseason.” *Id.*

**C. Culpability of Astros players and employees for the MLB Rules violations.**

**1. Astros Players.**

72. “Most of the position players on the 2017 team either received sign information from the banging scheme or participated in the scheme by helping to decode signs or bang on the trash can. Many of the players who were interviewed admitted that they knew the scheme was wrong because it crossed the line from what the player believed was fair competition and/or violated MLB rules. Players stated that if Manager A.J. Hinch told them to stop engaging in the conduct, they would have immediately stopped.” *Id.*

73. “Although the Astros’ players did not attempt to hide what they were doing from Hinch or other Astros employees, they were concerned about getting caught by players from other teams. Several players told [MLB] investigators that there was a sense of “panic” in the Astros’ dugout after White Sox pitcher Danny Farquhar appeared to notice the trash can bangs. Before the game ended, a group of Astros players removed the monitor from the wall in the tunnel and hid it in an office. For the Postseason, a portable monitor was set up on a table to replace the monitor that had been affixed to the wall near the dugout.” *Id.*



74. “Some Astros players told [MLB] investigators that they did not believe the sign-stealing scheme was effective, and it was more distracting than useful to hitters. ... But for purposes of [Manfred’s] decision, regardless of whether the scheme was effective or not, it violated the rules and, at a minimum, created the appearance of unfairness, and for that, it necessitates severe discipline.” *Id.*

75. “[But Manfred did] not assess discipline against individual Astros players. [He] made the decision in September 2017 that [he] would hold a Club’s General Manager and Field Manager accountable for misconduct of this kind ... . [A] Club’s General Manager and Field Manager are responsible for ensuring that the players both understand the rules and adhere to them. [The Commissioner’s] office issues a substantial number of detailed rules and procedures to Clubs – many of which, including the sign stealing rules, are not sent directly to players. It is the obligation of the Club, and, in this case, the General Manager and Field Manager, to educate and instruct their players on the rules governing play on the field.” ... *Id.*

## **2. Jeff Luhnow (General Manager).**

76. “Luhnow adamantly denies knowledge of both the banging scheme and the efforts by the replay review room staff to decode signs and transmit them to the dugout. The investigation revealed no evidence to suggest that Luhnow was aware of the banging scheme. The investigation also revealed that Luhnow neither devised nor actively directed the efforts of the replay review room staff to decode signs in 2017 or 2018.” *Id.*

77. “Although Luhnow denies having any awareness that his replay review room staff was decoding and transmitting signs, there is both documentary and testimonial evidence that indicates Luhnow had some knowledge of those efforts, but he did not give it much attention. Irrespective of Luhnow’s knowledge of his Club’s violations of the rules, [Manfred held] him

personally accountable for the conduct of his Club. It is the job of the General Manager to be aware of the activities of his staff and players, and to ensure that those activities comport with both standards of conduct set by Club ownership and MLB rules.” *Id.*

78. “Despite his knowledge of the Red Sox incident in September 2017, and receipt of both [Manfred’s] September 15, 2017 memorandum and Joe Torre’s March 2018 memorandum, Luhnow failed to take any adequate steps to ensure that his Club was in compliance with the rules. Luhnow did not forward the memoranda and did not confirm that the players and field staff were in compliance with MLB rules and the memoranda. Had Luhnow taken those steps in September 2017, it is clear to me that the Astros would have ceased both sign-stealing schemes at that time.” *Id.*

**3. A.J. Hinch (Field Manager).**

79. “Hinch neither devised the banging scheme nor participated in it. Hinch told [the MLB] investigators that he did not support his players decoding signs using the monitor installed near the dugout and banging the trash can, and he believed that the conduct was both wrong and distracting. Hinch attempted to signal his disapproval of the scheme by physically damaging the monitor on two occasions, necessitating its replacement.” *Id.*

80. “However, Hinch admits he did not stop it and he did not notify players or Cora that he disapproved of it, even after the Red Sox were disciplined in September 2017. Similarly, he knew of and did not stop the communication of sign information from the replay review room, although he disagreed with this practice as well and specifically voiced his concerns on at least one occasion about the use of the replay phone for this purpose. As the person with responsibility for managing his players and coaches, there simply is no justification for Hinch’s failure to act.” *Id.*

81. “If Hinch was unsure about how to handle the situation, it was his responsibility to bring the issue to the attention of Luhnow. Hinch expressed much contrition both to [Manfred] and [his] investigators for allowing the conduct to continue. Although [Manfred] appreciate[d] Hinch’s remorsefulness, [Manfred held] him accountable for the conduct of his team, particularly since he had full knowledge of the conduct and chose to allow it to continue throughout the 2017 Postseason.” *Id.*

#### **4. Alex Cora (Bench Coach).**

82. “Cora was involved in developing both the banging scheme and utilizing the replay review room to decode and transmit signs. Cora participated in both schemes, and through his active participation, implicitly condoned the players’ conduct.” *Id.* On April 22, 2020, MLB formally suspended Cora for the 2020 season—but only for his role as the Astros’ bench coach even though Manfred pointed identified him as the ringleader of the Astros' sign stealing cheating scheme.

83. The investigation continues. On information and belief, Defendants may have engaged in other cheating schemes during the 2019 season. Defendants knew about the illicit sign stealing cheating scheme and subsequent MLB investigation at all times when Plaintiffs and Season Ticketholder Class Members purchased their 2016-2020 season tickets, parking, promo packs, ticket printing services, and other goods and/or services from Defendants. Defendants, however, failed and refused to disclose the illicit sign stealing cheating scheme and subsequent MLB investigation to Plaintiffs and Season Ticketholder Class Members at such times.

#### **VI. Commissioner Manfred’s disciplinary measures.**

84. “[Manfred found] that the conduct of the Astros, and its senior baseball operations executives, merits significant discipline. [He] base[d] this finding on the fact that the Club’s

senior baseball operations executives were given express notice in September 2017 that [he] would hold them accountable for violations of [MLB] policies covering sign stealing, and those individuals took no action to ensure that the Club's players and staff complied with those policies during the 2017 Postseason and the 2018 regular season. The conduct described herein has caused fans, players, executives at other MLB Clubs, and members of the media to raise questions about the integrity of games in which the Astros participated. ..." *Id.*

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85. For engaging in the sign stealing cheating scheme and coverup, Defendants forfeited their regular first and second round selections in the 2020 and 2021 First-Year Player Drafts and were assessed a fine of \$5 million, which is the highest allowable fine under the MLB Constitution.

86. For his engagement in, knowledge about, and/or responsibility for the sign stealing cheating scheme and coverup, Luhnow was suspended without pay for the period beginning on January 13, 2020 and ending on the day following the completion of the 2020 World Series. During the period of his suspension, Luhnow is prohibited from performing any services for or conducting any business on behalf of the Astros or any other Major League Club. Luhnow must not be present in any major league, minor league, or spring training facilities, including stadiums, and he may not travel with or on behalf of the Astros. If Luhnow is found to engage in any future material violations of the MLB Rules, he will be placed on the permanently ineligible list.

