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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.

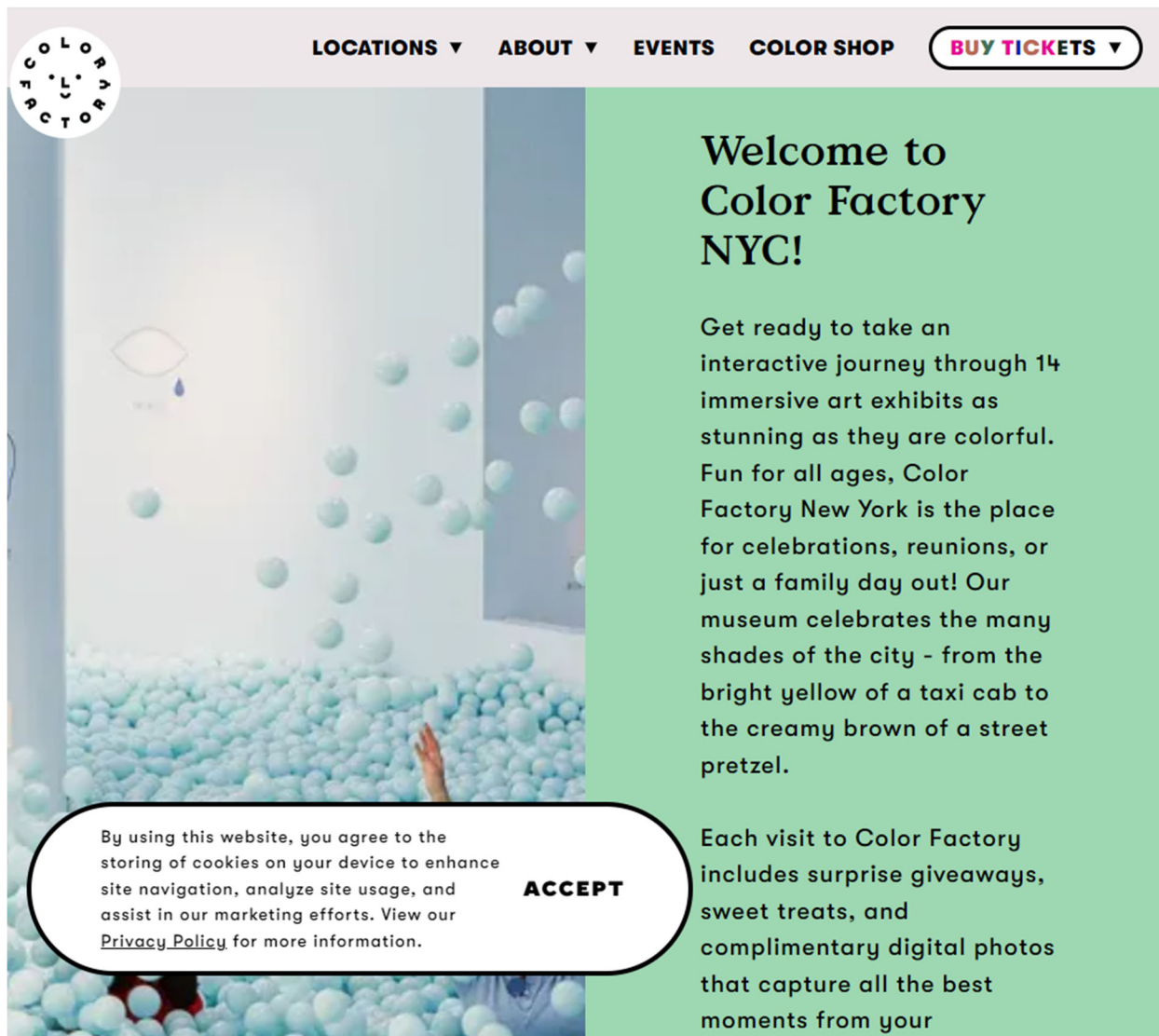


Figure 1

