

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ERIC TALENT, ANDY BRILL, on behalf of themselves and
other individuals similarly situated,

Plaintiffs,

against

AURORA GAMES FESTIVAL, LLC; MEDIA2, INC.;
JERRY SOLOMON; and other affiliated entities and
individuals,

Defendants.

Index No.:

SUMMONS

Date Filed: June 16, 2020

Plaintiffs designate the
COUNTY OF NEW YORK
as the place of trial.

Venue is based on:
Lex loci actus.

TO THE ABOVE NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on Plaintiffs' attorney within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty [30] days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of failure to appear or answer, judgment will be taken against you by default of the relief demanded in the Complaint.

Dated: June 16, 2020
Carle Place, New York

/S/
LEEDS BROWN LAW, P.C.
Michael A. Tompkins, Esq.
Rick Ostrove, Esq.
Anthony Alesandro, Esq.
One Old Country Road, Suite 347
Carle Place, New York 11514
Tel: (516) 873-9550

Counsel for Named Plaintiffs and the Putative Class

TO:

AURORA GAMES FESTIVAL, LLC
29 Alexandra Road
Lynnfield, MA 01940

MEDIA2, INC.
72 Madison Avenue, 2nd Floor
New York, New York

JERRY SOLOMON
29 Alexandra Road
Lynnfield, MA 01940

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ERIC TALENT, ANDY BRILL, on behalf of themselves
and other individuals similarly situated,

Plaintiffs,

against

AURORA GAMES FESTIVAL, LLC; MEDIA2, INC.;
JERRY SOLOMON; and other affiliated entities and
individuals,

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Named Plaintiffs Eric Talent and Andy Brill, individually and on behalf of all others similarly situated, by their attorneys, alleges the following upon information and belief, except for those allegations pertaining to Plaintiff, which are based on personal knowledge:

NATURE OF THE ACTION

1. This class action is brought on behalf of Named Plaintiff and those similarly situated individuals (“Plaintiffs”) who provided services to Defendants Aurora Games Festival, LLC, Media2, Inc., and Jerry Solomon for the production of the 2019 Aurora Games.

2. Plaintiffs and Defendants entered into a contract where Plaintiffs would provide services to aid in the production and operation of the 2019 Aurora Games and Defendants would provide monetary compensation for such services.

3. Plaintiffs provide a significant amount of those services in New York City in preparation of the onsite productions.

4. To date Defendants have failed to provide such compensation to Plaintiffs for the services provided.

5. Based on these failures, Defendants have failed to uphold their end of the contract and violated the law, including common law claims and New York City Local Law 140 of 2016, codified into NYC Admin Code § 20-927 etc. (“NYC Freelancers Law”).

FACTS

6. Plaintiffs and Class Members are individuals that provided services for the production and operation of Defendants’ 2019 Aurora Games.

7. Plaintiffs and Class Members performed work for the Aurora Games throughout New York City.

8. The 2019 Aurora Games was a female international multi-sport event that was held between August 20, 2019 through August 25, 2019, in Albany, New York.

9. Defendants accepted Plaintiff and Class Members services in exchange for monetary compensation.

10. Named Plaintiff Talent and Defendants entered into a service agreement wherein Named Plaintiff Talent would provide services as a Tape AD for the broadcast of the 2019 Aurora Games held from August 20, 2019 through August 25, 2019.

11. The terms of the contract included \$750 per day up to 10 hours, double the hourly rate for hours worked beyond 10 hours per day, per diem for travel days, and meals.

12. Defendants owed Named Plaintiff Talent more than \$10,405.78 under the contract. To date Named Plaintiff has only received one check for \$423.28 for his expenses incurred. As such Named Plaintiff Talent is owed \$9,982.50 in unpaid amounts, plus interest, damages, and attorney’s fees.

13. Named Plaintiff Brill and Defendants entered into a service agreement wherein Named Plaintiff Brill would provide services as a Graphics Operator/Coordinator for the broadcast of the 2019 Aurora Games from August 20, 2019 through August 25, 2019, as well as any graphics work prior to the event.