87. For his engagement in, knowledge about, and/or responsibility for the sign stealing cheating scheme and coverup, Hinch was suspended without pay for the period beginning on January 13, 2020 and ending on the day following the completion of the 2020

World Series. During the period of his suspension, Hinch is prohibited from performing any services for or conducting any business on behalf of the Astros or any other Major League Club. Hinch must not be present in any major league, minor league, or spring training facilities, including stadiums, and he may not travel with or on behalf of the Astros. If Hinch is found to engage in any future material violations of the MLB Rules, he will be placed on the permanently ineligible list.

**VII. Aftermath of the illicit sign stealing cheating scheme and the subsequent MLB investigation.**

88. On January 13, 2020, shortly after the MLB Commissioner issued his report, Jim Crane, Defendants' principal owner, convened a news conference admitting that Defendants broke the MLB Rules and accepting MLB's decisions, findings, and penalties. He also fired Luhnow and Hinch.

89. Hours later, Luhnow issued a statement accepting responsibility for the MLB Rules violations that occurred on his watch as President of Baseball Operations and General Manager of the Astros. Otherwise, he has been silent.

90. Hinch issued a similar statement on January 13, 2020, noting that it was his "responsibility to lead players and staff with integrity" and he failed to stop the sign stealing cheating scheme. Later, in a February 7, 2020 MLB TV interview, Hinch took responsibility for his role in the sign stealing cheating scheme, stating "I still feel responsible and will always feel responsible as the man out front. As the leader, I was in charge of the team. ... It happened on my watch," Hinch said. "I'm not proud of that. I'll never be proud of it. I didn't like it. But I have to own it because [I was] in a leadership position. And the commissioner's office made very, very clear that the GM and the manager were in position to make sure that nothing like this

happened. And we fell short.” See <https://abc13.com/sports/apologetic-aj-hinch-takes-blame-for-astros-cheating-scandal-it-happened-on-my-watch/5912285> (last visited Apr. 25, 2020).

91. Despite MLB Commissioner Manfred’s findings that “[m]ost of the position players on the 2017 team either received sign information from the banging scheme or participated in the scheme by helping to decode signs or bang on the trash can” and “[m]any of the players who were interviewed admitted that they knew the scheme was wrong because it crossed the line from what the player believed was fair competition and/or violated MLB rules,” those players were not punished.

92. The Astros, as a professional Major League Baseball Club, must play according to the Official Baseball Rules promulgated by the MLB Official Playing Rules Committee and the Office of the Commissioner of Baseball. See, e.g., [http://mlb.mlb.com/documents/0/8/0/268272080/2018\\_Official\\_Baseball\\_Rules.pdf](http://mlb.mlb.com/documents/0/8/0/268272080/2018_Official_Baseball_Rules.pdf). (last visited May 1, 2020). That said, in purchasing season tickets to the Astros’ home games, Class Members reasonably relied on the Astros’ representation that they would follow the Official Baseball Rules and abide by the “code of rules [that] governs the playing of baseball games by professional teams of Major League Baseball and the leagues that are members of the National Association of Professional Baseball Leagues.” *Id.*; see also [http://mlb.mlb.com/mlb/downloads/y2016/official\\_baseball\\_rules.pdf](http://mlb.mlb.com/mlb/downloads/y2016/official_baseball_rules.pdf) (2016 Official Rules); [http://mlb.mlb.com/documents/0/4/0/224919040/2017\\_Official\\_Baseball\\_Rules\\_dbt69t59.pdf](http://mlb.mlb.com/documents/0/4/0/224919040/2017_Official_Baseball_Rules_dbt69t59.pdf) (2017 Official Baseball Rules); [https://content.mlb.com/documents/2/2/4/305750224/2019\\_Official\\_Baseball\\_Rules\\_FINAL\\_.pdf](https://content.mlb.com/documents/2/2/4/305750224/2019_Official_Baseball_Rules_FINAL_.pdf) (2019 Official Baseball Rules). The Official Rules themselves, to which the Astros are (and continue to be) obliged to subscribe, recognize that “[t]he popularity of the game will grow only so long as its players, managers, coaches, umpires and administrative officers respect the discipline of its code of rules.” *Id.*

93. The Astros are also governed by the Major League Rules, <https://registration.mlbpa.org/pdf/MajorLeagueRules.pdf>, and various directives issued by MLB, one of which, as detailed above, expressly prohibits the use of electronic equipment during a baseball game. *See* <https://theathletic.com/94995/2017/09/05/red-sox-crossed-a-line-and-baseballs-response-must-be-firm/> (last visited May 1, 2020). Class Members relied on the Astros' representations and express obligation that they would also abide by the Major League Rules and MLB rules and directives by virtue of their participation:

**Rule 48. Obligations of Participants**

Each of the Clubs, players, and umpires, participating or eligible to participate in a World Series, or in any series played or to be played under these Rules and under the Commissioner's auspices, shall faithfully carry out all of the provisions of these Rules and regulations, and such others as may hereafter be made to govern such games, and shall not abandon such series, or any game thereof, until it shall have been legally terminated.

<https://registration.mlbpa.org/pdf/MajorLeagueRules.pdf> (last visited May 1, 2020).

94. From the advent of Codebreaker in 2016 until their secret sign stealing cheating scheme was first revealed on January 13, 2020, Defendants and their employees and representatives knowingly and surreptitiously engaged in the scheme in violation of MLB Rules and Regulations that could result (and now has resulted) in severe penalties instituted by MLB and secretly put a diminished product on the field—all the while deceptively selling 2016, 2017, 2018, 2019, and 2020 season tickets and/or other goods and/or services to Plaintiffs and Season Ticketholder Class Members at exorbitant prices. Their claims have resulted.

**VIII. The Astros refuse to refund season ticket payments for the entire 2020 season in the face of the Covid-19 coronavirus. Adding insult to injury, Defendants continued to debit 2020 season ticketholders' bank accounts and credit cards for season ticket payments with full knowledge that the full slate of Astros' 2020 home games would not be played in front of fans at Minute Maid Park.**

95. In July 2019, Plaintiff Rao purchased four 2020 full season tickets for Astros home games in Minute Maid Park (Section 325, Row 7, seats 14-17) and 2020 full season parking for a total of \$12,533 to be charged to his credit card on the following dates in the following amounts:

August 19, 2019	\$3,759.90
September 23, 2019	\$3,759.90
December 2, 2019	\$1,253.30
January 3, 2020	\$1,253.30
February 3, 2020	\$1,253.30
March 2, 2020	\$1,253.30

Plaintiff Rao also paid an additional \$500 fee for printed tickets (as opposed to scanning a mobile ticket upon entering Minute Paid Park using the MLB Ballpark App).

96. In late December 2019, the government in Wuhan, China, confirmed that health authorities were treating dozens of people sick with a new virus—the Covid-19 novel coronavirus. By January 23, 2020, Wuhan, a city of more than 11 million people, was locked down cut off from the world by the Chinese authorities. But the Covid-19 coronavirus nonetheless rapidly spread throughout the world, including the United States.

