

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

**In re: TICKETNETWORK, INC., EVENTVEST, INC.
d/b/a TICKET GALAXY, and DONALD VACCARO**

Index No. 451858/2018
Hon. Saliann Scarpulla

CONSENT ORDER AND JUDGMENT

WHEREAS, TicketNetwork, Inc. (“TicketNetwork”) filed a declaratory judgment action on September 6, 2018 assigned to the Commercial Division of the Supreme Court of the State of New York, New York County, under the caption *TicketNetwork, Inc. v. Underwood*, No. 158291/2018 (N.Y. Sup. Ct.), and Eventvest, Inc. d/b/a Ticket Galaxy (“Ticket Galaxy”) filed a declaratory judgment action on September 6, 2018 assigned to the Commercial Division of the Supreme Court of the State of New York, New York County, under the caption *Eventvest, Inc. d/b/a Ticket Galaxy v. Underwood*, No. 158292/2018 (N.Y. Sup. Ct.) (together, the “Declaratory Judgment Actions”), both alleging that their ticket resale practices are and have been entirely lawful and commonplace across multiple industries; and

WHEREAS, the State of New York, by its then-attorney, Barbara D. Underwood, Attorney General of the State of New York (“NYAG”), filed an action on September 14, 2018 assigned to the Commercial Division of the Supreme Court of the State of New York, New York County, under the caption *People of the State of New York v. TicketNetwork, Inc., et al.*, No. 451858/2018 (N.Y. Sup. Ct.), alleging that TicketNetwork, Ticket Galaxy, and Donald Vaccaro (collectively, the “Covered Resale Actors”) engaged in illegal, fraudulent, and deceptive conduct in violation of the New York General Business Law (“GBL”) §§ 349, 350, 396, the New York Executive Law § 63(12), and the Arts and Cultural Affairs Law (“ACAL”) § 25.23, in connection with their

practices concerning the offer and sale of tickets that the ticket seller does not have, has not yet purchased, and does not have a contractual right to obtain (the “Enforcement Action”); and

WHEREAS, the NYAG moved to dismiss the Declaratory Judgment Actions on September 27, 2018, and the Covered Resale Actors opposed the NYAG’s motion and cross-moved to consolidate all of the actions; and

WHEREAS, the Covered Resale Actors moved to dismiss the Enforcement Action on November 2, 2018, which motions are fully briefed and remain pending; and

WHEREAS, on November 30, 2018 the Court denied the NYAG’s motions to dismiss, granted the Covered Resale Actors’ cross-motions, and consolidated the Enforcement Action and the Declaratory Judgment Actions under the instant caption; and

WHEREAS, the NYAG filed its answers to the complaints in the Declaratory Judgment Actions on December 28, 2018; and

WHEREAS, the parties have entered into the Consent and Stipulation (the “Stipulation”), dated July 10, 2019, which is hereby incorporated by reference into this Consent Order and Judgment (the “Consent Order”); and

WHEREAS, the Covered Resale Actors neither admit nor deny the NYAG’s allegations in the Enforcement Action; and

WHEREAS, this Consent Order is being entered into for settlement purposes only and does not constitute and shall not be construed as an admission of liability or wrongdoing by the Covered Resale Actors; and

WHEREAS, the parties wish to resolve all outstanding issues amongst themselves in order to avoid prolonged and costly litigation, and in furtherance of the public interest, and desire to have the Court issue the following Consent Order;

NOW, THEREFORE, IT IS ADJUDGED, ORDERED AND DECREED:

PARTIES SUBJECT TO JURISDICTION

1. This Consent Order shall extend to the NYAG, and to TicketNetwork, Ticket Galaxy, and Donald Vaccaro; anyone acting on their behalf, including but not limited to their principals, officers, directors, employees, servants, successors or assignees; agents in active concert or participation with any of the foregoing who are involved in the conduct of business that is the subject of this litigation; and to any corporation, company, business entity, or other entity or device through which TicketNetwork, Ticket Galaxy, or Donald Vaccaro may now or hereafter act or conduct business that is the subject of this litigation. For the avoidance of doubt, this Consent Order is not intended to, and shall not, extend or enlarge the scope of any liability faced by TicketNetwork, Ticket Galaxy, and/or Donald Vaccaro based on the conduct of any third party for whose conduct TicketNetwork, Ticket Galaxy, and Donald Vaccaro would not otherwise be liable under applicable principles of law.

