

**SUPERIOR COURT
(CLASS ACTION)**

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

No.: 500-06-001066-204

TRACY PATTERSON

Plaintiff

vs.

TICKETMASTER CANADA HOLDINGS ULC ET AL.

Defendants

**APPLICATION BY DEFENDANT VIVID SEATS LLC
FOR LEAVE TO ADDUCE EVIDENCE
(Article 574(3) CCP)**

TO THE HONOURABLE JUSTICE PIERRE-C. GAGNON OF THE SUPERIOR COURT OF QUEBEC, THE DEFENDANT, VIVID SEATS LLC, RESPECTFULLY SUBMITS THE FOLLOWING :

I. Introduction

1. The Defendant Vivid Seats LLC ("**Vivid Seats**") seeks leave to file relevant and limited documentary evidence into the Court record, *viz* a brief affidavit from Edward Pickus, Vice President of Accounting for Vivid Seats LLC. The purpose of this affidavit is to show that the Plaintiff's allegation that Vivid Seats has not already refunded its customers in Quebec is, on its face, manifestly false.

II. Brief Description of the Proposed Class Action

2. On or around May 12, 2020, then-Plaintiff filed an *Application for Authorization to Institute a Class Action* ("**Application for Authorization**") only against Ticketmaster entities.
3. On or around July 10, 2020, the *Amended Application for Authorization to Institute a Class Action* ("**Amended Application for Authorization**") in order to name further defendants, including Vivid Seats, and to replace the Plaintiff with Mr. Tracy Patterson.

4. Through the Amended Application for Authorization, Plaintiff seeks authorization from this Court to institute a class action on behalf of the following class:

“All persons in Canada, who purchased before March 11, 2020 one or more tickets from one of the Defendants for an event scheduled to take place after March 11, 2020, which event was subsequently either postponed, rescheduled or cancelled, without a full refund being timely provided by Defendants, or any other Group(s) or Sub- Group(s) to be determined by the Court” (the “**Class**”)

5. Applicant is claiming on behalf of the Class the full reimbursement of the purchase price of the tickets, and other related services purchased (ex. parking), plus interest and any additional damages or costs suffered. Plaintiff is also claiming punitive damages in an unspecified amount.
6. Vivid Seats rejects the allegations made against it.

III. Application for Leave to File Relevant Evidence

7. Plaintiff alleges that the Defendants did not provide a timely refund to putative Class Members for tickets they bought before March 11, 2020 for events that were scheduled to take place after March 11, 2020, which event was subsequently postponed, rescheduled or cancelled.
8. As described above, Plaintiff is seeking a national class.
9. With respect to Vivid Seats specifically, Plaintiff assumes that Quebec orders for tickets purchased to an event that has been cancelled, postponed or rescheduled were not refunded.
10. Plaintiff simply points to alleged changes on Vivid Seats’ general (not Quebec-only) website, implying that Vivid Seats probably did not provide refunds, and alleges that said modifications to its different terms are abusive, illegal, intentional and in bad faith (par. 17.23 to 17.28 of the Amended Application for Authorization).
11. Where Plaintiff fails to allege, and cannot allege, that Vivid Seats’ actually did not provide refunds to Quebec customers, the mere implication that this may be the case is manifestly unreasonable.
12. Further, Plaintiff seeks to represent a national class of all Canadian persons who purchased one or more tickets from Vivid Seats (among other Defendants), while failing to allege facts relevant to the jurisdiction of this Court over such a class, including the domicile of Vivid Seats.
13. Vivid Seats seeks to file as **Exhibit VS-1** a brief affidavit dated May 18, 2021 by Edward Pickus, Vice President of Accounting for Vivid Seats LLC, demonstrating:

- (a) that refunds have been provided for all Quebec orders for tickets purchased to an event that had been cancelled by the event organizer;
 - (b) that any orders placed by purchasers in Quebec for events that were postponed or rescheduled received a refund if they contacted Vivid Seats' contact centre and requested a refund and returned their tickets; and
 - (c) that Vivid Seats does not have its head office in Quebec.
14. This evidence will show that Plaintiff's allegations are, on their face, manifestly false with respect to Vivid Seats, and therefore Plaintiff does not meet the criteria of article 575(2) CCP.
15. The evidence will also support Vivid Seats' argument that a national class is inappropriate in the circumstances as Vivid Seats does not have a head office in Quebec.

