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**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

<p>QUALTRICS, LLC, a Delaware limited liability company,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>SME ENTERTAINMENT GROUP, LLC, a Delaware limited liability company,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">COMPLAINT</p> <p style="text-align: center;">Case No.</p>
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Plaintiff Qualtrics, LLC (“Qualtrics”), by and through the undersigned counsel, brings this complaint for declaratory relief against defendant SME Entertainment Group, LLC (“SME”), and alleges as follows:

NATURE OF THE ACTION

On March 3, 2020, Qualtrics announced the postponement of its X4 Experience Management Summit (“X4”) that was scheduled to be attended by up to 16,000 people on March

10-13, 2020 in Salt Lake City, Utah. Qualtrics postponed X4 because of the rapidly spreading novel coronavirus (COVID-19) pandemic and the health risks posed to attendees who would be in close proximity to each other in large groups for extended periods of time. Qualtrics made this decision after carefully considering information provided by the Centers for Disease Control and Prevention (CDC), the Utah Department of Health, the World Health Organization (“WHO”) and other experts on epidemiology and disease prevention. The vast majority of the participants and presenters engaged for X4 supported Qualtrics’ decision and are working with Qualtrics to reschedule their participation.

SME, by contrast, has refused to do so. SME and Qualtrics entered into an agreement to secure the participation of the band “The Killers” as entertainment for the attendees during the conference for Thursday, March 12, 2020. [REDACTED]

[REDACTED] Consistent with its requests to other X4 participants, Qualtrics asked SME to postpone The Killers’ performance. SME and The Killers refused to cancel (or postpone) their performance and, instead, insist on full payment, claiming that there is no health risk sufficient to justify cancelation under the agreement. Qualtrics disagrees and asks this Court to declare that (1) [REDACTED], and that Qualtrics has properly exercised its rights to do so under the agreement and (2) because Qualtrics properly exercised its rights under the agreement, both parties’ obligations [REDACTED].

THE PARTIES

1. Plaintiff Qualtrics, LLC is a Delaware limited liability company, having a principal place of business at 333 W. River Park Dr., Provo, Utah. The members of Qualtrics are Qualtrics Int'l Inc. and Q(AGF2) Inc., which are both Delaware corporations.

2. On information and belief, defendant SME Entertainment Group, LLC is a Delaware limited liability corporation, having a principal place of business at 1100 Glendon Avenue, Suite 200, Los Angeles, California. The sole managing member of SME is Corey Shapoff who, upon information and belief, is a citizen of California with an address of 1100 Glendon Avenue, Suite 200, Los Angeles, California.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over the claims in this action pursuant to 28 U.S.C. §§ 1332 and 2201 because diversity of citizenship exists between Qualtrics and SME, the amount in controversy under the agreement exceeds the sum or value of \$75,000, and there is an actual and continuing controversy between Qualtrics and SME.

4. This Court has personal jurisdiction over SME because of its continuing and systematic contacts within the State of Utah, including specific actions of negotiating and entering into the agreement with Qualtrics that was to be performed in Utah. Moreover, on information and belief, SME has transacted business in Utah by advertising and offering its services in Utah.

5. Venue is proper in the District of Utah pursuant to 28 U.S.C. § 1391(b) and (c) because a substantial part of the events or omissions giving rise to the claim occurred in this

district and because SME's contacts with this jurisdiction are sufficient to subject it to personal jurisdiction in Utah.

GENERAL ALLEGATIONS

A. The 2020 X4 Summit and the Outbreak of the Coronavirus Pandemic

6. Since 2014, Qualtrics has organized and conducted its X4 Experience Management Summit in Salt Lake City, Utah. X4 draws thousands of attendees and participants from across North America and around the globe, and includes globally-renowned speakers and performers. X4 is widely regarded as a cutting-edge, industry-standard setting event.

7. Qualtrics intended its 2020 X4 Summit to continue in that tradition and began planning or organizing for it in early 2019.

8. On December 31, 2019, the Chinese government notified the World Health Organization ("WHO") that several "flu-like" patients had been identified and quarantined while the local health authorities sought to trace the source of the flu.

9. By January 7, 2020, Chinese authorities identified the virus, called "coronavirus," which was a family of viruses including the common cold, SARS and MERS. The new virus was initially named "2019-nCoV."

10. Within two weeks, the new virus had been identified in patients in South Korea, Thailand, Japan, and the United States. In addition, China began reporting fatalities associated with the virus. By January 29, 2020, the new virus had spread to Europe, the Middle East, Mexico and Canada. The international death toll had risen to 132 individuals.

11. On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the COVID-19 outbreak a “public health emergency of international concern.”

12. One day later, on January 31, 2020, U.S. Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the United States to aid the nation’s healthcare community in responding to COVID-19.

13. By February 24, 2020, the U.S. Centers for Disease Control and Prevention (CDC) reported that there were 53 cases of COVID-19 in the United States.

14. By February 28, 2020, the CDC reported that Oregon and California were reporting new cases of “community spread” COVID-19 where the patients had not been in contact with any known infected person, or traveled to any location known to have infected persons.

15. During February 2020, numerous governments and health care experts began recommending that individuals engage in preventative activities, such as washing hands regularly, avoiding unnecessary travel and avoiding attending large-scale group gatherings to limit the spread of the highly contagious COVID-19.

16. On February 29, 2020, the first U.S. citizen died of the virus and the United States increased its travel restrictions beyond mainland China to include South Korea, Iran and Italy due to the increasing number of cases in those countries.