DEFINITIONS

2. For the purposes of this Consent Order, the following definitions apply:

a. “Clear and Conspicuous” means, consistent with generally applicable law, that the statement, representation, or term being disclosed is of such size, color, contrast and/or audibility and is so presented as to be readily noticed by the person to whom it is being disclosed. If such statement is necessary as a modification, explanation, or clarification to other information with which it is presented, it must be presented in close proximity or time to the information it modifies, in a manner so as to be readily noticed. For the avoidance of doubt, a disclosure is not Clear and Conspicuous if it is avoidable and accessed or displayed only indirectly upon the user’s affirmative election, e.g., through drop-downs, hyperlinks, or other similar means.

- b. “Effective Date” shall mean the date this Consent Order is entered by the Court.
- c. “Service Offering” shall mean an offer to sell or obtain a ticket that is not a Ticket Offering.
- d. “Ticket Offering” shall mean an offer to sell a ticket where, at the time the offer is made, the offeror is in possession of the offered ticket or has a written contract to obtain the offered ticket at a certain price from a person or entity in possession of the ticket or from a person who has a contractual right to obtain such ticket.
- e. “Ticket Platform” shall mean a system owned, operated, or controlled by one or more of the Covered Resale Actors, if any, that enables a Covered Resale Actor or other Ticket Seller to make Service Offerings.
- f. “Ticket Seller” shall mean any person or entity that makes a Service Offering or Ticket Offering.

AFFIRMATIVE OBLIGATIONS

- 3. Each Covered Resale Actor shall comply with Executive Law § 63(12) and GBL §§ 349, 350, and 396.
- 4. Each Covered Resale Actor shall not make available any Service Offering, or knowingly assist others in making available any Service Offering, that is deceptive or misleading.
- 5. Each Covered Resale Actor shall not misrepresent with respect to any Service Offering, or knowingly assist others in misrepresenting with respect to any Service Offering:
 - a. while a Service Offering is available for purchase, that the Ticket Seller that has made available the Service Offering (i) has possession of or has purchased the offered ticket, or (ii) has a written contract to obtain the offered ticket at a certain price from a person or entity in possession of the ticket or from a person who has a contractual right to obtain such ticket; or

b. the reason that the purchased tickets have not been delivered to the purchaser by the advertised delivery date or are unavailable.

6. Each Covered Resale Actor shall not misrepresent:

- a. that Actor's policies or practices relating to filling ticket orders; or
- b. that Actor's policies or practices relating to Service Offerings.

7. Each Covered Resale Actor shall, upon a ticket buyer's inquiry to that Actor concerning the availability of a ticket that the Actor knows is being offered or has been sold through a Service Offering, disclose to the buyer whether the Ticket Seller then has possession of the ticket or is offering to obtain the ticket.

8. To the extent that any Covered Resale Actor operates a Ticket Platform, that Actor shall, for each Service Offering made available through the Ticket Platform that the Actor knows is a Service Offering:

a. wherever a Service Offering is displayed or otherwise communicated to consumers, label such Service Offering in a manner that differentiates it from a Ticket Offering and indicates it is a Service Offering, and such label may be done through the use of a branded term;

b. when a purchaser initially selects the Service Offering, Clearly and Conspicuously disclose that the Ticket Seller does not have possession of the ticket and is offering to obtain the ticket; and

c. prior to completing the transaction for the Service Offering, again Clearly and Conspicuously disclose that the Ticket Seller does not have possession of the ticket and is offering to obtain the offered ticket, and require the purchaser to expressly confirm having read or, if a transaction is completed by phone, received the disclosure.

This paragraph shall take effect ninety (90) days from the Effective Date. In the event that ninety (90) days is insufficient time for the Covered Resale Actors to come into compliance with this paragraph, this deadline may be extended with the consent of the NYAG, which consent shall not be unreasonably withheld or conditioned.

9. Each Covered Resale Actor shall, wherever Service Offerings are defined or the nature of Service Offerings is described on any website owned or operated by the Actor, disclose that the Ticket Seller does not have possession of the ticket and is offering to obtain the ticket.