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.*

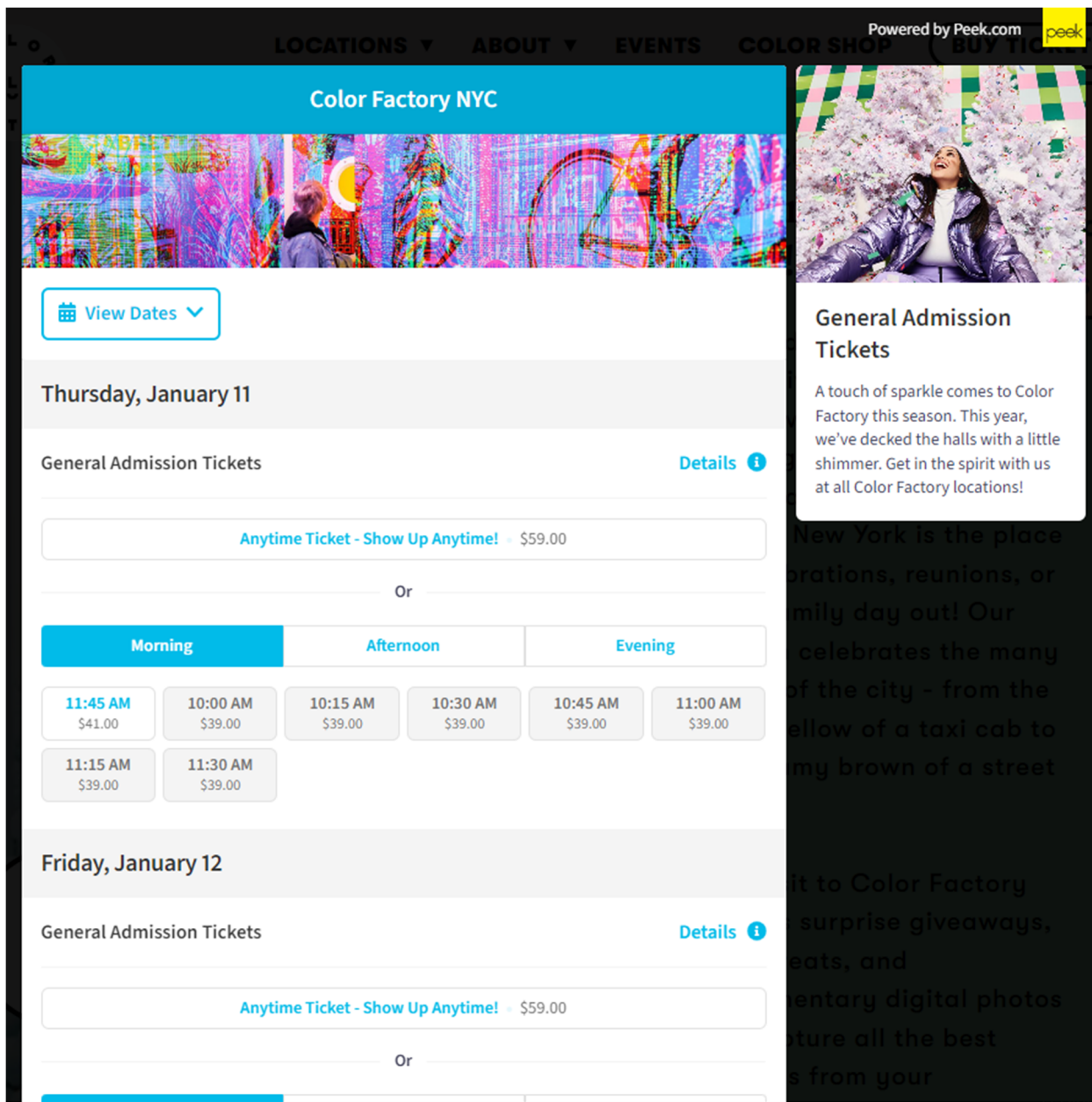


Figure 2

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.

