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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Erika Engel, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

ERIC FULLER, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

TICKETMASTER, a Delaware Corporation
and DOES 1 through 1000

Defendants.

Case No. 37-2017-00038371-CU-FR-CTL

**CLASS ACTION COMPLAINT
FOR RELIEF BASED UPON THE
FOLLOWING:**

1. Negligence;
2. Negligent Misrepresentation;
3. Intentional Misrepresentation;
4. Conversion and
5. Breach of Contract

**UNLIMITED JURISDICTION
PUNITIVE DAMAGES REQUESTED**

Judge:
Dept:
Date:
Time:
Action Filed:
Trial Date:

Plaintiff on behalf of himself and all others similarly situated, alleges as follows:

NATURE AND BASIS OF CLAIMS

1. This lawsuit arises out of Defendant Ticketmaster ("TM") and Does 1-1,000, and each of them converting money which they owe to Plaintiffs to their own benefit, failing their duty

1 of good faith and fair dealings by making agreements with ticket sellers, ticket buyers,
2 teams, performers and venues which contain irreconcilable conflicts, misleading the ticket
3 buying public as to the true price and availability of tickets and improperly and without
4 authority confiscating or canceling tickets which have been purchased in good faith.
5

- 6 2. Between June 2015 and March 2016 TM changed the manner in which it paid the
7 individuals and companies which provided tickets for resale to events in Canada. TM sent
8 an email which said that it would now pay those tickets providers by check, and in Canadian
9 currency rather than including payment along with the regular electronic payment for the
10 events which took place in the United States.
11
- 12 3. Ticket sellers use computerized point of sale systems to continuously update TM as to
13 which tickets are offered for sale and at what price. TM pays the seller when the tickets are
14 sold and delivered. Because most tickets are electronically delivered, a majority of such
15 sales result in near instant delivery of the tickets.
16
- 17 4. The authority to sell tickets transmitted to TM through the computerized point of sale
18 systems uses U.S. Dollars as the currency when directing TM the price the seller is to be
19 paid when tickets sell. However, once TM began paying for tickets by checks issued in
20 Canadian Dollars, it paid for the tickets as if the checks were written in US Dollars. In other
21 words, if a seller was owed \$100 for tickets sold on the TM platform, the seller would
22 receive a check for 100 Canadian dollars. During this time, the exchange rate was
23 approximately US \$0.65 to purchase one Canadian dollar. Therefore, the ticket sellers were
24 underpaid approximately 35% by TM's changing to Canadian currency without adjusting
25 the amount of their checks to reflect the differing value of the Canadian Dollar vs. the US
26 Dollar.
27
28

- 1 5. Upon information and belief, instead of paying ticket sellers whose tickets for events in
2 Canada between June 2015 and March 2016 were sold by TM the amount due them under
3 the authority to sell transmitted by the seller to TM, instead TM concealed their practice of
4 conflating the US and Canadian Dollar, and underpaid sellers the difference in value
5 between the two by issuing checks in the amount due in US Dollars, paid in Canadian
6 Dollars without adjusting the number of Canadian Dollars upwards to compensate for the
7 lower value of the Canadian currency.
8
- 9 6. In Addition, upon information and belief, for a period to be determined, but for at least the
10 statutory period, TM has failed to refund the purchase price of all tickets when a show or
11 event is canceled. In some instances, TM simply retains the money it was paid when a show
12 or event is canceled rather than automatically refunding the purchaser.
13

14 PARTIES

- 15 7. Plaintiff Eric Fuller is a California resident who is over the age of 21, is a ticket broker, and
16 is the owner of Fullatickets which has and does sell tickets through TM's
17 TicketsNow/Ticketmaster Resale platform.
18
- 19 8. On information and believe, at all times relevant herein, Defendant Ticketmaster was a
20 Delaware corporation doing business in California.
21
- 22 9. The true names and capacities of Does 1 through 1000 are unknown to Plaintiff. When their
23 true names and capacities are ascertained, Plaintiff will amend this complaint. Plaintiff is
24 informed and believes, and on that basis alleges, each of the fictitiously named defendants is
25 responsible in some way for the occurrences herein alleged, and those defendants
26 proximately caused Plaintiff and the other putative class members' damages. Each
27
28

reference in this complaint to “defendant,” “defendants,” or a specifically named defendant refers to all defendants including those defendants sued under fictitious names.

