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 CENTRAL DISTRICT OF CALIF.
 LOS ANGELES
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FA D

15 Attorneys for Plaintiff, Ellen Diamond,
 16 individually, and on behalf of all others similarly situated

17 **UNITED STATES DISTRICT COURT**
 18 **CENTRAL DISTRICT OF CALIFORNIA**

19 ELLEN DIAMOND, individually,)
 20 and on behalf of all others similarly)
 21 situated,)
 Plaintiff,)
 22)
 v.)
 23)
 24 TICKETMASTER)
 25 ENTERTAINMENT, INC. and)
 26 TICKETSNOW.COM, INC.,)
 Defendant.)
 27)
 28)

CV 09-0912 CDM PLA

**CLASS ACTION COMPLAINT
 FOR VIOLATIONS OF THE
 SHERMAN ACT; THE
 CONSUMER LEGAL REMEDIES
 ACT; NEW YORK GENERAL
 BUSINESS LAW**

JURY TRIAL DEMANDED

1 Plaintiff Ellen Diamond (“Plaintiff”) brings this action as a nationwide class
2 action on behalf of herself and all others similarly situated against Defendants
3 TicketMaster Entertainment, Inc. (“TicketMaster”) and TicketsNow.com, Inc.
4 (“TicketsNow”) (collectively “Defendants”) and alleges the following upon
5 personal knowledge as to her own acts, and upon information and belief as to all
6 other matters. Plaintiff’s information and belief are based on the investigation
7 conducted by Plaintiff’s counsel.

8 **NATURE OF THE ACTION**

9 1. This class action is brought on behalf of all those who purchased event
10 tickets from TicketsNow during the period January 15, 2008 through the time when
11 Defendants cease the wrongful actions detailed herein (the “Class” and “Class
12 Period,” respectively).

13 2. This class action is brought to remedy unlawful acts taken by
14 Defendants, the purpose of which was to to wrongfully corner or manipulate the
15 market for event tickets, and thereby cheat consumers out of millions of dollars.

16 3. During the Class Period, Defendant TicketMaster, a primary seller of
17 event tickets, conspired with its wholly-owned subsidiary Defendant TicketsNow,
18 an online marketplace at which ticket brokers re-sell event tickets, to artificially
19 inflate the price of event tickets through the use of a fraudulent scheme.

20 4. Defendants’ scheme is quite simple. TicketMaster procures tickets for
21 events directly from venues and promoters. Those tickets are allegedly made
22 available to consumers for purchase over the Internet at www.ticketmaster.com. In
23 furtherance of its monopoly over the event ticket market, however, TicketMaster
24 sells large quantities of its tickets to TicketsNow’s ticket brokers, either prior to or
25 at the exact moment that tickets for an event go on sale. Because TicketsNow’s
26 ticket brokers have already purchased large quantities of TicketMaster’s
27 inventories of tickets, tickets that should otherwise be available for sale to event
28 ticket purchasers at face price are sold out within seconds of a sale’s

1 commencement. At that time, event ticket purchasers are then redirected to
2 TicketsNow's website, www.ticketsnow.com, where prices for tickets for the same
3 event are sold at prices above the ticket's face price, sometimes marked up by
4 hundreds or thousands of dollars. When a consumer purchases the greatly-
5 marked-up ticket from TicketsNow, TicketsNow, TicketMaster's wholly-owned
6 subsidiary, receives 15% of the sale price.

7 5. Accordingly, TicketMaster profits twice as the result of the
8 monopolistic scheme – once from the sale of its tickets to TicketsNow brokers, and
9 again from the sale of tickets by TicketsNow to event ticket purchasers at
10 artificially inflated prices.

11 6. As a result of this unlawful scheme to wrongfully corner or manipulate
12 the market for even tickets, Defendants have illegally bilked event ticket
13 purchasers out of millions of dollars.

14 **JURISDICTION and VENUE**

15 7. This Court has jurisdiction over all causes of action asserted herein
16 pursuant to 15 U.S.C. § 2, 15 U.S.C. § 15 and 28 U.S.C. § 1332.

17 8. Venue is proper in this Court pursuant to Sections 15(a) and 22 of the
18 Sherman Act and 28 U.S.C. § 1391 (b) and (c) because Defendants are found or
19 transact business in the Central District of California. The interstate trade and
20 commerce described herein has been carried out, in part, within the Central District
21 of California.

22 **PARTIES**

23 9. Plaintiff Ellen Diamond is a citizen of Merrick, New York. On
24 September 2, 2008, Plaintiff purchased two tickets for Cirque du Soleil through
25 TicketsNow for a total of \$385.25 (\$161.00/ticket plus \$48.30 service charge plus
26 \$14.95 shipping).

