

CANADA

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No : 500-06-000462-099

**SUPERIOR COURT**  
**Class action**

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**MARY ANNE MARSHALL**, 429 Comptois,  
Otterburn Park, district of St-Hyacinthe,  
province of Quebec, J3H 3Z8

**Petitioner**

c.

**TICKETSNOW ENTERTAINEMENT GROUP  
INC.**, a legal person, with a place of business  
at 265 Exchange Drive, Crystal Lake, IL  
60014

**TICKETMASTER ENTERTAINEMENT INC.**,  
a legal person, with a head office 8800  
Sunset Blvd, West Hollywood, CA 90069

**TICKETMASTER CANADA LTD.**, a legal  
person, with a place of business at 76 St-  
Paul street, Québec, district of Québec, G1K  
3V9

**PREMIUM INVENTORY INC.**, a legal person,  
with a place of business at 265 Exchange  
Drive suite 310, Crystal Lake, IL 60014

**Respondents**

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**MOTION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION  
(A. 1002 C.C.P)**

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**IN SUPPORT OF HIS MOTION FOR PERMISSION TO INSTITUTE A CLASS  
ACTION, PETITIONER RESPECTFULLY SUBMITS AS FOLLOWS:**

1. Petitioner wishes to institute a class action on behalf of all the persons forming part of the group hereinafter described and of which the petitioner is a member, namely:

*« All physical persons who, since February 19<sup>th</sup> 2006, purchased a ticket from TicketMaster or TicketsNow and paid an overcharge from the regular sale price due to an apparent unavailability of said ticket on the primary market.»*

2. Petitioners' personal claim against the Respondent is based on the following facts:

### THE PETITIONER

- 2.1 On August 8<sup>th</sup> 2008, Petitioner went on Ticketmaster's website to buy tickets for the show "So you think you can dance";
- 2.2 The Petitioner learned on the website that there was a show in Toronto at the Air Canada Center on October 26<sup>th</sup> 2008;
- 2.3 The website indicated that there was no more tickets available, but the Ticketmaster's website redirected her to TicketsNow's website where tickets were available;
- 2.4 The first tickets purchased by the Petitioner had a face value of 46.75\$ each, but the retail price was 181.00\$;
- 2.5 The Petitioner purchased 2 tickets and ended up paying 446.25\$, because of the delivery fees of 29.95\$ and the service charge of 54.30\$, as appears from exhibit P-1;
- 2.6 The Petitioner paid the premium because she really wanted to see this show with her daughter and thought it was the only way to get tickets for this show;
- 2.7 The first tickets were shipped by FedEx but got lost in the mail. The Petitioner had to make repeated calls to TicketsNow to finally get someone telling her that replacement tickets were shipped. The second tickets received a few days before the show had a face value of 56.95\$;
- 2.8 In October 2008, the Petitioner saw that seats were available on the Air Canada Center's website for much less than what she paid;
- 2.9 When the Petitioner arrived at the performance, it appeared from a large number of empty seats that the show was not sold out;

## THE RESPONDENTS

- 2.10 Ticketmaster describes itself as the world's leading live entertainment ticketing and marketing company that connects the world to live entertainment. Ticketmaster operates in 20 global markets, providing ticket sales, ticket resale services, marketing and distribution through [www.ticketmaster.com](http://www.ticketmaster.com), one of the largest e-commerce sites on the internet; approximately 6,700 retail outlets; and 19 worldwide call centers;
- 2.11 Ticketmaster Canada is a corporation pursuant to the laws of Canada and is wholly-owned subsidiary of Ticketmaster;
- 2.12 TicketsNow is a corporation incorporated pursuant to the laws of the State of Illinois and is a wholly-owned subsidiary of Ticketmaster. It is Ticketmaster's resale partner. TicketsNow describes itself as a "safe and secure online ticket resale marketplace for buyers and sellers that provides fans with access to hard-to-get tickets that may otherwise be unavailable through primary distribution channels." TicketsNow provides its services through the website [www.ticketsnow.com](http://www.ticketsnow.com);
- 2.13 Premium Inventory is a corporation incorporated pursuant to the laws of the State of Illinois and is a wholly-owned subsidiary of Ticketmaster. Premium Inventory describes itself as a licensed, professional ticket brokerage service that is the preferred broker for TicketsNow;
- 2.14 At all material times, Ticketmaster and Ticketmaster Canada have been engaged in the sales of tickets for a variety of music, sports, arts and other entertainment events. Ticketmaster provides exclusive ticketing services for leading arenas, stadiums, amphitheatres, music clubs, concert promoters, professional sports franchises and leagues, college sports teams, performing arts venues, museums and theatres;
- 2.15 Customers wishing to purchase tickets from Ticketmaster or Ticketmaster Canada may do so electronically through their websites, [www.ticketmaster.com](http://www.ticketmaster.com) and [www.ticketmaster.ca](http://www.ticketmaster.ca), or alternatively, by attending at one of their retail outlets;
- 2.16 Ticketmaster and Ticketmaster Canada typically announce the sales of Tickets to the public well in advance of the events, and establish a date and time when the Tickets will become available to the public for purchase electronically or at the retail outlets;
- 2.17 It is not uncommon for tickets offered for sale by Ticketmaster or Ticketmaster Canada to be sold out within a matter of hours, and sometimes, within minutes after such tickets are made available for sale;