97. On January 30, 2020, the World Health Organization declared a Covid-19 global health emergency.



98. On February 29, 2020, the United States reported its first coronavirus death. The coronavirus continued to spread with states, counties, and towns across the United States issuing lock down orders and implementing social distancing measures.

99. On March 12, 2020, MLB Commissioner Manfred cancelled the rest of MLB spring training and “postponed” the start of the MLB regular season by two weeks due to Covid-19. Mark Feinsand, *Opening Day delayed, Spring games canceled*, MLB NEWS, Mar. 12, 2020, <https://www.mlb.com/news/mlb-2020-season-delayed> (last visited April 25, 2020). In its lengthy online statement posted to mlb.com, however, MLB failed to address restitution for the millions of fans who purchased baseball tickets, parking, promo packs, ticket printing services, and other goods and services, including Plaintiff Rao and 2020 Season Ticketholder Subclass Members.

100. On March 13, 2020, President Trump declared a national emergency because of the rapid spread of Covid-19 across the United States and its corresponding rapidly increasing death rate and impact on the economy.

101. By March 25, 2020, the NBA had shut down, the NFL had shut down, and the NCAA had cancelled its men’s and women’s college basketball championship tournaments.

102. The Astros’ season had been set to begin at Minute Maid Park on March 26, 2020 against the Los Angeles Angels. The regular season was to run from March 26, 2020 through the first week of October (depending on the playoff schedule) and included 81 home games. But by March 26, the United States had officially become the country hardest hit by the pandemic, with at least 81,321 confirmed infections and more than 1,000 deaths.

103. By then, according to a recent report, with respect to tickets across the professional sports spectrum, “[m]ore than \$1 billion in consumer capital is tied up in tickets to games that are stuck in limbo because of the pandemic, according to conservative estimates. It

affects ticket holders of all stripes and trickles downstream to the secondary market ... which faces its own financial reckoning if games are canceled.” Brent Schrottenboer, *Need a refund on those tickets to NBA, NHL or baseball games? Hold that thought*, USA TODAY, Mar. 25, 2020, <https://www.usatoday.com/story/sports/2020/03/25/coronavirus-update-nba-nhl-mlbhold-ticket-refunds-limbo/2908586001/> (last visited Apr. 25, 2020).

104. Yet, while Rome was burning, Defendants continued to debit Plaintiff Rao’s and 2020 Season Ticketholder Subclass Members’ payment cards and bank accounts for season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services purchased from the Astros. Continuing to take money from Plaintiff Rao and 2020 Season Ticketholder Subclass Members Defendants, in the wake of the pandemic and corresponding national economic crisis, is unlawful and frankly, downright immoral. As the Chairman of the House Energy and Commerce Commission, Frank Pallone, stressed:

We strongly encourage each company to fully refund all consumers affected by cancelled or postponed events. Many Americans are currently facing economic hardship due to COVID-19 . . . Full refunds, including all ancillary fees, should be issued so fans can spend or save their money as they need during this time of national crisis.

Bill Shaikin, *The Dodgers and Angels aren't playing. Shouldn't game tickets be refunded?* LOS ANGELES TIMES (Apr. 10, 2010), <https://www.latimes.com/sports/dodgers/story/2020-04-10/mlb-coronavirus-dodgers-angels-ticket-refunds> (last visited May 1, 2020). Defendants, however, ignored Chairman Pallone’s directive.

105. Finally, on April 29, 2020, Defendants informed Plaintiff Rao and 2020 Season Ticketholder Subclass Members, via email, that Defendants would either (i) issue an account credit for the amounts paid for the canceled games in March-May 2020 that may be (a) used to purchase seat upgrades and/or other goods and/or services during the remainder of the 2020 season or (b) applied to the purchase of 2021 season tickets, or (ii) refund the amounts paid for

the canceled games in March-May 2020. But Plaintiff Rao and 2020 Season Ticketholder Subclass Members must wait another month to receive their refunds/credits. The Astros do not seem to understand that there is a pandemic going on and folks are hurting financially. More important, in their public statements, Defendants intentionally failed and refused to address issuing credits or refunds for the amounts paid for season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services pertaining to home games to be played in Minute Park *after* May 31, 2020—even with full knowledge that that the Astros will not play a full slate of home games in 2020 in front of fans at Minute Maid Park—if any.

106. The probability that the regular season games will not be played in front of fans at Minute Maid Park is substantial and increases by the day. In fact, on April 15, 2020, the Executive Director of the MLB Player’s Union, Tony Clark, expressed skepticism about the 2020 MLB regular season being played at all. Clark stated that “[e]verything centers around two things, the amount of testing available and a vaccine. And how it can be mitigated in the public arena as much as the professional arena.” Bob Nightengale, *Opinion: Union chief Tony Clark still optimistic MLB will play game in some way*, USA TODAY (Apr. 15, 2020), <https://www.usatoday.com/story/sports/mlb/https://www.usatoday.com/story/sports/mlb/columnist/bob-nightengale/2020/04/15/baseball-players-union-chief-tony-clark-hopefulgames-2020/5141102002/>(last visited Apr. 25, 2020).

107. Moreover, by April 15, 2020, government officials also confirmed that the 2020 regular season games most likely will not be played in stadiums with spectators. Dr. Anthony Fauci, the health care policy expert advising President Trump on the U.S.’ response to Covid-19, stated that he believes the only way professional sports will occur during the summer of 2020 is if no fans are in attendance. *Dr. Anthony Fauci promotes fan-free return for sports*, ESPN NEWS

SERVICE (Apr. 15, 2020), [https://www.espn.com/espn/story/\\_/id/29038491/dr-anthony-fauci-promotessingle-site-fan-free-return-sports](https://www.espn.com/espn/story/_/id/29038491/dr-anthony-fauci-promotessingle-site-fan-free-return-sports) (last visited Apr. 25, 2020). *See also* Dayn Perry, *MLB’s plan to have 30 teams in Arizona might be most viable path to 2020, report says*, CBS SPORTS (Apr. 13, 2020), <https://www.cbssports.com/mlb/news/mlbs-plan-to-have-30-teams-in-arizona-might-bemost-viable-path-to-2020-season-report-says/> (last visited Apr. 25, 2020). As Dr. Fauci stated with respect to spectators: “Nobody comes to the stadium.” *Id.*

108. A recent Wall Street Journal article reported further on baseball games proceeding without spectators:

Just a few weeks ago, spectatorless sports were considered to be a worst-case scenario. Now, they’re the aspiration—and Dr. Fauci is among those rooting for them.

“People say, ‘Well, you can’t play without spectators,’” Dr. Fauci said. “Well, I think you probably get enough buy-in from people who are dying to see a baseball game, particularly me. I’m living in Washington. We have the world champion Washington Nationals. I want to see them play again.”

