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Attorneys For Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ZHARIA CHARLES, individually and on behalf
of all other persons similarly situated,

Plaintiff,

v.

PEEK TRAVEL, INC.

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Zharia Charles (“Plaintiff”) brings this action on behalf of herself, and all others
2 similarly situated against Peek Travel, Inc. (“Defendant” or “Peek”). Plaintiff makes the following
3 allegations pursuant to the investigation of their counsel and based upon information and belief,
4 except as to the allegations specifically pertaining to themselves, which are based on personal
5 knowledge.

6 **NATURE OF THE ACTION**

7 1. For over a year, Defendant has been nickel and diming visitors of its various places
8 of entertainment in New York in violation of the New York Arts and Cultural Affairs Law §
9 25.07(4) and New York General Business Law § 349. Defendant Peek is a software-as-a service
10 company that integrates and designs a platform to purchase tickets to various places of
11 entertainment located in New York, including the Color Factory NYC, the Museum of Ice Cream,
12 the Inter_ Intermersive Art Museum, or the ARTECHOUSE.

13 2. The purchase flow “powered by Peek.com” remains substantially the same across
14 all places of entertainment that use Peek’s ticket purchasing platform. Whenever a consumer
15 selects an admission ticket on the website of these various places, she is quoted a fee-less price,
16 only to be ambushed by non-delineated “fees” at checkout, after clicking through the various
17 screens required to make a purchase. The fees are masked under the ambiguous category “Taxes &
18 Fees,” and Peek does not provide a breakdown of how much fees go to itself as opposed to the
19 place of entertainment, nor does it explain what the fees are for.

20 3. To make matters worse, the websites often include a countdown timer for the
21 consumer to complete the transaction. Because New York is a busy place, and because these
22 “taxes & fees” are only flashed *after* a consumer selects her ticket, Defendant can plausibly put its
23 consumers on a shot clock and tell them they need to act quick, because Defendant and these places
24 of entertainment cannot hold their admission time slot open forever. This cheap trick has enabled
25 Defendant to swindle substantial sums of money from its customers.

26 4. To stop this hustle, New York passed Arts and Cultural Affairs Law § 25.07(4),
27 which provides that “every operator or every operator’s agent of a place of entertainment ... or
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1 platform that facilitates the sale or resale of tickets ... shall disclose the total cost of the ticket,
2 inclusive of all ancillary fees that must be paid in order to purchase the ticket.” “Such disclosure of
3 the total cost and fees shall be displayed in the ticket listing *prior to* the ticket being selected for
4 purchase.” *Id.* (emphasis added). And “[t]he price of the ticket shall not increase during the
5 purchase process.” *Id.* This latest version of the law went into effect August 29, 2022. *See*
6 Exhibit A.

7 5. Moreover, Arts and Cultural Affairs Law § 25.07(4) provides that “every
8 operator ... of a place of entertainment ... shall disclose in a clear and conspicuous manner the
9 portion of the ticket price stated in dollars that represents a service charge, or any other fee or
10 surcharge to the purchaser.” *Id.*

11 6. For these reasons, Plaintiff seeks relief in this action individually, and on behalf of
12 all other ticket purchasers for all places of entertainment in the state of New York that use
13 Defendant’s ticket purchase platform, for actual and/or statutory damages, reasonable attorneys’
14 costs and fees, and injunctive relief under New York Arts and Cultural Affairs Law § 25.33 and
15 New York General Business Law § 349.

16 **JURISDICTION AND VENUE**

17 7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
18 1332(d) because there are more than 100 class members, and the aggregate amount in controversy
19 exceeds \$5,000,000.00, exclusive of interest, fees, and costs, and at least one class member is a
20 citizen of a state different from Defendant. Defendant sold at least 100,000 tickets to its place of
21 entertainment through its website during the applicable class period, and is liable for a minimum of
22 fifty dollars in statutory damages for each ticket sold.

23 8. This Court has personal jurisdiction over Defendant because Defendant is
24 headquartered in San Francisco, California.

25 9. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant’s
26 Color Factory NYC is located in this District.

1 **PARTIES**

2 10. Plaintiff Zharia Charles is an individual consumer who, at all times material hereto,
3 was a citizen and resident of Brooklyn, New York. Plaintiff purchased two admission tickets to
4 Color Factory NYC on October 29, 2023 through the website, <https://www.colorfactory.co/>. This
5 website used Defendant’s platform and Plaintiff Charles paid fees to Defendant. The transaction
6 flow process she viewed on the website was substantially similar as that depicted in Figures 1
7 through 6 in this complaint.

8 11. Defendant Peek Travel, Inc. is a Delaware corporation with its principal place of
9 business in San Francisco, California.

10 **RELEVANT FACTUAL ALLEGATIONS**

11 **Peek’s Ticket Purchase Platform on the Color Factory NYC Website**

12 12. When a person visits the website, <https://www.colorfactory.co/>, on the main page,
13 she can click the multi-colored “BUY TICKETS” button to select admission tickets to visit Color
14 Factory NYC on various dates. *See* Figure 1, next page.

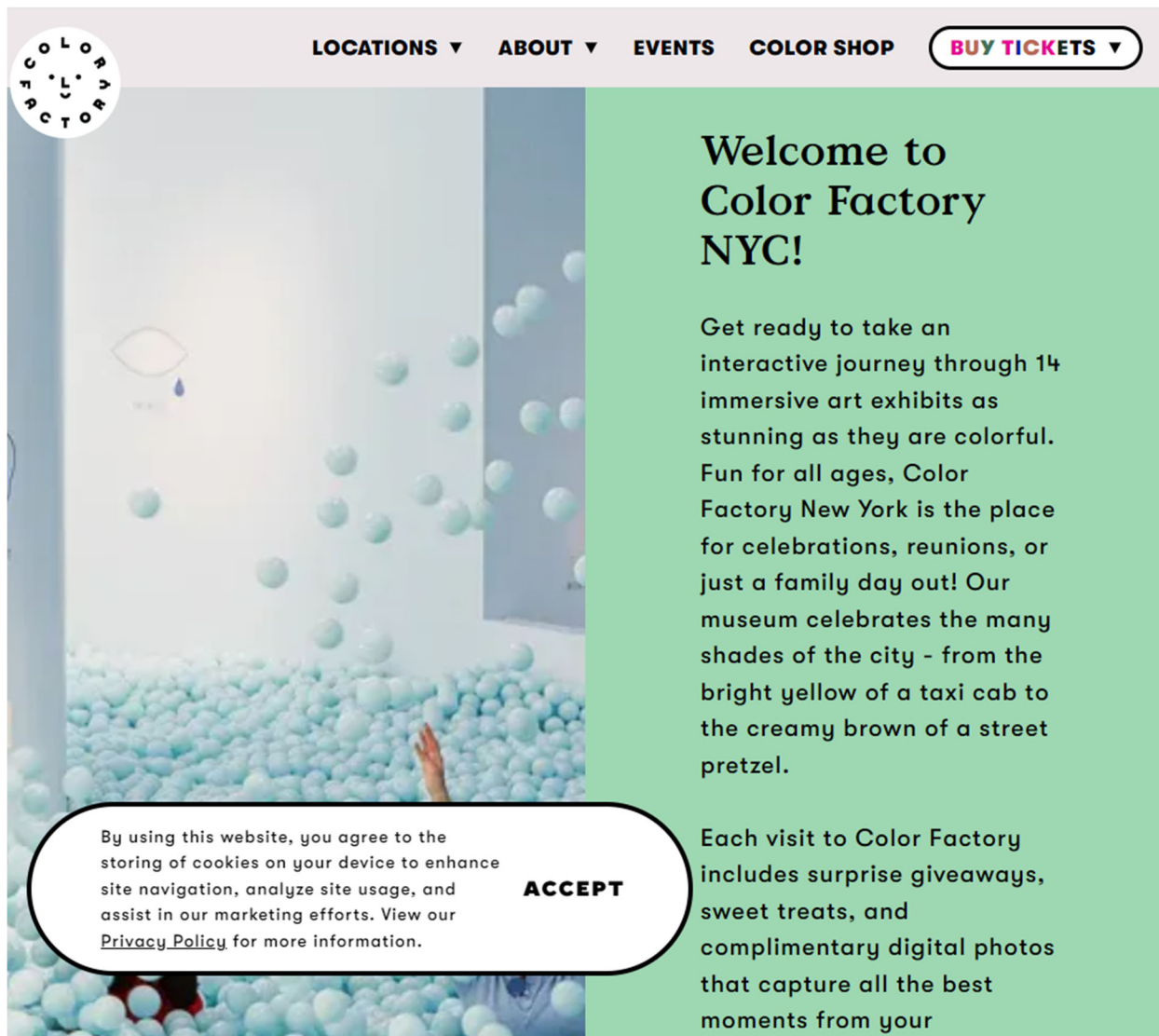


Figure 1

13. After a consumer selects the “BUY TICKETS” button, she is taken to a screen which provides a list of various museum admission dates, times, and prices. *See* Figure 2, next page. The “total cost” of any ticket, inclusive of fees, is not shown on this screen, in violation of New York Arts & Cultural Affairs Law § 25.07(4). *Id.* A ticket for admission at 11:45 a.m. on January 11, 2024 was quoted at “\$41.00.” *Id.*