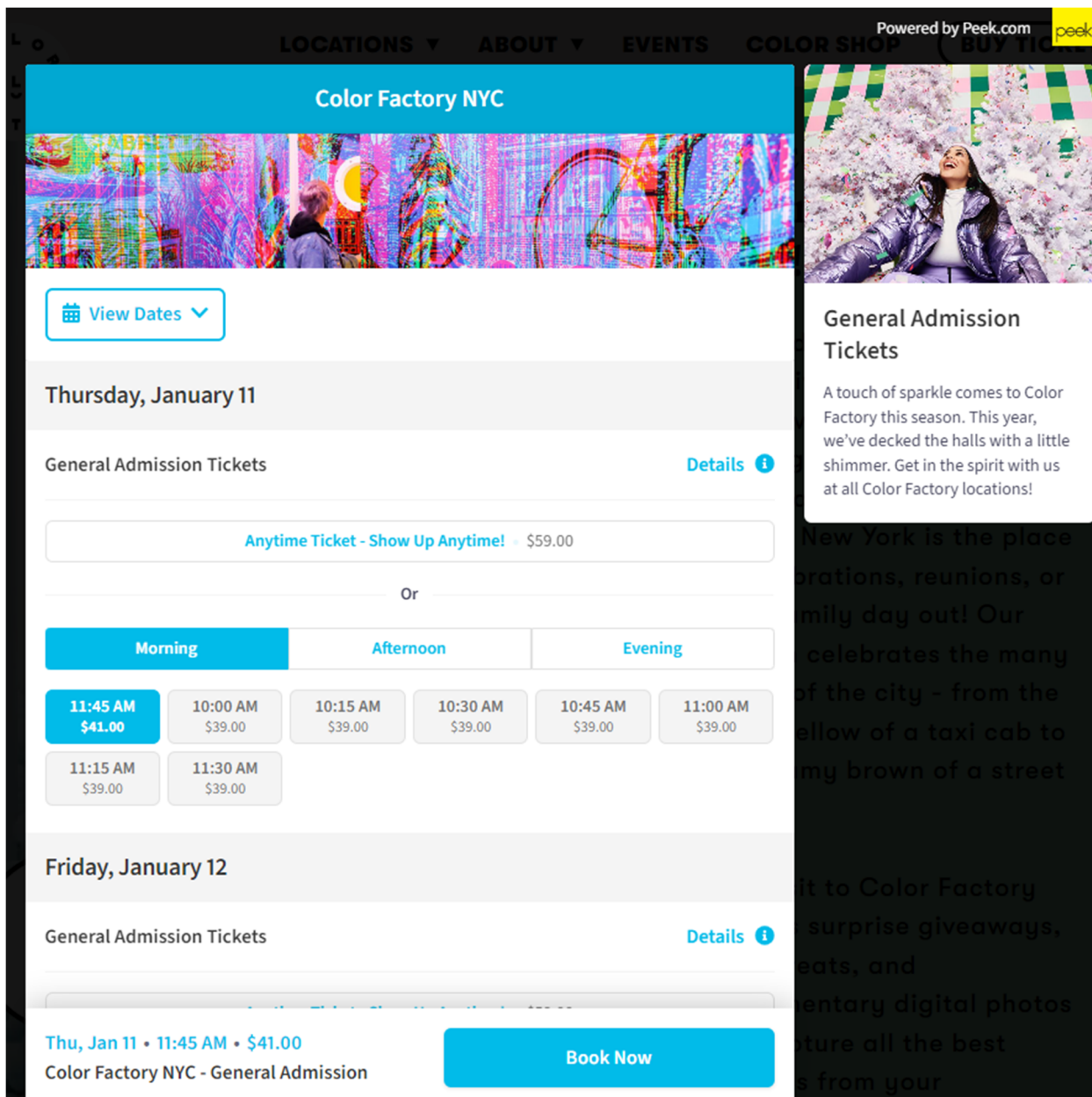


Figure 3

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.