27 10. TicketMaster is the world's leading live entertainment and marketing
28 company. TicketMaster operates in 20 global markets, providing ticket sales and

1 distribution through www.ticketmaster.com. TicketMaster is incorporated in
2 Delaware, and has its principal place of business located at 8800 Sunset Blvd.,
3 West Hollywood, California. On July 1, 2008, the Board of Directors of
4 IAC/InterActiveCorp, approved a plan to separate IAC into five separate, publicly
5 traded companies via the distribution of all of the outstanding shares of common
6 stock of four of its wholly-owned subsidiaries, including Ticketmaster
7 Entertainment, Inc. On August 20, 2008, in connection with the spin-off, IAC
8 distributed to its stockholders all of the outstanding shares of common stock of
9 Ticketmaster Entertainment

10 11. TicketsNow.com, Inc. is a wholly-owned subsidiary of Ticketmaster.
11 TicketsNow is an online platform for ticket brokers looking to re-sell event tickets
12 for concerts, sporting events and plays. With about 2 million event tickets for sale,
13 TicketsNow has one of the world's largest inventories of secondary market tickets
14 from licensed brokers and individual sellers. TicketsNow has its principal place of
15 business located at 620 N. Route 31, Suite C, Crystal Lake, IL 60012

16 SUBSTANTIVE ALLEGATIONS

17 Relevant Market

18 12. The relevant geographic market is the United States.

19 13. The relevant product market for analyzing the claims in this case is the
20 event ticket sales market, including tickets for concerts, sporting events and plays.

21 History of TicketMaster

22 14. Prior to the creation of TicketMaster, purchasers of tickets were forced
23 to select seats from those that had been allotted to a particular vendor. In the event
24 that the vendor was nearly sold out, the purchaser might be forced to buy bad seats
25 even though better seats were available through other ticket sellers. Melees
26 occasionally erupted when ticket buyers, after standing in line for hours at one
27 place, found that the vendor was sold out or that better seats were available
28 elsewhere.

1 15. In 1978, TicketMaster was created. TicketMaster used an innovative
2 computer program that networked several computers in such a way that a person
3 buying an event ticket at a box office could quickly select from the total reserve of
4 seats available. TicketMaster, thus, became one of several small vendors in the late
5 1970s and early 1980s that pioneered the computerized ticket sales industry.
6 Ticketmaster, with its unique computer-based vending system, managed to
7 increase its ticket sales to about \$1 million annually by 1981.

8 16. Not only did purchasers of tickets take advantage of TicketMaster's
9 new computerized system, promoters did, as well, giving TicketMaster exclusive
10 rights to sell their tickets.

11 17. In the early 1980's, TicketMaster's closest competitor was a struggling
12 company known as Ticketron. In 1991, however, TicketMaster purchased
13 Ticketron's assets, thereby providing TicketMaster a virtual monopoly on the
14 ticket sales industry. With Ticketron out of the picture, TicketMaster's sales began
15 rapidly rising toward the \$1 billion mark.

16 18. In 1996, TicketMaster went public and continued its growth through a
17 series of acquisitions of its competitors, thereby maintaining its monopoly over the
18 industry.

19 19. In 2007, TicketMaster sold more than 141 million tickets valued at over
20 \$8.3 billion.

21 **The Secondary Ticket Sales Market**

22 20. Although TicketMaster is a seller of tickets on the primary ticket sales
23 market, a secondary market for ticket sales also exists.

24 21. The practice of reselling tickets was once the purview of street-corner
25 scalpers and fly-by-night ticket brokers. With the advent of the Internet, however,
26 the ticket resale market has gained legitimacy. Internet companies that resell
27 tickets, such as StubHub ("StubHub"), a clearinghouse where a host of different
28 sellers can offer their tickets, side by side, so that buyers may pick and choose,

1 have taken steps to clean-up the resale industry’s image by weeding out con-artists
2 and by offering certain guarantees.

3 22. While estimates on the size of the ticket resale vary, some have
4 estimated that the secondary market brings in approximately \$2 to \$5 billion a year
5 in the United States alone.

6 23. StubHub is the market leader in ticket resales.
7

8 **TicketMaster’s Initial Attempts At Dominating**
9 **The Secondary Ticket Sales Market Fail**

10 24. By earlier 2008, TicketMaster’s tremendous dominance in the primary
11 ticket sales market was reknown. In stark contrast, however, TicketMaster had
12 failed to establish any similar dominance in the secondary ticket market by early
13 2008.

14 25. Because TicketMaster initially failed to involve itself in the secondary
15 ticket sales market, it drew criticism from industry analysts. For example,
16 securities analyst Joe Bonner, who tracks Ticketmaster's former parent company
17 New York-based IAC/InterActiveCorp, told USA Today: “You have to look at the
18 secondary market as something that is a real threat to Ticketmaster. They missed
19 the boat. StubHub has been around a few years now already. They weren't as
20 proactive as they probably should have been.”

21 26. Additionally, Eric Baker, founder and CEO of Viagogo.com, a
22 European ticket resale website, has described the loosening of Ticketmaster's grip
23 on the primary ticket sales market as “the equivalent in the ticketing industry of the
24 fall of the Roman Empire.”

25 27. Hoping, at first, to do away with the secondary market, which had
26 delivered a financial blow to TicketMaster, TicketMaster sought to craft legislation
27 that would abolish or greatly restrict ticket resellers. StubHub’s CEO, Jeff Fluhr
28

1 noted, however, that “TicketMaster’s efforts to craft legislation have so far come
2 up dry.”