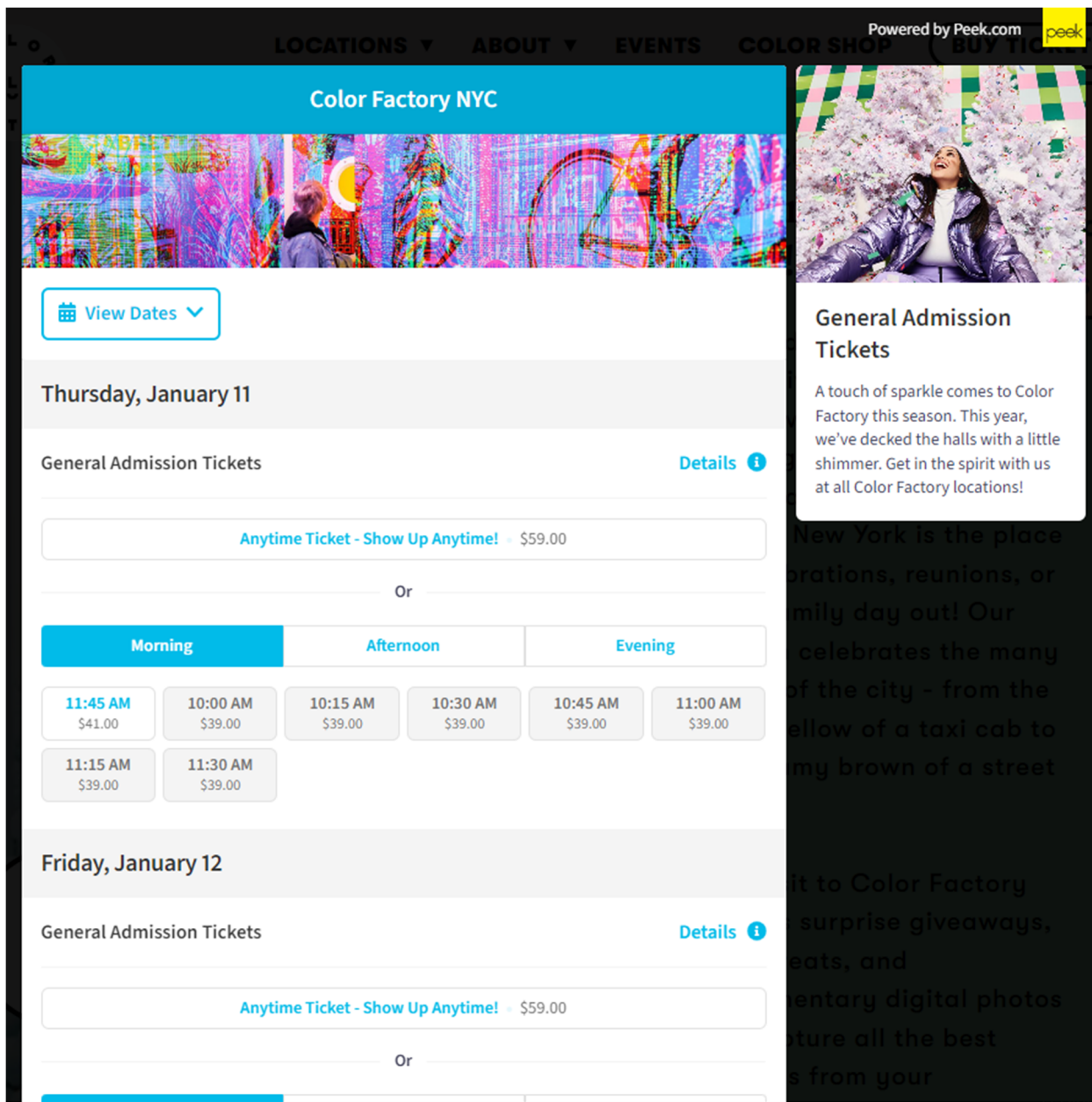


Figure 2

14. After a consumer clicks on the date and time of the ticket she wishes to purchase, a banner displays on the bottom of the page re-displaying the same “\$41.00” price, again failing to disclose ancillary fees, with a blue “Book Now” button. See Figure 3, next page.

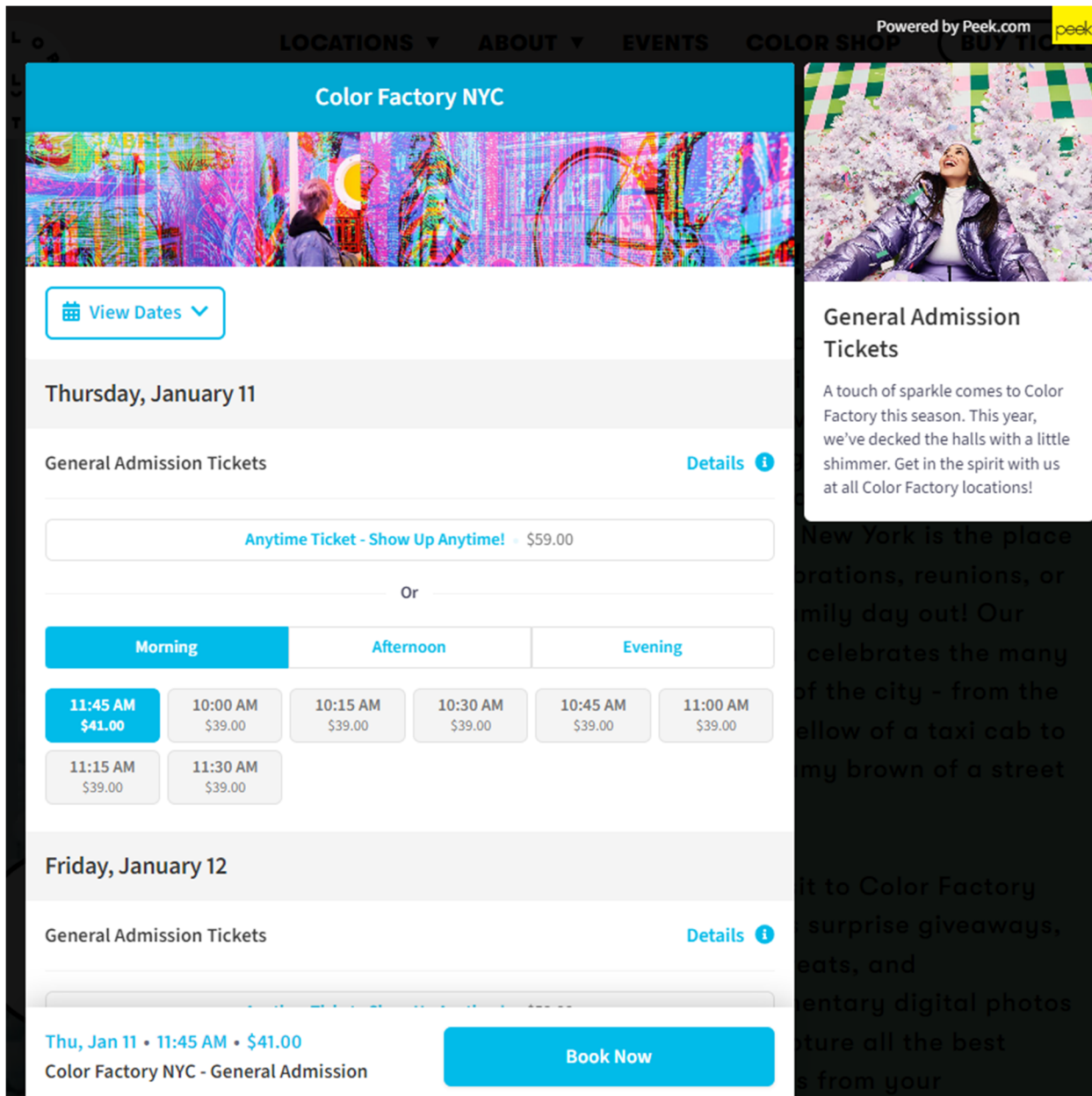


Figure 3

15. After a consumer clicks the “Book Now” button, she is taken to a screen re-
 displaying the same “\$41.00” price, again excluding ancillary fees, and requiring that the consumer
 input her name, phone number, and email address to continue the purchase process. See Figure 4,
 next page. This screen states that it is “powered by Peek.com,” which is operated by the Defendant.

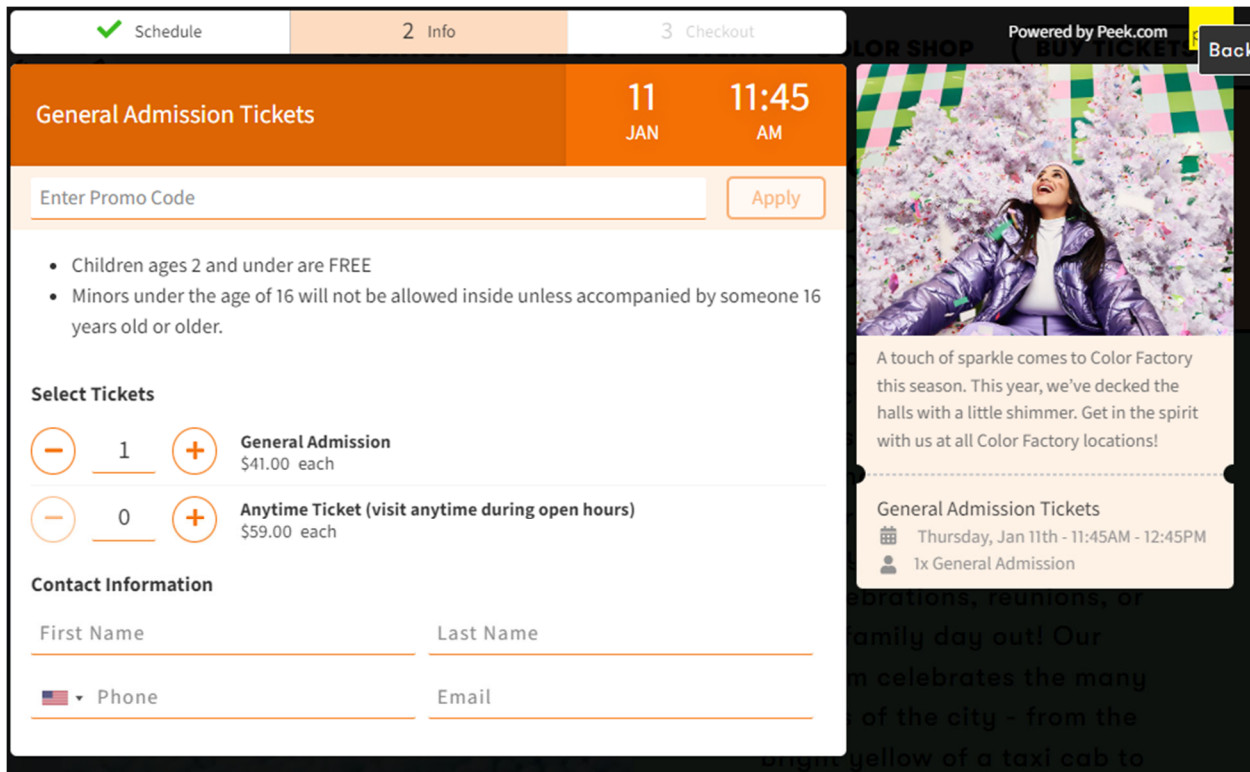


Figure 4

16. Once a consumer inputs her name, phone number, and email address, another banner appears requiring the customer to answer two questions before clicking a yellow “Continue” button. See Figure 5, next page. Again, the same “\$41.00” price is displayed, excluding ancillary fees. *Id.* This screen states that it is “powered by Peek.com,” which is operated by the Defendant.