- 2.18 TicketsNow and Premium Inventory operate in the secondary ticket market, and sell or assist third parties in selling Tickets;
- 2.19 According to a Frequently Asked Questions document posted on TicketsNow's website ("TicketsNow's FAQ"), the Tickets sold through Ticketsnow "typically are not available through standard channels, such as Ticketmaster or from a venue box office", and "may be substantially higher [priced] than the face value printed on the tickets";
- 2.20 According to the TicketsNow website, the tickets listed for sale on that website may be owned by ticket brokers, individual sellers or by Ticketmaster. Persons residing outside the United States who wish to sell tickets with TicketsNow must do so through Premium Inventory;
- 2.21 Premium Inventory purchases tickets from non-United States residents and places those tickets for sale on TicketsNow as its own tickets. It also places tickets owned by third parties for sale on the TicketsNow website in exchange for a commission to be paid if the ticket is sold;
- 2.22 Persons seeking to buy Tickets through the Premium Inventory website are automatically redirected to the Ticketsnow website. Premium Inventory does not provide buyers with an option to determine whether the Tickets are also available through Ticketmaster or Ticketmaster Canada;
- 2.23 At all material times, Class Members who purchased Tickets through TicketsNow paid substantially higher prices than those at which those Tickets were issued;
- 2.24 TicketsNow was, and is aware that this was occurring, as indicated by the following language on the Terms and Conditions document that is accessible at the bottom of the purchasing window:

#### 1. PURCHASING AND PRICE OF TICKETS

THE PRICE THAT YOU PAY MAY BE SUBSTANTIALLY HIGHER THAN THE FACE VALUE PRICE PRINTED ON THE TICKETS. TicketsNow provides you with the service of locating tickets that typically are not available through standard channels, such as through Ticketmaster or from a venue box office. Tickets listed on TicketsNow are owned and supplied by over 700 pre-qualified, screened, professional ticket suppliers as well as individual sellers. Sellers list these tickets at market value, which in turn may be well above the price printed on the face of the ticket. The market value price for a ticket is quite volatile, determined by many factors including seat location, supply and demand, date and location of event, etc. You hereby agree to and understand this.

- 2.25 Class Members who purchased Tickets through TicketsNow also paid service and other fees or charges to TicketsNow for each Ticket that was purchased. Class Members cannot purchase a Ticket from TicketsNow without paying these additional charges;
- 2.26 TicketsNow and Premium Inventory derive the following financial benefits from the sale of Tickets in the secondary market:

- (a) TicketsNow charges purchasers service and other fees or charges on the sale of each Ticket;
- (b) TicketsNow charges sellers a 15% commission on the prices at which Tickets are sold; and
- (c) Premium Inventory charges sellers a 15% commission on the prices at which Tickets are sold.