10. Unless otherwise alleged, whenever reference is made in this complaint to any act of “defendant,” “defendants,” or a specifically named defendant, such allegation shall mean that each defendant acted individually and jointly with the other defendant(s) named in the complaint.

11. Unless otherwise alleged, whenever reference is made in this complaint to any act of “defendant,” “defendants,” or a specifically named defendant, such allegation shall mean that such corporation or other business defendant committed or omitted to act as in this complaint through its officers, directors, employees, agents, and/or representatives while they were acting within the actual or apparent scope of their authority.

12. At all relevant times alleged herein, each defendant acted as an agent, representative, partner, joint venture, employee, assistant, or aide of each of the other defendants and has acted within the course and scope of said agency, representation, partnership or joint venture.

JURISDICTION AND VENUE

13. This court has subject matter jurisdiction over this matter pursuant to Article VI, section 10 of the California Constitution because this action is a cause not given by statute to other trial courts, and seeks (among other relief) money damages in excess of \$50,000. Subject matter jurisdiction is further premised on allegations contained in this complaint that defendants, and each of them, committed one or more of the following: negligence, negligent misrepresentation, intentional misrepresentation, conversion and breach of contract.

1 14. This court has personal jurisdiction over Defendant(s) in this action because Defendants(s)
2 do/does sufficient business in California and has/have sufficient minimum contacts in
3 California to render the exercise of personal jurisdiction over it/them by California courts
4 consistent with the traditional notions of fair play and substantial justice.
5

6 15. Venue is proper in this court because the causes of action alleged herein occurred, at least in
7 part, in San Diego County, San Diego, California.
8

9 **CLASS ALLEGATIONS**

10 16. Plaintiff brings this Class Action on behalf of himself and all others persons similarly
11 situated, defined as follows:
12

13 AS TO THE CANADIAN CURRENCY ISSUE

14 All persons who delivered ticket inventory to defendants and each of them,
15 who were paid by check denominated in Canadian Dollars which amount was not
16 adjusted to reflect the disparity between the value of the Canadian Dollar and the
17 United States Dollar.
18

19 AS TO THE FAILURE TO REFUND ISSUE

20 All persons who delivered ticket inventory to defendants and each of them,
21 who were not fully refunded for the purchase price of tickets paid for canceled
22 events exclusive of the cost if any of express shipping.
23

24 17. This action has been brought and may properly be maintained pursuant to Code of Civil
25 Procedure section 382 because:

26 (a) The members of the Class are so numerous it would be impracticable to join them all
27 individually in a single action. The Canadian Currency Class is believed to number as many
28

1 as several thousand members. The failure to refund Class is believed to number as many as
2 100,000 members. If the court determines notice to be necessary or appropriate, members
3 of the Class may be notified of the pendency of this action by mail, supplemented or
4 substituted by published notice.
5

6 (b) Common questions of law and fact exist as to all members of the Class. These questions
7 predominate over any questions which affect only the individual members of the Class.

8 These common legal and factual questions include as to the Canadian Currency Class:

- 9
- 10 (1) Whether Defendants, and each of them, were negligent in accepting and selling
11 tickets belonging to plaintiff and the putative class but paying for those tickets in
12 Canadian Currency without normalizing the payment value to reflect the
13 disparity between the U.S. and Canadian Dollar;
14
- 15 (2) Whether Defendants, and each of them, negligently misrepresented to plaintiff
16 and the putative class they would pay plaintiff and the putative class for said
17 ticket inventory consistent with the price transmitted to Defendants as
18 denominated in US Dollars;
19
- 20 (3) Whether Defendants, and each of them, intentionally represented to plaintiff and
21 the putative class they would pay plaintiff and the putative class the price
22 transmitted to Defendants as part of their authority to sell;
23
- 24 (4) Whether Defendants, and each of them, converted funds belonging to plaintiff
25 and the putative class by paying for tickets sold in Canadian Dollars rather than
26 US Dollars without adjusting the number of Canadian Dollars to reflect the 35%
27 difference in value between the two currencies, thereby allowing Defendants to
28 wrongfully retain 35% of the value of the ticket;