14. The terms of the contract included \$800 per day for up to 10 hours, \$120 for each additional hour over 10 in any given day, meals, per diem for travel days, \$3,250 flat rate for preparations prior to the event, and reimbursement of all travel/transportation expenses.

15. Named Plaintiff Brill invoiced Defendants for the total services provided in the amount of \$11,705.34. To date Named Plaintiff Brill has only received one check for \$225.34 for the expenses incurred. As such Named Plaintiff Brill is owed \$11,480 in unpaid invoices, plus damages, interest, and attorney's fees.

16. Upon information and belief, Defendants entered into service agreements with Class Members, wherein the Class would provide services for the production and operation of the 2019 Aurora Games with the expectation of receiving monetary compensation for such services.

17. Upon information and belief, Defendants failed to provide compensation to the Class for such services provided.

JURISDICTION AND VENUE

33. This Court has subject matter jurisdiction over this matter because the claims in this matter exceed \$25,000.

34. This court has personal jurisdiction over Defendants because Defendants maintains its principal place of business in this county.

35. Venue is proper in this county because a substantial part of the acts or omissions

giving rise to the claims alleged herein occurred within New York County and Plaintiffs performed uncompensated work in New York County.

PARTIES

36. Named Plaintiff Eric Talent is an adult individual residing in Brooklyn, New York.
37. Named Plaintiff Andy Brill is an adult individual residing in Queens, New York.
38. Defendant Aurora Games Festival, LLC is a corporation organized and existing under the laws of the State of Massachusetts. It maintains its principal place of business in 40 Salem Street, Lynnfield, MA 01940.
39. Defendant Media2, Inc, is a corporation organized and existing under the laws of the State of New York State. It maintains its principal place of business in 72 Madison Avenue, 2nd floor, New York, New York, 10016 and at 1 Bridge St., Suite 215, Irvington NY 10533.
40. Defendant Jerry Solomon is an adult individual who is the manager, controller, executive producer, and creator of the 2019 Aurora Games, who resides at 29 Alexandra Road, Lynnfield, MA 01940.
41. Defendant Aurora Games Festival, LLC, Media2, Inc., and Jerry Solomon are “hiring part[ies]” as that term is defined under NYC Freelancers Law.

CLASS ALLEGATIONS

42. Named Plaintiffs brings this matter on behalf of themselves and those similarly situated who were not compensated for the services they provided to Defendants for the production and operation of the 2019 Aurora Games.
43. Plaintiffs were impacted by and damaged by this misconduct.

44. Accordingly, this action is ideally situated for class-wide resolution.

45. The Class is defined as all individuals who provided services to Defendants for the production and operation of the 2019 Aurora Games.

46. The Class is properly brought and should be maintained as a class action under CPLR §§ 901 & 902 satisfying the class action prerequisites of numerosity, commonality, typicality, and adequacy because:

47. Numerosity: Class Members are so numerous that joinder of all members is impracticable. Plaintiff believes that there are tens of individuals who are Class Members described above who have been damaged by Defendants breach of contract.

48. Commonality: The questions of law and fact common to the Class Members which predominate over any questions which may affect individual Class Members include, but are not limited to:

- a. Whether Defendants accepted services from Plaintiff and Class Members in exchange for monetary compensation;
- b. Whether Defendants provided monetary compensation as bargained for;
- c. Whether Plaintiff and the Class Members are entitled to monetary compensation for the services they provided;
- d. Whether Defendants violated NYC Freelancers Law;
- e. Whether Defendants were unjustly enriched;
- f. Whether Defendants converted money from the Plaintiff and Class Members.

49. Typicality: The Named Plaintiffs are members of the Class. The Named Plaintiffs' claims are typical of the claims of each Class Member in that every member of the Class was subject to Defendants' breach of contract, unjust enrichment and conversion. The Named Plaintiffs are entitled to relief under the same causes of action as the other Class Members.

