

Insights

THE FIRST WAVE OF COVID-19 CONSUMER CLASS ACTIONS HAS BEGUN

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The rapid spread of COVID-19 and related government public safety mandates have caused numerous companies to make difficult business decisions as well as reassess their ongoing business practices. As companies prepare for the road ahead, a new lawsuit filed in Los Angeles Superior Court about a music festival's refund and exchange policy may signal the direction that the plaintiffs' bar will pursue in consumer class action litigation arising out of the immediate fallout of the coronavirus. Companies can prepare themselves by reviewing their terms of service and refund exchange policies through the lens of the current limited mobility environment and by assessing how best to satisfy their customers and keep the business afloat.

In *Rutledge v. Do LaB, Inc.*, the plaintiff alleges that he purchased a ticket to the Lightning in a Bottle music festival, an electronic music festival which takes place annually in the Central Valley region of California. Attendees can buy general admission or VIP tickets, as well as passes for RV camping, boutique camping, and lightning buses. The festival was scheduled to take place over Memorial Day 2020. Because of the spread of the COVID-19 and governmental mandates prohibiting large public gatherings, however, the festival was recently canceled.

According to the complaint, the defendant festival organizer refused to issue refunds for any festival tickets. As alleged, the terms and conditions of the tickets provide that "all sales are final" and that "no refunds will be granted for any reason." The terms continue to state that in the event of a cancellation, "the holder shall not be entitled to a refund except as otherwise required by law." Instead, the refund and exchange provision states in part that "the holder shall have the right..., (1) if the event is rescheduled to a date and time within twelve months of the date and time originally scheduled, to use the ticket to attend the event at the rescheduled date and time or (2) ... to exchange this ticket to another event that is designated by management to be the official replacement event for the cancelled event."

The plaintiff alleges that the contract is unenforceable as illusory because the defendant retained "complete and unfettered control to modify or terminate the agreement without assuming any obligations towards Plaintiff and the Class." The plaintiff has asserted three causes of action against the festival organizer, for: (1) rescission under Cal. Civ. Code § 1689 based on an alleged

failure of consideration; (2) violation of California's Consumer Legal Remedies Act by an alleged misrepresentation about the transaction and by including unconscionable provisions; and (3) violation of the California Business and Professions Code by allegedly engaging in deceptive and misleading acts and practices by including unconscionable terms. The plaintiff seeks to represent a nationwide class of ticket purchasers.

The lawsuit was filed on March 24, 2020, so it remains to be seen whether these allegations will be successful. And the defendant company may well reschedule an event later this year which will serve as the "replacement" event. The defendant may also raise a variety of legal and equitable defenses to the liability claims as well as opposing the certification of any class. From a broader perspective, however, the lawsuit may send an early signal about the direction that plaintiffs' bar may pursue in consumer fraud class actions. The quick filing of the lawsuit also rings the bell that consumers and the plaintiffs' are unlikely to wait patiently to see what alternatives and solutions companies can offer.

In this context, terms of use, refunds and exchange policies, and consumer warranties, as well as a host of other business operations practices, are critical. Companies whose services and product production may be adversely impacted by COVID-19 may want to examine the following:

- Refund, exchange, rescheduling, substitution, and cancellation policies;
- Terms of use;
- Warranty and guaranty provisions and timing;
- Customer contact and customer service;
- Automatic billing arrangements, especially where products or services are adversely impacted by production or delivery delays;
- Consumer arbitration clauses, including how and when they may be enforced.

Although the *Rutledge* suit was filed in California, other states' laws regarding breach of contract, rescission and consumer protection statutes may have additional or differing considerations.

Many newer and small businesses may be impacted and may be at risk. For companies without extensive litigation experience, be sure to obtain advice regarding litigation procedure and deadlines. Certain potential litigation deadlines are strictly construed and may be waived. Others can be the subject to extension—for example, where the parties may be trying to resolve the dispute. In the class action context, potential federal court removal is a key consideration and may have substantial advantages in positioning the defense.

Only time will tell, but there also may be developments and pronouncements from state Attorneys General, the FTC or other regulators regarding consumer protection issues stemming from COVID-

19. Giving some thought now about how to best serve consumers and best serve your business during in this challenging environment may pay dividends in the long run.

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MEET THE TEAM



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