*See* Jared Diamond and Lindsay Radnofsky, *Baseball Without Fans Sounded Crazy. It Just Might Work*, THE WALL STREET JOURNAL (Apr. 19, 2020), <https://www.wsj.com/articles/baseball-without-fans-sounded-crazy-it-might-just-work-11587297600?mod=searchresults&page=1&pos=> (last visited Apr. 25, 2020).

109. Finally, MLB itself has indicated that the games will not be played as scheduled in their home stadiums with fans. In fact, MLB and MLB Players Association leadership recently “embraced” a potential plan that “would dictate that all 30 teams play games at stadiums with no fans in the Phoenix area.” Jeff Passan, *Sources: MLB, union focused on plan that could allow season to start as early as May in Arizona*, ESPN (Apr. 7, 2020), [https://www.espn.com/mlb/story/\\_/id/29004498/mlb-union-focused-plan-allow-seasonstart-early-arizona](https://www.espn.com/mlb/story/_/id/29004498/mlb-union-focused-plan-allow-seasonstart-early-arizona) (last visited April

25, 2020). Indeed, no regular season baseball game option considered by MLB and/or the Astros to date calls for playing *any* baseball games in front of fans at Minute Maid Park during 2020.

110. Nevertheless, Defendants wrongfully fail and refuse to refund the full amount of the money paid by Plaintiff Rao and 2020 Season Ticketholder Subclass Members for their post-May 31, 2020 Astros season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services they purchased. Their claims have resulted.

### **CLASS ACTION ALLEGATIONS**

111. Pursuant to Rule 42 of the Texas Rules of Civil Procedure, Plaintiffs bring this action against Defendants as a class action, for themselves and all members of the following class of similarly situated individuals and entities (the “Season Ticketholder Class”):

All individuals and entities that purchased Houston Astros Baseball Club full and partial season tickets, 2017-2019 post-season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services for the 2016, 2017, 2018, 2019, and/or 2020 seasons.

112. Also pursuant to Rule 42 of the Texas Rules of Civil Procedure, Plaintiff Rao brings this action against Defendants as a class action, for himself and all members of the following subclass of similarly situated individuals and entities (the “2020 Season Ticketholder Subclass”):

All individuals and entities that purchased Houston Astros Baseball Club full and/or partial season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services for the 2020 season.

113. Excluded from both the proposed Season Ticketholder Class and 2020 Season Ticketholder Subclass are Defendants; their current owners, officers, directors, employees, agents, and representatives; and the Court and its personnel.

114. The proposed Season Ticketholder Class and 2020 Season Ticketholder Subclass consist of several thousand Class Members, the joinder of whom in one action is impracticable. The precise number and identities of Season Ticketholder Class Members and 2020 Season

Ticketholder Subclass Members are readily ascertainable from Defendants' internal season ticket holder records.

115. By their above-described knowing, intentional, and deceptive wrongful actions, inaction, and/or omissions, Defendants uniformly violated the rights of Plaintiffs and each Member of the Season Ticketholder Class and each Member of the 2020 Season Ticketholder Subclass in the same way, respectively—thereby inflicting injury, harm, and damages on all Plaintiffs and Class Members in the form of, *inter alia*, the (i) prices paid for 2016, 2017, 2018, 2019, and 2020 season tickets, 2017-2019 post-season tickets, parking, promo packs, ticket printing services, and/or goods and/or services purchased from the Astros, and (ii) diminished value of their personal seat licenses.

116. Certain questions of law and fact common to the proposed Season Ticketholder Class and 2020 Season Ticketholder Subclass predominate over any questions affecting their individual Members, including:

- (i) whether Defendants' knowing, intentional, deceptive, uniform, and systematic wrongful actions, inaction, and/or omissions constitute fraud by nondisclosure at Texas common law;
- (ii) whether Defendants' knowing, intentional, deceptive, uniform, and systematic wrongful actions, inaction, and/or omissions constitute breaches of the Texas Deceptive Trade Practices-Consumer Protection Act;
- (iii) whether Defendants' knowing, intentional, deceptive, uniform, and systematic wrongful actions, inaction, and/or omissions constitute money had and received at Texas common law;
- (iv) whether Defendants' knowing, intentional, deceptive, uniform, and systematic wrongful actions, inaction, and/or omissions constitute unjust enrichment and/or assumpsit at Texas common law;
- (v) whether Defendants' knowing, intentional, deceptive, uniform, and systematic wrongful actions, inaction, and/or omissions directly and/or proximately caused Plaintiffs and all Class and Subclass Members to suffer injury, harm, and damages; and
- (vi) whether Plaintiffs and all Class and Subclass Members are entitled to recover actual, consequential, and/or compensatory damages, treble damages, punitive

damages, pre- and post-judgment interest, attorneys' fees, litigation expenses, and court costs and, if so, the amounts of such recoveries.

117. Plaintiffs' claims are typical of Season Ticketholder Class Members' and 2020 Season Ticketholder Subclass Members' claims because Plaintiffs, Season Ticketholder Class Members, and 2020 Season Ticketholder Subclass Members are all victims of Defendants' respective above-described knowing, intentional, and deceptive wrongful actions, inaction, and/or omissions.

118. Plaintiffs and their counsel will fairly and adequately represent the interests of Season Ticketholder Class Members and 2020 Season Ticketholder Subclass Members. Plaintiffs have no interests antagonistic to, or in conflict with, the interests of any Season Ticketholder Class Members or 2020 Season Ticketholder Subclass Members, respectively. Plaintiffs' counsel are experienced in leading and prosecuting large consumer class actions, complex commercial litigation, and complex mass torts.

119. A class action is superior to all other available methods for fairly and efficiently adjudicating Plaintiffs,' the Season Ticketholder Class Members,' and 2020 Season Ticketholder Subclass Members' claims. Plaintiffs, Season Ticketholder Class Members, and 2020 Season Ticketholder Subclass Members have been (and will continue to be) harmed as a direct and/or proximate result of Defendants' above-described knowing, intentional, and deceptive wrongful actions, inaction, and/or omissions. Litigating this case as a class action is appropriate because (i) it will avoid a multiplicity of suits and the corresponding burden on the courts and Parties, (ii) it would be virtually impossible for all Season Ticketholder Class Members and 2020 Season Ticketholder Subclass Members to intervene as individual parties-plaintiff in this action, and (iii) it will provide court oversight of the claims process once Defendants' liability is adjudicated.

120. Certification, therefore, is appropriate under TEX. R. CIV. P. 42(b)(3) because the above-described common questions of law or fact predominate over any questions affecting individual Season Ticketholder Class Members and/or 2020 Season Ticketholder Subclass Members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

121. Certification also is appropriate under TEX. R. CIV. P. 42(b)(1) because the prosecution of separate actions by individual Season Ticketholder Class Members and/or 2020 Season Ticketholder Subclass Members would create a risk of (i) inconsistent or varying adjudications with respect to individual Season Ticketholder Class Members and/or 2020 Season Ticketholder Subclass Members, which would establish incompatible standards of conduct for Defendants, and/or (ii) adjudications with respect to certain individual Season Ticketholder Class Members and/or 2020 Season Ticketholder Subclass Members, which, as a practical matter, would (a) be dispositive of the interests of other Season Ticketholder Class Members and/or 2020 Season Ticketholder Subclass Members that are not parties to the adjudications, or (b) substantially impair or impede their ability to protect their interests.

