

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

SEATGEEK, INC.

Plaintiff,

- against -

SCOREBIG, INC., DAVID GOLDBERG, and TYLER  
HONAKER,

Defendants.

Index. No. 655490/2016

**COMPLAINT**

Plaintiff SeatGeek, Inc. (“SeatGeek” or “Plaintiff”) by its undersigned attorneys, for its Complaint against Defendants ScoreBig, Inc. (“ScoreBig”), David Goldberg (“Goldberg”), and Tyler Honaker (“Honaker”) alleges as follows:

**NATURE OF ACTION**

1. Plaintiff SeatGeek is an internet start-up company that operates a ticket search engine – found at [www.seatgeek.com](http://www.seatgeek.com) – that makes it easier for consumers to find live sports and entertainment tickets. The SeatGeek website searches dozens of ticket-selling sites, including the one operated by defendant ScoreBig, and presents the search results to its users. Ticket providers like ScoreBig pay SeatGeek to search and list their ticket offerings.

2. This an action for damages arising from ScoreBig’s failure to pay its brokers for tickets for events listed on SeatGeek’s online ticket platform and related fraudulent misrepresentations. In breach of its contract with SeatGeek, ScoreBig has improperly failed to pay brokers for tickets for events listed on SeatGeek’s platform. As a result of ScoreBig’s delinquency, SeatGeek has had to intervene at its own expense to mitigate the risk that unpaid brokers will fail to fulfill orders for tickets to the detriment of users of SeatGeek’s platform.

3. Moreover, ScoreBig, through its agents and officers including defendants David Goldberg and Tyler Honaker, has exacerbated this problem by making fraudulent misrepresentations to SeatGeek, including misrepresentations that brokers' fees had been paid when in reality they had not been. In reliance on these false statements, SeatGeek continued to list ScoreBig's tickets on SeatGeek's platform and unwittingly increased its exposure to the risk of ticket orders not being fulfilled.

4. In order to redress this misconduct, SeatGeek asserts legal claims for breach of contract against ScoreBig and fraud and promissory estoppel against defendants ScoreBig, David Goldberg, and Tyler Honaker.

### **THE PARTIES**

5. Plaintiff SeatGeek is a corporation organized under the laws of the State of Delaware that has its principal place of business at 400 Lafayette Street, New York, New York 10003.

6. Defendant ScoreBig is a corporation organized under the laws of the State of Delaware that has its principal place of business at 1800 N. Highland Avenue, 1<sup>st</sup> Floor, Los Angeles, California 90028.

7. Defendant David Goldberg is a natural person residing at 5600 Durbin Road, Bethesda, MD. At all relevant times, Goldberg was CEO of ScoreBig.

8. Upon information and belief, defendant Tyler Honaker is a natural person residing in Los Angeles, California. At all relevant times, Honaker was Senior Manager – Finance & Accounting at ScoreBig.

## **JURISDICTION**

9. This Court has personal and subject matter jurisdiction over this action pursuant to CPLR § 301 and §§ 302(a)(1), 302(a)(2), 302(a)(3).

10. Venue is proper in New York County pursuant to CPLR §§ 503(a) and (c), because Plaintiff resides in New York County.

## **FACTS COMMON TO ALL CLAIMS**

### **SeatGeek's Relationship with ScoreBig**

11. Defendant ScoreBig is an online marketplace for tickets to sports, concerts, theater, and family events. ScoreBig sells tickets through its website, [www.scorebig.com](http://www.scorebig.com).

12. SeatGeek is an internet start-up company that operates a ticket search engine – found at [www.seatgeek.com](http://www.seatgeek.com) – that makes it easier for consumers to find live sports and entertainment tickets. The SeatGeek website searches dozens of ticket-selling sites, including the one operated by ScoreBig, and presents the search results to its users. Ticket providers like ScoreBig pay SeatGeek to search and list their ticket offerings.

13. The relationship between SeatGeek and ScoreBig is governed by a signed merchant agreement (the “Merchant Agreement”), dated January 20, 2014. Pursuant to the Merchant Agreement, ScoreBig pays SeatGeek a certain amount of money if a customer buys one of its tickets from SeatGeek’s platform.

14. The Merchant Agreement contains provisions that protect SeatGeek from damages resulting from misleading or inaccurate ticket listings from ScoreBig that appear on SeatGeek’s website.