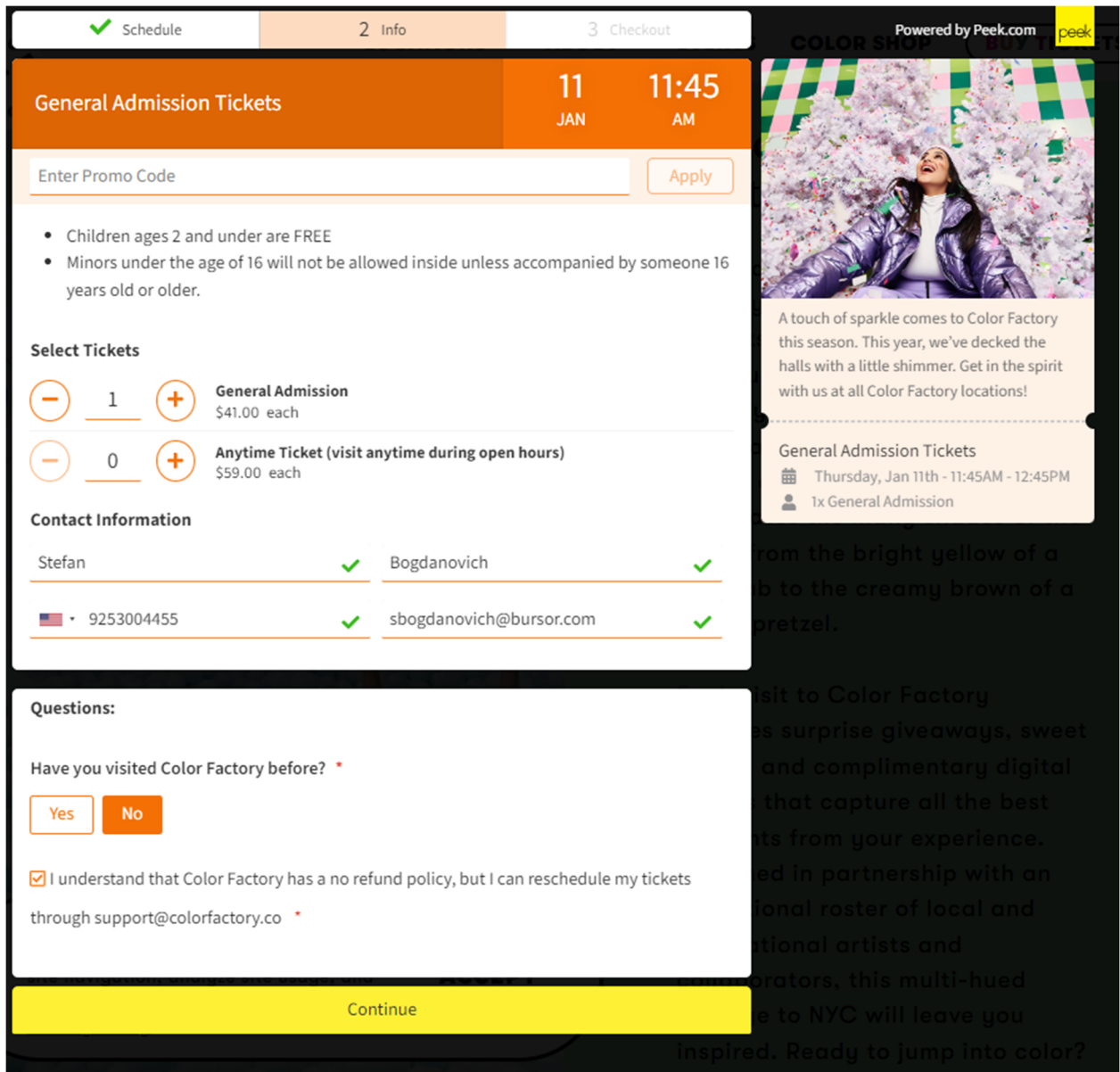


Figure 5

17. After the consumer clicks on the “Continue” button, a final checkout screen emerges, which requires the user to input her payment information, all while an 8-minute clock is ticking down. See Figure 6, next page. On the right-side of the same screen, the “TOTAL” ticket price is displayed, which, for admission at 11:45 a.m. on January 11, 2024, included an additional \$8.99 of “Taxes & Fees.” *Id.* This is the first time the screen makes mention of additional “fees.” This screen states it is “powered by Peek.com,” which is operated by the Defendant.

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✓ Schedule ✓ Info 3 Checkout Powered by Peek.com peek

Your Payment Information

Payment Options

Enter Promo Code / Gift Card Code / Store Credit

Or pay with card

link sbogdanovich@bursor.com

•••• 3104

Secure Credit Card Payment
This is a 2048-bit SSL Encrypted Payment

07:45 minutes to secure your booking

Stefan Bogdanovich
sbogdanovich@bursor.com
+1 925-300-4455

Tickets \$41.00
Taxes & Fees \$8.99

Total \$49.99

General Admission Tickets
Thursday, Jan 11th - 11:45AM - 12:45PM
1x General Admission \$41.00
[Change information](#)

Figure 6

18. As displayed in Figure 6, Defendant does not delineate how much of the additional \$8.99 is allocated to taxes versus fees. *Id.* That information is never made available to the consumer, even after she completes the checkout process and purchases a ticket.

19. Assuming Defendant levies the correct 8.875% New York City sales and use tax¹, the price in Figure 6 represents approximately \$5.36 in ancillary fees.

20. Because this screen is “Powered by Peek.com,” Defendant collects the funds from the consumer directly, and thereafter disburses it to Color Factory, LLC the operator of the Color Factory NYC.

Peek’s Ticket Purchase Platform on the Museum of Ice Cream NYC Website

¹ <https://www.nyc.gov/site/finance/business/business-nys-sales-tax.page> (last visited Jan. 12, 2024).

21. When a person visits the website, www.museumoficecream.com, on the main page, she can click the red “Reserve Tickets” button to select admission tickets to visit Defendant’s Museum of Ice Cream in New York City on various dates. See Figure 7.

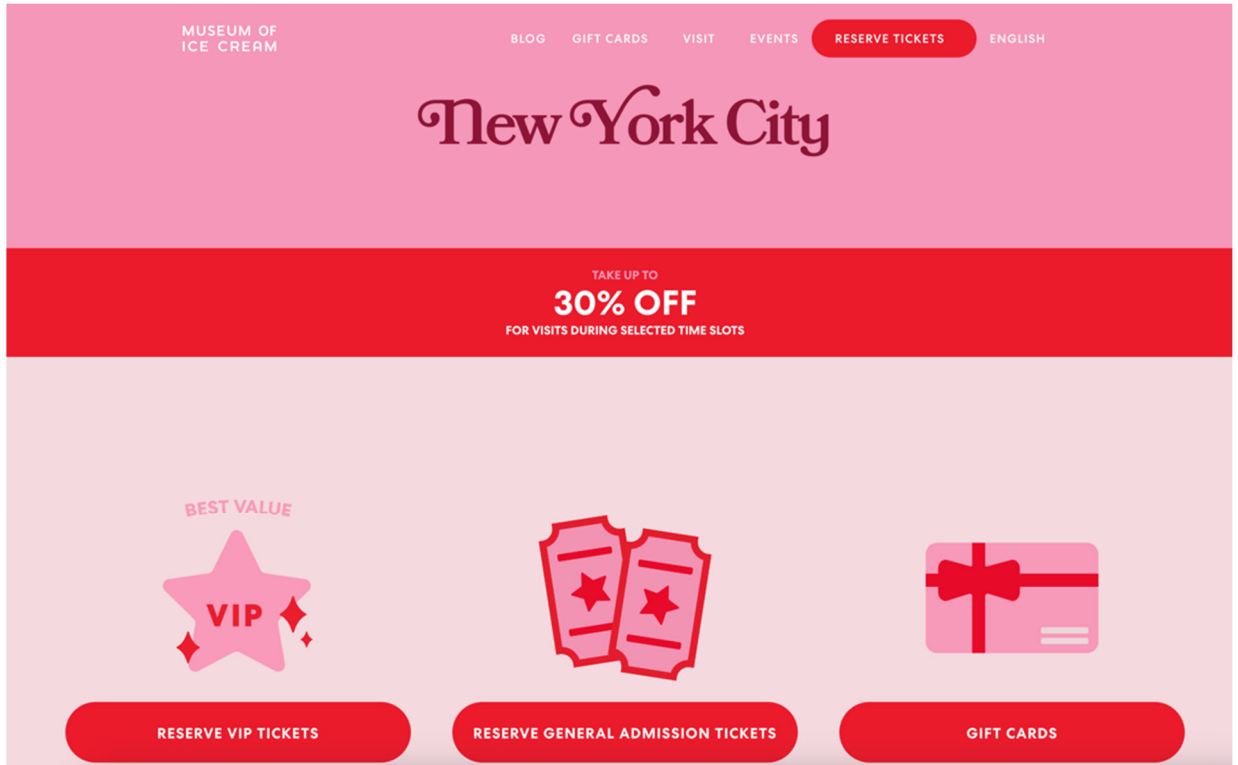


Figure 7

22. After a consumer selects the “RESERVE VIP TICKETS” or the “RESERVE GENERAL ADMISSION TICKETS” button, she is taken to a screen which provides a list of various museum admission dates, times, and ticket prices. The screen purports to provide the total cost of the ticket, listing a dollar amount under the time the consumer selects. See Figure 8, next page. However, the real “total cost” of any ticket, inclusive of fees, is not shown on this screen, in violation of New York Arts & Cultural Affairs Law § 25.07(4). *Id.* This screen states it is “powered by Peek.com,” which is operated by the Defendant.