1 (5) Whether Defendants, and each of them, breached their contracts with plaintiff,
2 and the putative class when they accepted and sold ticket inventory from plaintiff
3 and the putative class without paying for such inventory in full as a result of
4 defendant's failure to adjust the number of Canadian Dollars sent as payment to
5 reflect the disparate value of the Canadian Dollar with respect to the US Dollar.
6

7 These common legal and factual questions include as to the Failure to Refund Class:

8 (6) Whether Defendants, and each of them, were negligent failing to refund plaintiff
9 and the putative class for the price of tickets, exclusive of express shipping costs,
10 to shows which were subsequently canceled;
11

12 (7) Whether Defendants, and each of them, negligently misrepresented to plaintiff
13 and the putative class they would pay refunds to plaintiff and the putative class
14 for said tickets of canceled shows;
15

16 (8) Whether Defendants, and each of them, intentionally represented to plaintiff and
17 the putative class they would pay plaintiff and the putative class a refund of the
18 price transmitted to Defendants for tickets to shows which were later canceled,
19 exclusive of express shipping costs;
20

21 (9) Whether Defendants, and each of them, converted funds belonging to plaintiff
22 and the putative class by failing to refund the price of tickets paid to defendants,
23 exclusive of express shipping costs, thereby allowing Defendants to wrongfully
24 retain the value of the tickets;
25

26 (10) Whether Defendants, and each of them, breached their contracts with
27 plaintiff, and the putative class when they failed to refund the price paid for
28

1 tickets to subsequently canceled shows, exclusive of express shipping costs,
2 instead keeping those funds for their own benefit.

3 18. Plaintiff's claims are typical of those of the proposed Class. Like members of the Canadian
4 Currency Class, Plaintiff is a ticket broker who provided ticket inventory to defendants
5 between June 2015 and March 2016 and received payment for that inventory by checks
6 denominate in Canadian Dollars without adjustment for the 35% lower value of the
7 Canadian Dollar vs. the U.S. Dollar. Like members of the Failure to Refund Class, Plaintiff
8 purchased tickets to shows which were subsequently canceled, but for which he did not
9 receive a refund of the ticket price paid. Plaintiff and the members of both proposed Classes
10 are similarly situated, and were similarly harmed by the same courses of unlawful conduct
11 alleged herein. Plaintiff and the members of each proposed Class have sustained the same
12 form of harm arising out of Defendant's violations of California law as alleged here.

13
14
15 19. Plaintiff will fairly and adequately protect the interests of the members of each Class.

16 Plaintiff is a member of both proposed Classes and has no interests adverse to the interest of
17 either proposed Class. Plaintiff is interested in and prays to be fairly compensated both for
18 ticket inventory provided to Defendants for which he was paid and Canadian Currency and
19 for money paid to Defendants for tickets to events which were subsequently canceled but
20 not refunded. This harm to Plaintiff and members of the proposed class provides Plaintiff
21 with a substantial stake in this action and the motivation to prosecute it vigorously for him
22 and the proposed Class. Plaintiff has retained experience and competent counsel familiar
23 with class actions and the laws alleged to be violated, and intends to pursue this action
24 vigorously.

