

Testimony for Record in Support of BOSS & SWIFT Act (HR 3660) Ticket Buyer Bill of Rights Coalition

Consumer Action, Consumer Federation of America, Fan Freedom, National Association of Consumer Advocates, National Consumers League, Protect Ticket Rights, Public Knowledge, Sports Fans Coalition, Consumer Federation of California, Virginia Citizens Consumer Council

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PUBLIC KNOWLEDGE



The Ticket Buyer Bill of Rights Coalition is a group of consumer advocates who engage lawmakers at the national and state levels on a variety of consumer protection issues. As recent events with botched on-sales, fans not receiving their tickets, and other harms have shown us, the ticketing industry is deceitful to fans, restrictive of consumer rights, and overall does not serve the consumer's interest. Seeing this, together our groups developed the "The Ticket Buyer Bill of Rights", a set of principles we believe should serve as a framework for ticketing legislation that can improve the live events ticketing market that serves millions of fans each year. The Bill of Rights features five pillars:

1. **The Right to Transferability**, where ticket holders decide how to use, sell or give away their tickets if they wish. and not the entity that previously sold the tickets;
2. **The Right to Transparency**, which includes all-in pricing and disclosures of relevant information for the purchasing decision, such as ticket holdbacks;
3. **The Right to Set the Price**, so that companies who originally sold the tickets cannot dictate to fans the price at which they can or cannot resell their purchased tickets, and, lastly;
4. **The Right to a Fair Marketplace**, where fans compete with actual humans, not illegal software bots for tickets.
5. **The Right to Recourse**, where harmed fans retain the choice to seek remedies through the public court system and are not blocked by terms and conditions that force them into private arbitration.

H.R. 3660, The Better Oversight of Stub Sales and Strengthening Well Informed and Fair Transactions for Audiences of Concert Ticketing Act of 2023 (BOSS and SWIFT Act)¹ is the best embodiment of these principles. We encourage Members of the House of Representatives to cosponsor the BOSS and SWIFT Act to help improve transparency in live event ticketing, protect fans and ticket holders, and ensure the market where consumers buy tickets is safe and competitive. Of all the ticketing bills introduced in Congress this year, the BOSS and SWIFT Act is the most comprehensive and will require all corporate players in the system to reform for the sake of fans and to be held more accountable. This pro-consumer legislation will require change for the better for everyone from sports teams, concert promoters, artist management companies, and music venues, to ticket sellers and resellers.

The Right to Transferability

Fans should have the right to transfer their previously purchased tickets freely and without restrictions, especially those imposed by monopolists in the primary industry seeking to restrict transfer to “double dip” on their customers – the digital nature of today’s tickets only makes matters worse. We believe once a consumer purchases their ticket, it is theirs to do with as they please, regardless if it’s paper or electronic.

Laws in six states protect the right to transferability, and efforts to expand this protection across other states have been met with stiff opposition from industry - Live Nation/Ticketmaster, other primary ticketing companies, promoters, artist groups, teams, and venues. This right should be protected for all fans, at the federal level. Ticket transferability stands as a cornerstone of consumer protection for avid fans. In the world of live events, fans often find themselves securing tickets six months or longer in advance, only to have life's unexpected twists intervene. This rings particularly true for loyal fans who invest in season tickets, often holding multiple tickets for an entire sports season. When circumstances prevent a fan from attending an event, the ability to resell their ticket becomes a lifeline, allowing them to recoup potential losses. However, the significance of fan resale extends beyond individual convenience; it ushers in a wave of consumer savings.

The power of ticket holders to freely transfer tickets they've already purchased fuels the competitive secondary market for sports tickets. Given that market prices typically reflect the laws of supply and demand, many ticket holders willingly offer their tickets at a price lower than their initial purchase cost. This is true of fans and professional ticket resellers. This phenomenon translates into tangible savings for fellow fans, making live events more accessible and affordable.