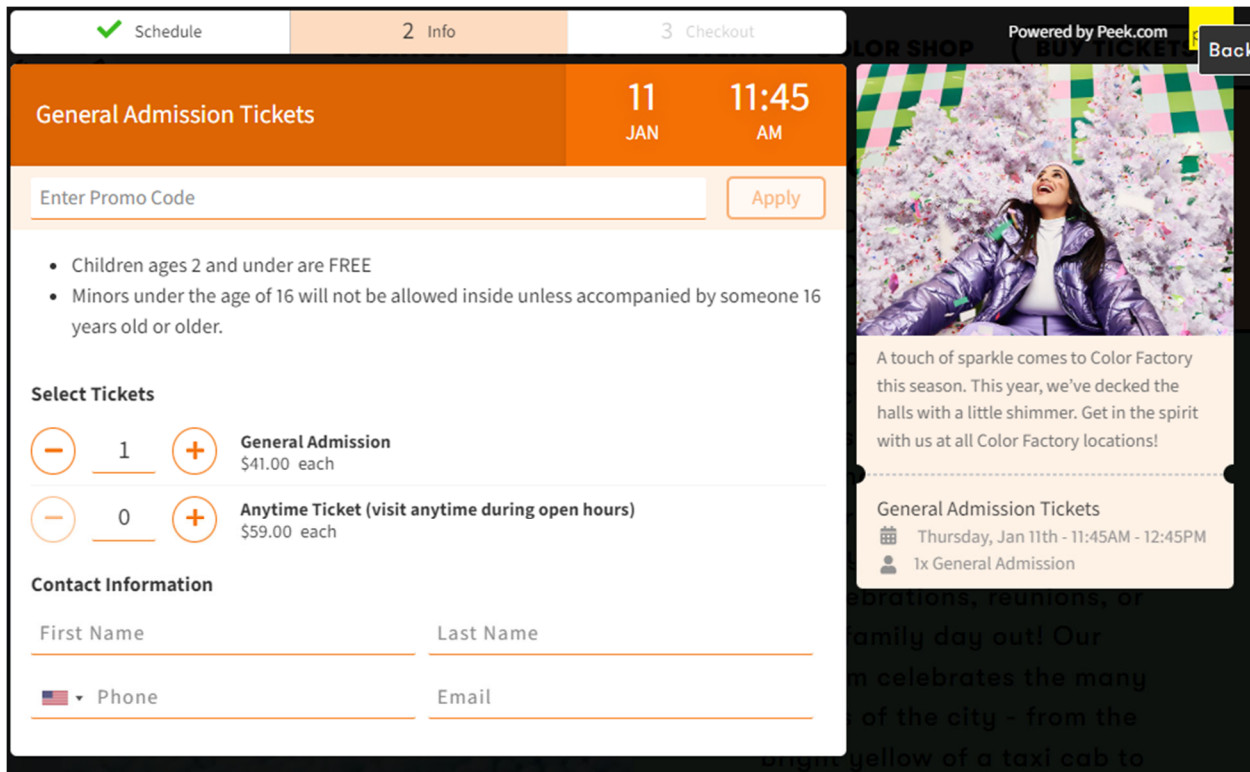


Figure 4

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.