IV. Conclusion

16. Allowing this limited documentary evidence to be adduced will streamline the hearing on authorization, obtain focus and clarity on the issues of fact and law alleged by the Plaintiff, show that the allegations of Plaintiff are manifestly false on their face and ensure an appropriate examination of the criteria for authorization.
17. The permission sought here to file evidence meets the criterion of proportionality.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Application;

AUTHORIZE Vivid Seats LLC to file **Exhibit VS-1** as described above;

ALL OF WHICH IS SOUGHT without costs, unless the present Application is contested.

MONTREAL, MAY 21, 2021

McCarthy Tétrault LLP

McCARTHY TÉTRAULT LLP

**Me J.R. Kristian Brabander / Me Amanda Gravel
Lawyers for Defendant, Vivid Seats LLC**

2500 - 1000 De la Gauchetière Street West

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Notification: notification@mccarthy.ca

Our file # 224791-536597

AFFIDAVIT

I, the undersigned, J.R. Kristian Brabander, lawyer, exercising my profession at McCarthy Tétrault LLP, located at Suite 2500, 1000 De La Gauchetière Street West, in the city and district of Montreal, province of Quebec, solemnly declare and affirm the following :

1. I am one of the lawyers of Defendant Vivid Seats LLC ; and
2. All of the facts alleged in the present application filed by the Defendant are true.

AND I HAVE SIGNED



J.R. Kristian Brabander

Solemnly affirmed before me at Montreal,
Province of Quebec, this 21st day of May,
2021



122,144

Commissioner of Oaths for all Judicial
District of Quebec

NOTICE OF PRESENTATION

**TO: Me David Assor /
Me Joanie Lévesque
LEX GROUP INC.**

Lawyers for the Plaintiff,
Tracy Patterson

**TO: Me Christopher Richter /
Me Se-Line Duong
TORYS**

Lawyers for the Defendants
Ticketmaster Canada Holdings ULC,
Ticketmaster Canada ULC, Ticketmaster
Canada LP, Ticketmaster LLC, Live
Nation Canada Inc., Live Nation
Entertainment Inc. and Live Nation
Worldwide Inc.

**TO: Me François-David Paré
Me Francesca Taddeo
NORTON ROSE FULBRIGHT
CANADA**

Lawyers for the Defendants
Stubhub Canada Ltd. and Stubhub Inc.

**TO: Me Fadi Amine
MILLER THOMSON**

Lawyers for the Defendant
Ticketnetwork Inc.

**TO: Me Jessica Harding /
Me Éric Préfontaine
OSLER, HOSKIN & HARCOURT**

Lawyers for the Defendant
Internet Referral Services LLC

**TO: Me Jean-François Forget
STIKEMAN ELLIOTT**

Lawyers for Defendant Seatgeek Inc.

TAKE NOTICE that the Application by Defendant Vivid Seats LLC for Leave to Adduce Evidence will be presented for adjudication before the Honourable Pierre-C. Gagnon of the Superior Court of Quebec, on a date and time to be determined by the Honourable Pierre-C. Gagnon at the Montreal Courthouse located at 1, Notre-Dame Street East.

MONTREAL, MAY 21, 2021

McCarthy Tétrault LLP

McCARTHY TÉTRAULT LLP

Me J.R. Kristian Brabander / Me Amanda Gravel

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LIST OF EXHIBITS

EXHIBIT VS-1 : Affidavit of Edward Pickus dated May 18, 2021

MONTREAL, MAY 21, 2021

McCarthy Tétrault LLP

McCARTHY TÉTRAULT LLP

**Me J.R. Kristian Brabander / Me Amanda Gravel
Lawyers for Defendant, Vivid Seats LLC**

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EXHIBIT VS-1

SUPERIOR COURT
(Class Actions Division)

**CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

No. 500-06-001066-204

TRACY PATTERSON

Plaintiff

v.