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Museum of Ice Cream - NYC

MUSEUM OF ICE CREAM
New York City

Powered by Peek.com peek

View Dates

Tuesday, January 23 Sold Out

Wednesday, January 24

NYC General Admission: Available starting from January 18th. Ticket prices may vary based on demand and availability Details

Morning		Afternoon		Evening	
12:00 PM \$36.00	12:30 PM \$36.00	1:00 PM \$42.00	1:30 PM \$42.00	2:00 PM \$42.00	2:30 PM \$42.00
3:00 PM \$42.00	3:30 PM \$42.00	4:00 PM \$42.00	4:30 PM \$42.00		

Thursday, January 25

NYC General Admission: Available starting from January 18th. Ticket prices Details

Wed, Jan 24 • 4:00 PM • \$42.00
General Admission Book Now

Figure 8

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23. After a consumer clicks on the “Book Now” button in Figure 8, she is taken to another page which displays the date and time that she selected to visit the museum, as well as the cost of the ticket. See Figure 9-A, next page. The page also requests the consumer put in her personal and contact information. *Id.* The total cost of the ticket is also not displayed on this page. *Id.* This screen states it is “powered by Peek.com,” which is operated by the Defendant.

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✓ SCHEDULE 2 INFO 3 CHECKOUT Powered by Peek.com peek

NYC GENERAL ADMISSION: AVAILABLE 24 4:00
STARTING FROM JANUARY 18TH. TICKET JAN PM
PRICES MAY VARY BASED ON DEMAND AND
AVAILABILITY

FOR AN ENHANCED EXPERIENCE, PLEASE SELECT ☆VIP TICKET☆

Enter Promo Code APPLY

Select # of Guest(s):

− 1 + General Admission ⓘ
\$42.00 per person

Contact Information

First Name Last Name

Phone Email

Continue

Connect with your family & friends or rediscover your inner child on a colorful journey through Museum of Ice Cream.

What to expect:

UNLIMITED ice cream treats

Themed **crafts & activities**

Countless interactive **installations**

Our world-famous **Sprinkle Pool**

Experience the best time and create unforgettable memories at the sweetest place on earth!

NYC General Admission: Available starting from January 18th. Ticket prices may vary based on demand and availability

📅 Wednesday, Jan 24th - 4:00PM - 5:00PM

👤 1x General Admission

17 **Figure 9-A**

18 24. *Only if* the consumer clicks on or hovers over the small red “i” icon on the page,
19 does the website inform her that “the displayed ticket price is pre-ticketing fees.” *See* Figure 9-B,
20 next page. Even still, it does not tell her how much those ticketing fees are. *Id.* This screen states
21 it is “powered by Peek.com,” which is operated by the Defendant.

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✓ SCHEDULE 2 INFO 3 CHECKOUT Powered by Peek.com peek

NYC GENERAL ADMISSION: AVAILABLE 24 4:00
STARTING FROM JANUARY 18TH. TICKET JAN PM
PRICES MAY VARY BASED ON DEMAND AND
AVAILABILITY

FOR AN ENHANCED EXPERIENCE, PLEASE SELECT ☆VIP TICKET☆

Enter Promo Code APPLY

Select # of Seats (0)

Please note that the displayed ticket price is pre-ticketing fees.

Contact Information

First Name Last Name

Phone Email

Continue

Connect with your family & friends or rediscover your inner child on a colorful journey through Museum of Ice Cream.

What to expect:

UNLIMITED ice cream treats

Themed **crafts & activities**

Countless interactive **installations**

Our world-famous **Sprinkle Pool**

Experience the best time and create unforgettable memories at the sweetest place on earth!

NYC General Admission: Available starting from January 18th. Ticket prices may vary based on demand and availability

📅 Wednesday, Jan 24th - 4:00PM - 5:00PM

👤 1x General Admission

17 **Figure 9-B**

18 25. *After* a consumer inputs her personal and contact information, she is prompted with

19 a set of boxes to check regarding marketing communications and Terms and Conditions. *See*

20 Figure 10, next page. Again, the total cost of the ticket is not displayed on this page either. *Id.*

21 This screen states it is “powered by Peek.com,” which is operated by the Defendant. For January

22 24, 2024 at 4:00 PM, the price of a “General Admission” ticket is displayed as “\$42.00 per

23 person.” *Id.*

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✓ SCHEDULE 2 INFO 3 CHECKOUT Powered by Peek.com peek

NYC GENERAL ADMISSION: AVAILABLE 24 4:00
STARTING FROM JANUARY 18TH. TICKET JAN PM
PRICES MAY VARY BASED ON DEMAND AND
AVAILABILITY

FOR AN ENHANCED EXPERIENCE, PLEASE SELECT ✨VIP TICKET✨

Enter Promo Code APPLY

Select # of Guest(s):

− 1 + General Admission ⓘ
\$42.00 per person

Contact Information

Jane ✓ Doe ✓
(800) 555-5555 ✓ janedoe@gmail.com ✓

Questions:

Have you visited Museum of Ice Cream before? *

Yes No

I consent to receive recurring automated and personalized marketing text and email message updates from Museum of Ice Cream. *

YES NO

I agree to Museum of Ice Cream's No refund policy, and the other Terms and Conditions. I acknowledge that I can reschedule my tickets through hello@museumoficecream.com *

Continue

Connect with your family & friends or rediscover your inner child on a colorful journey through Museum of Ice Cream.

What to expect:

- UNLIMITED ice cream treats
- Themed crafts & activities
- Countless interactive installations
- Our world-famous Sprinkle Pool

Experience the best time and create unforgettable memories at the sweetest place on earth!

NYC General Admission: Available starting from January 18th. Ticket prices may vary based on demand and availability

📅 Wednesday, Jan 24th - 4:00PM - 5:00PM

👤 1x General Admission

Figure 10

22 26. After checking those boxes, the consumer may click “Continue.” *Id.* Once the
23 consumer clicks “Continue,” she is taken to a screen offering her the ability to purchase additional
24 products along with her admission ticket. *See* Figures 11-A & 11-B, next page. This screen states
25 it is “powered by Peek.com,” which is operated by the Defendant.

✓ SCHEDULE
2 INFO
3 CHECKOUT

Powered by Peek.com

APPLY

SHOP ONLINE AND SAVE UP TO 40%!

*ADD-ONS ARE NONREFUNDABLE AND NONEXCHANGEABLE.

MOIC Ticket Insurance (\$4 per ticket)

Life is sprinkled with unpredictability! Enjoy peace of mind with **MOIC Ticket Insurance.**

show more ▾

Add To Cart

TOP SELLERS

♥ **Sprinkle Pool Sundae** *Ice Cream • Sprinkles • Cherry*

Ice cream, sprinkles and a cherry in a reusable Sprinkle Pool bowl you get to take home for endless fun!

♥ **Cherry On Top Cocktail** *Prosecco • Grenadine • Cherry*

Bubbly Prosecco, Grenadine and a cherry.

♥ **Carnival Milkshake** *Strawberry Ice Cream • Whipped Cream • Sweet Cotton Candy • Glitter*

Blended strawberry ice cream topped with whipped cream, sweet cotton candy and a sprinkle of glitter.

Any items with alcohol require proof of age. We appreciate you understanding the seasonality of our menu; some items may change. Actual product may vary slightly from image.

-	0	+	Sprinkle Pool Sundae \$18.00
-	0	+	Cherry On Top Cocktail \$17.00
-	0	+	Carnival Milkshake \$14.00

Jane Doe

✉ janedoe@gmail.com

☎ +1 800-555-5555

NYC General Admission: Available starting from January 18th. Ticket prices may vary based on demand and availability