1 20. A class action is superior to other available methods for the fair and efficient adjudication of
2 the litigation because individual joinder of all members of these two Classes is
3 impracticable. The actual damages suffered by each individual member of each Class are
4 relatively small given the expense and burden of individual prosecution of and individual
5 action. Thus, it would be virtually impossible for the members of the Class to individually
6 redress the wrongs done to them. Even assuming members of the proposed Classes could
7 themselves afford to individually litigate individual actions against Defendants, and each of
8 them, such litigation would constitute a highly avoidable inefficiency in the administration
9 of justice by the courts. Further, individualized litigation presents the potential for
10 inconsistent of contradictory judgments.
11

12
13 21. In engaging in the wrongful conduct alleged here, Defendants have acted or refused to act
14 on grounds generally applicable to each Class, thereby making appropriate final relief with
15 respect to each Class as a whole, and making appropriate Class certification under Code of
16 Civil Procedure section 382 and any other relevant provisions of other statutes alleged
17 herein.
18

19 **FIRST CAUSE OF ACTION**

20 **Negligence against Defendant Ticketmaster, Does 1-1000, and each of them**

21
22 22. Plaintiff incorporates in this cause of action the allegations contained in each and every
23 preceding paragraph of this complaint as if they were set out at length herein.

24 23. Defendants, and each of them, had a duty to Plaintiff and members of the proposed
25 class to act as a reasonably prudent business and/or individual to avoid creating an unjustifiable risk
26 of harm to Plaintiff.

27 24. As to the Canadian Currency class: Defendants, and each of them, breached that
28 duty by accepting ticket inventory from Plaintiff and the proposed class and not in full paying for

1 said inventory by switching currency from US Dollars to Canadian Dollars without adjusting for the
2 difference in value between the two.

3 25. As to the Failure to Refund class: Defendants, and each of them, breached that duty
4 by failing to issues full refunds for the amounts paid them when selling ticket inventory to Plaintiff
5 and the proposed class once the event was canceled.

6 26. Defendants, and each of their, breach(es) of duty, as alleged herein were the actual
7 and legal cause of harm to plaintiff and both the proposed classes.

8 27. Defendant's breach(es) of duty to plaintiff and the proposed classes was/were a
9 substantial factor in causing Plaintiff and the both the proposed classes harm in an amount to be
10 proved at trial but in excess of the jurisdictional minimum of this court.

11 **SECOND CAUSE OF ACTION**

12 **Negligent Misrepresentation against Ticketmaster, Does 1-1000 and each of them**

13 28. Plaintiff incorporates in this cause of action the allegations contained in each and
14 every preceding paragraph of this Complaint as if the same were set out at length herein.

15 29. Defendant Ticketmaster and Does 1-1000, and each of them, represented to Plaintiff
16 and the putative class that Ticketmaster and Does 1-1000, and each of them, would compensate
17 Plaintiff and the putative class for ticket inventory provided to defendants, and each of them. This
18 representation was an important fact for each class:

19 As to the Canadian Currency class the representation they would be paid by Defendants for
20 the tickets provided, in an amount established in US Dollars, was the basis of Defendant's authority
21 to sell the tickets. Defendants did not have the unilateral authority to sell tickets at a price lower
22 than the price set by the transmitting broker, nor did they have the unilateral authority to switch the
23 form of payment to a foreign currency without making certain the amount of that foreign currency
24 paid class members equated to the US dollar sale authorization.

25 As to the Failure to Refund class, class members purchased tickets with the understanding
26 that sometimes for reasons beyond anyone's control events are canceled. Should that happen, the
27 value paid Defendants for the tickets (less express mailing expenses) are refunded.

1 30. The representation(s) made by Ticketmaster and Does 1-1000, and each of them to
2 Plaintiff and the putative class was/were they would compensate Plaintiff and the putative class for
3 ticket inventory Plaintiff and the putative class provided to defendants, and each of them.
4 Alternately, should an event cancel, they would be fully refunded.

5 31. Although Ticketmaster and Does 1-1000 and each of them may have honestly
6 believed that the representation(s) set forth in this cause of action was/were true, defendants, and
7 each of them had no reasonable grounds for believing the representations regarding payment for
8 ticket inventory provided to defendants by Plaintiff and the putative class in Canadian currency
9 being what was owed in US Dollars, or that missing or partial refunds paid in place of full refunds
10 was/were true when it/they was/were made.