VIVID SEATS LLC ET AL.

Defendants

AFFIDAVIT OF EDWARD PICKUS

I, the undersigned, Edward "Ted" Pickus, exercising my profession at Chicago, Illinois, U.S.A., hereby solemnly declare the following:

1. I am the Vice President of Accounting for Vivid Seats.
2. I have read the *Amended Application for Authorization to Institute a Class Action* dated July 10, 2020, and which was served on Vivid Seats on or around July 28, 2020.
3. Vivid Seats acts as an online ticket marketplace. Vivid Seats is an intermediary between ticket buyers and ticket sellers, allowing ticket buyers to find tickets for all their favorite live events. The Vivid Seats Marketplace is not the ticket seller and the listed tickets are not listed by Vivid Seats on behalf of any venue, promoter, team, league or organizing group.
4. Vivid Seats does not have its head office in Quebec. It is a Delaware limited liability company with its head office located in Chicago, Illinois.
5. On March 11, 2020, the World Health Organization declared the novel coronavirus (COVID-19) outbreak a global pandemic. Resulting national directives, and state and local government shutdown orders, and other events outside the control of private parties, made it impossible to hold ticketed live events on scheduled dates.
6. The consequences of this unprecedented public health development cascaded through the ticketing and events business, resulting in an incredible amount of

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- disruption, including numerous cancelations, postponements and rescheduled events.
7. On or about June 22, 2020, Vivid Seats initiated refunds for all Quebec customer orders for tickets purchased to any event that had been canceled by the event organizer.
 8. As of July 9, 2020, the day prior to the amendment of these proceedings by which Vivid Seats was added as a defendant, there were a total of 661 orders placed by purchasers in Quebec for events that were canceled by the event organizer.
 9. As of July 9, 2020, all refunds had been completed or were pending:
 - 657 of 661 Quebec orders for tickets purchased to an event that had been canceled by the event organizer had been refunded;
 - The remaining 4 of 661 Quebec orders for tickets purchased to an event that had been canceled by the event organizer were pending chargeback, or had been refunded via chargeback, meaning that the customer's credit card issuer refunded the purchase.
 10. Of course, Vivid Seats continued to refund Quebec orders for tickets for events that were subsequently canceled, even after July 10, 2020.
 11. As of March 22, 2021, there were a total of 811 orders placed by purchasers in Quebec for events that were canceled by the event organizer.
 12. As of March 22, 2021, all refunds had been completed or were pending:
 - 804 of 811 Quebec orders for tickets purchased to an event that had been canceled by the event organizer had been refunded;
 - The remaining 7 of 811 Quebec orders for tickets purchased to an event that had been canceled by the event organizer were pending chargeback (3 orders), or had been refunded via chargeback (4 orders), meaning that the customer's credit card issuer refunded the purchase.
 13. In the case of a chargeback, when the card issuer grants a refund to the customer, the card issuer then withdraws from Vivid Seats the amount paid to the customer by the card issuer.
 14. Where customers decide to proceed via chargeback, Vivid Seats must wait until a determination has been made by the customer's credit card issuer as to whether they will receive the chargeback or not; otherwise the customer may be refunded twice and Vivid Seats would end up paying double the value of the original order. Should the credit card issuer deny the chargeback, Vivid Seats can then refund the ticket orders.

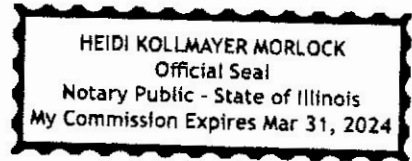
15. With regard to orders placed by purchasers in Quebec for events that were postponed or rescheduled, any customer who contacted the Vivid Seats' contact center and requested a refund and returned their tickets has received a full refund.
16. All of the facts alleged herein are true.

AND I HAVE SIGNED

Edward Pickus

Edward Pickus

Solemnly affirmed before me at State of Illinois
County of DuPage, this 18th day of May 2021
Heidi Kollmayer Morlock
Notary Public



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DISTRICT OF MONTREAL

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(ARTICLE 574(3) CCP)
AND EXHIBIT VS-1**

ORIGINAL

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