📅 Wednesday, Jan 24th - 4:00PM - 5:00PM

👤 1x General Admission

← Change information

Figure 11-A

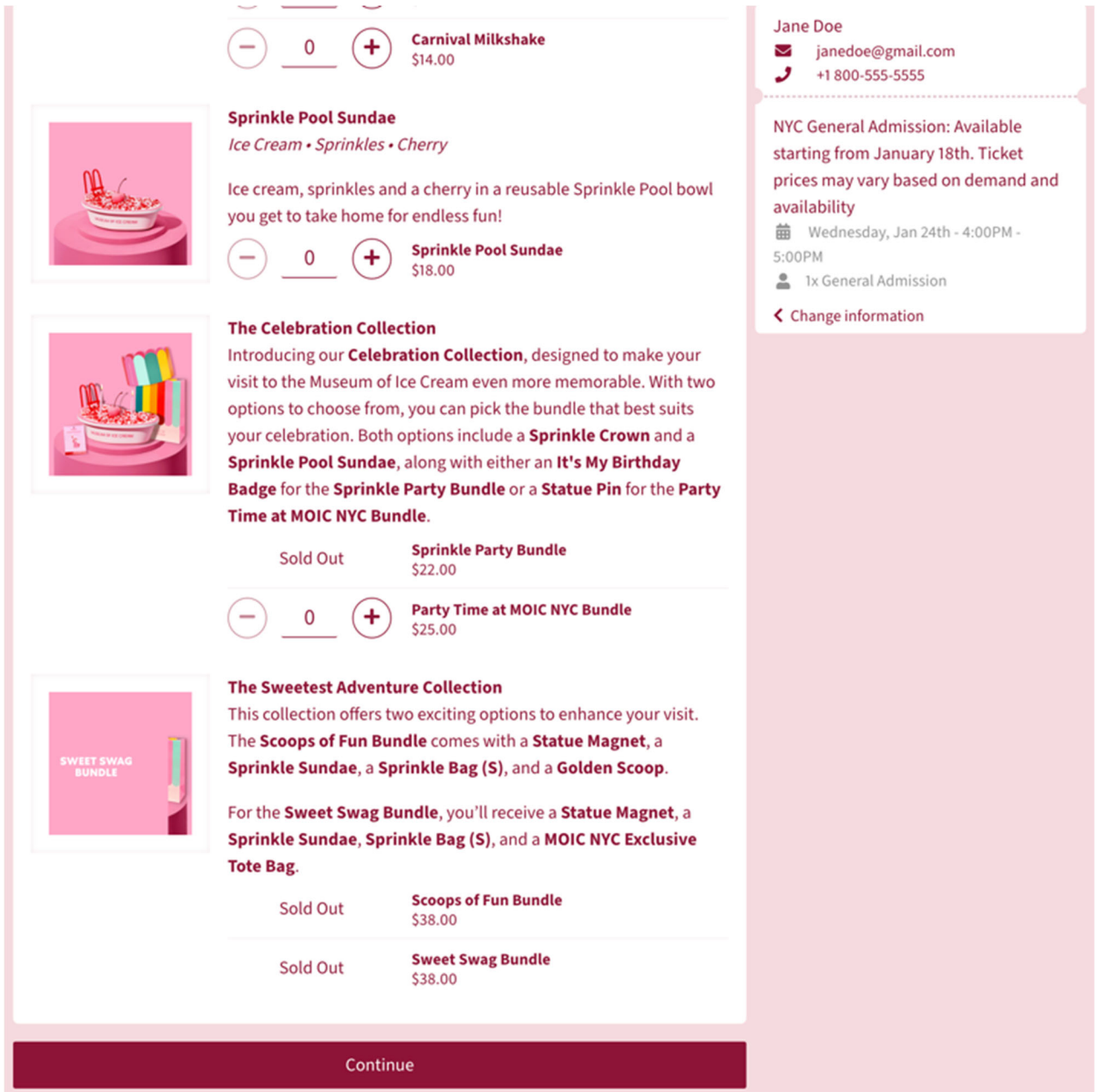


Figure 11-B

27. Once a consumer clicks on the “Continue” button again, a final checkout screen emerges, which requires the user to input her payment information. See Figure 12, next page. On the right-side of the same screen, the “Total” ticket price is finally displayed, which includes \$13.23 of “Taxes & Fees.” *Id.* This is the first time Defendant makes explicit mention of additional “fees.” This screen states it is “powered by Peek.com,” which is operated by the Defendant.

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✓ SCHEDULE ✓ INFO 3 CHECKOUT Powered by Peek.com peek

YOUR PAYMENT INFORMATION

Payment Options

Enter Promo Code / Gift Card Code / Store Credit

Card number: 1234 1234 1234 1234 Expiration: MM / YY CVC: CVC

Country: United States ZIP: 12345

Secure Credit Card Payment
This is a 2048-bit SSL Encrypted Payment

Jane Doe
✉ janedoe@gmail.com
☎ +1 800-555-5555

Tickets \$42.00
Taxes & Fees \$13.23

Total \$55.23

NYC General Admission: Available starting from January 18th. Ticket prices may vary based on demand and availability
📅 Wednesday, Jan 24th - 4:00PM - 5:00PM
👤 1x General Admission \$42.00
[← Change information](#)

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Figure 12

15 28. As displayed in Figure 12, Defendant does not delineate how much of the additional
16 \$13.23 is allocated to taxes versus fees. *Id.* Only if a consumer clicks on or hovers over the
17 question mark icon next to “Taxes & Fees” does the webpage disclose a “Service Fee” of “\$9.50.”
18 *See* Figure 13, next page.
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✓ SCHEDULE ✓ INFO 3 CHECKOUT Powered by Peek.com peek

YOUR PAYMENT INFORMATION

Jane Doe
✉ janedoe@gmail.com
☎ +1 800-555-5555

Payment Options

Enter Promo Code / Gift Card Code / Store Credit

Taxes	\$3.73	\$42.00
Service Fee	\$9.50	\$13.23
Total		\$55.23

Card number: 1234 1234 1234 1234 Expiration: MM / YY CVC: CVC

Country: United States ZIP: 12345

Process Booking

Secure Credit Card Payment
This is a 2048-bit SSL Encrypted Payment

NYC General Admission: Available starting from January 18th. Ticket prices may vary based on demand and availability
📅 Wednesday, Jan 24th - 4:00PM - 5:00PM
👤 1x General Admission \$42.00
← Change information

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Figure 13

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29. This is the first and only time that Defendant’s \$9.50 per ticket “Service Fee” is displayed to the consumer. *Id.* This screen states it is “powered by Peek.com,” which is operated by the Defendant. Worse yet, Defendant does not disclose whether how much of the fee goes to the operator of the place of entertainment as opposed to the Defendant. And to make matters worse, a consumer can complete the final checkout page without ever clicking on the question mark icon to be shown Defendant’s \$9.50 per ticket service fee. *Compare* Figure 12 *with* Figure 13.

Peek’s Ticket Purchase Platform on the Inter Intermersive Art Museum Website

30. When a person visits the website, <https://www.interiam.co/>, on the main page, she can click the purple “Book Tickets” button to select admission tickets to visit Defendant’s Inter_Intermersive Art Museum in New York City on various dates. *See* Figure 14, next page.

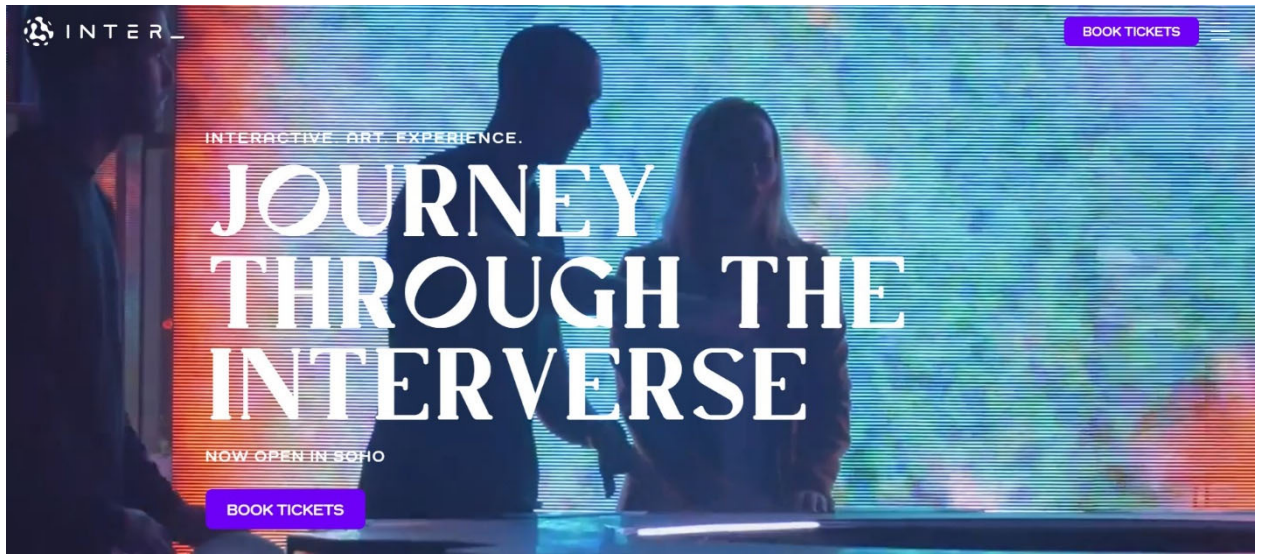


Figure 14

31. After a consumer selects the “BOOK TICKETS” button, she is taken to a screen, which provides a list of various museum admission types, dates, and times. No ticket prices are shown to a consumer at this stage. See Figure 15, next page. This screen states it is “powered by Peek.com,” which is operated by the Defendant.