11 32. Ticketmaster and Does 1-1000 and each of them intended that plaintiff and the
12 putative class rely on their representation(s) as set forth in this cause of action regarding payment
13 for ticket inventory provided to defendants by Plaintiff and the putative class.

14 33. Plaintiff and the putative class reasonably relied on Ticketmaster and Does 1-1000's
15 representation(s) regarding promised but unfulfilled payment for ticket inventory or refunds for
16 canceled events provided to defendants by Plaintiff and the putative class.

17 34. Plaintiff and the putative class were harmed by Ticketmaster and Does 1-1000's
18 representation(s) regarding promised but undelivered payment for ticket inventory provided to
19 defendants by Plaintiff and the putative class and for missing refunds in an amount as of yet
20 undetermined but in excess of the jurisdictional minimum of this court.

21 35. Plaintiff and the putative class's reliance on Ticketmaster and Does 1-1000's
22 representations regarding promised but undelivered payment for sold ticket inventory or refunds
23 from canceled events provided to defendants by plaintiff and the putative class was a substantial
24 factor in causing harm to Plaintiff and the putative class.

25 **THIRD CAUSE OF ACTION**

26 **Intentional Misrepresentation against Ticketmaster and Does 1-1000**

27 36. Plaintiff incorporates in this cause of action the allegations contained in each and
28 every preceding paragraph of this Complaint as if the same were set out at length herein.

1 37. Defendant Ticketmaster and Does 1-1000, and each of them, represented to Plaintiff
2 and the putative classes that Ticketmaster and Does 1-1000, and each of them, would compensate
3 Plaintiff and the putative classes for ticket inventory provided to defendants and sold, or for ticket
4 purchases for events which were subsequently canceled. This representation was an important
5 fact.

6 38. The representation Ticketmaster and Does 1-1000, and each of them made to
7 Plaintiff and the putative classes was they would compensate Plaintiff and the putative classes for
8 ticket inventory Plaintiff and the putative class provided to defendants which defendants sold or for
9 ticket purchases for events which were subsequently canceled, and each of them.

10 39. Although Ticketmaster and Does 1-1000 and each of them knew the representation
11 set forth in this cause of action was false they made the representation(s) to Plaintiff anyway with
12 reckless disregard for its truth.

13 40. Ticketmaster and Does 1-1000 and each of them intended that Plaintiff and the
14 putative classes rely on their representation(s) as set forth in this cause of action regarding payment
15 for ticket inventory provided to defendants by Plaintiff and the Canadian currency putative class; or
16 for ticket purchases made by the Failure to refund putative class from defendants for events which
17 were subsequently canceled without reimbursement.

18 41. Plaintiff and the putative class reasonably relied on Ticketmaster and Does 1-1000's
19 representation(s) regarding promised but undelivered payment (representing the difference in value
20 between the US Dollar amount due and the Canadian Dollar amount paid for ticket inventory
21 provided to defendants by Plaintiff; or the value of tickets purchased for events subsequently
22 canceled and the putative classes.

23 42. Plaintiff and the putative class were harmed by Ticketmaster and Does 1-1000's
24 representations regarding promised but undelivered payment for ticket inventory provided to
25 defendants by plaintiff and the putative class in an amount as of yet undetermined but in excess of
26 the jurisdictional minimum of this court; and for promised but undelivered repayment for ticket
27 inventory bought from defendants by plaintiff and the putative class to for events which were
28

1 subsequently canceled in an amount as of yet undetermined but in excess of the jurisdictional
2 minimum of this court.

3 43. Ticketmaster and Does 1-1000's representation(s) regarding promised but
4 undelivered payment(s) for ticket inventory provided to defendants by Plaintiff and the putative
5 Canadian currency class; and for unreimbursed ticket purchases by Plaintiff and the Failure to
6 refund putative class was a substantial factor in causing harm to Plaintiff and the putative classes.

