



**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued : 05-May-2020
Délivré par voie électronique : 05-May-2020
Toronto

RYAN MACINTYRE

Plaintiff

- and -

**TICKETMASTER CANADA HOLDINGS ULC, TICKETMASTER CANADA
ULC, LIVE NATION CANADA, INC., LIVE NATION ENTERTAINMENT, INC.**

Defendants

STATEMENT OF CLAIM

Proceeding under the *Class Proceedings Act, 1992*

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO

PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$ for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: May 5, 2020 Electronically issued via the Civil Claims Online Portal

TO: **TICKETMASTER CANADA HOLDINGS ULC**
 1 Blue Jays Way
 Suite #3900
 Toronto, ON M5V 1J3

AND TO: **TICKETMASTER CANADA ULC**
 1 Blue Jays Way
 Suite #3900
 Toronto, ON M5V 1J3

AND TO: **LIVE NATION CANADA, INC.**
 40 Hanna Ave
 Suite #3rd Floor
 Toronto, ON M6K 0C3

AND TO: **LIVE NATION ENTERTAINMENT, INC.**
 9348 Civic Center Drive
 Beverly Hills, CA 90210

CLAIM

1. In this Statement of Claim, in addition to the terms that are defined elsewhere herein, the following terms have the following meanings:

- (a) "**CJA**" means the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended;
- (b) "**Class**" or "**Class Members**" means all persons resident in Canada, except for Excluded Persons, who purchased one or more tickets from the Defendants for an event taking place after March 13, 2020 that has been postponed, rescheduled or canceled, or is postponed, rescheduled or canceled prior to certification of this claim;
- (c) "**Competition Act**" means the *Competition Act*, R.S.C. 1985, c. C-34;
- (d) "**Consumer Protection Act**" means the *Consumer Protection Act, 2002*, S.O. 2002, c. 30, Sched. A;
- (e) "**CPA**" means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended;
- (f) "**Defendants**" means Ticketmaster Canada Holdings ULC, Ticketmaster Canada ULC, Live Nation Canada, Inc., and Live Nation Entertainment, Inc.;
- (g) "**Equivalent Consumer Protection Statutes**" means the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c.2, the *Fair Trading Act*, R.S.A. 2000, c. F-2, the *Consumer Protection and Business Practices Act*, S.S. 2013, c. C-30.2, the *Business Practices Act*, C.C.S.M., c. B120, the *Consumer Protection Act*, C.Q.L.R., c. P-40.1 and the *Consumer Protection and Business Practices Act*, S.N.L. 2009, c. C-31.1, as amended;

- (h) "**Excluded Persons**" means the Defendants, the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, and the successors and assigns of the Defendants; and
- (i) "**Ticketmaster**" means the Defendants Ticketmaster Canada Holdings ULC and Ticketmaster Canada ULC, and the website, apps, and other electronic means by which they offer event tickets for sale to the public.

RELIEF SOUGHT

2. The Plaintiff claims on his own behalf and on behalf of the other Class Members:
 - (a) an order certifying this action as a class proceeding pursuant to the *CPA* and appointing the Plaintiff as the representative plaintiff for the Class;
 - (b) a declaration that the Defendants are liable to the Plaintiff and Class Members for breach of contract, or alternatively for unfair practices under the *Consumer Protection Act* and/or false and misleading representations under the *Competition Act*;
 - (c) a declaration that the Defendants were negligent for not retaining the full value of Class Members' money paid for tickets that now must be refunded, as particularized herein;
 - (d) a declaration that the Defendants were unjustly enriched by the acts and omissions pleaded herein;
 - (e) an order rescinding the ticket agreements entered into between the Plaintiff and Class Members and the Defendants;
 - (f) damages equivalent to the value of all monies paid by the Plaintiff and Class Members to the Defendants, and for which the Defendants are severally liable;
 - (g) punitive damages in an amount that this Court finds appropriate;

- (h) an equitable rate of interest on all sums found due and owing to the Plaintiff and Class Members;
- (i) prejudgment and post judgment interest pursuant to the *CJA*;
- (j) costs of this action on a substantial indemnity basis or in an amount that provides full indemnity;
- (k) pursuant to section 26(9) of the *CPA*, the costs of notice and of administration;
- (l) plan of distribution of the recovery in this action plus applicable taxes; and
- (m) such further and other relief as this Honourable Court may deem just.