¹ H.R.3660 - 118th Congress (2023-2024): BOSS and SWIFT ACT of 2023. (2023, May 26). <https://www.congress.gov/bill/118th-congress/house-bill/3660>

Ticket Buyer Bill of Rights Coalition member, Sports Fans Coalition, recently analyzed more than 25 million tickets purchased on the secondary market since 2017 and determined that the secondary market generated nearly \$260M in savings for fans. On average fans saved enough money per ticket to afford a beer at the game. A common criticism opponents of an open, transparent, secondary market make is that the secondary market only price gouges fans. In sports this is not the case, as the same study by Sports Fans Coalition shows that nearly a third of the time, tickets sell below face value to major league sporting events.²

Protect Ticket Rights, another member of the Coalition, did a similar study but for concert tickets.³ PTR looked at nearly a quarter million tickets purchased on the secondary market in 2023 to the top concerts and tours and found that consumers at these specific events alone saved more than \$7.5 million by buying from secondary ticket exchanges rather than buying directly from the primary event organizer. For individual concerts, fans saved an average of \$46.34 per ticket. For tours, the average savings were \$36.84. In both cases, fans saved enough money to buy merchandise to commemorate what is undoubtedly a once-in-a-lifetime event.

Not only does ticket transferability protect fans from losing out when they get sick, transferability protects fans' ability to comparison shop for deals, and these data clearly demonstrate that many fans can find substantial savings. 2022 polling from Protect Ticket Rights showed that nationally, 81.6% of respondents support transferability and nearly the same amount (79.3%) back rules to protect that right.⁴ While indeed both the primary and secondary ticketing markets require reform to make buying and selling tickets more transparent and protected, it is important to note that the secondary resale market represents the only form of competition in ticketing other than a venue box office or its exclusively contracted primary seller. Protecting transferability protects competition.

Section 4(2) of The BOSS and SWIFT Act prohibits primary ticketing companies from restricting fans from transferring their tickets. Section 4(4) also prohibits primary ticketing companies from sanctioning or denying a fan entry to an event based on the fact the ticket was resold or transferred. This is the only legislation in Congress that affirmatively protects fans from restrictions on transfer.

Right to Transparency

²Sports Fans Coalition, *Ticket transferability helps sports fans save \$260 million over five years*, July 11, 2023 <https://www.sportsfans.org/ticket-transferability-helps-sports-fans-save-260-million-over-five-years>

³ Protect Ticket Rights, *2023 Top Concert Ticket Resale Savings Report*, September 2023, <https://www.ticketbuyerbillofrights.org/s/2023-Top-Music-Concert-Ticket-Resale-Savings-Report-09122023.pdf>

⁴ Protect Ticket Rights, March 2022, <https://www.protectticketrights.com/news/80/Press+Release+National+Poll+Shows+Americans+Want+Government+to+Improve+Live+Event+Ticketing+and+Bet>

The ticketing marketplace is one of the most opaque industries consumers interact with on a regular basis. Fans often don't know the total price of their ticket until the last minute, how many tickets are actually available for sale or that might go on sale at a future date, or even whether they are buying a ticket or the promise of a ticket. Fans deserve a more transparent and fair marketplace which allows them to meaningfully participate in the process from beginning to end. The BOSS and SWIFT Act brings long overdue transparency measures to the ticket sale marketplace, leveling the playing field for consumers who are spending their hard earned money to see their favorite event.

All-in Pricing

Much like elsewhere in the economy, drip pricing in the live event industry is detrimental to consumers. When individuals purchase tickets, whether on the primary or secondary market, they are routinely confronted with substantial additional fees atop the ticket's face value. Shockingly, these extra costs are seldom, if ever, disclosed in the initial advertisements, only emerging at the eleventh hour during the checkout process. Failing to advertise the true and final ticket price constitutes a deceptive and misleading practice, ultimately resulting in consumers paying more than they would have if the advertising had been forthright about the complete cost of the ticket.

