



Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Electronically issued : 05-Nov-2018  
Délivré par voie électronique : 05-Nov-2018  
Toronto

*(Court Seal)*

STACEY THOMPSON-MARCIAL

**Plaintiff**

and

TICKETMASTER CANADA HOLDINGS ULC and TICKETMASTER LLC

**Defendants**

**STATEMENT OF CLAIM**

TO THE DEFENDANTS

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.

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local Registrar

Address of Superior Court of Justice  
court office: 393 University Avenue, 10th Floor  
Toronto ON M5G 1E6

TO: **Ticketmaster Canada Holdings ULC**  
1 Blue Jays Way, Suite #3900  
Toronto ON M5V 1J3

AND TO: **Ticketmaster LLC**  
8800 Sunset Blvd.  
West Hollywood CA 90069  
U.S.A.

## CLAIM

### (1) DEFINED TERMS

1. The capitalized terms used in this Statement of Claim have the following meanings:
  - (a) “**Class**” or “**Class Member**” means all persons who purchased Secondary Sales tickets for Live Events from the defendants or Unaffiliated Reseller Sites during the Class Period;
  - (b) “**Class Period**” means September 1, 2013 until November 5, 2018;
  - (c) “**CA**” means the *Competition Act*, RSC 1985, c C-34;
  - (d) “**CJA**” means the *Courts of Justice Act*, RSO 1990, c C.43;
  - (e) “**Consumer Protection Act**” means the *Consumer Protection Act, 2002*, SO 2002, c 30, Sch A;
  - (f) “**CPA**” means the *Class Proceedings Act, 1992*, SO 1992, c 6;
  - (g) “**Double-Dip Commissions**” means additional revenues resulting from reselling tickets as Secondary Sales using software, websites, and other methods sponsored by the defendants;
  - (h) “**Equivalent Consumer Protection Statutes**” means the *Business Practices and Consumer Protection Act*, SBC 2004, c 2, the *Fair Trading Act*, RSA 2000, c F-2, the *Consumer Protection Act*, SS 1996, c C-30.1, the *Consumer Protection and Business Practices Act*, SS 2014, c C-30.2, the *Business Practices Act*, CCSM, c

B120, the *Consumer Protection Act*, CQLR, c P-40.1, the *Consumer Protection and Business Practices Act*, SNL 2009, c C-31.1, the *Consumer Protection Act*, RSNS 1989, c 92 and the *Business Practices Act*, RSPEI 1988, c B-7, all as amended;

- (i) “**Live Events**” means live performance events in Canada;
- (j) “**NYAG**” means New York Attorney General;
- (k) “**Primary Sales**” means the sale and purchase of Live Events tickets when they are initially listed for sale in Canada;
- (l) “**Secondary Sales**” means the resale of Live Events tickets in Canada after they are purchased as Primary Sales;
- (m) “**Ticketmaster Canada**” means the defendant Ticketmaster Canada Holdings ULC;
- (n) “**Ticketmaster U.S.**” means the defendant Ticketmaster LLC; and
- (o) “**Unaffiliated Reseller Sites**” means commercial ticket reselling websites, including but not limited to stubhub.com, ticketnetwork.com, and seatgeek.com.

## (2) RELIEF SOUGHT

2. The Plaintiff claims:

- (a) an order appointing the plaintiff as the representative plaintiff of the Class;
- (b) damages or compensation in an amount not exceeding \$250 million for:

- (i) unfair practices contrary to Part III of the Consumer Protection Act and/or any Equivalent Consumer Protection Statutes;
  - (ii) breach of contract;
  - (iii) false or misleading representations, contrary to s. 52 of the CA;
  - (iv) loss or damage suffered as a result of conduct contrary to Part VI of the CA;
  - (v) unjust enrichment;
  - (vi) waiver of tort;
- 
- (c) prejudgment interest in accordance with section 128 of the CJA;
  - (d) postjudgment interest in accordance with section 129 of the CJA;
  - (e) investigative costs and costs of this proceeding pursuant to s. 36 of the CA;
  - (f) the costs of this proceeding, plus all applicable taxes; and
  - (g) such further and other relief as this Honourable Court may deem just.

**(3) THE PARTIES**

3. The plaintiff resides in Toronto, Ontario. On or about April 23, 2018, she purchased two Secondary Sales “Verified Tickets by Ticketmaster” from ticketmaster.ca to a concert by the artist “Childish Gambino,” for a total of \$313.56, a price well in excess of the face value of the tickets. The plaintiff is a member of the Class.