OVERVIEW

3. The Plaintiff and Class Members purchased tickets from Ticketmaster for concerts, sports games and other events that either did not or will not take place as scheduled. Ticketmaster promised them refunds should this occur, but is now delaying, deferring and/or refusing to pay those refunds.

4. The money from refunds could be used right now by Class Members to pay rent, buy groceries, buffer savings and satisfy other daily needs during this time of economic crisis. Instead, the Defendants refuse to refund Class Members' money on any reasonable timescale – or at all – protecting their corporate bottom line at the expense of their customers.

5. The Defendants have not been honest in their dealings with the Plaintiff and Class Members. The Defendants attempted to negate their refund obligations by purporting to change Ticketmaster's refund policy once the spread of COVID-19 and the need for social distancing rendered concerts, sporting events and live theatre impossible to hold for the foreseeable future. Prior to this development, Ticketmaster's website promised a customer would get a refund "if your event is postponed, rescheduled or

canceled". After, Ticketmaster's website promised a refund for "canceled" events but not for postponed or rescheduled events.

6. Ticketmaster now disclaims any responsibility for providing refunds other than for officially canceled events. Even once an event has been officially canceled, Ticketmaster will not provide refunds sooner than 30 days, or potentially longer, after the cancellation.

7. At this time, many events scheduled for 2020 are still listed as "postponed", "rescheduled", or are scheduled to take place on the original date when it is all but certain they will not. The effect of this is – as the Defendants would have it – is that no refund obligation will ever be triggered in many cases, and will be significantly delayed until after an event is officially canceled by the event provider in other cases. This benefits the Defendant and prejudices Class Members.

8. The Defendants have known, or ought to have known, since early March 2020 that concerts, sporting events and the like would not and will not take place as scheduled because of the risks posed to public health from the further spread of COVID-19. Any "postponement" of such events may last months or longer. Any events that are "rescheduled" will likely fall in 2021 or even beyond. In all likelihood, it will not reasonably be possible to hold large events like concerts, sports and theatre shows until there is a safe, effective and widely available vaccine for COVID-19. Class Members should be given refunds *now*, allowing them to make decisions about whether to attend any rescheduled events *later*.

9. It is also disingenuous and entirely self-serving for the Defendants to act as if hundreds or thousands of upcoming events will continue on their originally scheduled dates, some of which fall within the next several months.

10. The Defendants have recently touted billions of dollars in available liquidity. Their refusal to provide immediate refunds to the Plaintiff and Class Members is improper, unlawful, and highly prejudicial to Class Members during the current economic crisis.

11. Class Members cannot wait for the Defendants to maybe, at some undefined point in the future, provide refunds for events that will not take place this year, or at all. Refunds totaling hundreds or thousands of dollars per Class Member are needed right now.

Coronaviruses and COVID-19

12. Coronaviruses are a large family of viruses that cause respiratory illnesses.

13. COVID-19 is an infectious respiratory disease caused by a newly discovered coronavirus.

14. The COVID-19 virus spreads primarily through droplets of saliva or discharge from the nose when an infected person coughs or sneezes. It also spreads through close, prolonged personal contact, such as touching or shaking hands and by touching something with the virus on it, and then touching one's mouth, nose or eyes before washing one's hands.

15. COVID-19 is a serious health threat and the risk to Canadians at this time is considered high.

16. COVID-19 can cause mild symptoms including cough and fever. It can also become more severe and lead to pneumonia or breathing difficulties that may require medical attention or hospitalization. There is an increased risk of more severe outcomes for individuals aged 65 and over, and those with compromised immune systems or with underlying medical conditions.

17. COVID-19 is easily spread, person to person, when two or more people spend time in enclosed spaces, such as concert halls, theatres, clubs, arenas and stadiums.

The Outbreak and Response

18. On December 31, 2019, the World Health Organization (the "**WHO**") was alerted to an outbreak of pneumonia in Wuhan, China, with an unknown cause.