The Government Accountability Office's (GAO) examination of the primary ticketing market unveiled a disconcerting trend. For the majority of the events scrutinized, mandatory fees remained conspicuously absent from the advertised price. Consumers could only learn the price of the ticket after selecting a seat, navigating through additional screens, creating an account, or logging into the website, and finally, clicking on "order details." The GAO also found that in a staggering 91% of surveyed events, ticket fees were presented in a significantly smaller font size than the ticket price itself. On average, these primary market fees inflate the face value of a ticket by an astonishing 27%, with some fees soaring to an exorbitant 58% of the ticket's price. Beyond the alarming rate of these fees lies the crux of the issue—the lack of transparent upfront disclosure—a real unfairness to consumers.

Regrettably, the practice of drip pricing extends its reach into the secondary market, further hindering consumers' ability to make well-informed decisions. It stifles fair competition by obscuring the genuine ticket cost until the final stages of the transaction. On average, the fees imposed on secondary market consumers inflate ticket costs by a staggering 31%, with some fees reaching a shocking 56%. As if navigating the ticket-buying process weren't hard enough, the GAO's investigation uncovered another startling revelation: a striking 80% of surveyed

marketplaces impose an unexpected "print-at-home" fee, ranging from \$2.50 to a substantial \$7.95.⁵

Every introduced bill on ticketing in Congress, including H.R. 3950 (the TICKET Act⁶), which many members of the Coalition support, calls for all-in pricing. Representative Gallego's Junk Fee Prevention Act (H.R. 2462) also calls for all-in pricing.⁷ President Biden has also weighed in, calling for all-in pricing for tickets.⁸ Section 3 of the BOSS and SWIFT Act begins with disclosures of all-in prices. Passing all-in pricing is a consensus issue and should be included in any and all legislative vehicles.

Deceptive Ticket Holdbacks

Undisclosed ticket holdbacks are deceptive. Many times sellers withhold up to half of all tickets for shows as documented by the US GAO⁹, New York Attorney General¹⁰, and the City and County of Honolulu¹¹. This scheme was a huge problem for the Taylor Swift tour, as was documented by the Wall Street Journal¹². The Journal estimated that 94% of Swift tickets were held back for those with special or exclusive access. Yet while Ticketmaster initially claimed tickets had sold out, sometimes hours before her concert Ticketmaster sent out access codes for thousands of held back tickets.

This deceptive industry scheme creates fake scarcity to induce a ticket-buying frenzy so that consumers panic, and in believing there are few tickets left, are compelled to buy now, often at higher prices than anticipated. Consumers without special or exclusive access to pre-sales are abused during the public on-sale of tickets, where they may miss work and spend hours in an online waiting room only to be left with intentionally opaque and costly options. When the true

⁵ U.S. Gov't Accountability Office, GAO-18-347, Congressional Requesters: Event Ticket Sales Market Characteristics and Consumer Protection Issues (April 2018) <https://www.gao.gov/products/gao-18-347>

⁶ H.R. 2950 - 118th Congress (2023-2024): Transparency in Charges for Key Events Ticketing Act. (June 9, 2023). <https://www.congress.gov/bill/118th-congress/house-bill/3950>

⁷ H.R.2463 - 118th Congress (2023-2024): Junk Fee Prevention Act. (April 14, 2023). <https://www.congress.gov/bill/118th-congress/house-bill/2463/>

⁸ The White House, "Remarks by President Biden on Protecting Consumers from Hidden Junk Fees," June 15, 2023, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/06/15/remarks-by-president-biden-on-protecting-consumers-from-hidden-junk-fees/>

⁹ U.S. Gov't Accountability Office, GAO-18-347, "Congressional Requesters: Event Ticket Sales Market Characteristics and Consumer Protection Issues", (April 2018) <https://www.gao.gov/products/gao-18-347>

¹⁰ Eric T. Schneiderman, "Obstructed View: What's Blocking New Yorkers from Getting Tickets", Office of New York State Attorney General https://ag.ny.gov/pdfs/Ticket_Sales_Report.pdf

¹¹ Neal S. Blaisdell, "Ticket Sales Operations, Resolution 19-264", Report No. 20-06, Office of the City Auditor, City of Honolulu, HI, November 2020. https://www.honolulu.gov/rep/site/oca/oca_docs/Final_Report_Audit_of_NBC_Ticket_Sales_Operations_Reso_19-264.pdf

¹² Anne Steele, "Taylor Swift Tickets: How Many Might be Left?", The Wall Street Journal, December 10, 2022 <https://www.wsj.com/articles/taylor-swift-tickets-how-many-might-be-left-11670624940>

inventory of tickets is not presented to fans, they are not capable of making the best possible purchase decision.