122. Defendants' above-described knowing, intentional, and deceptive wrongful actions, inaction, and/or omissions were uniformly inflicted by Defendants on Plaintiffs, Season Ticketholder Class Members, and 2020 Season Ticketholder Subclass Class Members as a whole, respectively, for which Plaintiffs seek damages and other equitable remedies. Absent a class action, Defendants will retain the benefits of their wrongdoing despite inflicting injury, harm, and damages on Plaintiffs, Season Ticketholder Class Members, and 2020 Season Ticketholder Subclass Members.



**CLAIMS FOR RELIEF/ CAUSES OF ACTION**

**COUNT I**

**FRAUD BY NONDISCLOSURE**  
**(FOR PLAINTIFFS AND SEASON TICKETHOLDER CLASS MEMBERS)**

123. The preceding factual statements and allegations are incorporated by reference.

124. Defendants knowingly, intentionally, deceptively, uniformly, and systematically sold Plaintiffs and Season Ticketholder Class Members 2016-2020 season tickets, post-season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services with full knowledge that their employees and representatives surreptitiously engaged in a sign stealing cheating scheme in violation of Major League Baseball (“MLB”) Rules and Regulations that could result (and has since resulted) in severe penalties instituted by MLB that, in turn, resulted in a diminished product in the field—all of which Defendants covered up. Defendants engaged in such unlawful practices under false pretenses. The Astros’ surreptitious sign stealing cheating scheme and its coverup are also outrageous and morally offensive to Plaintiffs.

125. Defendants knowingly, intentionally, deceptively, uniformly, and systematically concealed the illicit sign stealing cheating scheme and subsequent MLB investigation from Plaintiffs and Season Ticketholder Class Members until the sign stealing cheating scheme and subsequent MLB investigation finally came to light on January 13, 2020. The illicit sign stealing cheating scheme and subsequent MLB investigation were material to Plaintiffs’ and Season Ticketholder Class Members’ decisions to purchase 2016-2020 season tickets, 2017-2019 post-season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services from Defendants. Had Plaintiffs and Season Ticketholder Class Members known about the Astros’ illicit sign stealing cheating scheme and subsequent MLB investigation, they never would have made such purchases from Defendants.

126. Defendants had a duty to Plaintiffs and Season Ticketholder Class Members to disclose to them the illicit sign stealing cheating scheme and subsequent MLB investigation because of the Parties' confidential relationship of trust and confidence arising out of the harsh unilateral terms imposed by Defendants on Plaintiffs and Season Ticketholder Class Members in the Astros Season Ticket Terms and Conditions (<https://www.mlb.com/astros/tickets/season-tickets/terms>), thereby justifying Plaintiffs' and Season Ticketholder Class Members' expectation that Defendants would act in their best interest and disclose the illicit sign stealing cheating scheme and subsequent MLB investigation.

127. Defendants also had a duty to Plaintiffs and Season Ticketholder Class Members to disclose to them the illicit sign stealing cheating scheme and subsequent MLB investigation because Defendants' season ticket marketing and advertising campaigns knowingly, intentionally, deceptively, uniformly, and systematically created a substantially false impression about the Astros; to wit, that they were winners because they are men of integrity and not cheaters; because of their skill, teamwork, hard work, and desire to "earn it;" and because of great coaching and management. But this is not true. Defendants' season ticket marketing and advertising campaigns knowingly, intentionally, deceptively, uniformly, and systematically created a false impression in the minds of Plaintiffs and Season Ticketholder Class Members—which required Defendants to disclose to them the illicit sign stealing cheating scheme and subsequent MLB investigation (*i.e.*, material new facts), since such new facts reveal that Defendants' previous season ticket marketing and advertising campaigns were false or misleading. In other words, Defendants should have disclosed the illicit sign stealing cheating scheme and subsequent MLB investigation to Plaintiffs and Season Ticketholder Class Members, thereby coming forth with the full truth, to correct the prior false impression given to them by the

Astros' uniformly deceptive season ticket marketing and advertising campaigns; to wit, that the Astros are not cheaters (and not subject to harsh MLB penalties—which, in fact, have since been imposed) and that the Astros' success was due to the above-listed reasons, all of which is untrue.

128. Defendants knew that Plaintiffs and Season Ticketholder Class Members were not aware of the illicit sign stealing cheating scheme and subsequent MLB investigation prior to January 13, 2020 because Defendants wrongfully engaged in yet another deceptive scheme to cover them up. As such, Plaintiffs and Season Ticketholder Class Members did not have an equal opportunity to discover the facts about the nature and existence of the illicit sign stealing cheating scheme and subsequent MLB investigation—because Defendants wrongfully and intentionally kept them secret.

129. Defendants knowingly, intentionally, deceptively, uniformly, and systematically were silent when they had a duty to speak and disclose the illicit sign stealing cheating scheme and subsequent MLB investigation to Plaintiffs and Season Ticketholder Class Members. By knowingly, intentionally, deceptively, uniformly, systematically, and deliberately failing to disclose the illicit sign stealing cheating scheme and subsequent MLB investigation to Plaintiffs and Season Ticketholder Class Members, Defendants intended to induce (and, in fact, induced) Plaintiffs and Season Ticketholder Class Members to purchase 2016-2020 season tickets, 2017-2019 post-season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services—in some cases, year after year—when they otherwise would have not made such purchases.

130. Plaintiffs and Season Ticketholder Class Members relied to their detriment on Defendants' knowing, intentional, deceptive, uniform, and systematic failure and refusal to disclose the illicit sign stealing cheating scheme and subsequent MLB investigation, which were

material facts in deciding whether to purchase 2016-2020 season tickets, 2017-2019 post-season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services from Defendants—which they did.

131. As a direct and/or proximate result of Defendants’ above-described knowing, intentional, deceptive, uniform, and systematic nondisclosure of the illicit sign stealing cheating scheme and subsequent MLB investigation, Plaintiffs and Season Ticketholder Class Members have suffered (and will continue to suffer) injury, harm, and damages in the form of, *inter alia*, the payments they made for 2016, 2017, 2018, 2019, and 2020 season tickets, 2017-2019 post-season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services that they otherwise would not have made, and the diminished value of their personal seat licenses. All conditions precedent to Plaintiffs’ and Season Ticketholder Class Members’ claims for relief have been performed or occurred. Defendants’ above-described knowing, intentional, deceptive, uniform, and systematic nondisclosure of the illicit sign stealing cheating scheme and subsequent MLB investigation, and the resulting injury, harm, and damages inflicted on Plaintiffs and Season Ticketholder Class Members, constitute fraud by nondisclosure at Texas common law.