3 28. Following its failed attempt to restrict the resale of tickets through
4 legislation, TicketMaster adopted an “if you can’t beat them, join them” approach
5 and set out to conquer the secondary ticket sales market. In November 2005,
6 TicketMaster launched a fan to fan secondary ticket resale called TicketExchange.
7 TicketExchange, however failed to gain widespread acceptance and critics
8 commented that TicketExchange had seen only “lackluster” performance.

9
10 **TicketMaster Learns How To Corner The Secondary**
11 **Ticket Sales Market From RMG, Technologies, Inc.**

12 29. Ticketmaster suffered another blow to its sales in 2007 when RMG
13 Technologies, Inc. (“RMG”), d.b.a. ticketbrokertools.com, marketed a software
14 product that allowed ticket brokers to barrage TicketMaster’s website, in
15 circumvention of certain safeguards put into place by TicketMaster, and reserve
16 tickets from TicketMaster, which RMG ticket brokers then purchased and resold to
17 the public at greatly inflated prices.

18 30. TicketMaster filed suit against RMG seeking a preliminary injunction,
19 which a federal judge in Los Angeles ultimately granted.

20 31. According to papers filed by TicketMaster, RMG ticket resellers were
21 able to reserve tickets through Ticketmaster every 10 seconds, ultimately
22 successfully reserving seats over 8,000 times a day. As a result of RMG’s acts, the
23 tickets that were supposed to be made available to the public through TicketMaster
24 were no longer available through TicketMaster. RMG then profited handsomely
25 by reselling the tickets it had obtained from Ticketmaster to event ticket purchasers
26 at wildly marked-up prices.

1 **TicketMaster Acquires TicketsNow, An Integral**
2 **Player In Furtherance Of Its Conspiracy To**
3 **Monopolize The Secondary Ticket Sales Market**

4 32. Having: (i) tried to thwart the progress of the secondary ticket sales
5 market through legislation; (ii) failed to successfully gain footing with
6 TicketExchange and (iii) witnessed RMG and it's ticket resellers reaping huge
7 profits by reselling event tickets purchased from TicketMaster, TicketMaster was
8 desperate to find away to gain a position of strength in the secondary ticket sales
9 market.

10 33. TicketMaster, however, lacked a vehicle by which it could gain
11 entrance into the secondary market for event tickets. TicketMaster found that
12 vehicle in TicketsNow.

13 34. TicketsNow was founded in 1999 and is an on-line marketplace for
14 consumers who wish to purchase tickets from ticket brokers. TicketsNow
15 maintains a database of tickets sold by "established ticket brokers" and
16 "individuals," according to TicketsNow's website.

17 35. TicketsNow was named in the Inc. 500 Index of fastest-growing
18 privately held companies in 2004 and 2006. TicketsNow is the second largest on-
19 line ticket reseller, second only to StubHub, having sold \$200 million worth of
20 tickets in 2006.

21 36. On January 15, 2008, TicketMaster acquired TicketsNow for \$265
22 million. According to a TicketMaster press release dated January 15, 2008, "The
23 acquisition will make TicketMaster a leading company in the resale category."
24 Sean Moriarty, President and CEO of TicketMaster further stated, "We are
25 confident that combining TicketsNow's strong resale network with our audience
26 and distribution capabilities will enable us to set a new standard in the resale
27 category."
28

1 37. While TicketMaster touted the acquisition as a way for it to
2 legitimately gain dominance in a market that had passed it by, commentators stated
3 that the acquisition raised a host of questions. For example, *The Wall Street*
4 *Journal* reported on January 15, 2008, “[t]he acquisition raises potentially thorny
5 questions for TicketMaster, which has previously sued brokers (RMG and its
6 clients) who (circumvented certain TicketMaster safeguards) to scoop up tickets
7 faster than regular fans can, and then resell them for big profits on sites such as
8 TicketsNow.” Such criticism was, indeed, a sign of things to come.

9
10 **TicketMaster and TicketsNow’s Conspiracy To**
11 **Monopolize The Secondary Ticket Sales Market**

12 38. Equipped with the knowledge of how RMG was able to manipulate
13 TicketMaster’s own system and make tickets instantaneously available to ticket
14 resellers (and at the same time, unavailable to the ticket buying public),
15 TicketMaster and TicketsNow devised a scheme whereby TicketMaster sells
16 TicketsNow’s ticket brokers event tickets, which are supposed to be sold directly
17 to the public, prior to or at the time tickets are scheduled to go on sale on
18 TicketMaster’s website, www.ticketmaster.com.

19 39. Because TicketsNow’s ticket brokers have already purchased large
20 quantities of TicketMaster’s inventories of tickets, tickets are sometimes sold out
21 within seconds of a ticket event’s sale’s commencement.