50. Adequacy: The Named Plaintiffs are adequate Class representatives because their interests do not conflict with the interests of the Class Members they seek to represent; their claims

are common to all members of the Class and they have a strong interest in vindicating their rights; they have retained counsel competent and experienced in complex class action litigation and they intend to vigorously prosecute this action. Plaintiffs have no interests which conflict with those of the Class. The Class Members' interests will be fairly and adequately protected by Plaintiffs and their counsel. Defendants have acted in a manner generally applicable to the Class, making relief appropriate with respect to Plaintiffs and the Class Members. The prosecution of separate actions by individual Class Members would create a risk of inconsistent and varying adjudications.

51. The Class is properly brought and should be maintained as a class action under CPLR §§ 901 & 902 because a class action is superior to traditional litigation of this controversy. Common issues of law and fact predominate over any other questions affecting only individual members of the Class. The Class issues fully predominate over any individual issue because no inquiry into individual conduct is necessary; all that is required is a narrow focus on Defendants' deceptive and misleading practices.

52. In addition, this Class is superior to other methods for fair and efficient adjudication of this controversy because, *inter alia*:

53. Superiority: A class action is superior to the other available methods for the fair and efficient adjudication of this controversy because:

- a. The joinder of at least 40 other individual Class Members is impracticable, cumbersome, unduly burdensome, and a waste of judicial and/or litigation resources;
- b. The individual claims of the Class Members may be relatively modest compared with the expense of litigating the claim, thereby making it impracticable, unduly burdensome, and expensive-if not totally impossible-to justify individual actions;
- c. When Defendants' liability has been adjudicated, all Class Members' claims can be determined by the Class and administered efficiently in a manner far less burdensome and expensive than if it were attempted through filing, discovery, and trial of all individual cases;
- d. This class action will promote orderly, efficient, expeditious, and

- appropriate adjudication and administration of Class claims;
- e. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action;
 - f. This class action will assure uniformity of decisions among Class Members;
 - g. The Class is readily definable and prosecution of this action as a class action will eliminate the possibility of repetitious litigation;
 - h. Class Members' interests in individually controlling the prosecution of separate actions is outweighed by their interest in efficient resolution by single class action; and
 - i. It would be desirable to concentrate in this single venue the litigation of all plaintiffs who were induced by Defendants' practices.

54. Accordingly, this Class is properly brought and should be maintained as a class action under CPLR §§ 901 & 902 because questions of law or fact common to Class Members predominate over any questions affecting only individual members, and because a class action is superior to other available methods for fairly and efficiently adjudicating this controversy.

55. Plaintiffs can maintain a class action pursuant to CPLR §§ 901 & 902.

FIRST CAUSE OF ACTION
VIOLATION OF NYC FREELANCERS LAW
(On Behalf of Plaintiff and All Class Members)

56. Plaintiffs, on behalf of themselves and other members of the class, brings a claim for unlawful payment practices pursuant to New York City Freelancers Law, as codified in New York City Administrative code Title 20, Chapter 10 §20-929.

57. Defendants are "hiring part[ies]" as defined under the statute.

58. Plaintiffs are "freelance worker[s]" as defined under the statute.

59. Defendants retained the services of Plaintiff and the Class to perform services in connection with the production and operation of the 2019 Aurora Games.

60. Plaintiffs and Defendants entered into a contractual agreement to provide such services.

61. Plaintiffs provided such services as detailed under the contract, but Defendants have failed to provide timely compensation pursuant to NYC Administrative Code § 20-929.

62. Plaintiff Talent provided work within New York City under his contract without full payment and reimbursement from Defendants.

63. Plaintiff Talent entered into his contract with Defendants in New York City.

64. Plaintiff Talent performed other tasks and responsibilities related to Aurora Games in New York City.

65. Plaintiff Talent spoke to Defendants and other related entities and individuals about Aurora Games from New York City, including work that needed to be performed on his contract.

66. Plaintiff Brill provided work within New York City under his contract without full payment and reimbursement from Defendants.

67. Plaintiff Brill entered into his contract with Defendants in New York City.

68. Plaintiff Brill performed other tasks and responsibilities related to Aurora Games in New York City.

69. Plaintiff Brill spoke to Defendants and other related entities and individuals about Aurora Games from New York City, including work that needed to be performed on his contract.

70. Upon information and belief, other Class Members performed work associated with their contracts with Defendants in New York City without full payment and reimbursement from Defendants.