## COUNT II

### **VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER TRADE ACT (FOR PLAINTIFFS AND SEASON TICKETHOLDER CLASS MEMBERS)**

132. The preceding factual statements and allegations are incorporated by reference.

133. Pursuant to TEX. BUS. & COM. CODE §17.45(4), Plaintiffs and Season Ticketholder Class Members are “consumers” under the Texas Deceptive Trade Practices-Consumer Protection Act (“DTPA”) because, *inter alia*, they purchased goods from Defendants

(e.g., promo packs) and by virtue of purchasing season tickets from Defendants, they purchased and received the services of Minute Maid Park. *See, e.g., Simms v. Jones*, 879 F.Supp.2d 595, 603 (N.D. Tex. 2012) (“Judge Fitzwater found that plaintiffs, who purchased tickets to Six Flags, were “consumers” who received the “services” of the amusement park. This Court similarly concludes Plaintiffs [by virtue of their Super Bowl ticket purchases] are consumers of services.”) (citing *Sells v. Six Flags Over Tex., Inc.*, No: 3:96–CV–1574–D, 1997 WL 527320, at \*4-5 (N.D. Tex. Aug. 14, 1997)).

134. Pursuant to TEX. BUS. & COM. CODE § 17.45(3), Defendants are “persons” that may be sued under the DTPA.

135. Plaintiffs, for themselves and Season Ticketholder Class Members, formally assert these DTPA claims since they received no response from Defendants to their TEX. BUS. & COM. CODE § 17.505(b) written notification, and sixty days have passed.

136. Plaintiffs, for themselves and Season Ticketholder Class Members, assert that by Defendants’ above-described knowing, intentional, deceptive, uniform, and systematic wrongful actions, inaction, and/or omissions, Defendants knowingly and intentionally engaged in false, misleading, and deceptive acts and practices in violation of TEX. BUS. & COM. CODE §§17.50(a)(1) and 17.46(b), as follows:

- (i) Defendants represented that goods or services had sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they did not have (in violation of TEX. BUS. & COM. CODE § 17.46(b)(5)); to wit, Defendants (a) misrepresented that they were winners because they are men of integrity and not cheaters; because of their skill, teamwork, hard work, and desire to “earn it;” and because of great coaching and management, and (b) by their silence (when they had a duty to speak), Defendants falsely represented that they had not engaged in the illicit sign stealing cheating scheme and/or were subject to a MLB investigation that has resulted in severe penalties and a diminished product on the field. All of Defendants’ misrepresentations and/or omissions (when they had a duty to speak) were intended to induce (and, in fact, induced) Plaintiffs and Season Ticketholder Class Members to purchase 2016-2020 season tickets, 2017-

2019 post-season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services that they otherwise would not have purchased but for Defendants' unlawful misrepresentations and/or omissions.

- (ii) Defendants represented that goods or services were of a particular standard, quality, or grade, or that goods were of a particular style or model, when they were of another (in violation of TEX. BUS. & COM. CODE § 17.46(b)(7)); to wit, Defendants (a) misrepresented that they were winners because they are men of integrity and not cheaters; because of their skill, teamwork, hard work, and desire to "earn it;" and because of great coaching and management, and (b) by their silence (when they had a duty to speak), Defendants falsely represented that they had not engaged in the illicit sign stealing cheating scheme and/or were subject to a MLB investigation that has resulted in severe penalties and a diminished product on the field. All of Defendants' misrepresentations and/or omissions (when they had a duty to speak) were intended to induce (and, in fact, induced) Plaintiffs and Season Ticketholder Class Members to purchase 2016-2020 season tickets, 2017-2019 post-season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services that they otherwise would not have purchased but for Defendants' unlawful misrepresentations and/or omissions.
- (iii) Defendants failed to disclose information concerning goods or services which was known at the time of the transaction when such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed (in violation of TEX. BUS. & COM. CODE § 17.46(b)(24)); to wit, by their silence, Defendants failed to disclose (when they had a duty and were specifically compelled by the DTPA to speak and advise Plaintiffs and Season Ticketholder Class Members) the illicit sign stealing cheating scheme and the subsequent MLB investigation to Plaintiffs and Season Ticketholder Class Members, which Defendants knew about at the time of the 2016-2020 season ticket purchase transactions, with the intent to induce (and, in fact, induced) Plaintiffs and Season Ticketholder Class Members to purchase 2016-2020 season tickets, 2017-2019 post-season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services that they otherwise would not have purchased but for Defendants' unlawful omissions.

137. Plaintiffs and Season Ticketholder Class Members relied to their financial detriment on Defendants' above-described knowing, intentional, deceptive, uniform, and systematic wrongful material misrepresentations and/or omissions in deciding whether to purchase 2016-2020 season tickets, 2017-2019 post-season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services from Defendants, which they otherwise

would not have purchased but for Defendants' knowing, intentional, deceptive, uniform, and systematic wrongful material misrepresentations and/or omissions.

138. Plaintiffs, for themselves and Season Ticketholder Class Members, further assert that by their above-described knowing, intentional, deceptive, uniform, and systematic wrongful actions, inaction, and/or omissions, Defendants knowingly and intentionally violated TEX. BUS. & COM. CODE § 17.50(a)(3) by engaging in the above-described unconscionable actions and/or unconscionable course of action; to wit, engaging in the illicit sign stealing cheating scheme, covering up the scheme and subsequent MLB investigation, and intentionally failing and refusing to disclose the illicit sign stealing cheating scheme and subsequent MLB investigation to Plaintiffs and Season Ticketholder Class Members (when Defendants had a duty to do so), which Defendants knew about at the time of the season ticket purchase transactions, with the intent to induce (and, in fact, induced) Plaintiffs and Season Ticketholder Class Members to purchase 2016-2020 season tickets, 2017-2019 post-season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services, which they otherwise would not have purchased but for Defendants' above-described unconscionable actions and/or unconscionable course of action. Such wrongful acts and practices took advantage of Plaintiffs' and Season Ticketholder Class Members' lack of knowledge about the illicit sign stealing cheating scheme and subsequent MLB investigation to a grossly unfair degree—to Defendants' financial benefit and Plaintiffs' and Season Ticketholder Class Members' financial detriment.

139. Defendants' above-described knowing, intentional, deceptive, uniform, and systematic wrongful actions, inaction, omissions, and violations of the Texas DTPA were a direct, proximate, and/or producing cause of Plaintiffs' and Season Ticketholder Class Members' ongoing and continuous injury, harm, and damages in the form of, *inter alia*, the purchase prices

for 2016, 2017, 2018, 2019, and 2020 season tickets, 2017-2019 post-season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services, and the diminished value of their personal seat licenses. All conditions precedent to Plaintiffs' and Season Ticketholder Class Members' claims for relief have been performed or occurred.

140. Plaintiffs and Season Ticketholder Class Members also are entitled to treble damages for Defendants' above-described knowing, willful, intentional, surreptitious, wrongful, and unconscionable conduct under TEX. BUS. & COM. CODE §17.50(b)(1). All conditions precedent to Plaintiffs' and Season Ticketholder Class Members' claims for treble damages have been performed or occurred.