(collectively, the "Additional Charges");

2.27 Because at least some of the Additional Charges are charged as a percentage of the sale price of each Ticket, as the price at which the Tickets are sold increases, so do the Additional Charges;

2.28 In order to maximize receipt of the Additional Charges:

- a) Ticketmaster, Ticketmaster Canada and Premium Inventory divert consumer traffic from their websites to the TicketsNow website. This practice is designed to ensure, and did ensure, the sale of Tickets at the highest possible price, and, in all cases, at a price substantially higher than the price at which those Tickets were first issued;
- b) Ticketmaster, Ticketmaster Canada, TicketsNow and Premium Inventory allow and facilitate the purchase of high-demand tickets by professional ticket brokers or buyers, knowing that these brokers or buyers intend to place their Tickets on sale in the secondary market, so that they can earn additional revenue through the payment of the Additional Charges. This practice reduces the amount of Tickets that are available to Class Members in the primary market and creates an inflated demand for Tickets thereby allowing secondary sellers to charge Class Members substantially higher prices for tickets; and
- c) Ticketmaster and Ticketmaster Canada diverted a substantial portion of Tickets that they control or have access to for resale through the TicketsNow website, either directly or by allocating or facilitating their sale to third parties with whom they had a relationship or arrangement, including TicketsNow and Premium Inventory. This practice was designed to ensure, and did ensure, the sale of Tickets at the highest possible price, and, in all cases, at a price substantially higher than the price at which the Tickets were first issued;

## THE RESPONSABILITY

- 2.29 It is contrary to section 219 of the *Consumer protection act*, L .R.Q. c. P-40.1, for a merchant to, by any means whatever, make false or misleading representations to a consumer;
- 2.30 The Respondents made it appear that the demand for the ticket bought by the Petitioner were in higher a demand than reality by showing those tickets to be on the secondary market of TicektsNow;
- 2.31 Respondents hence created a false rarity of said tickets and created an artificial hike in price;
- 2.32 During the Class Period, the Respondents wrongfully, unlawfully, maliciously and lacking bona fides conspired and agreed among together, the one with the other and with persons unknown to:
- a) establish, operate and promote the TicketsNow and Premium Inventory online resale websites when they knew, or ought to have known, that the Tickets sold on or through these websites would be sold for a price or consideration greater than that paid or given for it to the owner of the place to which it authorizes admission;
  - b) permit, encourage and facilitate the purchase of Tickets by brokers or professional buyers whom they knew, or ought to have known, intended to resell the Tickets for a price or consideration greater than that paid or given for it to the owner of the place to which it authorizes admission;
  - c) permit, encourage and facilitate the sale of Tickets by brokers or professional buyers on or through the websites maintained by TicketsNow or Premium Inventory, when they knew or ought to have known these brokers or professional buyers intended to resell the Tickets for a price or consideration greater than that paid or given for it to the owner of the place to which it authorizes admission;
  - d) earn profits from the sale of Tickets for a price or consideration greater than that paid or given for it to the owner of the place to which it authorizes admission;
  - e) control the supply of Tickets to the primary market with a view to artificially increase demand for those Tickets and generate additional revenues in the secondary market;
  - f) obtain control over a large number of Tickets with a view to prevent them from being sold in the primary market to buyers who did not intend to resell

those Tickets, thereby maximizing the profits earned in sales in the secondary market;

- g) obtain control over a large number of Tickets and divert them to the secondary market, either directly or indirectly, so that they could earn profits from the sale of those Tickets for a price or consideration greater than that paid or given for it to the owner of the place to which it authorizes admission;
- 2.33 The Respondents were motivated to conspire and their predominant purposes and predominant concerns were, among other things, to illegally profit from the sale of Tickets to the Petitioner and to the other Class Members for a price or consideration greater than that paid or given for it to the owner of the place to which it authorizes admission. The result of the unlawful conduct was that the Petitioner and the other Class Members paid Overcharges on the Tickets purchased;
- 2.34 In furtherance of the conspiracy, the following acts, among others, were acts done by the Respondents and their servants, agents and employees:
- (a) they established, operated and promoted the TicketsNow and Premium Inventory online resale websites and thereby provided a means for the Tickets to be sold in the secondary market;
  - (b) they took advantage of their purchasing power to limit the number of tickets available in the primary market;
  - (c) they took advantage of their purchasing power and diverted a number of tickets, directly or indirectly, to the TicketsNow website;
  - (d) they allowed brokers and professional ticket buyers to purchase a large number of tickets when those tickets should have been made available to the Class Members;
  - (e) they engaged in a scheme whereby they solicited Class Members and induced them to purchase Tickets through TicketsNow when tickets were or should have been still available in the primary market;
  - (f) they automatically redirected Class Members to the TicketsNow website when they knew or ought to have known that those Class Members believed they were still purchasing tickets in the primary market;
  - (g) they designed the TicketsNow website so that sellers were not required to indicate the face value of the tickets being sold; and