22 40. When a consumer attempts to purchase a ticket from TicketMaster,
23 through the TicketMaster website, consumers are informed that tickets are either
24 unavailable or presented with poor ticket seating location options. Consumers are
25 either then redirected to TicketsNow’s website, www.ticketsnow.com, or simply
26 told that the only tickets available are those on TicketsNow, which have been
27 wildly marked up, sometimes by thousands of dollars.
28

1 41. When a consumer purchasers the greatly-marked-up ticket from
2 TicketsNow, TicketMaster, through TicketsNow receives a 15% commission on
3 the sale.

4 42. Accordingly, TicketMaster profits twice as the result of the
5 monopolistic scheme – once from the sale of its tickets to TicketsNow ticket
6 brokers, and once from the sale of tickets by TicketsNow to event ticket purchasers
7 at artificially inflated prices.

8 43. Remarkably, TicketMaster Vice-President, Joe Freeman has bold-
9 facedly acknowledged the unfairness of the situation. Freeman stated in relevant
10 part, “It seems to people (when they are automatically redirected to TicketsNow’s
11 website) it’s instantaneous and they’ve never had a fair shot.”

12 44. In response to consumer complaints about Defendants’ illegal conduct,
13 the Consumer’s Association of Canada has publicly stated in a Westmount
14 Examiner article dated January 2, 2009, “It’s a conflict. It’s a monopoly, its
15 unconscionable.”

16
17 **Consumers Complain About Defendants’ Illegal Conduct**

18 45. Hundred, if not thousands of consumers, have voiced their outrage over
19 Defendant’s illegal conduct by posting complaints on the Internet. Below is just a
20 sampling of such complaints:

21 I went on to the ticketmaster.com Web site on Saturday morning,
22 Jan. 31 at 8:55 a.m. to purchase Jimmy Buffett tickets for a concert
23 in Waikiki on Feb. 28. The tickets were to go on sale at 9 a.m. but I
24 went on early just in case they opened for sale a little early. They
25 didn't. But at 9 a.m. on the button, I got through and clicked on
26 best available for 2 tickets. At the venue here in Waikiki, there are
27 seats and then there is lawn seating way in the back. And at 9:00
28 a.m. (the clock had not even clicked over to 9:01 yet) the only
seats available were lawn seats. So I hit try again (or what ever the
option is to try for better seats. and it came up with only lawn seats
again, and again. Six or eight times. Then, instead of hitting best

1 available, I decided to cue in specifically \$125 seats the best ones.
2 This time, while I was still only offered lawn seats, the web site
3 gave me the option of clicking on Tickets Now for better seat
4 options. (Some in the front seats sections.)

5 So I clicked on that. The tickets here were very expensive twice
6 the price of the most expensive ones on ticketmaster's face value
7 seats. But because we really wanted to be in seats, not on the lawn,
8 I purchased 2 tickets in Section C Row 3 for \$239 each. It wasn't
9 until I received an email confirmation later, that I was informed of
10 the \$35.85 EACH (so \$70 plus dollars) service charge they were
11 charging me PLUS shipping charges of \$14.95 for a grand total of
12 \$564.65. (P.S. Ticketmaster's service charge is \$11.70 each ... so
13 again, this is more than triple the cost for service. Now, in spite of
14 the fact that this was more than double the \$250.

15 ***

16 Never thought Phish would let this happen. On the day and at
17 10:00 AM the Asheville event went on sale. TicketMaster site sent
18 me straight to TicketsNow, lead me to believe that I got 4 tickets
19 for \$230..HA HA.. That is 230 EACH!!!! Now TicketsNow will
20 not let me out of the event, cancel my order. That is \$1072.85 for 4
21 tickets... I thought you the Phish guys had a thing about
22 scalping??? But right online I was scalped, not 5 minutes into the
23 General Admission sale. Very disappointed.

24 ***

25 Phish tickets were on sale at their site for 7 times the face value
26 one second after selling out. The average price for a \$50 ticket is
27 \$370.

28 I believe the tickets never really went on sale to the public. I have
dozens of friends that had the same experience.

ticketmaster never even tried to sell tickets to deer creek and
pittsburgh, at 10am it was redirecting you to ticketsnow. i
understand if the show is sold out and then they offer you the
choice to go to ticketsnow, but that was not the case. it even said as

1 it was redirecting you to ticketsnow that "ticketmaster is not
2 selling tickets for this show, but you can get them at ticketsnow".

3 **Defendant's Most Recent Monopolization**
4 **of The Secondary Ticket Sales Market**

5 46. On February 2, 2009, at 9:00am, tickets for a concert by Bruce
6 Springsteen, a popular music performer, were to go on sale on TicketMaster's
7 website.

8 47. Within seconds of the sale's commencement, consumers who attempted
9 to purchase tickets were met with a notice that the TicketMaster site was
10 experiencing technical difficulties that impaired them from making a purchase.
11 Thousands of others who were fortunate enough to get beyond the message of
12 technical difficulty were informed that tickets to the the Bruce Springsteen shows
13 were unavailable. Consumers were then either re-directed to the TicketsNow
14 website, where tickets were available (within seconds of the TicketMaster sale
15 beginning) at a greatly marked-up price, or offered tickets from TicketsNow at a
16 value marked up hundreds of dollars beyond their original face value. Tickets with
17 a face value of \$65 and \$95 were listed for sale for \$200-\$4,998.

