

MLB Ticket Holders Left With One Strike to Keep Ticket Merchants in COVID Refund Class Action

James B. Saylor, Caitlin R. Hickey

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In a series of orders issued earlier this month, Judge Dale S. Fischer of the Central District of California dealt two strikes to putative class claims against ticket merchants Ticketmaster/LiveNation and StubHub that seek refunds for Major League Baseball games cancelled or “postponed” in the wake of the coronavirus pandemic. *See Ajzenman, et al. v. Office of the Commissioner of Baseball, et al.*, No. 2:20-cv-03643 (C.D. Cal. Apr. 20, 2020).

In April, fans hit the MLB, 30 MLB teams and the ticket merchants with a proposed class action lawsuit alleging that the postponement of games (as opposed to the cancellation of games) was a conspiratorial decision to avoid paying refunds to fans for their tickets.

Of the initial eight named plaintiffs in the suit, just three purchased tickets directly from the ticket merchants—one from Ticketmaster/LiveNation, and two from StubHub. Judge Fisher compelled all three of these plaintiffs to arbitrate their claims. Relying on *Lee v. Ticketmaster LLC*, 817 F. App’x 393 (9th Cir. 2020) and related caselaw, Judge Fisher determined that these plaintiffs entered into enforceable modified or “hybrid” clickwrap agreements with Ticketmaster/LiveNation and StubHub because the companies adequately made their terms and conditions—including an arbitration agreement—available by a sufficiently prominent hyperlink on registration, sign-in, and purchase pages.

The ticket merchants also moved to dismiss the claims of the five remaining plaintiffs who purchased their tickets from the MLB defendants, on the grounds that they failed to sufficiently allege a conspiracy. Judge Fisher noted that many of the conspiratorial allegations in the complaint were vague, and that the more specific allegations were irrelevant to Ticketmaster/LiveNation and StubHub. Still further, the court found that Ticketmaster did not have the power to cancel baseball games, and thus plaintiffs’ theory that all the defendants formed a conspiracy to cancel games was implausible.

Judge Fisher gave the fans one last chance to amend their allegations, suggesting that if plaintiffs’ theory was that “all Defendants formed a conspiracy *not to give refunds* rather than *not to cancel games in order to avoid refunds*, they must allege it in their complaint.”

The MLB defendants similarly filed motions to compel arbitration and motions to dismiss, which are still pending.

The court’s skeptical view of the plaintiff’s alleged conspiracy will likely mean that this refund class

action will end up in individual arbitration—like most refund class actions with plaintiffs who agreed to terms in connection with their purchase. Plaintiffs will be hard pressed to hold parties liable unless they purchased their tickets directly from them.