

Testimony of

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before the

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and the

Standing Committee on Commerce, Economic Development, and Small Business

of the

New York Senate

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Good afternoon, Chairman Skoufis, Chairwoman Kaplan and members of the committee. My name is John Breyault and I am the Vice President of Public Policy, Telecommunications and Fraud for the National Consumers League (NCL). I appreciate this opportunity to appear before the committee and provide testimony in support of your investigation of the live event ticketing industry.

Founded in 1899, NCL is the nation's pioneering consumer organization. Our non-profit mission is to advocate for social and economic justice on behalf of consumers and workers in the United States and abroad. Since 2009, we have testified before Congress and more than a dozen state and municipal legislatures in support of bills that protect consumers from the abuses of a live event industry that is too often rigged against fans.

The modern ticket-buying experience is too often an exercise in frustration for fans who want only to see their favorite artists or sports teams or take in a Broadway show at a fair price. Unfortunately, fans far too often find themselves out of luck due in no small part to an opaque system of private sales, secret ticket diversions, rampant use of ticket-buying 'bots,' and unscrupulous broker practices.

As we emerge from the COVID-19 pandemic and live events begin to return, we believe that the time is ripe to address many of the predatory ticketing industry practices that have bedeviled fans for far too long. We commend the New York legislature for your past work on this issue and urge you to extend the consumer protections set to expire, as well as adopt additional language to bring greater transparency to the ticketing marketplace.

My testimony today focuses on two of the areas where the New York legislature has an opportunity to address a glaring hole in state consumer protection law: ticket holdbacks and ticket-buying "bots."

First, holdbacks, also known as allocations, are one of the dirty little secrets of the live event industry. As a 2016 report by the New York Attorney General's office found, only 46% of tickets to popular events, on average, are ever made available to the general

public.¹ The New York Attorney General’s findings were recently corroborated by a 2020 audit by the Honolulu, Hawaii City Council that found that promoter and venue holdbacks are the primary reasons that consumers could not access tickets to events there. Indeed, one Mariah Carey concert reviewed by the Honolulu auditors found that 93% of tickets had been held back from public on-sale.²

Instead of tickets being made available to the general public, they are diverted to connected insider groups like fan clubs, premium credit card holder rewards programs, artists, venues, and promoters who often work directly with brokers to direct tickets to the secondary market. Giant live event conglomerates waste no opportunity to point the finger at ticket brokers and the secondary market as scapegoats when consumers cannot access tickets at a fair price. The evidence is clear, however, that opaque insider holdback arrangements are at least, if not more, responsible for fans’ inability to access tickets as unscrupulous broker practices.

Ticketing companies, artists’, promoters’, and venues’ dishonesty about ticket allocations harms fans in many ways. First, as the New York Attorney General’s report notes, when tickets are set aside for premium cardholder and fan club pre-sales, it puts less wealthy fans that don’t have access to those cards and fan clubs at a disadvantage. As a result, these pre-sales give more well-heeled fans a better chance of getting tickets at face value, while decreasing the supply of face-value tickets available to everyone else.

Ticket allocation dishonesty hurts consumers again when they spend time trying to buy a small number of tickets under the erroneous assumption that they have a chance to buy most of the seats in a venue.

¹ Office of New York State Attorney General Eric Schneiderman. *Obstructed View: What’s Blocking New Yorkers from Getting Tickets*. (January 28, 2016). Pg. 11. Online: https://ag.ny.gov/pdfs/Ticket_Sales_Report.pdf

² Clark, Dave. “Arena Audit Shows Holdbacks, Not ‘Bots’ or Brokers to Blame for Ticket Issues,” Ticket News. (November 11, 2020) Online: <https://www.ticketnews.com/2020/11/arena-audit-shows-holdbacks-not-bots-or-brokers-to-blame-for-ticket-issues/>

And the dishonesty hurts fans a third time by distorting perceived ticket supply. When consumers can't buy the ticket they want, they often go quickly to ticket resale websites and pay inflated prices due to the hype created by an artificially-engineered sellout.

All too often, a consumer who does pay a premium for a ticket on the secondary market is harmed a fourth time when tickets to the allegedly "sold out" show are later made available if promoters realize that they have held back too many tickets.

To be clear, we do not oppose holdbacks in principle. Primary ticketers, venues, artists, and concert promoters should be free to distribute their tickets as they see fit. However, we believe it is an unfair and deceptive practice to advertise an event, lead customers to believe that have a foreseeable chance at getting a seat at a reasonable price, trumpet the inevitable quick sellouts, and then point the finger of blame at the secondary market or event fans themselves.

The best antidote to opaque, deceptive ticket holdback practices is more transparency. We urge the New York Legislature to follow the lead of U.S. Congressman Bill Pascrell's BOSS Act, which would require primary ticket sellers to disclose and display on their websites and at the box office the total number of tickets to be made available to the general public no less than seven days prior to the date on which tickets go on sale.³ Such a requirement would provide consumers with valuable information they can use to decide whether to attempt to purchase tickets via public on-sale or obtain them via other means, such as via the secondary market or directly from the box office closer to the date of the event. It would also provide consumers with additional information to help they evaluate whether prices they are seeing on the secondary market reflect actual ticket supply, or artificially-engineered ticket scarcity.

The second issue my testimony will address is the use of ticket "bots" by unscrupulous ticket brokers. Of the minority of tickets that ever make it to public sale for in-demand

³ Better Oversight of Secondary Sales and Accountability in Concert Ticketing Act of 2019, H.R. 3248, 116th Cong. (2019). <https://www.congress.gov/116/bills/hr3248/BILLS-116hr3248ih.pdf>

events, many are acquired illegally by ticket brokers using sophisticated ticket bots that can electronically jump the line to buy hundreds or thousands of tickets in a matter of seconds. Those tickets are then resold on the secondary market, typically at greatly inflated prices. While the use of ticket bots to circumvent ticket purchase limits is illegal under both federal and New York law, bots remain a pernicious problem in the live event marketplace.

New York can and should take steps to strengthen enforcement of its anti-bot law. Until the Federal Trade Commission took action earlier this year to bring cases against brokers using ticket bots in violation of the federal BOTS Act,⁴ we were unaware of any enforcement actions at the state or federal level against users of ticket bots. New York can address the continued use of illegal ticket bots by increasing penalties for violation of New York's existing anti-bot statute and by requiring entities such as primary tickets, venues, promoters or other actors in the live event ecosystem who have knowledge of illegal bot use to report such activity to the Attorney General's office.

Finally, in addition to our recommendations regarding ticket holdbacks and ticket bots, we support many of the other comprehensive solutions mentioned here today by our colleague organizations such as prohibiting egregious broker practices like undisclosed speculative ticketing, reigning in drip pricing, prohibiting white label ticket sites that defraud fans, requiring refunds for canceled or rescheduled events, and requiring ticket sellers to provide toll-free phone numbers for customer support.

Chairman Skoufis and Chairwoman Kaplan, thank you for giving the National Consumers League this opportunity to provide testimony on this important issue. We look forward to answering any questions you or other members of the committee may have.

⁴ Federal Trade Commission. "FTC's first BOTS Act cases: Just the ticket to help protect consumers from ticket bots," Press release. (January 22, 2021) Online: <https://www.ftc.gov/news-events/blogs/business-blog/2021/01/ftcs-first-bots-act-cases-just-ticket-help-protect-consumers>