18 48. Below is quote from a consumer who attempted to buy Bruce
19 Springsteen tickets from TicketMaster on February 2, 2009:

20 I was on the Ticketmaster site shooting for Bruce Springsteen tickets
21 for Chicago, refreshed the page within 5 seconds of when they went on
22 sale at 11:00.00, went through the ordering page, filled out the code
23 word, hit "2 TICKETS, ANY PRICE, BEST AVAILABLE," and sent
24 the page before 11:00.20.

25 Response:

26 Quote
27 Sorry, no exact matches were found, but other tickets may still be
28 available.

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- * Select "Best Available" or "Any Price"
- * Change the quantity of tickets requested
- * Double check your promotional code or password, if you used one
- * At the time of your search, another customer may have been viewing the tickets you want and then decided not to buy them

*Expand your search at TicketsNow:
TicketsNow More Info
What is TicketsNow?*

TicketsNow provides secure and convenient access to event tickets that are supplied by professional resellers and fans.

Tickets are listed at market price, which is often above face value. All tickets sold through TicketsNow are 100% guaranteed.

The artist and/or venue for this event may not be affiliated with TicketsNow.

Sections 302 - FLR GA

\$161-\$213

Sections 309 - 119

\$214-\$241

Sections FLOOR - 110

\$241-\$284

Sections 204 - 219

\$316-\$375

Sections 208 - 121

\$375-\$641

Remember, this is within **30 seconds** of the tickets going on sale.

(Emphasis added).

49. This above-quoted experience clearly demonstrates the complete effectiveness of Defendants' scheme.

1 50. Only one day after of the execution of Defendants' scheme involving
2 Brue Springsteen, United States Representative Bill Pascrell of New Jersey wrote
3 to the Federal Trade Commission and the United States Department of Justice,
4 asking that the two entities investigate the relationship between the Defendants (the
5 "Pascrell Letter"). Rep. Pascrell wrote in relevant part:

6 I am writing today to direct your attention to a potential conflict of
7 interest regarding Ticketmaster and its affiliate company, TicketsNow.
8 This issue has been brought to my attention through constituent
9 complaints and press reports regarding the online sale of Bruce
10 Springsteen concerts tickets at the IZOD Center in New Jersey and
11 other locations all across the country.

12 As you know, Ticketmaster is a large ticket sales and distribution
13 company that often serves as a venue's sole ticketing agent. A large
14 percentage of their sales are made online through Ticketmaster.com. In
15 a recent effort expand its business Ticketmaster acquired TicketsNow, a
16 website which specializes in the secondary, resale market for tickets.

17 When tickets for Bruce Springsteen's new tour went on sale exclusively
18 through Ticketmaster at 9:00 a.m. on Monday, February 2, 2009, scores
19 of fans in New Jersey were met with technical difficulty on
20 Ticketmaster.com that impaired them from making a purchase.
21 Thousands of others who were fortunate enough to get beyond the
22 technical problems were informed that the shows were sold out.
23 Conspicuously placed on the same screen that informed fans of ticket
24 unavailability was an alternative purchasing option from
25 TicketsNow.com. It offered the same tickets at a value marked up
26 hundreds of dollars beyond their original face value.

27 **I am troubled by how quickly tickets priced exponentially higher
28 became available on the secondary market to thousands of rejected
fans, many who also endured unfortunate technical problems on
Ticketmaster.com.**

**I am concerned that the business affiliation between Ticketmaster
and TicketsNow may represent a conflict of interest that is
detrimental to the average fan. There is a significant potential for
abuse when one company is able to monopolize the primary market**

1 for a product and also directly manipulate, and profit from, the
2 secondary market. Additionally, the speed with which tickets were
3 made available on Ticketmaster's official resale affiliate site raises
4 questions about whether TicketsNow brokers were given
5 preferential treatment instead of competing on a level playing field
with average consumers to purchase the tickets.

6 Letter from Pascrell to Chairman Kovacic dated February 3, 2009. (Emphasis
7 added).

8 51. The very next day, Bruce Springsteen posted an open letter to his fans
9 on his website apologizing for Defendants' wrongful acts (the "Springsteen
10 Letter"). The Springsteen Letter denounced Defendants' actions and stated:

11 **A LETTER TO OUR FANS:**

12 We know there was much confusion regarding Ticketmaster and
13 TicketsNow during last Monday's on-sale dates. We were as confused
14 as you were, as we were given no advance notice of the major changes
15 in the Ticketmaster-TicketsNow world...

16 **Last Monday, we were informed that Ticketmaster was redirecting**
17 **your log-in requests for tickets at face value, to their secondary site**
18 **TicketsNow, which specializes in up-selling tickets at above face**
19 **value. They did this even when other seats remained available at**
face value. We condemn this practice.

