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BY UPS & ELECTRONIC MAIL

April 18, 2021

The Honorable Anna Kaplan (kaplan@nysenate.gov)
Chair, Committee on Commerce, Economic Development, and Small Business
New York State Senate
1 Old Country Rd., Suite 270
Carle Place, NY 11514

The Honorable James Skoufis (skoufis@nysenate.gov)
Chair, Committee on Investigations and Government Operations
New York State Senate
Legislative Office Building – Room 815
Albany, NY 12247

Re: Joint Public Hearing on New York State's Live Event Ticket Industry

Dear Senator Kaplan and Senator Skoufis:

In response to your letter of March 31, 2021 regarding the April 22, 2021 Joint Public Hearing on New York's Live Event Ticket Industry, please consider this the written testimony of Brooklyn Events Center, LLC, the operator of the Barclays Center sports and entertainment venue in Brooklyn, NY.

As presently drafted, Section 25.30(a)-(b) of New York's Arts and Cultural Affairs Law ("ACAL") imposes certain limitations on the ability of an operator¹ to restrict the resale of tickets that are part of a subscription or season ticket package. Specifically, operators may not restrict the resale of subscription or season tickets: (i) as a condition of purchasing such tickets; (ii) as a condition of retaining those tickets for the duration of the subscription or season ticket agreement; or (iii) as a condition of retaining any contractually agreed upon right to purchase future subscription or season ticket packages conferred in the agreement. *See* N.Y. Arts & Cult.

¹ An operator is defined as "any person who owns, operates, or controls a place of entertainment or who promotes or produces an entertainment." N.Y. Arts & Cult. Aff. Law § 25.03(5).



Aff. Law § 25.30(a). In addition, an operator may not deny access to a ticket holder of a resold subscription or season ticket solely on the ground that such ticket has been resold. *See id.* § 25.30(b).

Notably, the foregoing provisions of Section 25.30 do not apply to single-event tickets, such as tickets for concerts. There are, of course, sound policy reasons for this distinction. As the New York Attorney General noted in 2016,² when tickets for high demand concerts and events go on sale, a majority of tickets are *not* able to be purchased by the general public; instead they are “snapped up” by ticket brokers who then resell those tickets at a substantial markup. Thus, New York consumers are often blocked by brokers from purchasing single-event tickets from the operator, and then forced to purchase the tickets from those same brokers at a price well above the face value price established by the operator.

As the Attorney General also recognized, permitting resale restrictions on single-event tickets helps prevent New York consumers from losing out to the brokers, and instead puts more face-value tickets in the hands of consumers.³ Thus, Barclays Center and the Brooklyn Nets continues to support the current distinction that ACAL makes between subscription and season tickets on the one hand, and single-event tickets on the other.

Nevertheless, we believe that legislative reform is needed. As currently drafted, ACAL leaves open the possibility that an operator such as an event promoter or organizer could impose select restrictions on resale that would favor a preferred ticket resale partner or punish a disfavored ticket resale platform. For example, ostensibly without running afoul of ACAL, an event promoter could seek to impose a condition that tickets to a highly desirable concert may be resold only through a single resale platform of its choosing. Or the promoter ostensibly could dictate that tickets not be resold through a specific platform. Such “selective” resale restrictions fail to serve the purpose of enabling fans to obtain more seats at face value.

Accordingly, Barclays Center urges the legislature to clarify that operators may not selectively restrict the resale market in a manner that favors or disfavors any single ticket reseller or resale platform. Specifically, we ask that the legislature adopt the following addition to ACAL Section 25.30, making it unlawful for an operator to:

- *(d) Restrict by any means the resale of single-event tickets in a manner that [unreasonably] favors or disfavors any specific ticket reseller or ticket resale platform.*

² ERIC T. SCHNEIDERMAN, N.Y. STATE ATTORNEY GENERAL, OBSTRUCTED VIEW: WHAT’S BLOCKING NEW YORKERS FROM GETTING TICKETS 3 (2016)

³ *Id.* at 35-37.



To be clear, Barclays Center fully understands and supports the decision of artists to restrict resale to their concerts as an effort to help ensure fans have a better and more fair opportunity to obtain tickets at face value during the initial on-sale period. However, that choice by an artist – or an operator – should be a binary one, in which the single-event tickets either are sold with a uniform resale limitation, or purchasers have the unfettered opportunity to resell single-event tickets through any legal means available – transacting on any platform they wish – without limitation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jeffrey B. Gewirtz', written over a horizontal line.

Jeffrey B. Gewirtz
Chief Operating Officer & General Counsel

cc: John Abbamondi
Chief Executive Officer, Brooklyn Nets & Barclays Center

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