17. On March 2, 2020, the death toll in the United States had risen to 6 people with 91 individuals confirmed as infected.

18. On March 3, 2020, in response to this global pandemic and rapid spread of COVID-19, and in consultation with medical and government experts, Qualtrics determined that it would postpone the 2020 X4 Summit and publicly announced that decision to its attendees and participants. Qualtrics made this decision to protect the health and safety of its attendees and participants, as well as the general public, to prevent the spread of COVID-19.

19. On March 6, 2020, Utah Governor Gary R. Herbert issued an executive order declaring a state of emergency in response to the evolving outbreak of COVID-19. Governor Herbert stated that his executive order was part of Utah's preparedness plan and was issued at the unanimous recommendation of the Utah COVID-19 Task Force. The task force is led by Lt. Governor Spencer J. Cox and includes public health officials and health representatives from the private sector, as well as business, education, and community leaders.

20. Only hours after Governor Herbert declared the state of emergency on March 6, 2020, the first Utahn was diagnosed with COVID-19.

21. Salt Lake County Mayor Jenny Wilson likewise declared a State of Emergency for Salt Lake County on March 6, 2020.

22. Since the outbreak of the COVID-19 global pandemic, numerous conferences and events, including business conferences, music festivals and other large-scale group activities have been cancelled in an attempt to reduce the spread of COVID-19 both to the attendees at those events as well as the general public.

B. The Agreement between Qualtrics and SME

23. On November 26, 2019, prior to the outbreak of COVID-19, Qualtrics entered into an agreement with SME to secure The Killers to perform at X4 (the "Agreement") (filed

under seal as Exhibit A). The Agreement contained a confidentiality provision related to the terms of the Agreement.

24. The Agreement provided that Qualtrics [REDACTED]
[REDACTED] See Agreement at 3.

25. The Agreement also contained [REDACTED]
[REDACTED]

26. Specifically, the Agreement provided:

[REDACTED]

Id. ¶ 6 (emphasis added).

27. On March 3, 2020, Qualtrics informed SME that it wanted to postpone and reschedule The Killers' performance at X4.

28. SME and, upon information and belief, The Killers have rejected that request and, instead, have insisted on performing at X4.

29. In response, Qualtrics asserts its rights under the Agreement to cancel The Killers' engagement because, [REDACTED], Qualtrics believes that the

performance would be [REDACTED] for the attendees at X4 and the general public.

30. Under the Agreement, [REDACTED]
[REDACTED].

FIRST CLAIM FOR RELIEF

(Declaratory Judgment – Qualtrics Properly Exercised its Good Faith Judgment)

31. Qualtrics incorporates the allegations above as if fully set forth herein.

32. There presently exists an actual and continuing controversy between Qualtrics, on one hand, and SME, on the other hand, concerning whether Qualtrics has the right to cancel The Killers' engagement to perform at the 2020 X4 Summit as a result of the health risks posed by the COVID-19 pandemic.

33. As part of that actual and continuing controversy, SME asserts that the COVID-19 pandemic does not pose sufficient health risks, and that airlines are still flying to Salt Lake City and that local hotels and airlines are "not accepting cancellations or providing refunds." Specifically, SME contends that "we are generally proceeding with our events unless they are specifically shut down by the authorities." SME and The Killers demand payment under the Agreement and deny that Qualtrics can exercise its rights to cancel the engagement under the Agreement.

34. Qualtrics contends that the Agreement specifically provides it the right to cancel the performance if Qualtrics determines [REDACTED]

[REDACTED] On March 3, 2020, Qualtrics made that determination based

upon expert advice regarding the spread and risks posed by COVID-19 to its attendees and the general public.

35. Based on the foregoing, Qualtrics seeks declaratory relief from this Court to determine the rights and obligations of the parties under the Agreement as alleged in this Complaint and set forth in the Prayer for Relief.

SECOND CLAIM FOR RELIEF

(Declaratory Judgment – Qualtrics’ Obligations under the Agreement Are Waived)

36. Qualtrics incorporates the allegations above as if fully set forth herein.

37. There presently exists an actual and continuing controversy between Qualtrics, on one hand, and SME, on the other hand, concerning whether Qualtrics has any remaining obligations under the Agreement if it properly exercises its rights to cancel the engagement [REDACTED]

[REDACTED]

38. Qualtrics contends that the Agreement states that [REDACTED] [REDACTED] if Qualtrics properly exercises its rights to cancel the engagement as alleged in the First Cause of Action.

39. SME contends that Qualtrics cannot cancel the The Killers’ engagement under the Agreement and, therefore, Qualtrics is not relieved of its obligations under the Agreement, including its obligation to pay the entire amount due under the Agreement.

40. Based on the foregoing, Qualtrics seeks declaratory relief from this Court to determine the rights and obligations of the parties under the Agreement as alleged in this Complaint and set forth in the Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, Qualtrics prays for judgment against SME as follows:

A. **On Plaintiff's First Claim for Relief:** For a declaratory judgment from this Court that [REDACTED], and that Qualtrics has properly exercised its rights to do so under the Agreement.

B. **On Plaintiff's Second Claim for Relief:** For a declaratory judgment from this Court that, because Qualtrics properly exercised its rights under the Agreement, both parties' obligations [REDACTED].

C. For such other and further relief as the Court may deem appropriate.

DATED this 12th day of March, 2020.

RAY QUINNEY & NEBEKER, P.C.

/s/ Justin T. Toth
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Beth J. Ranschau

Attorneys for Plaintiff Qualtrics LLC