19. On January 7, 2020, Chinese authorities identified the cause of the outbreak as a new coronavirus that did not match any other known virus. The disease has since been named COVID-19.
20. On January 22, 2020, Canada implemented screening requirements related to COVID-19 for travellers returning from China to major airports in Montréal, Toronto and Vancouver.
21. On January 25, 2020, Canada confirmed its first case of COVID-19 related to travel within Wuhan, China.
22. On January 30, 2020, the WHO declared the outbreak of COVID-19 a public health event of international concern.
23. On February 9, 2020, Canada expanded its COVID-19 screening requirements for travellers returning from affected areas to 10 airports across 6 provinces.
24. On February 20, 2020, Canada confirmed its first case of COVID-19 related to travel outside mainland China.
25. On March 9, 2020, Canada confirmed its first death related to COVID-19.
26. On March 11, 2020, the WHO declared the global outbreak of COVID-19 a pandemic. That same day an NBA player tested positive for COVID-19 and the NBA suspended the rest of its 2019/20 season.
27. On March 12, 2020, the NHL similarly suspended the rest of its 2019/20 season. Major League Baseball followed suit several days later.
28. On March 13, 2020, Ontario officially recommended against gatherings of 250 or more people. This was lowered to 50 people three days later.
29. On March 17, 2020, Ontario issued an emergency declaration that, among other things, legally required all bars, theatres, concert venues to close.

30. Similar measures on a similar timeline were taken across the rest of Canada and have remained in place since.

31. While governments in Canada are now planning for a phased reopening of parts of the economy over the spring and summer of 2020, none are planning to permit events with large crowds to take place in the foreseeable future. For example, Ontario's reopening policy "A Framework for Reopening our Province", dated April 27, 2020, states that resuming concerts, sporting events and live theatre will not even be *considered* until the *final* stage of the reopening process, if and when the initial stages progress safely. It confirms there will be **no** such events for the foreseeable future: "Large public gatherings such as concerts and sporting events will continue to be restricted **for the foreseeable future.**"

THE PLAINTIFF AND CLASS

32. The Plaintiff, Ryan Macintyre, is an individual who resides in the City of Toronto, in the Province of Ontario. He purchased two tickets from Ticketmaster for approximately \$75.60 to see a Tinashe concert that was to take place at the Danforth Music Hall in Toronto on April 29, 2020.

33. On April 1, 2020, Ryan attempted to request a refund through the Ticketmaster app but it would not allow such a request. He sent a message to Ticketmaster through the "Contact Us" page on the website but did not receive a response. He then consulted the Ticketmaster website and noticed the refund policy wording had been changed. He began researching the issue and saw that other Ticketmaster customers were also being denied refunds.

34. Despite the scheduled date for this concert (April 29, 2020) having passed with no event taking place, Ticketmaster continues to list the concert as "postponed" on its website with the date TBA. Ryan has not received a refund from the Defendants.

35. The Plaintiff is seeking certification of the following class (collectively referred to as the "Class" or "Class Members"):

All persons resident in Canada, except for Excluded Persons, who purchased one or more tickets from the Defendants for an event taking place after March 13, 2020 that has been postponed, rescheduled or canceled, or is postponed, rescheduled or canceled prior to certification of this claim.

Excluded Persons means the Defendants, the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, and the successors and assigns of the Defendants.

THE DEFENDANTS

36. Ticketmaster Canada Holdings ULC, Ticketmaster Canada ULC, and Live Nation Entertainment Canada, Inc. are Canadian corporations doing business in Toronto, ON, all of which are subsidiaries of Live Nation Entertainment, Inc., which has its principal place of business in Beverly Hills, CA, USA.

37. When customers purchase a ticket for an event that is located in Canada, Ticketmaster Canada Holdings ULC (formerly Ticketmaster Canada Ltd.) is the contracting party on behalf of the Defendants.

38. The Defendants are the largest ticket seller in Canada and the world. Globally, they sold 485 million event tickets in 2019.

39. The Defendants collect a per-ticket fee for each ticket sold, with limited exceptions. Beyond the ticket fee, Ticketmaster may charge service fees, processing fees and other fees, such as delivery fees, to purchase and use event tickets. In 2019, the Defendants collected \$1.9 billion from fees, representing 13.4% of their total revenue.

40. Where the Defendants sell tickets for events taking place at venues they do not own, they claim to transfer the "face value" revenue collected from ticket sales to the venue within one week. In other cases the Defendants own the venue where the event will take place. For example, the Defendants own the Danforth Music Hall in Toronto. The Defendants hold onto the ticket revenue for events taking place at venues they own or operate until the event happens.

41. According to the Defendants, Ticketmaster's practice of sending the money it collects from ticket sales for an event to the event's organizers on a weekly basis makes it "impossible" for the Defendants to issue refunds to customers for all currently postponed and rescheduled events.

