

CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No : 500-06-000462-099

SUPERIOR COURT
Class action

NICHOLAS D'URZO [REDACTED]

Petitioner

v.

TNOW ENTERTAINMENT GROUP, INC.

LIVE NATION ENTERTAINMENT, INC.

TICKETMASTER CANADA HOLDINGS ULC

PREMIUM INVENTORY, INC.

Respondents

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

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 in Canada who, since February 19th 2006, purchased a ticket through the TicketsNow Website for an event in the Province of Quebec.»

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

THE PETITIONER

- 2.1 On September 30th 2008, Petitioner went on the Ticketmaster.com website to buy three tickets for the February 7th 2009 Montreal Canadians vs Maple Leafs game taking place at the Bell Centre in Montreal, Quebec;
- 2.2 (...)
- 2.3 The Ticketmaster.com website indicated that there were no more tickets available for that game, but Ticketmaster's website redirected Petitioner to TicketsNow's website where tickets were available;
- 2.4 The tickets purchased by the Petitioner had a face value of 35.00\$ each, but the asking price was 112.00\$;
- 2.5 The Petitioner purchased 3 tickets and ended up paying 416.35\$, because of the delivery fees of 29.95\$ and the service charge of 50.40\$, the whole as appears from Exhibit P-1;
- 2.6 The Petitioner paid the premium because he really wanted to see this game and thought it was the only way to get tickets;
- 2.7 (...)
- 2.8 (...)
- 2.9 When the Petitioner arrived at the game, it appeared from a large number of empty seats that the game was not sold out;

THE RESPONDENTS

- 2.10 Live Nation Entertainment, Inc. ("Live Nation") describes itself as the world's leading live entertainment ticketing and marketing company that connects the world to live entertainment. It operates in 20 global markets, providing ticket sales, ticket resale services, marketing and distribution through 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 Holdings ULC is a corporation pursuant to the laws of Canada and is wholly-owned subsidiary of Live Nation;
- 2.12 TNOW Entertainment Group, Inc. ("TNOW") is a corporation incorporated pursuant to the laws of the State of Illinois and is a wholly-owned subsidiary of Live Nation.

It is Live Nation's resale partner. TNOW 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." TNOW provides its services through the website www.ticketsnow.com (the "TicketsNow Website");

- 2.13 Premium Inventory, Inc. is a corporation incorporated pursuant to the laws of the State of Illinois and is a wholly-owned subsidiary of Live Nation. Premium Inventory describes itself as a licensed, professional ticket brokerage service that is the preferred broker for TNOW;
- 2.14 At all material times, Live Nation and Ticketmaster Canada Holdings ULC (together hereinafter "Ticketmaster") 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 (...) may do so electronically through their websites, www.ticketmaster.com (the "Ticketmaster US Website") and www.ticketmaster.ca (the "Ticketmaster Canada Website"), or alternatively, by attending at one of their retail outlets;
- 2.16 Ticketmaster (...) typically announces the sale of tickets to the public well in advance of the events, and establishes 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 (...) to be sold out within a matter of hours, and sometimes, within minutes after such tickets are made available for sale;
- 2.18 TNOW and Premium Inventory Inc. 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 TNOW's website ("TNOW's FAQ"), the tickets sold through TNOW "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 TNOW 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 TNOW must do so through Premium Inventory Inc.;

- 2.21 Premium Inventory Inc. purchases tickets from non-United States residents and places those tickets for sale on the TicketsNow Website 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 Inc. website are automatically redirected to the TicketsNow Website. Premium Inventory Inc. does not provide buyers with an option to determine whether the tickets are also available through Ticketmaster (...);
- 2.23 At all material times, Class Members who purchased tickets through the TicketsNow Website paid substantially higher prices than those at which those tickets were issued;
- 2.24 TNOW 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 the TicketsNow Website also paid service and other fees or charges to TNOW for each ticket that was purchased. Class Members cannot purchase a ticket from the TicketsNow Website without paying these additional charges;
- 2.26 TNOW and Premium Inventory Inc. derive the following financial benefits from the sale of tickets in the secondary market:
- (a) TNOW charges purchasers service and other fees or charges on the sale of each ticket;
 - (b) TNOW charges sellers a 15% commission on the prices at which tickets are sold; and
 - (c) Premium Inventory Inc. 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 (...) and Premium Inventory Inc. 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, (...) TNOW and Premium Inventory Inc. 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 (...) diverted a substantial portion of tickets that it controlled or had access to for resale through the TicketsNow Website, either directly or by allocating or facilitating the sale to third parties with whom it had a relationship or arrangement, including TNOW and Premium Inventory Inc. 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 RESPONSIBILITY

- 2.29 It is a civil fault contrary to section 1457 of the *Civil Code of Quebec*, for any merchant involved in the promotion or sale of tickets to events in Quebec to make false or misleading representations to a consumer;
- 2.30 The Respondents made it appear that the demand for tickets to the event for which the Petitioner purchased tickets was higher than reality by showing those tickets to be on the secondary market of the TicketsNow Website;
- 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 Website and the Premium Inventory Inc. online resale website 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 TNOW or Premium Inventory Inc., 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 Website and the Premium Inventory Inc. online resale website 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 the TicketsNow Website 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 336.00\$ (112.00\$ x 3) instead of the original retail price of 183.00\$ (61.00\$ x 3), which leaves a difference of 153.00\$ in overcharges;
- 2.38 The Petitioner paid 50.40\$ as a "Service Charge", which is 15% of the retail price of the tickets instead of an amount of 27.45\$ (15% of 183.00\$), which leaves a difference of 22.95\$ in overcharges;

- 2.39 The Petitioner asserts that his 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 *Civil Code of Québec*, as well as high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, willful and motivated by economic considerations. (...)
- 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 (...)
- 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 in the context of the sale of event tickets to the Group Members;
- 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 265.65\$ 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 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. **Petitioners proposes that the class action be brought before the Superior Court of the district of Montreal 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 in the context of the sale of event tickets to the Group Members;

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 in Canada who, since February 19th 2006, purchased a ticket through the TicketsNow Website for an event in the Province of Quebec.

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?
- (...)

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 265.65\$ 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 any further relief as the Court finds appropriate;

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

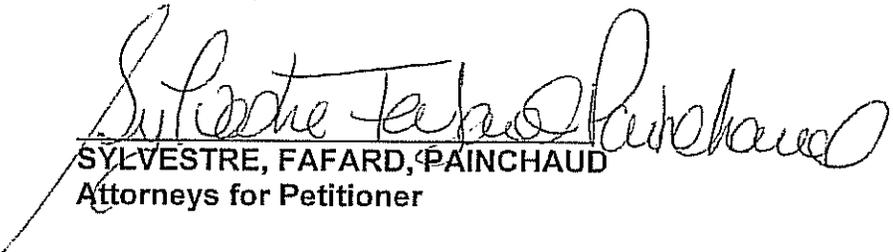
THAT it be declared that any Group member who has not requested his exclusion from the Group be bound by any judgment to be rendered on the class action, in accordance with the law;

THAT the delay for exclusion be fixed (...) 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 (...)

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, APRIL 24TH 2012


SYLVESTRE, FAFARD, PAINCHAUD
Attorneys for Petitioner