This past spring, Sports Fans Coalition polled Colorado voters on a number of ticketing related issues and found that nearly 90% of those surveyed support mandating the disclosure of ticket holdbacks.¹³ Knowing exactly how many tickets are available for purchase may change a fan's decision about whether it is worth waiting in line or committing to a clunky online queue.

Section 4(1) of The BOSS and SWIFT Act calls for the clear and conspicuous disclosure of this deceptive practice. The BOSS and SWIFT Act is not the only bill that calls for holdback disclosures. Representative Gallego's Junk Fee Prevention Act (H.R. 2463) includes these disclosures as well, albeit through different language.¹⁴ We recommend that thorough holdback disclosures be adopted in any pending ticketing legislation.

Speculative Ticketing

The practice known as speculative ticket sales involves the sale of tickets by a seller who does not currently possess the tickets but intends to acquire them in the future. While most speculative ticket sales do not cause problems for consumers, some have had negative experiences.

Speculative ticket sales essentially constitute a form of "pre-release" ticket purchasing, allowing many consumers to secure tickets and enjoy live events without having to jockey for special access codes or having to miss school or work to sit hours in an uncertain online queue. Concerns regarding speculative ticket sales mainly revolve around a deceptive practice employed by a small percentage of bad actors. This practice misleads consumers into believing the seller already has the tickets. If the seller does not possess or have constructive possession of the tickets, this puts the consumer at risk of a "busted order." Unfortunately, such situations tend to occur when consumers purchase tickets from individuals outside of official venues or from online classified ads, scenarios that lack the purchase protection typically offered by box offices, official online ticket agents, or major online ticket marketplaces with refund safeguards. These consumer harms are exacerbated if the consumer traveled for the event under the false assumption they had a ticket.

To ensure transparency and protect consumers, it is crucial that speculative sales are clearly disclosed as such, allowing buyers to understand the nature of their purchase. Moreover, these

¹³ Sports Fans Coalition, "New poll: Colorado voters overwhelmingly support right to transfer live event tickets and want mandated disclosure of deceptive 'hold backs' when tickets go on sale", May 30, 2023, https://www.sportsfans.org/new_poll_colorado_voters_overwhelmingly_support_right_to_transfer_live_event_tickets_and_want_mandated_disclosure_of_deceptive_ticket_hold_backs_when_tickets_go_on_sale

¹⁴ H.R.2463 - 118th Congress (2023-2024): Junk Fee Prevention Act. (2023, April 14). <https://www.congress.gov/bill/118th-congress/house-bill/2463/>

transactions should always come with a guarantee, assuring buyers that they will receive what they paid for. The safest form of speculative ticket sales involves informing consumers that they are paying a seller to secure tickets at an agreed-upon price, with a money-back guarantee if the seller cannot fulfill the order. This approach enhances transparency, as consumers are fully aware of what they are purchasing and the slight possibility that the tickets may not be obtained, but their funds will be returned in such a scenario. Buyers are not led to believe that ticket fulfillment is guaranteed from the outset.

Some proposals seek to ban speculative ticketing altogether. While banning deceptive speculative ticketing is good, outright bans can be more difficult to enforce than disclosure requirements. In that light, Section 5(1) of the BOSS and SWIFT Act calls for the clear and conspicuous disclosure of whether or not a ticket is speculative.

White Label Websites

"White label" ticket resale websites operate by leveraging the ticket inventory, website infrastructure, backend capabilities, and order processing systems of larger ticket resale platforms. Regrettably, white label ticket sites frequently employ deceptive tactics aimed at duping fans into paying outrageous prices for tickets. Through the use of misleading URLs, link titles, imagery, and logos, these websites create an illusion that convinces fans they are acquiring tickets from the primary market or an official box office, paying the face value. In reality, they are unwittingly engaging with a third party posing as an official source. This deceitful strategy allows white label ticket sites to inflate ticket prices and impose exorbitant additional fees, often kept concealed until the buyer reaches the point of entering their credit card information.

