

ATTORNEY GENERAL OF THE STATE OF NEW YORK
BUREAU OF INTERNET & TECHNOLOGY

In the Matter of

Assurance No. 21-072

**Investigation by LETITIA JAMES,
Attorney General of the State of New York, of**

TICKET FULFILLMENT SERVICES, L.P.,

Respondent.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (“NYAG”) commenced an investigation pursuant to Executive Law § 63(12) into the resale of event tickets by licensees of Respondent Ticket Fulfillment Services, L.P. This Assurance of Discontinuance (“Assurance”) contains the findings of NYAG’s investigation and the relief agreed to by NYAG and Respondent, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the “Parties”).

FINDINGS OF NYAG

1. Respondent Ticket Fulfillment Services, L.P. (“TFS”) is an Illinois-based company, which has developed a proprietary electronic platform that may be used by its licensees to enable the resale of tickets to sporting events, concerts and other live events to customers (the “Platform”). TFS licenses this Platform to qualified independent ticket resale marketplaces (“Participant(s)” or “Affiliates”).

2. TFS also provides to these licensees services to enable ticket sales and address follow-up customer service-related inquiries, including (i) providing available ticket listings for sale, (ii) processing orders, (iii) verifying order details and confirming validity of payment

information, (iv) charging buyers' credit and debit cards, (v) coordinating delivery of purchased tickets, and (vi) customer service support (the "Services").

3. As of August 26, 2020, TFS had agreements with eleven Affiliates (or "Participants," as used in some agreements, and used interchangeably herein) that facilitated the resale of tickets to events within and/or to residents of New York State ("Covered Sales," and the consumers who purchased Covered Sales where the event was later canceled, "Affected Purchasers"). Pursuant to these agreements, each company licenses the Platform and uses the Services to enable the sale and distribution of tickets to their own customers on one or more websites that the Participant operates (the "Websites"). Each Participant customized the Platform with the name, logos, and branding of Participant, with its own distinctive "look and feel" and interactive features desired by each Participant. As part of the Services, TFS personnel communicate directly with consumers and provide live customer support via phone or text chat.

4. TFS also included in the licensing agreements a Terms of Service template. The Affiliates were contractually obligated to post Terms of Service on their Websites that met with Respondent's approval.

5. The Terms of Service for each of the Credit Affiliates in effect prior to the COVID-19 pandemic prominently informed consumers that they would receive a refund if an event were canceled. For example, the Terms of Service on one Affiliate's Website told consumers, "If an event is cancelled you will be a given a full refund less shipping charges."

6. Over the course of February and March 2020, the threat of the novel coronavirus COVID-19 began to materialize in significant ways. With COVID-19 cases mounting in New York State, on March 12, 2020, New York Governor Andrew Cuomo issued Executive Order 202.1, temporarily prohibiting public gatherings of more than five hundred people. Public

ticketed events were canceled en masse both within New York and around the country causing significant financial difficulty for the ticketing industry and for Respondent and its Affiliates.

7. By April 2020, TFS was in contact with each of its Affiliates to discuss the pandemic response plan. TFS provided spreadsheets to some of the Affiliates that calculated that Affiliate's financial exposure under different scenarios to canceled events, which included either proceeding with refunds as promised or providing store credit (at up to 120% of the order value) in lieu of a refund.

8. Five of the eleven Affiliates informed TFS that they believed they were unable to refund their commissions for all of the canceled events ("Credit Affiliates"). Unlike the other six Affiliates, the Credit Affiliates requested that TFS allow them to offer consumers alternative compensation in the form of 100% or 120% credits toward future purchases, in lieu of promised refunds. The Credit Affiliates and TFS did not ensure that consumers purchasing tickets through the TFS platform received refunds in accordance with the law. On behalf of the Credit Affiliates, TFS drafted or approved, and transmitted, communications from the Credit Affiliates to consumers stating that:

Government shutdown orders, which are beyond our control, have made it impossible for events to occur as scheduled. Due to this completely unforeseen and unprecedented epidemic, we are no longer able to offer refunds for events that have been cancelled.

9. If Affected Purchasers complained or inquired about the availability of a refund, they were told that they could not receive a refund, often for substantially the same reasons set forth in the email communications. The Credit Affiliates requested that TFS handle calls from Affected Purchasers who had purchased their tickets through the Credit Affiliates' Websites by following a policy of offering only credits as compensation for the tickets. TFS did so.