4. The defendant Ticketmaster Canada is a company that carries on business in Canada, and has its principal place of business in Toronto, Ontario. The Ticketmaster Canada Purchase Policy states: “When you purchase a ticket for an event that is located in Canada, then Ticketmaster Canada Ltd. will be handling the transaction and collecting payment for the Event Provider.” The defendant Ticketmaster Canada is the successor company to Ticketmaster Canada Ltd.

5. The defendant Ticketmaster U.S. is a U.S. corporation headquartered in California that sells tickets for live events in the United States. Ticketmaster U.S. administers and is responsible for the Ticketmaster TradeDesk reseller program.

6. Ticketmaster Canada and Ticketmaster U.S. are affiliated companies whose businesses are inextricably interwoven. Each is the agent of the other for the purposes of the claims described herein.

#### **(4) SUMMARY OF CLAIM**

7. The defendant Ticketmaster Canada has been the dominant ticket seller in Canada for many years. It dominates the market in Canada for the primary sale of Live Events tickets.

8. The defendant Ticketmaster Canada earns revenues when Live Events tickets are sold as Primary Sales. The defendants have sought for many years to increase their market share and revenues arising from Secondary Sales. They have succeeded in this respect.

9. To purportedly give all consumers an equal opportunity to acquire tickets for Live Events, the Terms of Use on ticketmaster.ca prohibit ordering more tickets than the stated limits. The Ticketmaster.ca Terms of Use state in part:

- (a) “You agree that you will comply with all applicable laws, rules and regulations, and that you will not [...] order a number of tickets for an event that exceeds the stated limit for that event [...]”
  
- (b) “We grant you a limited, conditional [...] licence to view this Site and its Content as permitted by these Terms for non-commercial purposes only if, as a condition precedent, you agree you will not: [...]”
  - (i) “Use any robot, spider, offline reader, site search/retrieval application or other manual or automatic device, tool, or process to retrieve, index, data mine or in any way reproduce or circumvent the navigational structure or presentation of the Site or its contents, including with respect to any CAPTCHA displayed on the Site [...]”
  - (ii) “Use any password or code to participate in a presale or other offer on the Site if you did not receive the password or code from us or if you violate the terms of the presale or offer [...]”
  - (iii) “Use any automated software or computer system to search for, reserve, buy or otherwise obtain tickets [...]”
  - (iv) “Take any action that imposes or may impose (in our sole discretion) an unreasonable or disproportionately large load on our infrastructure [...]”
  - (v) “Access, reload or refresh transactional event or ticketing pages, or any other request to transactional servers, more than once during any three-second interval [...]”

- (vi) “Request more than 1,000 pages of the Site in any 24-hour period, whether alone or with a group of individuals [...]”
  - (vii) “Make more than 800 reserve requests on the Site in any 24-hour period, whether alone or with a group of individuals [...]”
  - (viii) “Use the Site or [its contents] in an attempt to, or in conjunction with, any device, program or service designed to circumvent any technological measure that effectively controls access to, or the rights in, the Site and/or [its contents] in any way including, without limitation, by manual or automatic device or process, for any purpose [...]”
  - (c) “This licence exists only so long as you strictly comply with each of the provisions described [above] [...]”
  - (d) “You may not attempt to conceal your identity by using multiple Internet Protocol addresses or email addresses to conduct transactions on the Site [...]”
  - (e) “If we determine that you have violated these Terms or the law, or for any reason or no reason, we may cancel your account, delete all your Use Content and prevent you from accessing the Site at any time without notice to you. If that happens, you may no longer use the Site or any Content [...]”
10. The Ticketmaster.ca Purchase Policy further states in part:
- (a) “When purchasing tickets on our Site, you are limited to a specified number of tickets for each event (also known as a “ticket limit”). This ticket limit is posted



during the purchase process and is verified with every transaction. This policy is in effect to discourage unfair ticket buying practices. We reserve the right to cancel any or all orders and tickets without notice to you if you exceed the posted limits. This includes orders associated with the same name, e-mail address, billing address, credit card number or other information.”