### COUNT III

#### **MONEY HAD AND RECEIVED** **(FOR PLAINTIFFS AND ALL CLASS MEMBERS)**

141. The preceding factual statements and allegations are incorporated by reference.

142. As a direct and/or proximate result of their above-described knowing, intentional, deceptive, uniform, and systematic wrongful actions, inaction, and/or omissions, Defendants hold money—*i.e.*, the funds paid by Plaintiffs and Season Ticketholder Class Members to Defendants for 2016, 2017, 2018, 2019, and 2020 season tickets, 2017-2019 post-season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services—that, for the reasons set forth above, in equity and good conscience, rightfully belong to Plaintiffs and Season Ticketholder Class Members. Defendants, therefore, should be compelled to refund to Plaintiffs and Season Ticketholder Class Members now such payments under the equitable doctrine of money had and received. All conditions precedent to Plaintiffs' and Season Ticketholder Class Members' claims for relief have been performed or occurred.



143. As a further direct and/or proximate result of their above-described knowing, intentional, deceptive, uniform, and systematic wrongful actions, inaction, and/or omissions, Defendants hold money—*i.e.*, *inter alia*, the funds paid by Plaintiff Rao and 2020 Season Ticketholder Subclass Members to Defendants for their post-May 31, 2020 season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services—that, for the reasons set forth above, in equity and good conscience, rightfully belong to Plaintiff Rao and 2020 Season Ticketholder Subclass Members. Defendants know and, in fact, have stated that no Astros home games against the MLB teams on their 2020 schedule will be played in front of fans at Minute Maid Park in Houston, Texas, in 2020.

144. Defendants, therefore, should be compelled to refund to Plaintiff Rao and 2020 Season Ticketholder Subclass Members now the funds they paid Defendants for their post-May 31, 2020 season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services under the equitable doctrine of money had and received. All conditions precedent to Plaintiff Rao's and 2020 Season Ticketholder Subclass Members' claims for relief have been performed or occurred.

#### **COUNT IV**

#### **UNJUST ENRICHMENT/ASSUMPSIT (FOR PLAINTIFFS AND ALL CLASS MEMBERS)**

145. The preceding factual statements and allegations are incorporated by reference.

146. As Defendants' customers, Plaintiffs and Season Ticketholder Class Members conferred valuable benefits on Defendants in the form of, *inter alia*, funds paid for 2016, 2017, 2018, 2019, and 2020 season tickets, 2017-2019 post-season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services. As Defendants' customers, Plaintiff Rao and 2020 Season Ticketholder Subclass Members also conferred valuable benefits on Defendants

in the form of, *inter alia*, the money systematically debited from their bank accounts and/or payment cards for their post-May 31, 2020 season tickets, post-season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services—for which Plaintiff Rao and 2020 Season Ticketholder Subclass Members have received (and will continue to receive in 2020) nothing in return from Defendants.

147. Defendants accepted such valuable financial benefits from Plaintiffs, Season Ticketholder Class Members, and 2020 Season Ticketholder Subclass Members. As such, and as a direct and/or proximate result of their above-described knowing, intentional, deceptive, uniform, and systematic wrongful actions, inaction, and/or omissions, Defendants have been (and continue to be) unjustly enriched by, *inter alia*, (i) the payments made by Plaintiffs and Season Ticketholder Class Members for 2016, 2017, 2018, 2019, and 2020 season tickets, 2017-2019 post-season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services, (ii) such wrongfully charged and collected money from Plaintiff Rao and 2020 Season Ticketholder Subclass Members for their post-May 31, 2020 season tickets, parking, promo packs, ticket printing services, and/or other goods and/or services, and (iii) the return on investment generated by Defendants on the amounts described in (i) and (ii).

148. Defendants, therefore, as a matter of justice, equity, and good conscience, should be compelled to refund (or disgorge) to Plaintiffs, Season Ticketholder Class Members, and 2020 Season Ticketholder Class Members now such wrongfully charged and collected amounts and the corresponding return on investment under the common law doctrines of unjust enrichment and/or the duty to make restitution under the common law equitable doctrine of *assumpsit* (*i.e.*, Defendants failed to keep their promise to Plaintiff Rao and 2020 Season Ticketholder Subclass Members to play 81 MLB home games against the MLB teams on the Astros' 2020 schedule in

front of fans at Minute Maid Park in Houston, Texas, during 2020). All conditions precedent to Plaintiffs' and all Class Members' claims for relief have been performed or occurred.

### **RESPONDEAT SUPERIOR/AGENCY**

149. The preceding factual statements and allegations are incorporated by reference.

150. Defendants also are liable for the above-described knowing, intentional, deceptive, uniform, and systematic wrongful actions, inaction, and/or omissions committed by their officers, directors, employees, agents, and/or representatives during the course and scope of their employment while they were under Defendants' employ, command, supervision, direction, and control under the doctrine of *respondeat superior* and/or agency theory; to wit, such wrongful conduct was committed (i) within their general authority while they were under Defendants' employ, command, supervision, direction, and control with Defendants' full knowledge, (ii) in furtherance of Defendants' operations and commercial activity in the United States, and (iii) while accomplishing the objectives for which they were hired—all of which directly and/or proximately caused Plaintiffs, Season Ticketholder Class Members, and 2020 Season Ticketholder Subclass Class Members to suffer (and continue to suffer) the above-described injury, harm, and damages.

### **TOLLING OF THE STATUTES OF LIMITATION**

151. The preceding factual statements and allegations are incorporated by reference.

152. **FRAUDULENT CONCEALMENT.** Defendants took active steps to conceal their above-described knowing, intentional, deceptive, uniform, and systematic wrongful actions, inaction, and/or omissions. The details of Defendants' efforts to conceal their unlawful conduct are in their possession, custody, and control, to the exclusion of Plaintiffs, and await further discovery. When Defendants revealed the sign stealing cheating scheme and MLB's sanctions on January 13, 2020, Plaintiffs exercised due diligence by investigating the situation, retaining

counsel, and pursuing their claims. Defendants fraudulently concealed their wrongful conduct. Should such be necessary, therefore, all applicable statutes of limitation (if any) are tolled under the fraudulent concealment doctrine.

153. **EQUITABLE ESTOPPEL.** Defendants took active steps to conceal their above-described knowing, intentional, deceptive, uniform, and systematic wrongful actions, inaction, and/or omissions. The details of Defendants' efforts to conceal their unlawful conduct are in their possession, custody, and control, to the exclusion of Plaintiffs, and await further discovery. When Defendants revealed the sign stealing cheating scheme and MLB's sanctions on January 13, 2020, Plaintiffs exercised due diligence by investigating the situation, retaining counsel, and pursuing their claims. Defendants intentionally concealed their wrongful conduct. Should such be necessary, therefore, all applicable statutes of limitation (if any) are tolled under the doctrine of equitable estoppel.