10. TFS also approved and/or discussed changes to the Credit Affiliates' Terms of

Service informing purchasers that canceled events would receive “compensation,” which in some cases was described as either store credit or a refund. In some cases, TFS drafted specific language concerning the new “compensation” policy which Credit Affiliates then posted on their websites. The new policies applied to all canceled events, regardless of the location of the venue or the residency of the purchaser, or whether the purchaser had completed the order at the time the Websites promised refunds for canceled events.

11. Beginning in or about April 2020, TFS allowed Credit Affiliates to continue to use the Platform without providing refunds to consumers who were entitled by law to receive a refund. By late August 2020, approximately 11,000 consumers who had ordered tickets on the TFS platform through the Credit Affiliates’ websites to New York events and/or who were residents of New York were informed that they could only receive store credit instead of a refund when their event was canceled. These purchases represent approximately \$4.4 million in gross order price.

12. After the New York Attorney General questioned TFS and the Credit Affiliates about the legality of the new compensation practices (of offering a credit rather than a refund), the Credit Affiliates requested that TFS offer refunds to those Affected Purchasers who had only been offered credit. As of May 27, 2021, all Affected Purchasers had received an offer of a refund.

13. These practices harmed consumers who were entitled to refunds under Arts and Cultural Affairs Law § 25.07, but were not given and/or were denied refunds.

Regulatory Framework

14. Executive Law § 63(12) prohibits illegal practices in the conduct of any business. Arts and Cultural Affairs Law § 25.07 requires any person, firm, or corporation that facilitates

the resale of event tickets to guarantee that it will refund to the purchaser the amount paid by the purchaser (including, but not limited to, all fees, regardless of how characterized) if the event for which such ticket has been resold is canceled, notwithstanding any other provision of law.

Respondent's Conduct Violated New York Law

15. NYAG finds that Respondent's conduct violated, *inter alia*, Executive Law § 63(12), which authorizes NYAG to pursue repeated illegal acts; and Arts and Cultural Affairs Law § 25.07, which requires any person, firm, or corporation that facilitates the resale of event tickets to provide refunds to purchasers if the event for which the purchaser has bought a ticket is canceled.

16. Respondent neither admits nor denies NYAG's Findings, paragraphs 1–13 above, and neither admits nor denies that any violation of law has occurred as stated in paragraph 15 above.

17. NYAG finds the relief and agreements contained in this Assurance appropriate and in the public interest.

THEREFORE, NYAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of Executive Law § 63(12) and Arts and Cultural Affairs Law § 25.07.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

18. After the Effective Date of this Assurance, Respondent shall, within ten (10) business days of learning that any Affiliate or Participant has failed to offer or intends to deny a refund to an Affected Purchaser, or who fails to offer refunds to Affected Purchasers in posted Terms of Service, discontinue the Affiliate's or Participant's use of the Platform to make new sales. Respondent shall not reinstate Affiliate's or Participant's use of the Platform until all purchasers affected by any such failure to offer or denial of a refund receive a clear and conspicuous offer for a refund (and, where any such purchaser has already requested a refund, Respondent shall not reinstate Affiliate's or Participant's use of the Platform until all such purchasers are provided a full refund of the entire purchase price, excluding those purchasers who already have redeemed store credits, have received a refund via a successful chargeback, or who have a chargeback currently pending), and any affected Terms of Service are revised to offer such refunds.

19.

a. After the Effective Date of this Assurance, Respondent shall ensure that all Affected Purchasers are clearly and conspicuously offered a refund and, if any such purchaser requests a refund, Respondent shall ensure that all such purchasers are issued, within ten (10) business days of receiving such request, a full refund of the entire purchase price in the same form of payment as used by the purchaser to buy the ticket, provided that such purchaser does not have a pending chargeback of the purchase, has not received a refund of the full purchase price through a successful chargeback of the purchase, and has not redeemed any store credit issued for this order. The ten (10) day limit may be reasonably extended in instances where the purchaser has closed his or her

payment card or is otherwise unable to receive a refund using their original form of payment.

b. Notwithstanding any other provision herein, if any such Affected Purchaser who has a pending chargeback of the purchase requests a refund and Respondent denies such refund on those grounds, and the chargeback is later resolved in favor of the merchant, Respondent shall ensure that such purchaser is issued a full refund in accordance with this paragraph within fifteen (15) business days of receiving notice of the resolution of the chargeback.

c. Respondent shall ensure that all such purchasers who request a refund are provided a refund in compliance with this paragraph regardless of the ability of the Affiliate or Participant through whose Website the ticket to the canceled event was sold to refund its commission on any or all such sales.