This paragraph shall take effect ninety (90) days from the Effective Date. In the event that ninety (90) days is insufficient time for the Covered Resale Actors to come into compliance with this paragraph, this deadline may be extended with the consent of the NYAG, which consent shall not be unreasonably withheld or conditioned.

10. Each Covered Resale Actor that is a Ticket Seller shall comply with Arts and Cultural Affairs Law § 25.10.

11.

a. In the event Arts and Cultural Affairs Law § 25.10 is repealed or revised and not replaced by a new or revised law or regulation that contains disclosure requirements substantially similar to those set forth in Arts and Cultural Affairs Law § 25.10 as of the Effective Date of this Consent Order, then paragraphs 8, 9, and/or 10 of this Consent Order, as appropriate, shall no longer have effect. If a Covered Resale Actor believes that such a repeal or revision has occurred, it shall so notify the NYAG in writing, specifying which of paragraphs 8, 9, and/or 10 of this Consent Order it believes are no longer in effect. Paragraphs 8, 9, and/or 10 of this Consent Order shall continue to be in operation if the Covered Resale Actor has not provided such notice.

b. A Covered Resale Actor may petition the Court at any time for a modification or vacatur of paragraphs 8, 9, and/or 10 of this Consent Order for good cause, provided that the NYAG shall have an opportunity to respond to any such petition within seven (7) days of the filing of such petition. If any such petition is filed, the Court shall determine whether there is good cause for the modification or vacatur of paragraphs 8, 9, and/or 10.

c. For the avoidance of doubt, in the event of any modification or vacatur of paragraphs 8, 9, and/or 10 pursuant to this paragraph, the Covered Resale Actors shall not be relieved of complying with any applicable law in force at the time.

MONETARY RELIEF

12. The Covered Resale Actors shall pay to the NYAG the amount of \$1,550,000. This sum will be paid in two (2) equal installments of \$775,000, with the first installment paid within ten (10) days of the Effective Date of this Consent Order and the second installment paid within sixty (60) days of the Effective Date of this Consent Order. Upon application by the NYAG showing that the Covered Resale Actors have failed to make any payments required by this Consent Order, the Court shall enter a money judgment against the Covered Resale Actors in the amount outstanding plus interest at the statutory post-judgment rate of nine (9) percent per annum from the date of violation or nonpayment, and the NYAG shall have execution thereof. Payments shall be made pursuant to written payment processing instructions to be provided by the NYAG.

DISMISSAL OF ACAL § 25.23 WITHOUT PREJUDICE

13. The NYAG's claim brought pursuant to ACAL § 25.23 in the Enforcement Action, filed under the caption *People of the State of New York v. TicketNetwork, Inc., et al.*, No. 451858/2018 (N.Y. Sup. Ct.), is dismissed without prejudice.

CONTINUING JURISDICTION

14. This Court shall retain jurisdiction of this action for the purpose of carrying out the terms of this Consent Order, to which jurisdiction the Covered Resale Actors consent solely for purposes of the enforcement of this Consent Order, and, except as provided in paragraph 15 below, any party to this Consent Order may apply to this Court for such other and further relief as may be necessary to effectuate the terms of this Consent Order, upon seven (7) days' notice.

15. If the NYAG believes that a Covered Resale Actor has failed to comply with a provision of paragraphs 3 through 10 of this Consent Order, and if in the NYAG's sole discretion the failure to comply does not threaten the health or safety of the citizens of New York and/or does not create an emergency requiring immediate action, then prior to taking legal action for any alleged failure to comply with the Consent Order the NYAG shall provide initial notice to the Actor, identifying therein the alleged violation, the provision of the Consent Order allegedly violated, and the facts underlying that alleged violation. The Covered Resale Actor shall have thirty (30) days from receipt of such initial notice to provide a good-faith written response, including either a statement the Actor believes it is in full compliance with the relevant provision or a statement explaining how the violation occurred, how it has been addressed, or when it will be addressed. The NYAG may agree to provide the Covered Resale Actor with more than thirty (30) days to respond. Prior to taking legal action for any alleged failure to comply with the Consent Order, the NYAG shall, following receipt of the Covered Resale Actor's written response, request a meet and confer with the Covered Resale Actor, to be held within fourteen (14) days of the request, for the purpose of good-faith discussions about a non-judicial resolution to the NYAG's objection, unless the parties jointly agree that such meet and confer is unnecessary. The period between the date that the Covered Resale Actor receives initial notice of the alleged violation and

the earlier of (i) the date of the parties' meet and confer about that alleged violation or (ii) fourteen (14) days after the NYAG's request for such meet and confer, shall be known as the "Notice Period." The NYAG shall not initiate any legal proceeding for any alleged failure to comply with the Consent Order until the Notice Period has concluded. The Covered Resale Actor shall not seek a declaratory judgment concerning any alleged failure to comply with the Consent Order during the Notice Period.