Section 5(5) of the BOSS and SWIFT Act prohibits the use of these websites and is the only bill in Congress that does so.

Dark Patterns

Clear and conspicuous disclosures need to be the standard for all transparency provisions. However, even that standard may not be sufficient to prevent dark patterns from taking advantage of fans. While hidden fees are the most obvious example of dark patterns, ticketing companies use tools like countdown timers, or messages suggesting they are almost sold to trick fans into making rushed decisions. As, John Breyault of the National Consumers League, a founding Coalition member, wrote in the Wall Street Journal, "Anyone who has ever rushed through the process of buying a concert ticket and knuckled under to ticketers' exorbitant fees, thanks to a ticking time clock at the top of a screen, is familiar with the dark patterns."

Section 3(8) of the BOSS and SWIFT Act prohibits these kinds of dark patterns. No other bill in Congress addresses dark patterns in the ticketing marketplace.

Right to Set the Price

Price floors and price caps set by primary sellers only restrict consumer choice and harm fans. Primary sellers shouldn't be allowed to tell fans the price at which they can resell a ticket. Doing so only leaves more seats empty come show time, and may jeopardize the substantial savings consumers experience by participating in the existing secondary marketplace.^{15 16} Consumers are best protected in an open and transparent marketplace where regulated businesses have to compete in plain sight for their business and where the products being offered for sale are as apparent as the refund protections and guarantees offered by the seller. In ticketing, the advent of online ticket resale marketplaces more than 20 years ago saved consumers the risk of buying tickets from rogue scalpers outside of venues. Arbitrary price fixing could, however, send ticket resale back to the dark alleys where consumer protections don't exist.

Price Floors

In 2016, the NFL sought to exert control over prices in the secondary ticket market by setting a price floor. This came under scrutiny when the New York Attorney General's office launched an investigation into the NFL for potential antitrust violations related to its NFL Ticket Exchange. The investigation revealed that the NFL's implementation of price floors, which set a minimum value for ticket sales, artificially inflated ticket prices. The New York Attorney General argued that these price floors deceived fans into believing they were purchasing tickets at market prices, when, in reality, they were often paying prices above the actual market value. This situation was further exacerbated by sports leagues mandating the use of official ticket exchanges, where these price floors prevented ticket prices from aligning with demand, particularly for teams with a less-than-stellar performance record.¹⁷

Price Ceilings

Just as an artist cannot dictate how and for what price a fan resells a vinyl record after they purchase it, the same should apply to tickets. Artist promoted fan-to-fan exchanges seek to cap the price at which a consumer can resell their ticket. Proponents of these kinds of price ceilings argue that they prevent prices from “skyrocketing” on the secondary market. However, that theory does not hold true under economic testing. The CATO Institute’s analysis of three seasons

¹⁵ Sports Fans Coalition, *Ticket transferability helps sports fans save \$260 million over five years*, July 11, 2023 https://www.sportsfans.org/ticket_transferability_helps_sports_fans_save_260_million_over_five_years

¹⁶ Protect Ticket Rights, *2023 Top Concert Ticket Resale Savings Report*, September 2023, <https://www.ticketbuyerbillofrights.org/s/2023-Top-Music-Concert-Ticket-Resale-Savings-Report-09122023.pdf>

¹⁷ Eric T. Schneiderman, “Obstructed View: What’s Blocking New Yorkers from Getting Tickets” Office of New York (State Attorney General) https://ag.ny.gov/pdfs/Ticket_Sales_Report.pdf

worth of National Hockey League resale prices showed that states which repealed price ceilings had no change in prices when compared to states which still had resale caps; instead price ceiling laws only have a chilling effect on ticket supply to the secondary market.¹⁸

Section 4(3) of the BOSS and SWIFT Act prohibits setting price floors and price ceilings, and is the only proposal to protect a free market for fans.