20. After the Effective Date of this Assurance, Respondent shall ensure that Terms of Service on Affiliate or Participant Websites which Respondent has authority to modify and communications concerning event cancellation transmitted from the Platform or made by Respondent's own personnel on behalf of any Affiliate or Participant clearly and conspicuously inform any Affected Purchaser that he or she may be entitled to a refund under applicable law.

21. Nothing herein shall limit the right of any Affiliate or Participant, or of Respondent, to offer any purchaser a credit for future purchase, provided that any such offer for credit made to an Affected Purchaser clearly and conspicuously discloses to such purchaser that they may request a refund.

MISCELLANEOUS

22. Acceptance of this Assurance by NYAG is not an approval or endorsement by NYAG of any of Respondent's policies, practices, or procedures, and Respondent shall make no representation to the contrary.

23. Respondent expressly agrees and acknowledges that NYAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 30, and agrees and acknowledges that in such event:

a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;

b. the NYAG may use statements, documents or other materials produced or provided by Respondent prior to or after the effective date of this Assurance;

c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondent irrevocably and unconditionally waive any objection based upon personal jurisdiction, inconvenient forum, or venue.

d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to Executive Law § 63(15).

24. If a court of competent jurisdiction determines that Respondent has violated this Assurance, Respondent shall pay to the NYAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

25. This Assurance reflects a settlement between TFS and the NYAG, and therefore is not intended for use by any third party in any other current or future proceeding.

26. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of Respondent. Respondent shall include any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of NYAG.

27. Nothing contained herein shall be construed as to deprive any person of any private right under the law, nor to waive any legal argument or defense not expressly waived herein.

28. Any failure by the NYAG to insist upon the strict performance by Respondent of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the NYAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by Respondent.

29. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 21-072, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

If to Respondent, to:

Ticket Fulfillment Services
c/o/ Ryan J. Fitts
111 N Canal, Suite 800
Chicago, IL 60606

If to NYAG, to:

Bureau Chief
Bureau of Internet & Technology
New York State Office of the Attorney General
28 Liberty Street
New York, NY 10005

30. NYAG has agreed to the terms of this Assurance based on, among other things, the representations made to NYAG by Respondent and its counsel and NYAG's own factual investigation as set forth in Findings, paragraphs 1–14 above. Respondent represents and warrants that neither it nor its counsel have made any material representations to NYAG that are inaccurate or misleading. If any material representations by Respondent or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by NYAG in its sole discretion.

31. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Respondent in agreeing to this Assurance.

32. Respondent represents and warrants, through the signature below, that the terms and conditions of this Assurance are duly approved.

33. Nothing in this Agreement shall relieve Respondent of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

34. Respondent agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in the Assurance or creating the impression that the Assurance is without legal or factual basis. Nothing in this paragraph affects Respondent's right to take legal or factual positions in defense of litigation or other legal proceedings to which the NYAG is not a party.

35. Nothing contained herein shall be construed to limit the remedies available to NYAG in the event that Respondent violates the Assurance after its effective date.

36. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

37. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

38. Respondent acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

39. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

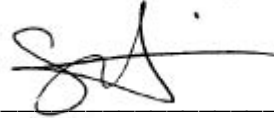
40. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

41. This Assurance may be executed in multiple counterparts by the Parties hereto. All counterparts so executed shall constitute one agreement binding upon all Parties, notwithstanding that all Parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

42. The effective date of this Assurance shall be October 29, 2021, and the effective period shall be for five years after the effective date.

LETITIA JAMES
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New York, NY 10005

By:



Ezra Sternstein
Assistant Attorney General
Bureau of Internet & Technology

**TICKET FULFILLMENT
SERVICES, L.P.**



By: Ryan J. Fitts

Title: Assistant Secretary

October 28, 2021

Date