16. Notwithstanding any provision to the contrary, if the Court determines that any Covered Resale Actor has violated this Consent Order, the Covered Resale Actors agree that any statute of limitations applicable to the alleged violation, and any claims arising from or relating thereto, are tolled until the date of the NYAG's actual or constructive knowledge of the conduct that forms the basis of the alleged violation.

17. Any notices, statements, or other written documents required by this Consent Order shall be provided by certified mail, return receipt requested, and by e-mail to the intended recipient at the addresses set forth below, unless a different address is specified in writing by the party changing such address:

For the NYAG, to:

Attn: Bureau Chief
Bureau of Internet and Technology
New York State Office of the Attorney General
28 Liberty Street
New York, New York 10005

For TicketNetwork, to:

TicketNetwork, Inc.
75 Gerber Road East
South Windsor, CT 06074
legal@ticketnetwork.com

For Ticket Galaxy, to:

Ticket Galaxy
75 Gerber Road East
South Windsor, CT 06074
legal@ticketgalaxy.com

For Vaccaro, to:

Donald Vaccaro
c/o TicketNetwork, Inc.
75 Gerber Road East
South Windsor, CT 06074
don@ticketnetwork.com

MISCELLANEOUS TERMS

18. Nothing in this Consent Order shall limit or expand the NYAG's right to subpoena the Covered Resale Actors with respect to matters not resolved by this Consent Order and the Stipulation.

19. Nothing in this Consent Order shall prevent or limit Vaccaro's ability to challenge the basis for personal jurisdiction over him in New York State Court, and Vaccaro does not waive that defense in any manner, except that Vaccaro expressly consents to personal jurisdiction in this Court for the sole purpose of effectuating the terms of or remedying a failure to comply with this Consent Order.

20. The Covered Resale Actors may fairly describe, characterize, or otherwise discuss the terms of this Consent Order. The Covered Resale Actors shall not state or imply, or cause to be stated or implied, that the NYAG has approved, sanctioned, or authorized any practice, act, or conduct of the Covered Resale Actors.

21. The failure of any party to exercise any right under any provision of this Consent Order shall not constitute a waiver of any rights of that party to enforce such provision prospectively.

22. Nothing in this Consent Order shall be construed as relieving the Covered Resale Actors of their obligation to comply with all applicable laws, regulations, and rules, or as granting permission to engage in any acts or practices prohibited by such law, regulation, or rule.

23. Nothing in this Consent Order or the corresponding Stipulation shall be construed to deprive any non-party of any private right or cause of action, including a consumer's ability to file a complaint with the NYAG. This Consent Order is not intended for use, and may not be used in any other proceeding or action and is not intended, and should not be construed, as an admission of any liability or wrongdoing by the Covered Resale Actors. The Covered Resale Actors neither admit nor deny the allegations in the NYAG's Enforcement Action complaint.

24. This Consent Order and the Stipulation between the parties sets forth all of the promises, covenants, agreements, conditions, and understandings between the parties, and supersedes all prior and contemporaneous agreements, understandings, inducements, or conditions, express or implied. There are no representations, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Consent Order that are not fully expressed herein or in the Stipulation.

25. If any clause, provision, or section of this Consent Order shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other clause, provision, or section of this Consent Order and this Consent Order shall be construed and enforced as if such invalid, illegal, or unenforceable clause, provision, or section had not been contained herein.

26. This Consent Order may not be changed, altered, or modified without further order of the Court, except as provided in the above paragraph 11.

27. This Consent Order shall be construed in accordance with the laws of New York.

28. The clerk is hereby directed to enter this Consent Order forthwith.

29. This Court's order and judgment dated _____, 2019 is hereby deemed a decision which shall be entered by the clerk of the court.

IT IS SO ORDERED.

Dated: _____, 2019

The Honorable Saliann Scarpulla

New York Supreme Court Justice