Right to a Fair Marketplace

Fans should not have to compete with computer software designed to scoop up tickets. In addition, companies should be required to report any bot behavior they catch to law enforcement.

While software bots employed to acquire tickets are a scourge on the ticket buying ecosystem, it's important to recognize that primary ticketing companies, like Ticketmaster have conveniently pointed to bots as the sole culprits for all of the problems fans face when buying tickets.¹⁹ However, federal law already prohibits the use of bots for purchasing event tickets. Regrettably, this legislation has only been enforced once²⁰, primarily because these ticketing giants have failed to report such criminal activities to law enforcement, leaving the Federal Trade Commission with little ability to locate and penalize offenders.

Given their significant influence and market presence, corporations like Ticketmaster and AXS possess the unique capacity to play a pivotal role in combating bots. In 2018, Ticketmaster claims to have stopped more than 10 billion bot purchase attempts²¹, and did the FTC receive any of this data? If they had, would there not have been more enforcement actions?

Establishing reporting requirements is a pragmatic and necessary stride toward enhancing the overall fan experience. It is incumbent upon these industry leaders to collaborate with law enforcement, making concerted efforts to halt bot-related misconduct and restore fairness to ticket distribution.

¹⁸ David E Harrington, "Uncapping Ticket Markets," CATO Institute, Fall 2010, <https://www.cato.org/regulation/fall-2010/uncapping-ticket-markets>

¹⁹ Ben Sisario, "Live Nation Says a Bot Attack Led to a 'Terrible Consumer Experience, Which We Deeply Regret,'" The New York Times, January 24, 2023, <https://www.nytimes.com/2023/01/24/arts/music/ticketmaster-taylor-swift-bot-attack>

²⁰ Bureau of Competition & Office of Technology. "FTC Brings First-Ever Cases under the Bots Act." Federal Trade Commission, January 22, 2021. <https://www.ftc.gov/news-events/news/press-releases/2021/01/ftc-brings-first-ever-cases-under-bots-act>

²¹ "Ticketmaster Discusses How to Protect Fans at the FTC Bots Workshop," Ticketmaster, February 8, 2022, <https://business.ticketmaster.com/business-solutions/ticketmaster-discusses-how-to-protect-fans-at-the-ftc-bots-workshop/>.

Section 3(10) of the BOSS and SWIFT Act requires all market participants to report bots, enabling law enforcement to finally put a stop to this criminal practice.

Right to a Recourse

Ticket buyers must be assured of their right to access remedies through the public court system when they are deceived, defrauded, or otherwise harmed by sellers in the marketplace. However, the take-it-or-leave-it terms and conditions for concert, sports, and other event tickets contain requirements that force consumers to resolve disputes with ticket sellers and venues in private, secret arbitration proceedings instead of in the public court system.²² These forced arbitration clauses often also prohibit consumers from banding together in class actions to address widespread or systemic harm. Forced arbitration must be banned from all fine-print language that accompanies ticket purchases and other fan-seller interactions in the ticketing marketplace.

A forced arbitration clause typically dictates the rules, including choosing the arbitration provider, the arbitration's location, the payment terms, and setting forth other rules such as secrecy requirements. Private arbitration generally lacks procedural protections that are assured in the public courts, including the ability to obtain key evidence necessary to prove one's case, and the right to appeal, which is rarely available. Studies have shown that consumers forced into arbitration are less likely to win cases and are generally disadvantaged.²³

In the event ticket market, arbitration clauses typically appear in the fine print on the "back" of electronic tickets or are situated on corporate websites via click wrap or browsewrap agreements.²⁴ In a single transaction to purchase tickets, a ticket buyer online may come across boxes and links to multiple terms and conditions from a ticket seller as well as a venue, both of which will impose forced arbitration requirements before a dispute even arises.