15. In Section 5.2 of the Merchant Agreement, ScoreBig “warrants that it shall use commercially reasonable efforts to ensure that the event, pricing, and ticket information

provided by Merchant to SeatGeek . . . will be accurate and truthful and will not be deceptive in any respect.”

16. In Section 6.2, entitled Additional Merchant Obligations, ScoreBig acknowledges that it “has the sole right and responsibility to process all orders from Users referred to the Merchant [ScoreBig] Website from the SeatGeek Website, including User claims such as those for refunds, non-receipt of tickets and counterfeit tickets.”

17. Section 11 of the Merchant Agreement, entitled Indemnification, states:

Merchant [ScoreBig] shall indemnify, defend and hold harmless SeatGeek . . . from any and all liability, damage, or expense (including reasonable attorneys’ fees) under any claim or suit brought by a third party arising out of products or services sold or offered by Merchant, or arising out of a breach, or alleged breach, of any of Merchant’s representations, warranties or obligations herein or on the Merchant Website, including but not limited to . . . (b) a claim by any third party that any ticket listed by Merchant on the SeatGeek Website was created, obtained or sold by any party in violation of any federal, state or local law or regulation, (c) any inaccurate, deceptive, or misleading information provided to SeatGeek or Users by Merchant . . . and (d) Merchant’s result to honor terms set forth on the SeatGeek Website.

### **ScoreBig Fails to Compensate Its Brokers and Breaches the Merchant Agreement**

18. ScoreBig obtains many of the tickets that it sells from a network of professional ticket sellers, commonly referred to as brokers. ScoreBig is contractually obligated to compensate its brokers for the tickets that it obtains from them. These brokers are typically paid from the proceeds of the sale of the ticket to a purchaser.

19. Pursuant to the Merchant Agreement, ScoreBig lists tickets that it obtains from its brokers on SeatGeek’s website.

20. In or around early 2016, ScoreBig began experiencing financial difficulties resulting from its failure to obtain anticipated financing. As a result, over the course of the year, ScoreBig stopped paying some of its brokers for tickets that it had received from them.

ScoreBig adopted the practice, unknown to its brokers or SeatGeek, of misappropriating proceeds from selling a particular broker's tickets for other purposes without first compensating the broker.

21. As a result of ScoreBig's failure to compensate its brokers for tickets that they had provided to ScoreBig, a number of brokers have filed a class action lawsuit against ScoreBig which is pending in California, *Eric Fuller v. ScoreBig, Inc.*, Superior Court of California, Los Angeles County, Case No. BC-635733.

22. ScoreBig's failure to pay its brokers created a risk that the unpaid brokers would retaliate by either failing to deliver purchased tickets to their purchasers or by invalidating tickets that had already been delivered. As a result, SeatGeek faced the danger that its users had purchased tickets through ScoreBig that would either never be delivered or would not be accepted when presented at the venue. Such failures would have disastrous consequences for customers that used SeatGeek to purchase tickets, leaving SeatGeek with no choice but to intervene at its own expense to protect these customers.

23. ScoreBig's failure to compensate its brokers was a breach of the Merchant Agreement. ScoreBig warranted that it would use "commercially reasonable efforts" to ensure that its ticket information would be "accurate and truthful and will not be deceptive in any respect." ScoreBig was obligated to address claims relating to the "non-receipt of tickets." ScoreBig was further obligated to indemnify SeatGeek for any damages or expenses caused by any breach of ScoreBig's warranties or obligations or any "inaccurate, deceptive, or misleading information" provided by ScoreBig to SeatGeek's users. By listing tickets that it had not and did not intend to timely pay its brokers for, which consequently carried a risk of being undelivered or

canceled by the broker, ScoreBig presented inaccurate, deceptive, and misleading information to SeatGeek's users in breach of the Merchant Agreement.

**Defendants Exacerbate ScoreBig's Contractual Breach Through Misrepresentations to SeatGeek**

24. In February 2016, SeatGeek confronted ScoreBig about its failure to pay overdue invoices due to SeatGeek. These invoices were for SeatGeek's share of ticket proceeds from sales that ScoreBig made through SeatGeek's website. SeatGeek and ScoreBig continued to discuss these unpaid invoices over the next several months.

25. The Merchant Agreement provides that SeatGeek can stop listing ScoreBig's tickets on SeatGeek's website in the event that ScoreBig fails to timely pay SeatGeek's invoices.