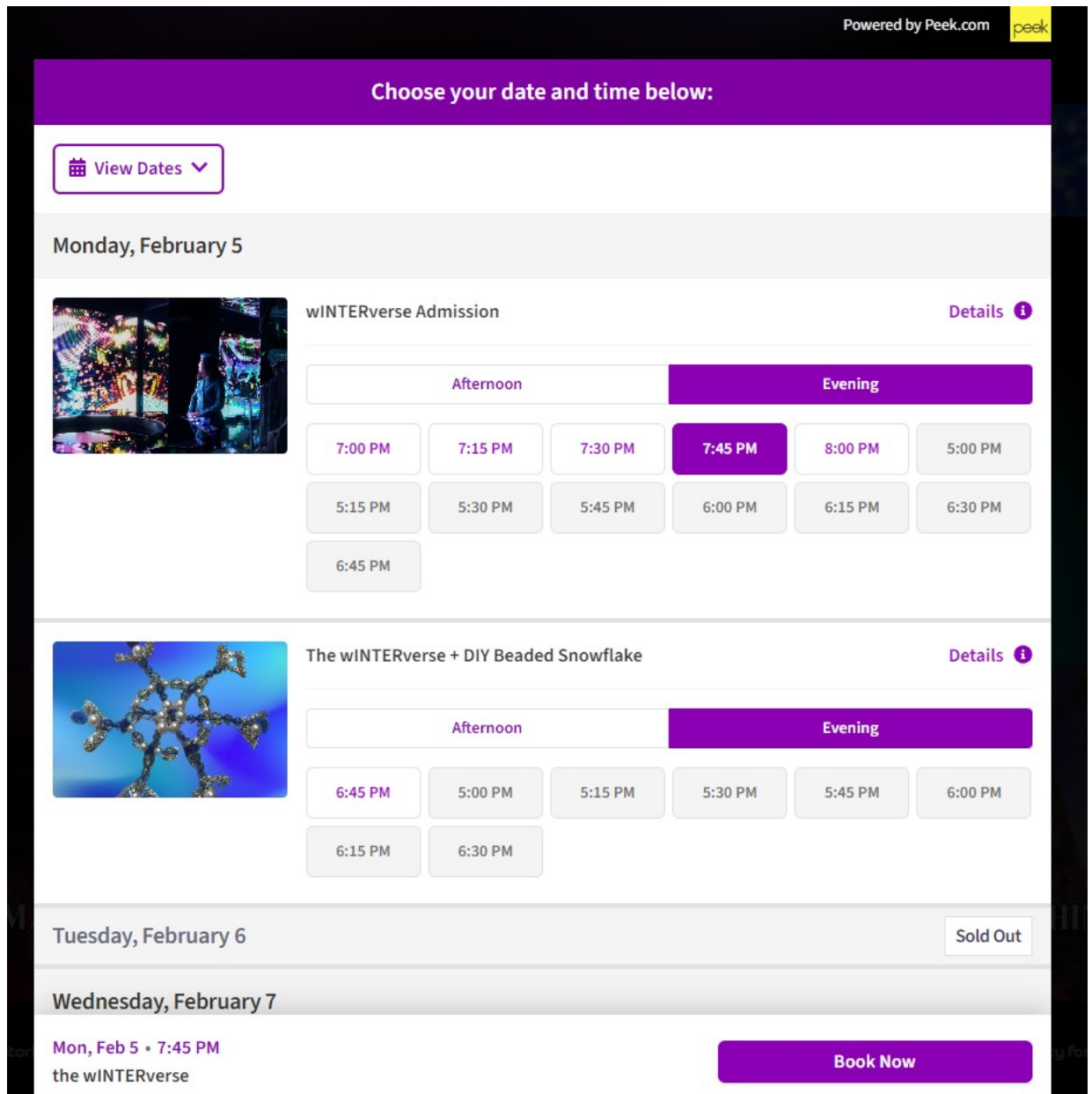


Figure 15

32. After a consumer clicks on the “Book Now” button in Figure 15, she is taken to another page, which displays the date and time that she selected to visit the museum, as well as the cost of the ticket. See Figure 16, next page. The page also requests the consumer put in her personal and contact information. *Id.* The total cost of the ticket is also not displayed on this page. *Id.* This screen states it is “powered by Peek.com,” which is operated by the Defendant.

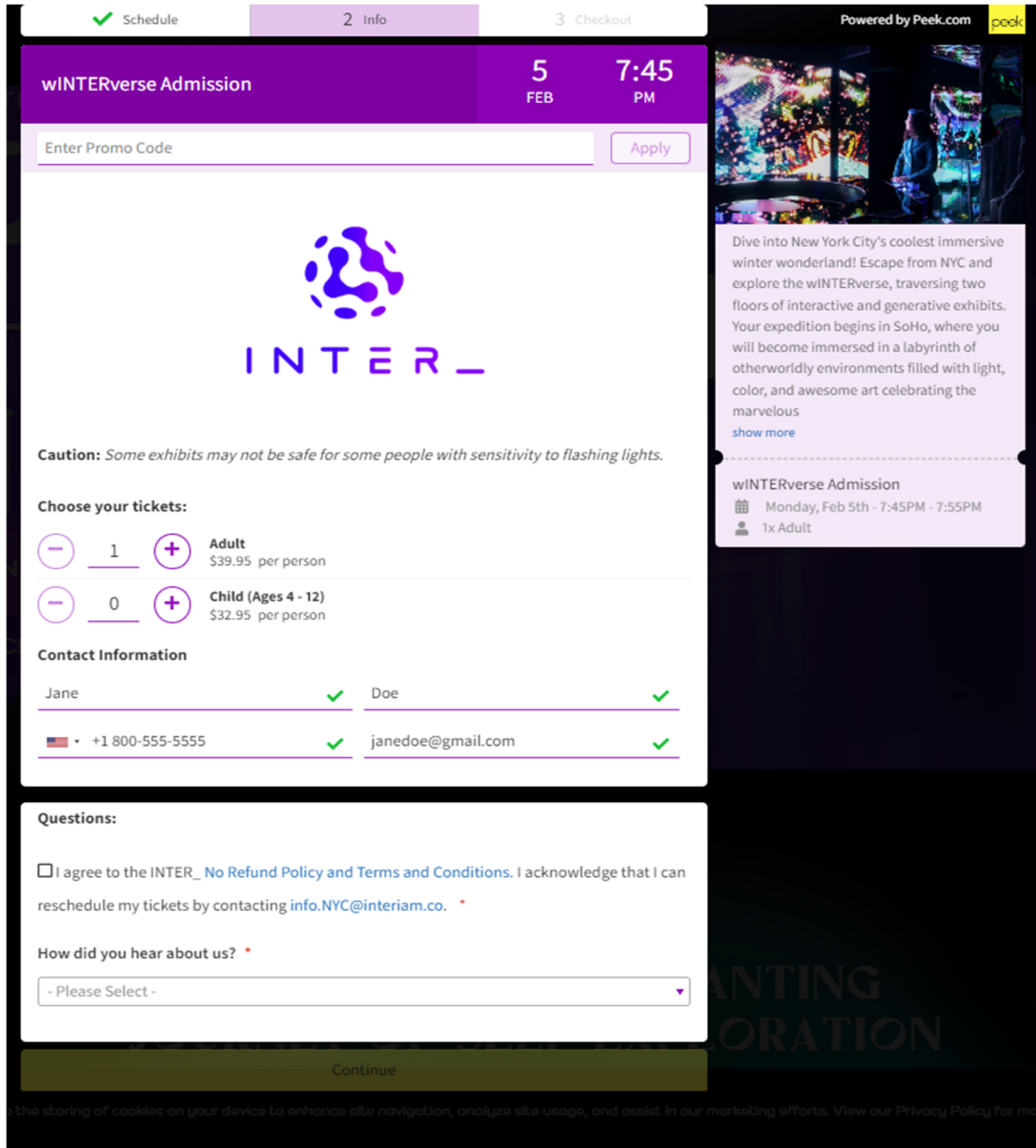


Figure 16

33. After a consumer inputs her information, she is prompted with a set of boxes to check regarding the operator of the place of entertainment’s refund policy and Terms and Conditions. The actual total cost of the ticket is not displayed on this page. This screen states it is “powered by Peek.com,” which is operated by the Defendant.

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✓ Schedule ✓ Info 3 Checkout Powered by Peek.com peek

Your Payment Information

Peek Protect can cover \$31.96 of your booking for \$3.20.

- ✓ Give yourself peace of mind in case your plans change
- ✓ Cancel for any reason up to 24 hours before your booking starts

Yes, protect my booking No, don't protect my booking

By selecting "Protect my booking" you are agreeing to Peek Protect's terms and conditions.

Powered by Spot

Payment Options

Enter Promo Code / Gift Card Code / Store Credit Apply

Card Bank

Secure, 1-click checkout with Link

Card number: 1234 1234 1234 1234 Expiration: MM / YY CVC: CVC

Country: United States ZIP: 12345

Process Booking

Secure Credit Card Payment
This is a 2048-bit SSL Encrypted Payment

07:05 minutes to secure your booking

Jane Doe
janedoe@gmail.com
+1 800-555-5555

Tickets: \$39.95
Taxes & Fees: \$8.05
Total: \$48.00

wINTERverse Admission
Monday, Feb 5th - 7:45PM - 7:55PM
1x Adult: \$39.95
[Change information](#)

Figure 17

34. Only after completing this page is a consumer taken to the final checkout screen where she becomes aware that the displayed ticket price is different than the actual total cost of the ticket. See Figure 17. This screen requires the consumer to input her payment information. *Id.* This screen states it is “powered by Peek.com,” which is operated by the Defendant. On the right side of the screen, the “Total” ticket price is finally displayed, which includes \$8.05 of “Taxes and Fees.” *Id.* The cost of the ticket jumps from \$39.95 (price for adults) to \$48.00. This is the first time Defendant makes explicit mention of additional “fees.” *Id.*

35. As displayed in Figure 17, Defendant does not delineate how much of the additional \$8.05 is allocated to taxes versus fees. *Id.* Only if a consumer clicks on or hovers over the question mark icon next to “Taxes & Fees” does the webpage disclose a “Convenience Fee” of “\$4.50.” See Figure 18.