154. **EQUITABLE TOLLING.** Defendants took active steps to conceal their above-described knowing, intentional, deceptive, uniform, and systematic wrongful actions, inaction, and/or omissions. The details of Defendants' efforts to conceal their unlawful conduct are in their possession, custody, and control, to the exclusion of Plaintiffs, and await further discovery. When Defendants revealed the sign stealing cheating scheme and MLB's sanctions on January 13, 2020, Plaintiffs exercised due diligence by investigating the situation, retaining counsel, and pursuing their claims. Defendants intentionally concealed their wrongful conduct. Should such be necessary, therefore, all applicable statutes of limitation (if any) are tolled under the doctrine of equitable tolling.

155. **THE DISCOVERY RULE.** The discovery rule also tolls the statute of limitation as Plaintiffs' injuries were inherently undiscoverable and objectively not verifiable, and Plaintiffs

did not, and could not, have discovered Defendants' knowing, intentional, deceptive, uniform, and systematic wrongful conduct until January 13, 2020.

**PRESERVATION OF EVIDENCE/SPOLIATION NOTICE**

156. Plaintiffs hereby request and demand that Defendants preserve and maintain all evidence pertaining to any claim or defense related to the incidents made the basis of this lawsuit, or the damages resulting therefrom, including without limitation, contracts, emails, minutes of meetings, memoranda, correspondence, financial records, diagrams, maps, photographs, videotapes, audiotapes, video and audio recordings showing the sign stealing, recordings, invoices, checks, files, facsimiles, voicemails, text messages, calendar entries, disciplinary actions, ticket sales, and/or documents and information relevant and/or related to the reference claims. Failure to maintain such items shall constitute a "spoliation" of the evidence.

**NOTICE OF SELF-AUTHENTICATION**

157. Pursuant to TEX. R. CIV. P. 193.7, Plaintiffs, for themselves and Season Ticketholder Class Members and 2020 Season Ticketholder Subclass Class Members, hereby notify Defendants that any documents and/or information produced in response to written discovery requests will be self-authenticated for use *against* Defendants in any pre-trial proceeding and/or at trial.

**REQUEST FOR DICLOSURE**

158. Pursuant to TEX. R. CIV. P. 194, Plaintiffs hereby request Defendants to immediately produce and/or disclose the documents and/or information described in TEX. R. CIV. P. 194.2(a)-(k). Defendants missed their April 10, 2020 deadline to respond to Plaintiffs' original Rule 194 discovery requests without securing an extension from Plaintiffs or the Court.

## **RELIEF REQUESTED**

159. The preceding factual statements and allegations are incorporated by reference.

160. **ACTUAL, CONSEQUENTIAL, AND/OR COMPENSATORY DAMAGES AND/OR ALTERNATIVE EQUITABLE RELIEF.** As a direct, proximate, and/or producing result of Defendants' above-described knowing, intentional, deceptive, uniform, and systematic wrongful actions, inaction, and/or omissions, Plaintiffs, Season Ticketholder Class Members, and 2020 Season Ticketholder Subclass Class Members have suffered (and will continue to suffer) actual, consequential, and/or compensatory damages in the form of, *inter alia*, (i) the payments made to Defendants for 2016, 2017, 2018, 2019, and 2020 season tickets, 2017-2019 post-season tickets, parking, promo packs, and ticket printing services and/or other goods and/or services, (ii) the diminished value of their personal seat licenses, and (iii) in the case of the 2020 Season Ticketholder Subclass, a refund of the full amounts they paid for their post-May 31, 2020 season tickets, parking, promo packs, ticket printing services and/or other goods and/or services—for which they are all entitled to compensation. Alternatively, Plaintiffs, Season Ticketholder Class Members, and 2020 Season Ticketholder Subclass Class Members are entitled to equitable relief in the form of a refund, restitution, and/or disgorgement. All injury, harm, and damages suffered (and to be suffered) by Plaintiffs, Season Ticketholder Class Members, and 2020 Season Ticketholder Subclass Members were reasonably foreseeable by Defendants. All conditions precedent to Plaintiffs' and all Class Members' claims for relief have been performed or occurred.

161. **TREBLE DAMAGES.** Plaintiffs and Season Ticketholder Class Members also are entitled to treble damages for Defendants' knowing, willful, intentional, surreptitious, wrongful, and unconscionable conduct, in violation of TEX. BUS. & COM. CODE §17.50(a)(1) and (a)(3),

under TEX. BUS. & COM. CODE §17.50(b)(1). All conditions precedent to Plaintiffs' and Season Ticketholder Class Members' claims for relief have been performed or occurred.

162. **PUNITIVE DAMAGES.** Defendants' above-described knowing, intentional, deceptive, uniform, and systematic wrongful actions, inaction, and/or omissions were committed willfully, wantonly, and with reckless disregard for Plaintiffs' and all Class Members' rights and interests. Accordingly, Plaintiffs and all Class Members also are entitled to punitive damages from Defendants as punishment and to discourage such wrongful conduct in the future. All conditions precedent to Plaintiffs' and Class Members' claims for relief have been performed or occurred.

163. **ATTORNEYS' FEES, LITIGATION EXPENSES, AND COURT COSTS.** Plaintiffs and all Class Members also are entitled to recover their attorneys' fees, litigation expenses, and court costs in prosecuting this action pursuant to, *inter alia*, TEX. BUS. & COM. CODE § 17.50(d) and principles of equity. All conditions precedent to Plaintiffs' and all Class Members' claims for attorneys' fees, litigation expenses, and court costs have been performed or occurred.

**WHEREFORE**, Plaintiffs, for themselves and all Class Members, respectfully request that (i) Defendants be cited to appear and answer this lawsuit, (ii) this action be certified as a class action, (iii) Plaintiffs be designated the Class Representatives, and (iv) Plaintiffs' counsel be appointed Class Counsel. Plaintiffs, for themselves and all Class Members, further request that upon final trial or hearing, judgment be awarded against Defendants in Plaintiffs' favor for:

- (i) actual, consequential, and/or compensatory damages and/or a refund, restitution, or disgorgement, in an amount to be determined by the trier of fact;
- (ii) treble damages;
- (iii) punitive damages;
- (iv) pre- and post-judgment interest at the highest legal rates;

- (v) attorneys' fees, litigation expenses, and court costs through the trial and any appeals of this case; and
- (vi) such other and further relief the Court deems just and proper.

**JURY DEMAND**

Plaintiffs, for themselves and all Class Members, respectfully demand a trial by jury on all claims so triable.

Date: May 4, 2020

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFFS AND THE  
PUTATIVE SEASON TICKETHOLDER  
CLASS AND 2020 SEASON TICKETHOLDER  
SUBCLASS**

**CERTIFICATE OF SERVICE**

I certify that on May 4, 2020, a true copy of Plaintiffs' Consolidated Amended Class Action Petition and Jury Demand was served on all counsel of record, via the Court's electronic filing system.

/s/ Richard L. Coffman  
Richard L. Coffman  
Attorney for Plaintiffs and the  
Putative Season Ticketholder Class and  
Putative 2020 Season Ticketholder Subclass