26. In order to induce SeatGeek to continue listing its tickets, ScoreBig misrepresented to SeatGeek that it had sent a payment check in the mail.

27. Specifically, on April 11, 2016, Travis Reinhard ("Reinhard"), an employee in ScoreBig's finance group, misrepresented by email to Becca Simmons, Senior Accounting Manager at SeatGeek, that ScoreBig had sent a check in the mail to pay for the long past due January 2016 invoice. Upon information and belief, this was not a true statement, as no such check had been sent. SeatGeek never received the referenced check in the mail.

28. As the promised check was never received, SeatGeek confronted ScoreBig again about the unpaid invoices in mid-May 2016. On or around May 13, 2016, ScoreBig finally managed to pay the invoices due to SeatGeek that were due and owing as of that time.

29. In reliance on ScoreBig's misrepresentation, SeatGeek continued to list ScoreBig's tickets on its website after April 11, 2016. Had ScoreBig informed SeatGeek of the truth – that ScoreBig was having financial difficulties, was having trouble paying vendors, and that there was no proverbial "check in the mail" – SeatGeek would have removed ScoreBig from

its website at that time and would not have risked further exposure to problems arising from ScoreBig's ticket listings.

30. During the conversations between SeatGeek and ScoreBig in May 2016 regarding unpaid SeatGeek invoices, SeatGeek also asked ScoreBig about its ability to timely pay its brokers.

31. In response to SeatGeek's inquiries about broker payment, ScoreBig lied to SeatGeek. ScoreBig repeatedly made misrepresentations to SeatGeek about how its brokers had all been paid, when in reality they had not been. Specifically, these misrepresentations include, but are not limited to, the following statements:

- In a May 17, 2016 email to Russell D'Souza at SeatGeek, defendant Goldberg wrote with respect to broker compensation: "We continue to be on track as I said earlier whereby 95% to possibly 100% will be made this week (keeping everyone current)." Upon information and belief, this was a false statement, as ScoreBig was not "on track" to compensate all or substantially all of its broker fees at that time and in fact did not do so and did not intend to do so.
- In an email by defendant Honaker on June 10, 2016 to Becca Simmons at SeatGeek, Honaker wrote: "Confirming as well there are no overdue broker payments." Upon information and belief, this was a false statement, as ScoreBig had unpaid broker fees outstanding at that time.
- On or around August 8, 2016, Becca Simmons at SeatGeek spoke on the telephone with Goldberg. On that call, Goldberg misrepresented that ScoreBig had paid brokers in full through June 30, 2016 and had paid

most of the broker fees for the month of July 2016. Upon information and belief, these were false statements, as ScoreBig had not paid these broker fees as stated.

32. In reliance on these false statements, SeatGeek continued to list ScoreBig's tickets on SeatGeek's platform and unwittingly increased its exposure to the risk of ticket orders not being fulfilled.

33. On or around September 12, 2016, SeatGeek learned that ScoreBig in fact had not paid its brokers as Defendants had represented and promised to SeatGeek. In the course of a conversation with ScoreBig about how ScoreBig's negotiations with a potential acquirer had fallen apart, ScoreBig disclosed its problems with broker non-payment to SeatGeek.

#### **SeatGeek Suffers Damages as a Result of ScoreBig's Failure to Pay Its Brokers**

34. As a result of ScoreBig's ongoing failure to pay its brokers, SeatGeek has had to make payments to these brokers in the amount of \$649,549, in order to prevent its users from facing an unacceptable risk of unfulfilled orders on purchased tickets.

35. When SeatGeek could not get in touch with a broker, a broker refused to accept SeatGeek's payment, or a broker already issued new tickets, SeatGeek had to purchase new tickets for customers out of pocket. To date, SeatGeek has made payments in \$69,539 in replacement tickets for customers that were unable to receive their tickets as a result of ScoreBig's failure to pay its brokers. If SeatGeek had not made these payments, thousands of customers would have endured the worst possible outcome on a ticket purchase: attempting to enter events they had paid for with invalid tickets. SeatGeek expects to continue making such payments for replacement tickets into the future.

36. SeatGeek has also refunded ticket purchases for other customers affected by ScoreBig's non-payment, at further expense to SeatGeek.

37. Despite SeatGeek's efforts to avert the crisis created by ScoreBig, SeatGeek has also suffered significant damage to its reputation. SeatGeek did not know about every compromised ticket order and there were customers who showed up to events and were turned away because the unpaid brokers had canceled their tickets. Some of these customers took to social media and complained, hurting SeatGeek's otherwise strong reputation for being consumer-friendly.