11. The defendants represented to the public and the Class that they take available active steps to stop users from circumventing the ticket limits in order to create an equal marketplace for Live Events tickets. They have represented, for instance:

- (a) “As the world’s leading ticketing platform, representing thousands of teams, artists and venues, we believe it is our job to offer a marketplace that provides a safe and fair place for fans to shop, buy and sell tickets in both the primary and secondary markets”;

Source: Statement from Catherine Martin, Senior VP Communications, to CBC News dated September 14, 2018, online:  
<<https://assets.documentcloud.org/documents/4891602/TICKETMASTER-S-STATEMENTS-to-CBC-NEWS-2FTORONTO.pdf>>

- (b) the activity of professional resellers constitutes “unfair competition” and that they “first and foremost want to ensure that the first ticket that’s sold, that the fan has a shot to buy that ticket”;

Source: May 2013 statement by Michael Rapino, CEO of Live Nation Entertainment, the defendants’ parent company, online:  
<<https://www.nytimes.com/video/business/media/10000002218421/fair-ticketing-fans-before-scalpers.html>>

- (c) the defendants use technology with the aim of “warding off bots and scalpers”;

Source: Statement by Ticketmaster, titled “New! Real-Time Over the Ticket Limit Verification for All Events,” online:  
<<http://pages.tmclient.ticketmaster.com/realtimetl/>>

- (d) “Individual ticket types and event ticket limits set by the venue, artist and promoter will be enforced”;

Source: Statement by Ticketmaster, titled “New! Real-Time Over the Ticket Limit Verification for All Events,” online:  
<<http://pages.tmclient.ticketmaster.com/realtimetl/>>

- (e) “Without the ability to resell tickets at steep prices, scalpers have no reason to snatch them up when they go on sale using automated software, or ‘bots’”; and

Source: Ticketmaster U.S., titled “Ticketmaster Credit Card Entry,” online: <<https://www.ticketmaster.com/creditcardentry>>

- (f) The activities of professional resellers who do not comply with rules about ticket limits harm consumers, allowing them to continue “playing with price,” “controlling the supply” and “making the market”;

Source: Statement by David Marcus, Ticketmaster Executive VP, as quoted on July 12, 2018 in “How the ticketing world is taking on scalpers and bots,” online: <<https://www.cnet.com/news/how-the-ticketing-world-is-taking-on-scalpers-and-bots/>>

12. On September 19, 2018, CBC news and the *Toronto Star* reported that their reporter(s) went undercover as ticket resellers at a ticket convention in Las Vegas and spoke with Ticketmaster representatives. Among other things, the investigation uncovered that:

- (a) Casey Klein, Ticketmaster U.S.’s resale director, held a closed media session entitled: “We appreciate your partnership: More brokers are listing with Ticketmaster than ever before.”

- (b) Ticketmaster had developed a professional reseller program and launched a program called TradeDesk, which facilitated professional ticket resellers simultaneously uploading large quantities of tickets and listing them for resale.
- (c) Ticketmaster's professional reseller handbook described TradeDesk as "Ticketmaster's Resale's custom-designed and web-based, inventory management, sales and full point-of-sale system built expressly for professional resellers."
- (d) A Ticketmaster representative stated that Ticketmaster would not police the use of multiple accounts through its TradeDesk platform, stating, by way of example, that he had "a gentleman who's got over 200 ticketmaster.com accounts."
- (e) A Ticketmaster representative stated that professional resellers were using TradeDesk to sell between a few thousand and several million tickets per year: "I think our biggest broker right now has probably grabbed five million." There are brokers with "literally a couple of hundred accounts" on TradeDesk, and "it's not something that we look at or report."
- (f) A Ticketmaster representative further stated: "I'd say pretty damn near every one of [his broker accounts] are using multiple accounts [...] I can't think of any of my clients that aren't using multiple accounts. I mean, they have to. Because if you want to get a good show and the ticket limit is six or eight [...] you're not going to make a living on eight tickets, yeah."
- (g) Ticketmaster actively rewards professional resellers. The Ticketmaster professional reseller handbook describes incentives to resellers who sell tickets on Ticketmaster

Resale consumer websites. The handbook provides an example of a purchase order exceeding \$5 million.

- (h) When asked if Ticketmaster cares if resellers use bots to buy tickets, the Ticketmaster representative stated: “We don’t share reports, we don’t share names, we don’t share account information with the primary site. Period.”
- (i) When asked if the company would ban resellers who violated the company’s Terms of Use, another Ticketmaster representative responded: “We’ve spent millions of dollars on this tool. The last thing we’d want to do is get brokers caught up to where they can’t sell inventory with us.”

13. After the *CBC/Toronto Star* investigation, Ticketmaster U.S. stated that it would conduct an internal review of its professional resellers’ accounts and employee practices “to ensure that our policies are being upheld by all stakeholders.” It further stated: “Moving forward we will be putting additional measures in place to proactively monitor for this type of inappropriate activity.”