71. Upon information and belief, other Class Members performed tasks related to Aurora Games in New York City without full payment and reimbursement from Defendants.

72. Pursuant to § 20-933, Plaintiffs seek unpaid amounts, damages, interest, and attorney's fees.

SECOND CAUSE OF ACTION
BREACH OF CONTRACT
(On Behalf of Plaintiff and All Class Members)

73. Plaintiffs, on behalf of themselves and other members of the Class, brings a common law claim for Breach of Contract.

74. Defendants entered into contractual arrangements with Plaintiff and Class Members to provide monetary compensation for the services provided by Plaintiffs in the production and operation of the 2019 Aurora Games.

75. Defendants received and retained the benefits of Plaintiffs work without providing monetary compensation to Plaintiffs and Class Members.

76. Plaintiffs performed all services and tasks required under their respective contracts with Defendants.

77. Upon information and belief, Class Members performed all services and tasks required under their respective contracts with Defendants.

78. As a direct and proximate result of Defendants breach of contract Plaintiff and Class Members have been harmed by not receiving the monetary compensation they earned through their services.

79. Defendants are required to perform under the contract.

80. Therefore, Defendants should be required to provide the full monetary compensation owed to Plaintiffs.

THIRD CAUSE OF ACTION
CONVERSION
(On Behalf of Plaintiff and All Class Members in the alternative)

81. Plaintiffs, on behalf of themselves and other members of the class, brings a common law claim for Conversion.

82. Plaintiff and Class Members have an ownership right to the monetary compensation owed to them based on the work they performed for Defendants.

83. Defendants intentionally interfered with Plaintiff and the Class Members' ownership right when they failed to complete payment for such services.

84. Plaintiff and the Class Members were damaged by Defendants' interference as they spend weeks providing service for Defendants which have gone uncompensated.

85. Plaintiff and the Class Members are entitled to full monetary compensation owed to Plaintiffs that was not provided resulting from Defendants' interference.

FOURTH CAUSE OF ACTION
COMMON LAW UNJUST ENRICHMENT
(On Behalf of Plaintiff and All Class Members in the Alternative)

86. Plaintiffs, on behalf of themselves and other members of the class, brings a common law claim for unjust enrichment.

87. Plaintiff and Class Members conferred benefits and provided services to Defendants for compensation related to the 2019 Aurora Games. As bargained for these compensation payments were intended to cover the services provide to produce and operate the 2019 Aurora Games.

88. Defendants accepted the obligation to provide such payment when they accepted the services.

89. Defendants retained these benefits, despite Defendants failing to provide the bargained for compensation. Defendants should be required to satisfy their obligation and provide

the compensation owed to Plaintiffs.

90. Under New York's common law principles of unjust enrichment, it is inequitable for Defendants to retain the benefits conferred by Plaintiff's and Class Members.

91. Plaintiff and Class Members seek disgorgement of all profits resulting from such failures of payment and establishment of a constructive trust from which Plaintiff and Class Members may seek restitution.

DEMANDS FOR RELIEF

92. Plaintiff demands a trial by jury on all issues.

WHEREFORE, Plaintiff, on behalf of himself and the Class, pray for judgment as follows:

- (a) Declaring this action to be a proper class action and certifying Plaintiff as the representative of the Class under CPLR 901 & 902;
- (b) Awarding monetary damages, including treble damages;
- (c) Awarding damages;
- (d) Awarding Plaintiff and Class Members their costs and expenses incurred in this action, including reasonable allowance of attorney's fees for Plaintiff's attorneys and experts, and reimbursement of Plaintiff's expenses; and
- (f) Granting such other and further relief as the Court may deem just and proper.

Dated: June 16, 2020
Carle Place, NY

LEEDS BROWN LAW, P.C.



Michael A. Tompkins, Esq.
Rick Ostrove, Esq.
Anthony Alesandro, Esq.
One Old Country Road, Suite 347
Carle Place, NY 11514
(516) 873-9550
mtompkins@leedsbrownlaw.com
rostrove@leedsbrownlaw.com
aalessandro@leedsbrownlaw.com

Counsel for Plaintiff and the Putative Class