38. As a direct result of ScoreBig's misrepresentations and contractual breaches, SeatGeek has had to divert significant resources across the entire company that could have been used for other purposes. Customer support, marketing, and inventory teams were forced to abandon existing projects to spend several weeks negotiating deals with brokers and securing tickets. For a fast-growing Internet startup like SeatGeek, such interference with its ordinary course of business is extremely costly.

**FIRST CLAIM FOR RELIEF**  
**BREACH OF CONTRACT**  
**(Against ScoreBig)**

39. Plaintiff repeats and re-alleges each of the foregoing paragraphs as if fully set forth herein.

40. Plaintiff has substantially performed its obligations under the Merchant Agreement by, among other things, listing ScoreBig's ticket offerings on SeatGeek's website in accordance with the terms agreed upon.

41. ScoreBig breached its warranties and obligations under the Merchant Agreement by providing inaccurate, deceptive, or misleading ticket information to SeatGeek's users.

Specifically, ScoreBig deceptively listed tickets that it knew had a significant risk of being undelivered or canceled due to ScoreBig's failures to timely compensate its brokers.

42. ScoreBig is further liable to SeatGeek under the Merchant Agreement's indemnification provision for damages and expenses that SeatGeek has incurred as a result of ScoreBig's failure to timely compensate its brokers.

43. As a direct and proximate result of Defendants' breaches, Plaintiff has suffered damages in an amount to be determined at trial, but in no event less than \$2,000,000.

**SECOND CLAIM FOR RELIEF**  
**FRAUD**  
**(Against All Defendants)**

44. Plaintiff repeats and re-alleges each of the foregoing paragraphs as if fully set forth herein.

45. As alleged above, Defendants have made multiple misrepresentations to ScoreBig regarding both the payment of SeatGeek's invoices and the payment of ScoreBig's ticket brokers.

46. Defendants made these misrepresentations with the intent to deceive SeatGeek.

47. SeatGeek justifiably and reasonably relied on Defendants' misrepresentations in continuing to list ScoreBig's tickets on SeatGeek's website. Had SeatGeek known the truth about these misrepresentations, it would not have continued doing business with ScoreBig.

48. As a direct and proximate result of Defendants' fraudulent misrepresentations, SeatGeek has suffered damages resulting from its listing of ScoreBig tickets that were at risk of being undelivered or canceled due to ScoreBig's failure to pay its brokers. These damages include, but are not limited to, SeatGeek's payments to brokers, purchases of replacement tickets

for customers, customer refunds, reputational damage with customers and advertisers, damages from having to divert company resources to address these issues, and attorneys' fees.

49. Plaintiff has suffered damages from Defendants' fraud in an amount to be determined at trial, but in no event less than \$2,000,000.

**THIRD CLAIM FOR RELIEF**  
**Promissory Estoppel**  
**(Against All Defendants)**

50. Plaintiff repeats and re-alleges each of the foregoing paragraphs as if fully set forth herein.

51. Defendants made the following unambiguous promises to ScoreBig regarding both the payment of SeatGeek invoices and the payment of ScoreBig's ticket brokers, including but not limited to the following.

52. On April 11, 2016, Travis Reinhard, speaking on behalf of ScoreBig, stated by email to Becca Simmons at ScoreBig, that ScoreBig had sent a check in the mail to pay for the long past due January 2016 invoice.

53. As set forth in paragraph 31 above, Defendants also made several promises to SeatGeek that its brokers had been paid.

54. Defendants made these promises with the intent to induce SeatGeek to continue listing ScoreBig's tickets on SeatGeek's website.

55. In reliance upon these promises, SeatGeek did continue to list ScoreBig's tickets on SeatGeek's website.

56. SeatGeek's reliance on these promises was reasonable and foreseeable.

57. As a direct and proximate cause of its reliance on these promises, Plaintiff has suffered damages in an amount to be determined at trial, but in no event less than \$2,000,000.

**DEMAND FOR RELIEF**

WHEREFORE, Plaintiff SeatGeek, Inc. prays for relief jointly and severally against Defendants ScoreBig, Inc., David Goldberg, and Tyler Honaker:

1. granting Plaintiff damages in an amount to be proven at trial, but no less than \$2,000,000; and
2. granting Plaintiff such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
December 30, 2016

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