14. When professional ticket resellers buy tickets in excess of stated limits, this prevents consumers from acquiring tickets, forcing them to purchase Secondary Sales tickets at supra-competitive prices, much higher than the face value (benefiting the professional ticket reseller) and to pay Double-Dip Commissions (benefiting the defendants when the sale takes place on their platforms).

15. The defendants have the means to detect the activities of professional ticket resellers, but fail to do so. In 2016, the NYAG conducted an investigation into the event ticketing industry.

Among its findings and conclusions, which are equally applicable to the Canadian market and are pleaded, relied upon and adopted herein, the NYAG stated:

- (a) “Ticketing, to put it bluntly, is a fixed game.”
- (b) “NYAG has identified many instances in which Bots were able to purchase hundreds of tickets within moments of the release of tickets to the general public [...]”
- (c) “The sources we interviewed uniformly stated that the usage of Bots has reached epidemic proportions in the ticketing industry.”
- (d) “Ticket limits are not regularly enforced” [by Ticketmaster].
- (e) “In most cases, by examining the volume of resale business a reseller conducts, resale platforms can easily distinguish professional resellers [...] from fans that are simply reselling tickets purchased for their own personal use.”
- (f) “Some of the suggestions [to Ticketmaster provided by the NYAG] included investigating resellers regularly offering numbers of tickets to popular shows, among others.”

16. Despite these findings, the defendants chose to double down on their dominance of the market by seeking to illegitimately expand their market share of Secondary Sales, including via TradeDesk, and thereby obtain further Double-Dip Commissions.

17. During the Class Period, the defendants knowingly, recklessly, falsely, misleadingly or deceptively represented to the public—including Class Members—that they strictly prohibited

violations of the Terms of Use pertaining to ticket limits by professional ticket resellers. The defendants represented to the public, including Class Members, that all consumers had an equal opportunity to acquire tickets for Live Events in Canada. These statements were false and misleading.

18. In fact, the defendants conspired, agreed or arranged to violate the Terms of Use pertaining to ticket limits by professional ticket resellers searching for, reserving, buying or otherwise obtaining Live Events tickets. These actions allowed professional ticket resellers to acquire massive volumes of Primary Sales Live Events tickets, reducing the supply of Primary Sales Live Events tickets, and to resell these tickets as Secondary Sales at significant markups and added fees. The impact of the conspiracy was to raise prices for Secondary Sales generally, including those on Unaffiliated Reseller Sites. The TradeDesk software is intended to incentivize professional ticket resellers to resell large volumes of tickets on Ticketmaster Secondary Sales sites, with little to no enforcement of the Terms of Use by the defendants.

## **(5) CAUSES OF ACTION**

### **A. Breach of Consumer Agreements**

19. The Terms of Use adopt the law of Ontario. Ticketmaster Canada is located in Ontario and carries 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.

20. The Class Members purchased Live Events tickets for personal, family or household purposes and are consumers for the purposes of the Consumer Protection Act and/or Equivalent Consumer Protection Statutes.

21. Ticketmaster Canada entered into consumer agreements with persons who used ticketmaster.ca or other Ticketmaster sites to purchase Live Events tickets.

22. It was a term of the contract that Ticketmaster Canada would “verify” the posted ticket limit “with every transaction.” Ticketmaster Canada breached the contract by failing to enforce ticket limits in respect of professional ticket resellers, causing damages to the class.

23. In order to maintain the integrity of the market and provide all purchasers of Live Event tickets with an equal opportunity to purchase Live Events tickets, it was essential that ticket limits would be enforced in respect of all ticket buyers, including professional ticket resellers. This policy as pleaded in paragraph 10(a) above is in effect “to discourage unfair ticket buying practices.” Accordingly, it was an implied term of the agreements that ticket sales limits would be enforced in respect of all ticket buyers, including professional ticket resellers.

24. It was also a term of the agreements that the defendants would not conspire, agree or arrange with brokers or others, or encourage or acquiesce to the violation of the Terms of Use by professional ticket resellers.

25. Ticketmaster Canada failed to act in the good faith performance of the consumer agreements. Ticketmaster Canada was under an obligation to perform the contract or enforce the Terms of Use pertaining to ticket limits honestly and in good faith. It failed to do so in relation to

professional ticket resellers. Indeed, the defendant itself described the conduct revealed in the *CBC/Toronto Star* investigation as “inappropriate.”

26. Ticketmaster Canada breached the above implied terms of the consumer agreements by failing to enforce ticket limits for professional ticket resellers. As a result of the breaches, the Class has suffered damages.