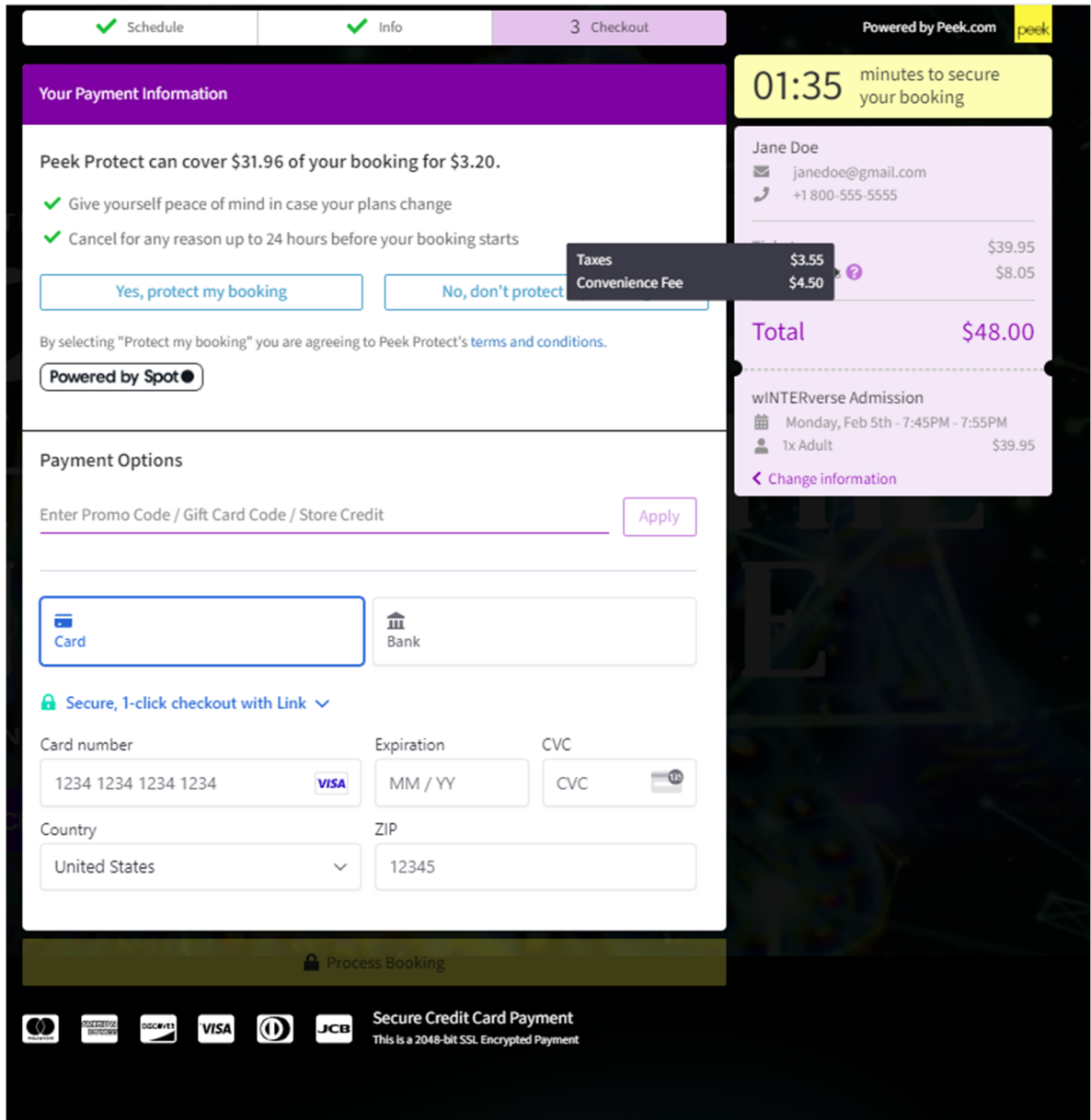


Figure 18

1 36. This is the first and only time that Defendant’s \$4.50 per ticket “Convenience Fee”
 2 is displayed to the consumer. *Id.* This screen states it is “powered by Peek.com,” which is
 3 operated by the Defendant. Worse yet, Defendant does not disclose whether how much of the fee
 4 goes to the operator of the place of entertainment as opposed to the Defendant. And to make
 5 matters worse, a consumer can complete the final checkout page without ever clicking on the
 6 question mark icon to be shown Defendant’s \$4.50 per ticket convenience fee. *Compare* Figure 17
 7 *with* Figure 18.

NEW YORK ARTS & CULTURAL AFFAIRS LAW

9 37. Effective August 29, 2022, New York enacted Arts & Cultural Affairs Law §
 10 25.07(4), which provides that “[e]very operator or operator’s agent of a place of entertainment... or
 11 platform that facilitates the sale or resale of tickets shall disclose the total cost of the ticket,
 12 inclusive of all ancillary fees that must be paid in order to purchase the ticket, and disclose in a
 13 clear and conspicuous manner the portion of the ticket price stated in dollars that represents a
 14 service charge, or any other fee or surcharge to the purchaser. Such disclosure of the total cost and
 15 fees shall be displayed in the ticket listing prior to the ticket being selected for purchase.” *Id.*
 16 (emphasis added). And “[t]he price of the ticket shall not increase during the purchase process.”
 17 *Id.*; *Compare with* Figures 2 through 6, Figures 8 through 13, and Figures 15 through 18.

18 38. Shortly after the law was enacted, ticketing websites peppered the State of New
 19 York’s Division of Licensing Services with questions about the scope of the law. As explained by
 20 the Division of Licensing Services, “the ticket purchasing process begins once a consumer visits a
 21 ticket marketplace and first sees a list of seat prices.” *See* N.Y. Dep’t of State, Div. Licens. Servs.,
 22 *Request for Additional Guidance – New York State Senate Bill S.9461*, attached hereto as **Exhibit**
 23 **A**, at 1. “From the moment the prospective purchaser assesses the [] ticket lists through the final
 24 payment ... there should be no price increases to the purchaser for the ticket itself.” *Id.* “When a
 25 prospective purchaser selects a ticket with full disclosure of the ticket price, the purchaser should
 26 not then have to search for the total price of the ticket as the purchaser proceeds through the
 27 purchasing process, it should continue to be readily available to the purchaser.” *Id.* at 2 (emphasis
 28

1 added). “In short, the ticket listing must include the total cost of the ticket, with a breakdown of all
2 service charges, fees and surcharges, that the purchaser must pay just to purchase the ticket.” *Id.*
3 (emphasis added).

4 CLASS ACTION ALLEGATIONS

5
6 39. **Nationwide Class:** Plaintiff seeks to represent a class defined as all individuals in
7 the United States who purchased tickets to places of entertainment in located New York state
8 which used screens which were “powered by Peek.com” or otherwise created in part by Defendant
9 on or after August 29, 2022. Excluded from the Nationwide Class is any entity in which Defendant
10 has a controlling interest, and officers or directors of Defendant.

11 40. **New York Subclass:** Plaintiff seeks to represent a class defined as all individuals
12 in New York who purchased tickets to who purchased tickets to places of entertainment in located
13 New York state which used screens which were “powered by Peek.com” or otherwise created in
14 part by Defendant on or after August 29, 2022. Excluded from the Nationwide Class is any entity
15 in which Defendant has a controlling interest, and officers or directors of Defendant.

16 41. Members of the Nationwide Class and New York Subclass are so numerous that
17 their individual joinder herein is impracticable. On information and belief, members of the
18 Nationwide Class and New York Subclass are at least in the hundreds of thousands. The precise
19 number of Nationwide Class and New York Subclass members and their identities are unknown to
20 Plaintiff at this time but may be determined through discovery. Nationwide Class and New York
21 Subclass members may be notified of the pendency of this action by mail, email, and/or publication
22 through the distribution records of Defendant.

23 42. Common questions of law and fact exist as to all Nationwide Class and New York
24 Subclass members and predominate over questions affecting only individual Nationwide Class and
25 New York Subclass members. Common legal and factual questions include, but are not limited to:
26 (a) whether Defendant failed to disclose the total cost of the ticket, including all ancillary fees,
27 prior to the tickets being selected for purchase in violation of New York Arts & Cultural Affairs
28

1 Law § 25.07(4); (b) whether the displayed price of Defendant’s tickets increases during the
2 purchase process in violation of New York Arts & Cultural Affairs Law § 25.07(4); (c) whether
3 Defendant failed to disclose its ancillary fees in a clear and conspicuous manner in violation of
4 New York Arts & Cultural Affairs Law § 25.07(4); (d) whether Defendant’s labeling of various
5 fees under the label “Taxes & Fees” is misleading and violates the New York General Business
6 Law § 349.

7 43. The claims of the named Plaintiff are typical of the claims of the Nationwide Class
8 and New York Subclass in that the named Plaintiff and the Nationwide Class and New York
9 Subclass sustained damages as a result of Defendant’s uniform wrongful conduct, based upon
10 Defendant’s failure to disclose the total cost of its tickets, including Defendant’s ancillary fees,
11 throughout the online ticket purchase process.

12 44. Plaintiff is an adequate representative of the Nationwide Class and New York
13 Subclass because her interests do not conflict with the interests of the Nationwide Class and New
14 York Subclass members she seeks to represent, she have retained competent counsel experienced
15 in prosecuting class actions, and she intends to prosecute this action vigorously. The interests of
16 Nationwide Class and New York Subclass members will be fairly and adequately protected by
17 Plaintiff and her counsel.

18 45. The class mechanism is superior to other available means for the fair and efficient
19 adjudication of the claims of Nationwide Class and New York Subclass members. Each individual
20 Nationwide Class and New York Subclass member may lack the resources to undergo the burden
21 and expense of individual prosecution of the complex and extensive litigation necessary to
22 establish Defendant’s liability. Individualized litigation increases the delay and expense to all
23 parties and multiplies the burden on the judicial system presented by the complex legal and factual
24 issues of this case. Individualized litigation also presents a potential for inconsistent or
25 contradictory judgments. In contrast, the class action device presents far fewer management
26 difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive
27 supervision by a single court on the issue of Defendant’s liability. Class treatment of the liability
28

1 issues will ensure that all claims and claimants are before this Court for consistent adjudication of
2 the liability issues.

3 **COUNT I**
4 **New York Arts & Cultural Affairs Law § 25.07**
5 **(On Behalf Of The Nationwide Class and New York Subclass)**

6 46. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set
7 forth herein.

8 47. Plaintiff brings this claim individually and on behalf of the members of the
9 Nationwide Class and New York Subclass against Defendant.

10 48. Defendant is an “operator’s agent of a place of entertainment” because Defendant
11 works on the behest of operators of places of entertainment, including but not limited to, Color
12 Factory, LLC (which operates the Color Factory NYC), 1AND8, Inc. (which operates the Museum
13 of Ice Cream NYC), Inter_Iam, Inc. (which operates Inter_Intermersive Art Museum), and ATH
14 NY CM LLC (which operates the ARTECHOUSE NYC).

15 49. Defendant is an “Platform that facilitates the sale or resale of tickets ” because
16 Defendant provides the website screens through which consumers to various places of
17 entertainment sell tickets, as shown in the examples in the complaint.