42. While the Defendants have unnecessarily and improperly created a problem for themselves by transferring some of Class Members' money to third parties, thereby prejudicing Class Members, they do have resources available to draw upon. On April 13, 2020, the Defendants issued a news release on their financial position that reported holdings of \$3.3 billion in cash and cash equivalents with a total liquidity position of \$3.8 billion.

43. A significant portion of the Defendants' cash holdings represents fees collected, and also ticket revenue for events taking place at venues they own or operate, which came directly from Class Members. For example, the Plaintiff paid money for tickets to a concert at the Danforth Music Hall, a venue owned by the Defendants.

44. In the same news release the Defendants also touted their plan to hold onto cash through an "aggressive cost and cash management program". This program would, among other things, see \$800 million in cash outflows deferred into 2021. The Defendants' efforts to avoid paying refunds, or at least delay paying them to the greatest extent possible, favours their own corporate interests over Class Members' rights and present needs.

The Defendants attempted to alter their refund policy to their own benefit

45. Up to March 14, 2020, the Defendants' policy was to provide automatic refunds where an event was postponed, rescheduled or canceled. There were listed exceptions to this rule, namely Major League Baseball games and the U.S. Open.

46. Once the scale of COVID-19's impact on events became clear, the Defendants purported to unilaterally alter their refund policy to their own benefit, at the expense of the Plaintiff and Class.

47. Whereas on March 13, 2020, Ticketmaster's website promised a customer would get a refund "if your event is postponed, rescheduled or canceled", the next day the website promised would get a refund "if your event is canceled". The Defendants did not mark this change with any sort of news release, tweet, or email to customers' registered accounts. This change was followed by an update of Ticketmaster's Purchase Policy on March 20, 2020, which is provided on Ticketmaster's website and is incorporated into the Terms of Use that provides the terms and conditions for tickets sold by Ticketmaster.

48. After a backlash from customers and substantial media coverage of the changes, the Defendants claimed publically that the refund policy had not actually changed and the website language had only been edited for clarity. The Defendants' website does not contain an archived version of the Purchase Policy as it read prior to March 20, 2020, nor have the Defendants provided relevant excerpts in their recent public statements.

49. On April 29, 2020, Ticketmaster published a document called "Terms Regarding Certain Cancelled, Rescheduled and Postponed Events (COVID-19)" on its website. It explains that a Ticketmaster refund will only be the default result where an event has been officially "canceled", and even then a refund will not be provided sooner than 30 days, or longer, after the cancellation. Where an event has been "rescheduled" or "postponed", the document claims the decision whether to issue a refund lies solely with the event provider. Ticketmaster purports to disclaim any responsibility for providing refunds for "rescheduled" or "postponed" events, and for deciding whether an event is canceled, rescheduled or postponed.

50. As of May 5, 2020, Ticketmaster's website continues to list 308 events as "postponed" and 274 events as "rescheduled" in Toronto and surrounding area alone.

CAUSES OF ACTION

Breach of Contract

51. The Plaintiff and Class Members' event tickets are contracts with the vendors – the Defendants. It was an express or implied term of these contracts that Class Members' would be allowed automatic refunds for events that are postponed, rescheduled or

canceled. The Defendants breached this term when they failed to provide refunds to Class Members as obliged, or failed to provide refunds on any reasonable timescale.

52. It is further an express or implied term of Class Members' contracts that the Defendants would observe a duty of good faith and fair dealing with them, characterized by candour, reasonableness, honesty, and forthrightness. Put another way, it is an express or implied term of Class Members' contracts that the Defendants would not act in bad faith by being, for example, untruthful, misleading or unduly insensitive. The Defendants are in continuing breach of this term by failing to acknowledge that all events scheduled to take place in the near term are effectively "canceled", thereby denying, delaying or deferring the Defendants' obligation to provide refunds to Class Members. The Defendants further breach this term by failing to acknowledge promptly and in good faith that events scheduled to take place later in 2020 will not occur, thereby delaying or deferring refunds to Class Members.

53. To the extent that the Defendants' unilaterally altered their contractual obligations to provide refunds in March or April 2020, these changes were void for reasons of public policy, illegality and/or inadequate notice.

Consumer Protection Act

54. The Plaintiff and Class Members purchased event tickets for personal, family or household purposes and are consumers for the purposes of the *Consumer Protection Act* and/or Equivalent Consumer Protection Statutes.