**B. False, Misleading or Deceptive Representations**

27. As particularized herein, Ticketmaster Canada represented to consumers that it takes available active steps to stop users from circumventing the ticket limits in order for all purchasers of Live Events tickets to have an equal opportunity to acquire Live Events tickets. Ticketmaster Canada represented to consumers that it strictly prohibited violations of the Terms of Use pertaining to ticket limits for Live Events by professional ticket resellers.

28. These representations were false, misleading or deceptive. Ticketmaster Canada failed to take available active steps to stop professional ticket resellers from violating the Terms of Use pertaining to ticket limits. Ticketmaster Canada failed to ensure that all consumers had an equal opportunity to acquire tickets for Live Events in Canada.

**C. Unconscionable Representations**

29. Ticketmaster Canada’s representations were unconscionable. The defendant knew that consumers could not reasonably protect their interests and that the unlawful activities of professional ticket resellers could only be prevented or controlled by the defendants.



**D. Waiver of Notice**

30. To the extent necessary, Class Members are entitled to a waiver of any notice requirements under the Consumer Protection Act and/or Equivalent Consumer Protection Statutes, as the defendant concealed the actual state of affairs from Class Members.

31. Class Members are entitled to the rescission of the purchase agreements, as well as damages pursuant to section 18 of the Consumer Protection Act and/or equivalent provisions of the Equivalent Consumer Protection Statutes.

**E. Breaches of s. 52 of the CA**

32. As particularized herein, the defendants knowingly or recklessly made representations to the public that were false or misleading in a material respect for the purpose of promoting the supply or use of their ticket purchasing services or for the purpose of promoting their business interests. The defendants falsely or misleadingly represented that they take available active steps to stop users from circumventing the ticket limit in order for all purchasers of Live Events tickets to have an equal opportunity to acquire Live Events tickets.

33. These representations were false, misleading or deceptive. The defendants failed to take available active steps to stop professional ticket resellers from violating the Terms of Use pertaining to ticket limits. The defendants failed to ensure that all Class Members had an equal opportunity to acquire tickets for Live Events in Canada.

34. The Class suffered loss or damage as a result of conduct that is contrary to Part VI of the CA.

**F. Breaches of s. 45 of the CA**

35. Professional resellers compete with the defendants in the sale of Live Events tickets. The defendants conspired, agreed or arranged with professional resellers to allocate the sales and markets for the supply of Live Events tickets and to fix, maintain, control, prevent, lessen or eliminate the supply of Live Events tickets, contrary to s. 45(1)(b) and s. 45(1)(c) of the CA, respectively.

36. Ticketmaster Canada implemented directives, instructions, policies or other communications to give effect to the conspiracy, contrary to s. 46 of the CA.

37. The defendants and their unnamed co-conspirators carried out the conspiracy by, among other things:

- (a) conspiring, agreeing or arranging with professional resellers to enable the professional resellers to obtain large numbers of Primary Sales tickets contrary to the Terms of Use and to limit the supply of those tickets for the Class, resulting in the sale of Secondary Sales tickets at supra-competitive prices to Class Members;
- (b) partnering with professional resellers under the guise of “Ticketmaster Resale Partner Program” and giving them financial incentives in the form of volume and performance discounts in order to increase the number of transactions by the professional resellers flowing through Ticketmaster sites;
- (c) conspiring, agreeing or arranging with professional resellers not to enforce ticket purchasing limits or maintain the integrity of posted online ticket purchasing order rules as against them; and

- (d) actively and deliberately employing steps to keep their conduct secret and to conceal and hide facts.

38. The effect of the conspiracy, agreement or arrangement of the defendants and their co-conspirators was to allocate the sales and markets for the supply of Live Events tickets, or control or lessen the supply of Live Events tickets. This resulted in unreasonably enhanced, supra-competitive prices for Live Events tickets sold on ticketmaster.ca and other Ticketmaster resale sites, as well as on Unaffiliated Reseller Sites.

39. The defendants have acknowledged the harm resulting to the Class from “[professional resellers] making the market. [...] They’re controlling the supply, they’re playing with price, releasing some tickets, not releasing others. [...] it’s a very deliberate process”.

Source: Statement by David Marcus, Ticketmaster Executive VP, as quoted on July 12, 2018 in “How the ticketing world is taking on scalpers and bots,” online: <<https://www.cnet.com/news/how-the-ticketing-world-is-taking-on-scalpers-and-bots/>>

40. The Class suffered loss or damage as a result of conduct that is contrary to Part VI of the CA. The plaintiff pleads and relies on s. 36 of the CA.