20 **We perceive this as a pure conflict of interest. Ticketmaster is there**
21 **to ensure that we have a good, fair sale of our tickets at their face**
22 **value plus normal ticketing charges. TicketsNow is supposed to be**
23 **a secondary site where people who already have tickets may**
24 **exchange, trade, and, unfortunately, speculate with them. We have**
25 **asked this redirection from Ticketmaster to TicketsNow cease and**
26 **desist immediately and Ticketmaster has agreed to do so in the**
future and has removed its unwanted material from their and our
site.

27 ***

1 **The abuse of our fans and our trust by Ticketmaster has made us**
2 **as furious as it has made many of you. We will continue to do our**
3 **utmost now and in the future to make sure that these practices are**
4 **permanently curtailed on our tours.**

5 Letter from Springsteen to Fans dated February 4, 2009. (Emphasis added).

6 52. That same day, New Jersey's Attorney General's Office launched an
7 investigation of TicketMaster after hundreds of fans contacted its Division of
8 Consumer Affairs. In commenting briefly on the investigation, Division Chief
9 David Szuchman stated, "This is just a tremendous response, it really gives us a
10 good idea about how widespread the problem was."

11 53. In response to the tremendous pressure created by the Pascrell Letter,
12 the Springsteen Letter and the investigation commenced by New Jersey's Attorney
13 General's Office, TicketMaster issued a statement, acknowledging its wrongful
14 acts. In an Open Letter of Apology, TicketMaster stated:

15 **We recognize that we need to change our course. We have**
16 **committed to Bruce and state publicly here that we have taken**
17 **down all links for Bruce's shows directing fans from Ticketmaster**
18 **to TicketsNow. This redirection only occurred as a choice when we**
19 **could not satisfy fans' specific search request for primary ticket**
20 **inventory, but to make sure there is no misunderstanding in the**
21 **future, we also publicly state that we will never again link to**
22 **TicketsNow in a manner that can possibly create any confusion**
23 **during a high-demand on-sale. . . .**

24 Open Letter from TicketMaster dated February 4, 2009.

25 **Defendants' Motivation Behind The Monopolistic Scam**

26 54. Defendants' were motivated to conspire, and ultimately manipulate and
27 monopolize the secondary ticket sales market in order to counter the financial
28 distress that Defendant TicketMaster had been experiencing.

1 55. According to an article published on TicketNews.com, on October 27,
2 2008, entitled *TicketsNow To Layoff More Than 60 From Illinois HQ*, “[t]rouble
3 has hit the offices of nation's second-largest secondary ticket company TicketsNow
4 with the news that the company is cutting 62 jobs from its Illinois headquarters.”

5 56. These cuts were among the 300 proposed TicketMaster as part of a \$35
6 million in operational savings that Ticketmaster was seeking.

7 57. At the time that the jobs cuts were announced, TicketMaster’s stock
8 was trading below \$9.30, down from its high of \$27 per share only two months
9 earlier. At the time that this instant action was filed, TicketMaster’s stock was
10 trading at 6.96 per share.

11 58. Accordingly, Defendants sought to – and did – illegally recoup the
12 financial losses that they were incurring by engaging in the illegal antitrust
13 activities described herein.

14
15 **CLASS ALLEGATIONS**

16 59. Plaintiff brings this action both as a nationwide class action on behalf of
17 all those who purchased event tickets from TicketsNow during the period January
18 15, 2008 through the time when Defendants cease the wrongful actions detailed
19 herein

20 60. Members of the Class are so numerous that joinder of all members
21 would be impracticable. Plaintiff estimates that there are millions of Class
22 members across the United States.

23 61. There are questions of law and fact common to all the members of the
24 Class that predominate over any questions affecting only individually members,
25 including:

- 26 a. whether Defendants engaged in a monopolistic scheme as alleged
27 herein; and
28

1 secondary market for ticket sales. The Defendants participated in the overarching
2 conspiracy as follows:

3 67. TicketMaster procures tickets for events directly from venues and
4 promoters. Those tickets are allegedly made available to consumers for purchase
5 over the Internet at www.ticketmaster.com. In furtherance of its monopoly over
6 the event ticket market, however, TicketMaster sells large quantities of its tickets
7 to TicketsNow's ticket brokers, either prior to or at the exact moment that tickets
8 for an event go on sale. Because TicketsNow's ticket brokers have already
9 purchased large quantities of TicketMaster's inventories of tickets, tickets that
10 should otherwise be available for sale to event ticket purchasers are sold out within
11 seconds of a sale's commencement. At that time, event ticket purchasers are then
12 redirected to TicketsNow's website, www.ticketsnow.com, where tickets for the same
13 event are marked up by thousands of dollars. When a consumer is forced to
14 purchase the greatly-marked-up ticket from TicketsNow, TicketMaster receives a
15 15 % commission on the sale price.

16 68. Defendants' specific intent to acquire a monopoly position in the
17 secondary market for ticket sales is evidenced by, among others, the following
18 overt acts:

19 a. On January 15, 2008, TicketMaster acquired TicketsNow for
20 \$265 million.

21 b. TicketMaster sells large quantities of its tickets to
22 TicketsNow's ticket brokers, either prior to or at the exact moment that tickets for
23 an event go on sale.