- (h) they ensured that any language regarding ticket resale laws or restrictions was only placed on the "selling" portion of the TicketsNow website, and was not directly disclosed to buyers.
- 2.35 The acts particularized above were unlawful acts directed towards the Petitioner and the other Class Members which unlawful acts the Respondents knew in the circumstances would likely cause injury to the Petitioner and the other Class Members, and it did by requiring them to pay artificially high prices for Tickets;

## **DAMAGES**

- 2.36 The Petitioner suffered damages and loss as a result of misrepresentation and conspiracy of the respondents, which had the effect of causing the price of the Tickets to be sold at artificially high prices;
- 2.37 The retail price for the pair of tickets bought by the Petitioner was 362.00\$ (181.00\$ x 2) instead of the original retail price of 93.50\$ (46.75\$ x 2), witch leaves a difference of 268.50\$ in overcharges;
- 2.38 The Petitioner paid 54.30\$ as a "Service Charge", witch is 15% of the retail price of the tickets instead of an amount of 14.00\$ (15% of 93.50\$), witch leaves a difference of 40.28\$ in overcharges;
- 2.39 The Petitioner asserts that her damages along with those of the other Class Members are capable of being quantified on an aggregate basis, in whole or in part because the Respondents should have lists of their clients and their transactions;
- 2.40 The Petitioner and the other Class Members have suffered a deprivation in the Amount of the Overcharge, or part thereof;
- 2.41 There is and can be no juristic reason to justify the Respondents retaining any part of the Overcharge;
- 2.42 The Petitioner pleads that the conduct of the Respondents was contrary to the provisions of the *Consumer Protection Act*, as well as high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, willful and motivated by economic considerations. Such conduct renders them liable to pay punitive damages;
3. **The facts giving rise to personal claims by each of the members of the Group against the Respondents are:**

3.1 The Petitioner and the Class members each have suffered damages due to the acts of the Respondents;

3.2 Each of the Class members are henceforth entitled to claim for damages and losses as a result of misrepresentation and conspiracy of the Respondents;

**4. The composition of the Group makes the application of articles 59 or 67 of C.C.P. difficult or impractical because:**

4.1 The Petitioner estimate that a large number of physical persons have suffered damages and losses as a result of the same practices or the Respondents;

4.2 The Petitioner cannot know the identity of the Class members;

4.3 In these circumstances, it would be difficult, even impossible to obtain individual mandates from each of those physical persons and proceed through the joining of cases;

4.4 Class action is therefore the appropriate applicable procedure in order for Class members to have their rights upheld;

**5. The identical, similar, or related questions of law or fact between each Group Members and Respondents which the Petitioners wish to have decided by the class action are:**

5.1 Did respondents use misleading or false representations towards the Class members?

5.2 Did respondents conspire to unduly overcharge Class members?

5.3 Are Class members entitled to received punitive damages from Respondents?

**6. It is expedient that the bringing of a class action for the benefit of Group Members be authorized as:**

6.1 The majority of the issues to be dealt with are issues common to every Group Member;

6.2 The relatively small claim of individual Group Members might discourage them from pursuing this matter in any other forum;

6.3 The high number of potential litigants could lead to a multitude of individual legal actions in different jurisdictions, possibly leading to contradictory judgements on questions of law and fact;

**7. The nature of recourse which the petitioner wishes to exercise on behalf of the Group Members is:**

An action in civil responsibility against the Respondents as a result of the Respondents' misleading and false representation and conspiracy to commit same;

**8. The conclusions sought by your Petitioner are:**

**GRANT** the Petitioner's action against the Respondents;

**GRANT** the relief requested against the Respondent and authorize the Petitioner to commence a class action;

**DECLARE** that the Respondents conspired each with the other to sell Tickets at an Overcharge;

**DECLARE** that the Respondents mislead and/or made false representations in order to sell tickets at an overcharge;

**DECLARE** that each Respondents is vicariously liable for the acts and/or omissions of the other Respondents;

**CONDEMN** the Respondent to compensate the Petitioner for the amount of 308.78\$ with interest payable at the legal rate as prescribed by law;

**CONDEMN** the Respondent to compensate each of the Group Members for aggregate damages assessed in an amount equal to the amount of the Overcharges, with interest payable at the legal rate as prescribed by law;