7 **FOURTH CAUSE OF ACTION**

8 **Conversion against Ticketmaster and Does 1-1000**

9 44. Plaintiff incorporates in this cause of action the allegations contained in each and
10 every preceding paragraph of this Complaint as if the same were set out at length herein.

11 45. Plaintiff and the putative classes owned ticket inventory.

12 46. Ticketmaster and Does 1-1000, and each of them, intentionally and substantially
13 interfered with plaintiff and the putative Class's property by taking possession of said ticket
14 inventory with a promise to pay plaintiff and the Canadian currency putative class for all ticket
15 inventory sold and then failed to fully pay plaintiff and the putative class for said ticket inventory
16 by tendering the amount of payment due in US Dollars in the form of the same number of Canadian
17 Dollars, ignoring the then fact that a Canadian Dollar was worth approximately 35% less than a US
18 Dollar. Similarly, for the Failure to refund putative class tickets were purchased from defendants
19 for events which were subsequently canceled but defendants did not fully or partially reimburse
20 plaintiff and the putative class.

21 47. Plaintiff and the putative Canadian currency putative class did not consent not to be
22 paid in full for ticket inventory provided to and sold by defendant Ticketmaster, and Does 1-1000.
23 Plaintiff and the Failure to refund putative class did not consent to pay for tickets to events which
24 were subsequently canceled without the promise of a refund.

25 48. Plaintiff and the putative classes were harmed by defendants' conduct as alleged
26 herein.

49. Defendants Ticketmaster and Does 1-1000's conduct was a substantial factor in causing Plaintiff and the putative classes' harm the exact amount of which is unknown at this time but which is in excess of the jurisdictional minimum of this court.

FIFTH CAUSE OF ACTION

Breach of Contract against Ticketmaster and Does 1-1000

50. Plaintiff incorporates in this cause of action the allegations contained in each and every preceding paragraph of this Complaint as if the same were set out at length herein.

51. Plaintiff and the putative classes entered into a contract with defendant Ticketmaster and DOES 1-500, DOES 501 - 1000 were the intended third party beneficiary(ies) of said contract.

52. Said contract required plaintiff and the Canadian currency putative class to provide ticket inventory to Ticketmaster and Does 1-1000 and in exchange Ticketmaster and Does 1-1000 would pay Plaintiff and the putative class money for all ticket inventory sold by defendants. Similarly as to the Failure to refund putative class, tickets purchases for any event which was subsequently canceled were to be fully refunded.

53. Plaintiff and the putative classes did all, or substantially all, of the significant things the contract required of them when they provided available ticket inventory to defendants or when they purchased event tickets prior to the event's cancellation.

54. Defendants, and each of them, failed to do something that the contract required, namely correctly pay Plaintiff and the putative class once ticket inventory provided to defendants by Plaintiff and the putative class was sold by defendants, or refund Plaintiff and the putative class when an event for which tickets had been purchased was canceled.

55. The actions by defendants, and each of them, of not paying Plaintiff and the putative class for ticket inventory provided to defendants by Plaintiff and the Putative class and subsequently sold by Defendants, and each of them, or failing to refund the purchases of tickets for an event which was subsequently canceled caused Plaintiff and the putative classes harm in an amount not yet determined but in excess of the jurisdictional minimum of this court.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for the following relief on behalf of himself and all others similarly
3 situated:

4 1. For an order certifying the proposed Class under California Code of Civil Procedure
5 section 382; appointing Plaintiff and his counsel to represent the Class; and directing that
6 reasonable notice of this action be given to the Class by Defendant;

7 2. For actual damages;

8 3. For punitive damages;


9 4. For costs incurred herein, including attorneys' fees allowable by statute, including
10 but not limited to Code of Civil Procedure section 1021.5; and

11 5. For such other and further legal and equitable relief as this court may deem proper.
12

13 Dated: October 12, 2017

JENKINS P.C.

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16 By:



Erik C. Jenkins, Esq.
Attorney for Plaintiff
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