24 69. Defendants' overt acts had the following effects:

25 a. By supplying large quantities of its tickets to TicketsNow,
26 TicketMaster's inventories of tickets are sold out within seconds of a sale's
27 commencement.

28

1 resellers failed, TicketMaster launched TicketExchange in an effort to attempt to
2 monopolize the secondary market for ticket sales. When TicketExchange failed to
3 take off, TicketMaster's attempt to monopolize the secondary market for ticket
4 sales was derailed. Finally, TicketMaster made a subsequent attempt to
5 monopolize the secondary market by acquiring TicketsNow on January 15, 2008.
6 This subsequent attempt resulted in a successful monopolization of the secondary
7 market for ticket sales.

8 74. The Defendants intent and attempt to create a monopoly position in the
9 secondary market for ticket sales is evidenced by, among other things:

- 10 a. In November 2005, TicketMaster launched TicketExchange.
- 11 b. On January 15, 2008, TicketMaster acquired TicketsNow for \$265
12 million.
- 13 c. TicketMaster sells large quantities of its tickets to TicketsNow's ticket
14 brokers, either prior to or at the exact moment that tickets for an event go
15 on sale.

16 75. Plaintiff Diamond is a member of the Class. Therefore, as a direct and
17 proximate result of Defendants' acts in conspiring to exercise monopoly power,
18 Plaintiff was damaged in her business or property. In addition, members of the
19 class were likewise damaged in their business or property. Plaintiff and members
20 of the class are entitled, under 15 U.S.C. § 15(a) to, among other relief, treble
21 damages and the cost of suit including reasonable attorneys fees.

22 **COUNT III**

23 **Section 2 of the Sherman Act: Monopolization of the Secondary**
24 **Market for Ticket Sales**

25
26 76. Plaintiff repeats and realleges each of the foregoing allegations as if
27 fully set forth herein.
28

1 77. This claim is brought against the Defendants pursuant to Section 4 of
2 the Clayton Act, 15 U.S.C. §15, for damages sustained as a result of Defendants'
3 violation of Section 2 of the Sherman Act, 15 U.S.C. §2, by reason of the exercise
4 of monopoly power with respect to the secondary market for ticket sales.

5 78. TicketMaster learned how to monopolize the secondary ticket sales
6 market from RMG. TicketMaster discovered that RMG ticket resellers were able
7 to reserve tickets through Ticketmaster every 10 seconds, ultimately successfully
8 reserving seats over 8,000 times a day. As a result of RMG's acts, the tickets that
9 were supposed to be made available to the public through TicketMaster, were
10 diverted to RMG brokers. Consumers, however, could only purchase the usurped
11 tickets from RMG's ticket brokers at marked-up prices. Consequently,
12 TicketMaster appropriated this practice and implemented it into its own business
13 model with the acquisition of TicketsNow.

14 79. The Defendants exercised their monopoly power by:

- 15 a. Supplying large quantities of its tickets to TicketsNow, TicketMaster's
16 inventories of tickets are sold out within seconds of a sale's
17 commencement.
18 b. Once the tickets are sold out on TicketMaster, consumers are then
19 redirected to TicketsNow's website, www.ticketsnow.com, forcing
20 consumers to purchase their tickets where tickets for the same event are
21 marked up by as much as thousands of dollars.

22 80. The Defendants exercise of monopoly power had the following effects:

- 23 a. When a consumer purchases the greatly-marked-up ticket from
24 TicketsNow, TicketMaster receives a 15 % commission from the sale
25 price.
26 b. TicketMaster profits twice as the result of the monopolistic scheme.
27 c. Defendants have bilked consumers of millions of dollars.
28

1 81. Plaintiff Diamond is a member of the Class. Therefore, as a direct and
2 proximate result of Defendants' acts in exercising monopoly power, Plaintiff was
3 damaged in her business or property. In addition, members of the class were
4 likewise damaged in their business or property. Plaintiff and members of the class
5 are entitled, under 15 U.S.C. § 15(a) to, among other relief, treble damages and the
6 cost of suit including reasonable attorneys fees.

7 **COUNT IV**

8 **(For Violations of Consumer Legal Remedies Act § 1770 For Injunctive**
9 **Relief)**

10 82. Plaintiff repeats and realleges each of the foregoing allegations as if
11 fully set forth herein.

12 83. At all times relevant herein, the Consumer Legal Remedies Act
13 (CLRA) was in effect. CLRA prohibits "unfair or deceptive acts or practices."

14 84. The acts complained of herein, which were committed by Defendants
15 constitute "unfair or deceptive acts or practices." Had Plaintiff and members of
16 the Class known Defendant's scheme, they would not have purchased their tickets
17 from TicketsNow. Defendant, at all relevant times, knew that Plaintiff and
18 members of the Class did not know or could not have reasonably discovered
19 Defendants' scheme.

20 85. As a result of Defendants' scheme, Plaintiff and members of the Class
21 have been damaged.

22 86. Plaintiff requests that Defendants be enjoined from the wrongful acts
23 described herein.