55. If it is true that the Defendants' policy was at all material times only to provide automatic refunds for canceled events – not postponed or rescheduled events – then the Ticketmaster website contained a false, misleading or deceptive representation when it stated prior to March 14, 2020 that "Refunds are available if your event is postponed, rescheduled or canceled." This statement represented to the Plaintiff and Class Members that their transactions with the Defendants would involve rights, remedies or obligations regarding refunds that the Defendants neither believed to exist, nor intended to honour. This was an "unfair practice" pursuant to s. 14 of the *Consumer Protection Act*, or the similar concepts as they are defined in the Equivalent Consumer Protection Statutes.

56. The Plaintiff and Class Members' entered into their ticket agreements with the Defendants after or while the Defendants were engaged in the unfair practice described above. Accordingly, the Plaintiff and Class Members are entitled to rescind their agreements and seek any further remedy that is available in law, including damages equivalent to a full refund of all monies paid, pursuant to s. 18(1) of the *Consumer Protection Act* and/or Equivalent Consumer Protection Statutes.

57. The notice requirement should be waived pursuant to s. 18(5) of the *Consumer Protection Act*. Ticketmaster customers have requested refunds *en masse* and there has been extensive media reporting on the issue. The Defendants have attempted to revise their refund policies on the fly to reduce their liability. The Defendants have been made fully aware that the Plaintiff and Class Members want refunds.

58. The class action waiver in Ticketmaster's Terms of Use is void pursuant to s. 8 of the *Consumer Protection Act*.

59. Ticketmaster's Terms of Use specify the law of Ontario applies to disputes between the Defendants and Class Members. The Defendants are located in Ontario and carry on business throughout Canada. As a result, all Class Members obtain the benefit of the *Consumer Protection Act*. In the alternative, Class Members outside of Ontario obtain the benefit of the Equivalent Consumer Protection Statutes.

Competition Act

60. The same facts pleaded above with regard to unfair practices under the *Consumer Protection Act* also constitutes a breach of s. 52 of the *Competition Act* because the representation on Ticketmaster's website was:

- (a) made for the purpose of promoting the business interests of the Defendants;
- (b) made to the public; and
- (c) false and misleading in a material respect.

61. Pursuant to s. 36 of the *Competition Act*, the Defendants are liable to pay Class Members the full value of monies paid for the relevant tickets, representing the losses or damages that resulted from the Defendants' breach of s. 52.

Negligence

62. The Defendants owed a duty of care to the Plaintiff and Class Members to be ready and financially able to provide prompt refunds if and when the conditions for refunds materialized, namely postponement, rescheduling or cancelation of the relevant events. The Defendants knew or should have known that a mass disruption of events – for any number of reasons, including an outbreak of disease – was a foreseeable scenario that might trigger its refund obligations to Class Members.

63. The reasonable standard of care required the Defendants to keep the money it collected from Class Members on hand until the events actually occurred, at which point the event organizers could be paid. In so doing the Defendants would always have been able to satisfy their refund obligations without delay, should the need have arisen. Instead, the Defendants' claim their chosen practice has been to pay event organizers with the money Ticketmaster collects from ticket sales for an event on a weekly basis. This practice virtually ensured that the Defendants would have difficulty satisfying mass refund obligations promptly, prejudicing Class Members financially and causing them undue stress and anxiety. The Defendants failed to meet the standard of care.

64. As a result of the Defendants' failure to pay prompt refunds, or any refunds at all, Class Members have suffered damage.

Unjust Enrichment

65. The Defendants received and continue to receive a benefit by avoiding or delaying their obligation to pay refunds to Class Members after the events for which they hold tickets were postponed, rescheduled or canceled, and also by holding onto the fees and substantial revenues generated by those ticket sales. This benefit is ongoing as the Defendants implement their "aggressive cost and cash management program," which

includes deferring, delaying and/or not paying refunds to Class Members in order to improve and protect the Defendants' bottom line.

66. The Plaintiff and Class Members suffered and continue to suffer a deprivation that corresponds to the Defendants' benefit.

67. There is no juristic reason for the Defendants' benefit and Class Members' corresponding deprivation. The Defendants have either breached their contracts with Class Members or they have engaged in "unfair practices" prohibited under consumer protection legislation and have contravened the *Competition Act* by virtue of their false and misleading representations. The Class Members are entitled to refunds to remedy the Defendants' unjust enrichment.

PLACE OF TRIAL

68. The Plaintiff proposes that this action be tried in the City of Toronto.

May 5, 2020

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Defendants

Court File No

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

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