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'Pokémon Go' Maker Catches Lawsuit Over Botched Festival

By **Hannah Meisel**

Law360, Springfield (July 27, 2017, 10:13 PM EDT) -- A California man who traveled to Chicago for the first-ever Pokémon Go Fest is suing the developer of the augmented reality video game, claiming the company was negligent in setting up the event that saw 20,000 players gather from around the world only to be met with outages when trying to play the game.

Named plaintiff Jonathan Norton filed the suit in Cook County Circuit Court on Thursday, alleging he and the estimated 20,000 members of the putative class were victims of false advertising due to the many shortfalls of the festival put on by Silicon Valley-based tech company Niantic Inc.

The Pokémon Go Fest, held in Chicago's Grant Park on Saturday, was billed as an opportunity for players of the popular mobile augmented-reality game to come together and catch rare Pokémon — the digital creatures whose capture is one of the objects of the game. But playing the game requires massive amounts of cellular data, and within a few hours of the event's start, it was clear that too many players were attempting to play the game in one concentrated area, leading to major outages.

The complaint alleges that Niantic should have foreseen the issue, especially because large concerts, sporting events and music festivals in the city pose a similar strain on cellular data networks. Additionally, the putative class alleges that large crowds of ticketholders were made to wait in extremely long lines outside Grant Park well after the 10 a.m. start time.

"Defendant knew, or should have known, that the aforementioned issues would manifest at the fest, but failed to disclose them to plaintiff and class members, and instead affirmatively misrepresented plaintiff's and class members' abilities to play the game at the fest as advertised," the complaint said.

Though some attendees paid hundreds for secondary-market tickets to the event, the ticket list price was \$20, which was eventually refunded to players this week after the fallout from the event. But Norton's attorney, Thomas Zimmerman of Zimmerman Law Offices PC, told Law360 on Thursday that the \$20, or even the \$100 credits Niantic put into players' accounts, were nothing compared to the travel expenses his client and many in the putative class incurred to attend Pokémon Go Fest.

"It was the whole experience of playing the game and catching these very rare Pokémon, and that was the reason people flew in from around the world for this," Zimmerman said. "They were not given what they were promised, so simply refunding the ticket price was not sufficient."

The seven-count complaint alleges violations of consumer protection laws of Illinois, California and Washington, in addition to charges of negligent misrepresentation and unjust enrichment on the part of Niantic, and it seeks actual and punitive damages plus attorneys' fees.

To illustrate the frustration attendees felt, the complaint includes a tweet from a user named @Rager67 that read, "Umm you know you have 75% of PAYING customers outside still? Probably 2-3 hours from getting in the very small park. What were you thinking?"

Zimmerman told Law360 on Thursday that Niantic should have planned better with the city of Chicago and major mobile phone networks, and called the whole festival a "fiasco."

"In an event such as this where you have 20,000 people packed into a densely packed area, you have to coordinate with the city and cellular data providers to ensure that there's enough bandwidth of all of the participants," Zimmerman said. "Moreover, Niantic's own software and its servers had technical problems so that was a further cause of the inability for the attendees to play the game. They had software glitches in their own system. It wasn't even tested properly."

Representatives for Niantic could not be reached for comment Thursday, but Niantic CEO John Hanke wrote on the company's blog Tuesday, saying he listened to the players he met Saturday and explaining the problem that exacerbated as the day wore on. Hanke identified a saturated cellular network and other server issues as the culprits for the outages, and he said he planned on learning from the experience for other planned "Pokémon Go" events in Japan and Europe.

"Last Saturday was not a happy day for us, but we are committed to listening to that feedback, however harsh, to improve what we do so that we can continue to build experiences that bring together people, technology and the real world in innovative ways," Hanke said.

Norton and the putative class are represented by Thomas Zimmerman, Sharon Harris, Matthew De Re, Nickolas Hagman and Maebetty Kirby of Zimmerman Law Offices PC.

Counsel information for Niantic was not immediately available Thursday.

The case is Norton et al. v. Niantic Inc., case number 2017-CH-10281, in Cook County Circuit Court.

--Editing by Aaron Pelc.