### **G. Civil Conspiracy**

41. The defendants and their unnamed co-conspirators voluntarily entered into agreements with each other to use unlawful means which resulted in loss and damage, including special damages, to the plaintiff and other Class Members. The unlawful means included entering into agreements or arrangements to allocate sales or markets for the supply of Live Events tickets in North America and elsewhere in contravention of ss. 45(1)(b), controlling or lessening the supply of Live Events tickets in North America and elsewhere in contravention of s. 45(1)(c) of the CA,

or implementing directives, instructions, policies or other communications to give effect to their conspiracy, in contravention of s. 46 of the CA.

42. In furtherance of the conspiracy, the defendants and their unnamed co-conspirators carried out the acts described in paragraphs 35-37 above.

43. Further and in the alternative, the defendants and their unnamed co-conspirators' predominant purpose in conspiring was to harm the plaintiff and Class Members by requiring them to pay artificially high prices for Secondary Sales Live Events tickets sold on ticketmaster.ca and other Ticketmaster resale sites, as well as on Unaffiliated Reseller Sites.

44. The defendants and their unnamed co-conspirators intended to cause economic loss to the Class Members. In the alternative, the defendants and their unnamed co-conspirators knew in the circumstances that their unlawful acts would likely cause injury to the plaintiff and the Class.

#### **H. Unjust Enrichment**

45. The defendants' conduct particularized herein caused Class Members to pay well in excess of the face value of tickets to Live Events, which in the case of Secondary Sales tickets on the defendants' websites included Double-Dip Commissions. As a result of their conduct, the defendants were enriched by the payment or overpayment in respect of Secondary Sales tickets on the defendants' websites.

46. The Class Members suffered a deprivation corresponding to the defendants' enrichment.

47. There is no juristic reason for the defendants' enrichment and the Class Members' corresponding deprivation. The Class Members are entitled to restitution and/or a disgorgement of profits as a result of the defendants' unjust enrichment.

**I. Damages**

48. By reason of the wrongful conduct alleged herein, the plaintiff and Class Members have sustained losses by paying higher prices for Live Event tickets on the Secondary Sales than they would have paid in the absence of the illegal conduct of the defendants, including by paying Double-Dip Commissions. The plaintiffs and other members of the Class have suffered loss and damage in an amount not yet known but to be determined. Full particulars of the loss and damage will be provided before trial.

**J. Punitive, exemplary and aggravated damages**

49. The defendants and their co-conspirators used Ticketmaster's dominance of Primary Sales, illegality and deception in furtherance of a conspiracy to illegally profit from the resale of Live Events tickets. At all material times, they were aware that their actions would have a significant adverse impact on all members of the Class. The conduct of the defendants and their co-conspirators was high-handed, reckless, without care, deliberate, and in disregard of Class Members' rights.

**K. Waiver of Tort**

50. In the alternative to damages, in all of the circumstances, the plaintiff pleads an entitlement to "waive the tort" of civil conspiracy and claim an accounting or other such restitutionary remedy

for disgorgement of the revenues generated by the defendants as a result of their unlawful conspiracy.

51. As a direct, proximate, and foreseeable result of the defendants' wrongful conduct, the plaintiffs and other members of the Class overpaid for Live Events tickets. As a result of the unlawful conspiracy, the defendants profited from the resale of those tickets on their sites at supra-competitive and artificially inflated prices and were accordingly unjustly enriched. The defendants accepted and retained the unlawful revenues that resulted from the conspiracy. It would be unconscionable for the defendants to retain the unlawful revenues obtained as a result of the alleged conspiracy.

#### **L. Discoverability**

52. The plaintiff and other Class Members did not discover, and could not have discovered through the exercise of reasonable diligence, the existence of the breaches during the Class Period.

#### **M. Service of Statement of Claim Outside Ontario**

53. The plaintiff is entitled to serve this statement of claim outside Ontario without a court order pursuant to Rules 17.02(g) and 17.02(p) of the *Rules of Civil Procedure*, RRO 1990, Reg. 194 because the claim relates to:

- (a) a tort committed in Ontario; and/or
- (b) a defendant ordinarily resident or carrying on business in Ontario.

November 5, 2018

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**Plaintiff**

-and-

**TICKETMASTER CANADA HOLDINGS ULC et al**  
**Defendants**

**Court File No.**

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT TORONTO**

**STATEMENT OF CLAIM**

**SOTOS LLP**

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