18 50. Color Factory NYC is a “place of entertainment.” “‘Place of entertainment’ means
19 any privately or publicly owned and operated entertainment facility such as a theatre, stadium,
20 arena, racetrack, museum, amusement park, or other place where performances, concerts, exhibits,
21 athletic games or contests are held for which an entry fee is charged.” N.Y. Arts & Cult. Aff. Law
22 § 25.03(6) (emphasis added).

23 51. The Museum of Ice Cream NYC is a “place of entertainment.” “‘Place of
24 entertainment’ means any privately or publicly owned and operated entertainment facility such as a
25 theatre, stadium, arena, racetrack, museum, amusement park, or other place where performances,
26 concerts, exhibits, athletic games or contests are held for which an entry fee is charged.” N.Y.
27 Arts & Cult. Aff. Law § 25.03(6) (emphasis added).
28

1 52. Inter_Intermersive Art Museum is a “place of entertainment.” “‘Place of
2 entertainment’ means any privately or publicly owned and operated entertainment facility such as a
3 theatre, stadium, arena, racetrack, museum, amusement park, or other place where performances,
4 concerts, exhibits, athletic games or contests are held for which an entry fee is charged.” N.Y.
5 Arts & Cult. Aff. Law § 25.03(6) (emphasis added).

6 53. ARTECHOUSE is a “place of entertainment.” “‘Place of entertainment’ means any
7 privately or publicly owned and operated entertainment facility such as a theatre, stadium, arena,
8 racetrack, museum, amusement park, or other place where performances, concerts, exhibits,
9 athletic games or contests are held for which an entry fee is charged.” N.Y. Arts & Cult. Aff. Law
10 § 25.03(6) (emphasis added).

11 54. Defendant violated New York Arts & Cultural Affairs Law § 25.07(4) by failing to
12 disclose the “total cost of a ticket, inclusive of all ancillary fees that must be paid in order to
13 purchase the ticket” after a ticket is selected, as depicted in Figures 2 through 6, Figures 8 through
14 13, and Figures 15 through 18 of this Complaint.

15 55. Defendant also violated New York Arts & Cultural Affairs Law § 25.07(4) by
16 increasing the total cost of its tickets during the purchase process, as depicted in Figures 2 through
17 6, Figures 8 through 13, and Figures 15 through 18 of this Complaint.

18 56. Defendant also violated New York Arts & Cultural Affairs Law § 25.07(4) by
19 failing to “disclose in a clear and conspicuous manner the portion of the ticket price stated in
20 dollars that represents a service charge, or any other fee or surcharge to the purchaser,” as depicted
21 in Figures 6, 13, and 18 of this Complaint.

22 57. Everything above 8.875% of the ticket price of Defendant’s “Taxes & Fees” is an
23 “ancillary fee[] that must be paid in order to purchase the ticket.” N.Y. Arts & Cult. Aff. Law §
24 25.07(4).

25 58. On or about October 29, 2023, Plaintiff Charles purchased two admission tickets to
26 the Color Factory NYC and was forced to pay ancillary fees to Defendant. The fees were
27
28

1 displayed as “Taxes and Fees.” Assuming Defendant levied an 8.875% sales and use tax, Plaintiff
2 paid fees of approximately \$11.38.

3 59. Plaintiff was harmed by paying these unlawful fees. These fees were unlawful
4 because the total cost was not disclosed to Plaintiff at the beginning of the purchase process, in
5 violation of New York Arts & Cultural Affairs Law § 25.07(4), the fees were not clearly and
6 conspicuously disclosed on the final checkout page in violation of New York Arts & Cultural
7 Affairs Law § 25.07(4), and the fees were unreasonable premiums under New York Arts &
8 Cultural Affairs Law § 25.29.

9 60. Plaintiff was also harmed by not having the total cost of her tickets disclosed
10 upfront at the start of the purchase process. By not knowing the total cost of her tickets before
11 Plaintiff selected their tickets for purchase from Defendant, Plaintiff could not shop around for
12 tickets from other sellers like Trip Advisor or Expedia, just to name a few. *See, e.g.*,
13 [https://www.tripadvisor.com/Attraction_Review-g60763-d15325499-Reviews-Color_Factory-](https://www.tripadvisor.com/Attraction_Review-g60763-d15325499-Reviews-Color_Factory-New_York_City_New_York.html)
14 [New_York_City_New_York.html](https://www.tripadvisor.com/Attraction_Review-g60763-d15325499-Reviews-Color_Factory-New_York_City_New_York.html); [https://www.expedia.com/things-to-do/color-factory-ticket-in-](https://www.expedia.com/things-to-do/color-factory-ticket-in-app-audio-tour-delighting-your-five-senses.a45694902.activity-details?location=Manhattan%2C%20New%20York%2C%20New%20York%2C%20United%20States%20of%20America&startDate=2024-07-04&endDate=2024-07-18&rid=129440)
15 [app-audio-tour-delighting-your-five-senses.a45694902.activity-](https://www.expedia.com/things-to-do/color-factory-ticket-in-app-audio-tour-delighting-your-five-senses.a45694902.activity-details?location=Manhattan%2C%20New%20York%2C%20New%20York%2C%20United%20States%20of%20America&startDate=2024-07-04&endDate=2024-07-18&rid=129440)
16 [details?location=Manhattan%2C%20New%20York%2C%20New%20York%2C%20United%20St](https://www.expedia.com/things-to-do/color-factory-ticket-in-app-audio-tour-delighting-your-five-senses.a45694902.activity-details?location=Manhattan%2C%20New%20York%2C%20New%20York%2C%20United%20States%20of%20America&startDate=2024-07-04&endDate=2024-07-18&rid=129440)
17 [ates%20of%20America&startDate=2024-07-04&endDate=2024-07-18&rid=129440](https://www.expedia.com/things-to-do/color-factory-ticket-in-app-audio-tour-delighting-your-five-senses.a45694902.activity-details?location=Manhattan%2C%20New%20York%2C%20New%20York%2C%20United%20States%20of%20America&startDate=2024-07-04&endDate=2024-07-18&rid=129440). As such,
18 Plaintiff had no way of knowing whether she was getting the best deal her money could buy. By
19 hiding its fees, Defendant was able to reduce price competition and cause consumer harm to
20 consumers like Plaintiff.

21 61. At the time Plaintiff purchased her tickets, she was not aware that Defendant’s fees
22 were unlawful under the New York Arts & Cultural Affairs Law. She was not a “website tester”
23 browsing websites in search of legal violations. Plaintiff was instead browsing the websites
24 because she sincerely intended to purchase tickets to a place of entertainment, and she did, in fact,
25 purchase those tickets.

1 62. On behalf of herself and members of the Nationwide Class and New York Subclass,
2 Plaintiff seeks to recover her actual damages or fifty dollars, whichever is greater, and reasonable
3 attorneys' fees. *See* N.Y. Arts & Cult. Aff. Law § 25.33.

4 **COUNT II**
5 **Violation of General Business Law § 349**
6 **(On Behalf Of The New York Subclass)**

7 63. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set
8 forth herein.

9 64. Plaintiff brings this claim individually and on behalf of the members of the
10 Nationwide Class and New York Subclass against Defendant.

11 65. New York's General Business Law § 349 prohibits deceptive acts or practices in the
12 conduct of any business, trade, or commerce.

13 66. Defendant committed deceptive acts and practices by misleadingly and deceptively
14 obscuring the itemization of the extra charges it adds to its ticket prices, and masking its fees under
15 the category "Taxes & Fees." On some websites, like that of the Color Factory, LLC, consumers
16 like Plaintiff Charles had no way of discovering how much went to taxes as opposed to fees. On
17 other websites, like that of the Museum of Ice Cream NYC or the Inter_Intermersive Art Museum,
18 consumers needed to click on the small "?" button to discover how much went to fees, and even
19 then, Defendant failed to disclosed how much it collected in fees as opposed to how much the
20 operator of the place of entertainment collected in fees.

21 67. Defendant committed deceptive acts and practices by misleadingly and deceptively
22 hiding its "fees" under the label "Taxes & Fees."

23 68. Defendant's deceptive acts and practices were directed at consumers.

24 69. Defendant's deceptive acts and practices are misleading in a material way because
25 they deliberately make the itemization of extra charges harder to find, and fundamentally
26 misrepresent the additional costs imposed by Defendant on museum goers by masking Defendant's
27 "fees" as, in part, a tax on the ticket purchase.
28

1 70. As a direct and proximate result of Defendant’s false, misleading, and deceptive
2 representations, Plaintiff and members of the Class and Subclass were injured in that they would
3 not have purchased the tickets, or would have paid substantially less for them, but for Defendant’s
4 obfuscation of the extra charges in an inconspicuous dropdown menu and its false and misleading
5 representations that the extra charges included both fees and taxes.

6 71. On behalf of herself and the New York Subclass, Plaintiff seeks to recover her
7 actual damages or fifty dollars per violation, whichever is greater, three times actual damages, and
8 reasonable attorneys’ fees.

9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, Plaintiff, individually and on behalf of the members of the Nationwide
11 Class and New York Subclass, prays for judgment as follows:

- 12 (a) For an order certifying the Classes under Rule 23 of the Federal Rules of Civil
13 Procedure and naming Plaintiff as the representative of the Classes and Plaintiff’s
14 attorneys as Class Counsel to represent the Classes;
- 15 (b) For an order declaring that Defendant’s conduct violates the statutes referenced
16 herein;
- 17 (c) For an order finding in favor of Plaintiff and the Classes on all counts asserted
18 herein;
- 19 (d) For compensatory and statutory damages in amounts to be determined by the Court
20 and/or jury;
- 21 (e) For prejudgment interest on all amounts awarded;
- 22 (f) For an order of restitution and all other forms of equitable monetary relief; and
- 23 (g) For an order awarding Plaintiff and the Classes their reasonable attorneys’ fees and
24 expenses and costs of suit.

25 **JURY TRIAL DEMANDED**

26 Plaintiff demands a trial by jury on all claims so triable.

27
28

1 Dated: July 11, 2024

BURSOR & FISHER, P.A.

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