In the last several years, consumers have attempted to pursue legal complaints against sellers and venues for serious and valid claims, such as discrimination under the Americans with Disability Act; negligence that caused serious physical injuries at venues; the retroactive changing of a refund policy after the coronavirus pandemic in violation of the law or failure to provide a full refund for tickets purchased for events canceled due to the pandemic; and anticompetitive practices, including "supracompetitive fees on primary and secondary ticket purchases on the seller's online platforms."²⁵ In these instances, the ticket seller or venue sought to enforce an

²² See, e.g. Ticketmaster Terms of Use, <https://am.ticketmaster.com/inconcerts/terms>.

²³ See, e.g. Heidi Shierholz, *Correcting the Record*, Economic Policy Institute (Aug. 1, 2017), <https://www.epi.org/files/pdf/132669.pdf>.

²⁴ See, e.g. *Naimoli v. Pro-Football, Inc.*, Civil Action No. TDC-22-2276, 2023 U.S. Dist. LEXIS 164632 (D. Md. Sep. 14, 2023) and *Dickey v. Ticketmaster LLC*, No. CV 18-9052-GW(GJSx), 2019 U.S. Dist. LEXIS 231895 (C.D. Cal. Mar. 12, 2019).

²⁵ *Dickey*, 2019 U.S. Dist. LEXIS 231895 (C.D. Cal. Mar. 12, 2019); *Egan v. Live Nation Worldwide, Inc.*, 764 F. App'x 204 (3d Cir. 2019); *Hansen v. Ticketmaster Entm't, Inc.*, No. 20-cv-02685-EMC, 2020 U.S. Dist. LEXIS 233538 (N.D. Cal. Dec. 11, 2020); *Heckman v. Live Nation Entm't, Inc.*, No. CV 22-0047-GW-GJSx, 2023 U.S. Dist. LEXIS 145793 (C.D. Cal. Aug. 10, 2023); *In re Stubhub Refund Litig.*, No. 22-15879, 2023 U.S. App. LEXIS 20687 (9th Cir. Aug. 9, 2023).

arbitration clause and deprive the consumers of their choice of going to court. Consumers also pursued claims on behalf of themselves and others who were harmed by the same alleged misconduct, but class action bans in the forced arbitration clauses often prevented consumers from doing so.

Recently, when Ticketmaster’s ticketing platform caused upheaval during the sale of tickets for the singer Taylor Swift’s “Era’s Tour,” harmed concertgoers filed a class action, alleging “anticompetitive and misleading conduct with respect to the (seller’s) handling of the presale, sale, and resale of concert tickets” to the tour.²⁶ While it is in the public interest for such claims with potentially broad impact to be heard in open court, the ticket seller is seeking to force its customers into private, secret arbitration.²⁷

Commendably, the BOSS and SWIFT Act includes a private right of action for injured ticket buyers to pursue claims, but it does not ensure that consumers can choose how to resolve those disputes after they arise. We urge a provision in the legislation be included to prohibit forced arbitration clauses in the terms and conditions of ticket purchases.

Section 6(c) of the BOSS and SWIFT Act is the only proposal which grants fans the ability to advocate for themselves and enforce their rights.

Conclusion

While many members of the Ticket Buyer Bill of Rights Coalition support the TICKET Act, it is not as comprehensive of a reform package as the BOSS and SWIFT Act. BOSS and SWIFT is the only bill that provides fans with the consumer protections they need to improve the ticket buying experience, prevent fraud, and inject competition into a consolidated marketplace.

We urge the members of the committee to support the BOSS and SWIFT Act and comprehensively reform both primary and secondary live event marketplace participants.

²⁶ Class Action Complaint, *Sterioff v. Live Nation Entertainment, Inc., And Ticketmaster, LLC*, Case No. 2:22-cv-9230, (C.D. Cal. Dec. 20, 2022).

²⁷ Mike Scarcella, *Live Nation says Taylor Swift fans can't sue over ticket debacle*, REUTERS, Feb. 27, 2023, available at <https://www.reuters.com/legal/live-nation-says-taylor-swift-fans-cant-sue-over-ticket-debacle-2023-02-27/>. See, *Sterioff v. Live Nation Ent., Inc.*, No. CV 22-9230-GW-GJSx, 2023 U.S. Dist. LEXIS 120894 (C.D. Cal. July 12, 2023). Case is ongoing.