**CONDEMN** the Respondent to pay exemplary damages of double the aggregate damages;

**CONDEMN** the Respondent to any further relief as the Court finds appropriate;

**THE WHOLE** with costs, including the costs of expert reports and publication of notices.

**9. Petitioner requests that he be ascribed the status of representative for the following reasons:**

He is a Group Member. He is well informed of the facts initiating this action. He has the required time, determination, and energy to bring this matter to a conclusion. He collaborates fully with his attorneys, responds diligently and intelligently to requests his attorneys make and comprehends the nature of the class action proceeding. He is not in a conflict of interest with other Group Members.

**10. Petitioner proposes that the class action be brought before the Superior Court of the district of Montréal for the following reasons:**

10.1 The Petitioner's counsel have their offices in Montreal;

**WHEREFORE PETITIONER PRAYS**

**THAT** the present motion be granted;

**THAT** the bringing of a class action be authorized as follows:

*An action in civil responsibility against the Respondents as a result of the Respondents misleading and false representation and conspiracy to commit same;*

**THAT** the status of representatives be granted to the Petitioner for bringing the said class action for the benefit of the following group of persons, namely:

*All physical persons who, since February 19<sup>th</sup> 2006, purchased a ticket from TicketMaster or TicketsNow and paid an overcharge from the regular sale price due to an apparent unavailability of said ticket on the primary market.*

**THAT** the principal questions of law and fact to be dealt with collectively be identified as follows:

- 1) Did respondents use misleading or false representations towards the Class members?
- 2) Did respondents conspire to unduly overcharge Class members?

3) Are Class members entitled to received punitive damages from Respondents?

**THAT** the conclusions sought with relation to such questions be identified as follows:

**GRANT** the Petitioner's action against the Respondents;

**GRANT** the relief requested against the Respondent and authorize the Petitioner to commence a class action;

**DECLARE** that the Respondents conspired each with the other to sell Tickets at an Overcharge;

**DECLARE** that the Respondents mislead and/or made false representations in order to sell tickets at an overcharge;

**DECLARE** that each Respondents is vicariously liable for the acts and/or omissions of the other Respondents;

**CONDEMN** the Respondent to compensate the Petitioner for the amount of 308.78\$ with interest payable at the legal rate as prescribed by law;

**CONDEMN** the Respondent to compensate each of the Group Members for aggregate damages assessed in an amount equal to the amount of the Overcharges, with interest payable at the legal rate as prescribed by law;

**CONDEMN** the Respondent to pay exemplary damages of double the aggregate damages;

**CONDEMN** the Respondent to any further relief as the Court finds appropriate;

**THE WHOLE** with costs, including the costs of expert reports and publication of notices.

**THAT** it be declared that any Group member who has not requested his exclusion from the Group be bound by any judgment to be rendered on the class action, in accordance with law;

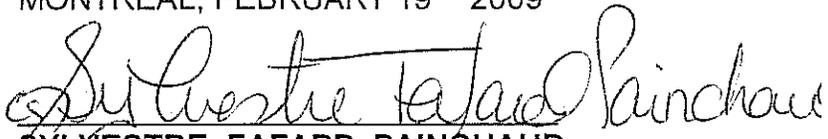
**THAT** the delay for exclusion be fixed at thirty (30) days from notice to members and that at the expiry of such delay, the members of the Group who have not requested exclusion be bound by any such judgment;

**THAT** it be ordered that a Notice to Members be published in the following manner:

- A copy of the Notice to Members be sent within sixty (60) days of the judgment by the Respondent to all Group Members for whom the Respondent has the Group Member's postal or e-mail address;
- Publication once in each of the following daily newspapers: La Presse, Le Journal de Montréal, The Montreal Gazette and Globe & Mail;
- Publication of the Notice to the Members on Respondent's websites.

**THAT** the record be referred to the Chief Justice so that he may fix the district in which the class action is to be brought and the judge before whom it will be heard. That the Clerk of this Court be ordered, upon receiving the decision of the Chief Justice, in the event that the class action be brought in another district, to transmit the present record to the clerk of the designated district.

MONTREAL, FEBRUARY 19<sup>TH</sup> 2009

  
**SYLVESTRE, FAFARD, PAINCHAUD**  
**Attorneys for Petitioner**