24 **COUNT V**

25 **(For Violations of New York Gen. Bus. Law § 349)**

26 87. Plaintiff repeats and realleges each of the foregoing allegations as if
27 fully set forth herein.

28

1 88. By their conduct, Defendants engaged and continue to engage in
2 deceptive acts and practices in the conduct of business, trade and commerce, and in
3 the furnishing of services within New York State, all in violation of New York
4 General Business Law ("GBL") § 349.

5 89. GBL § 349(h) provides in relevant part that:

6 ... any person who has been injured by reason of any violation of this
7 section may bring an action in his own name to enjoin such unlawful
8 act or practice, [and] an action to recover his actual damages ...

9 90. Plaintiffs are "person[s] who have been injured" by reason of the
10 Defendant's violation of GBL § 349.

11 91. The above-referenced deceptive acts and practices have directly and
12 proximately and foreseeably resulted in damages to Plaintiffs and Class members.

13 92. Plaintiff is therefore entitled to damages in an amount to be determined
14 at trial.

15
16 **WHEREFORE**, Plaintiff prays that the Court enter judgment and orders in her
17 favor and against Defendant as follows:


- 18 A. An order certifying the Class and directing that this case proceed as a class
19 action;
- 20 B. Judgment in favor of Plaintiff and the members of the Class in an amount of
21 actual damages or restitution to be determined at trial;
- 22 C. An order enjoining Defendants from the illegal practices described herein;
- 23 D. An order granting reasonable attorneys' fees and costs, as well as pre- and
24 post judgment interest at the maximum legal rate; and
- 25 E. Such other and further relief as this Court may deem appropriate.
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DEMAND FOR JURY TRIAL

Plaintiffs hereby respectfully demand a jury trial to the extent permitted by law.

Dated: February 5, 2009


_____ for

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

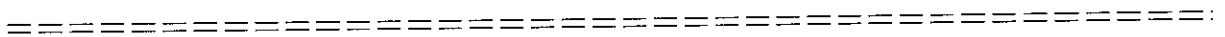
This case has been assigned to District Judge Consuelo B. Marshall and the assigned discovery Magistrate Judge is Paul L. Abrams.

The case number on all documents filed with the Court should read as follows:

CV09- 912 CBM (PLAx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge



NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

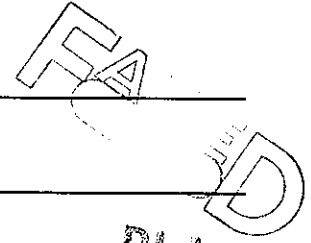
Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Paul R. Kiesel, Esq. (SBN 119854)
Patrick DeBlase, Esq. (SBN 167138)
KIESEL BOUCHER LARSON LLP
8648 Wilshire Blvd., Beverly Hills, CA 90211
Tel.: (310) 854-4444
Fax: (310) 854-0812

 ORIGINAL

 FA
D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ELLEN DIAMOND, individually, and on behalf
of all others similarly situated,

v.

PLAINTIFF(S)

CASE NUMBER

CV09-0912CBM PLA

TICKETMASTER ENTERTAINMENT, INC. and
TICKETSNOW.COM, INC.,

DEFENDANT(S).

SUMMONS

TO: DEFENDANT(S): TICKETMASTER ENTERTAINMENT, INC. and TICKETSNOW.COM, INC.

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint _____ amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, KIESEL BOUCHER LARSON, whose address is 8648 Wilshire Blvd., Beverly Hills, CA 90211. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: FEB - 6 2009

By: Natalia Gonzalez
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

Paul R. Kiesel, Esq. (SBN 119854)
Patrick DeBlase, Esq. (SBN 167138)
KIESEL BOUCHER LARSON LLP
8648 Wilshire Blvd., Beverly Hills, CA 90211
Tel.: (310) 854-4444
Fax: (310) 854-0812

COPY

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FA

FILED

ELLEN DIAMOND, individually, and on behalf
of all others similarly situated,

PLAINTIFF(S)

v.

CASE NUMBER
CV09-0912 CBM

TICKETMASTER ENTERTAINMENT, INC. and
TICKETSNOW.COM, INC.,

DEFENDANT(S).

SUMMONS

TO: DEFENDANT(S): TICKETMASTER ENTERTAINMENT, INC. and TICKETSNOW.COM, INC.

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint _____ amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, KIESEL BOUCHER LARSON, whose address is 8648 Wilshire Blvd., Beverly Hills, CA 90211. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: FEB - 6 2009

By: NATALIE LONGORIA
Deputy Clerk



[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District: *	California County outside of this District; State, if other than California, or Foreign Country
	New York

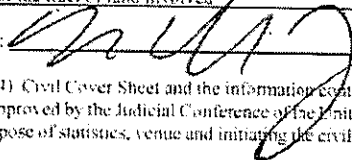
(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District: *	California County outside of this District; State, if other than California, or Foreign Country
Los Angeles	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
 Note: In land condemnation cases, use the location of the tract of land involved.

County in this District: *	California County outside of this District; State, if other than California, or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties
 Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date February 5, 2009

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 5-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
865	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))