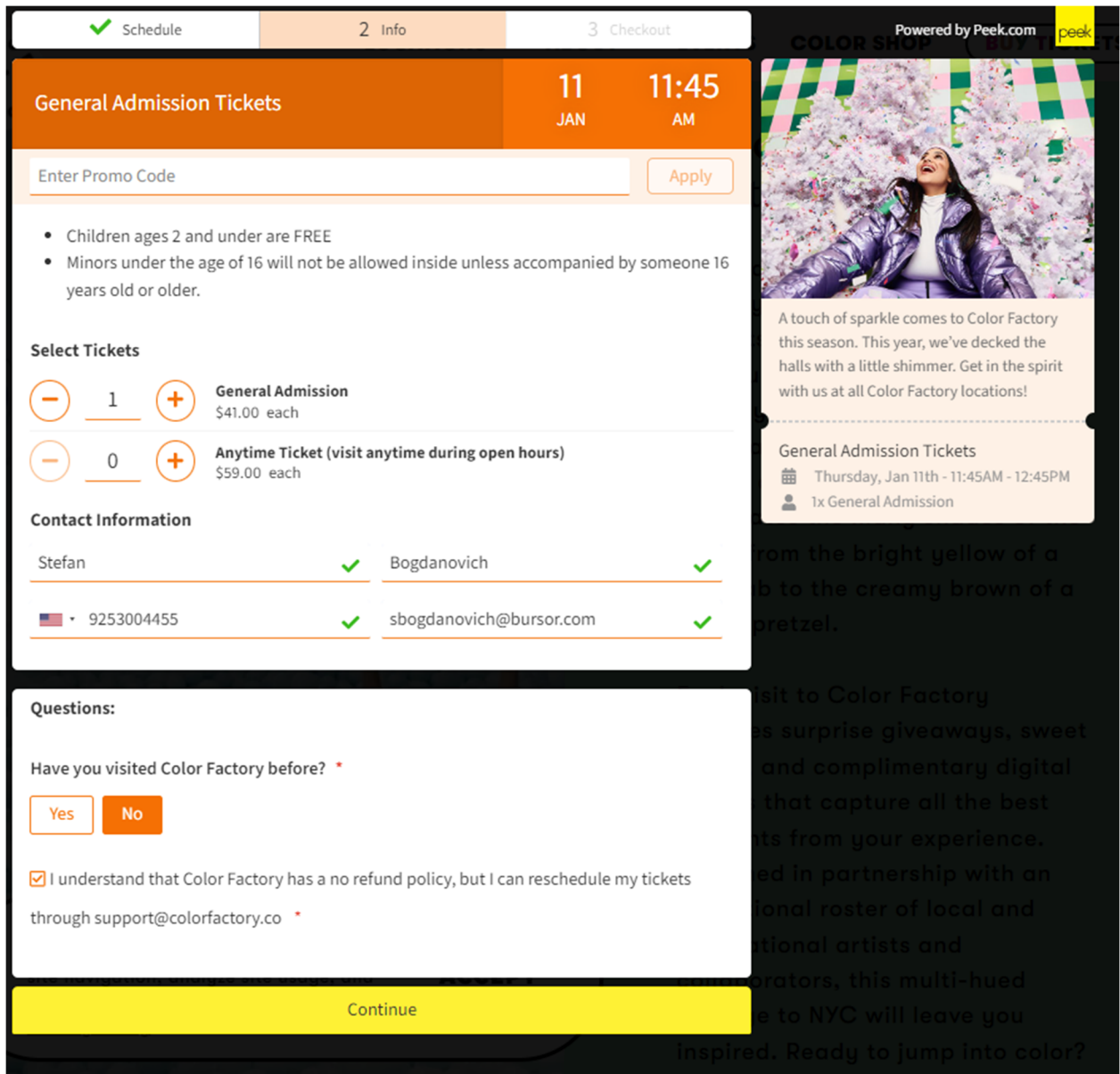


Figure 5

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

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).

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Powered by Peek.com peek

MUSEUM OF ICE CREAM - NYC

MUSEUM OF ICE CREAM
New York City

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

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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Powered by Peek.com peek

✓ SCHEDULE 2 INFO 3 CHECKOUT

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

24 4:00
JAN PM

FOR AN ENHANCED EXPERIENCE, PLEASE SELECT ☆VIP TICKET☆

Enter Promo Code APPLY

Select # of Guest(s):

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 Sweet(s)

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

Figure 9-B

25. After a consumer inputs her personal and contact information, she is prompted with a set of boxes to check regarding marketing communications and Terms and Conditions. See Figure 10, next page. Again, the total cost of the ticket is not displayed on this page either. *Id.* This screen states it is “powered by Peek.com,” which is operated by the Defendant. For January 24, 2024 at 4:00 PM, the price of a “General Admission” ticket is displayed as “\$42.00 per person.” *Id.*

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Figure 10

26. After checking those boxes, the consumer may click “Continue.” *Id.* Once the consumer clicks “Continue,” she is taken to a screen offering her the ability to purchase additional products along with her admission ticket. *See* Figures 11-A & 11-B, next page. This screen states 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	+	<p>Sprinkle Pool Sundae \$18.00</p>
-	0	+	<p>Cherry On Top Cocktail \$17.00</p>
-	0	+	<p>Carnival Milkshake \$14.00</p>

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

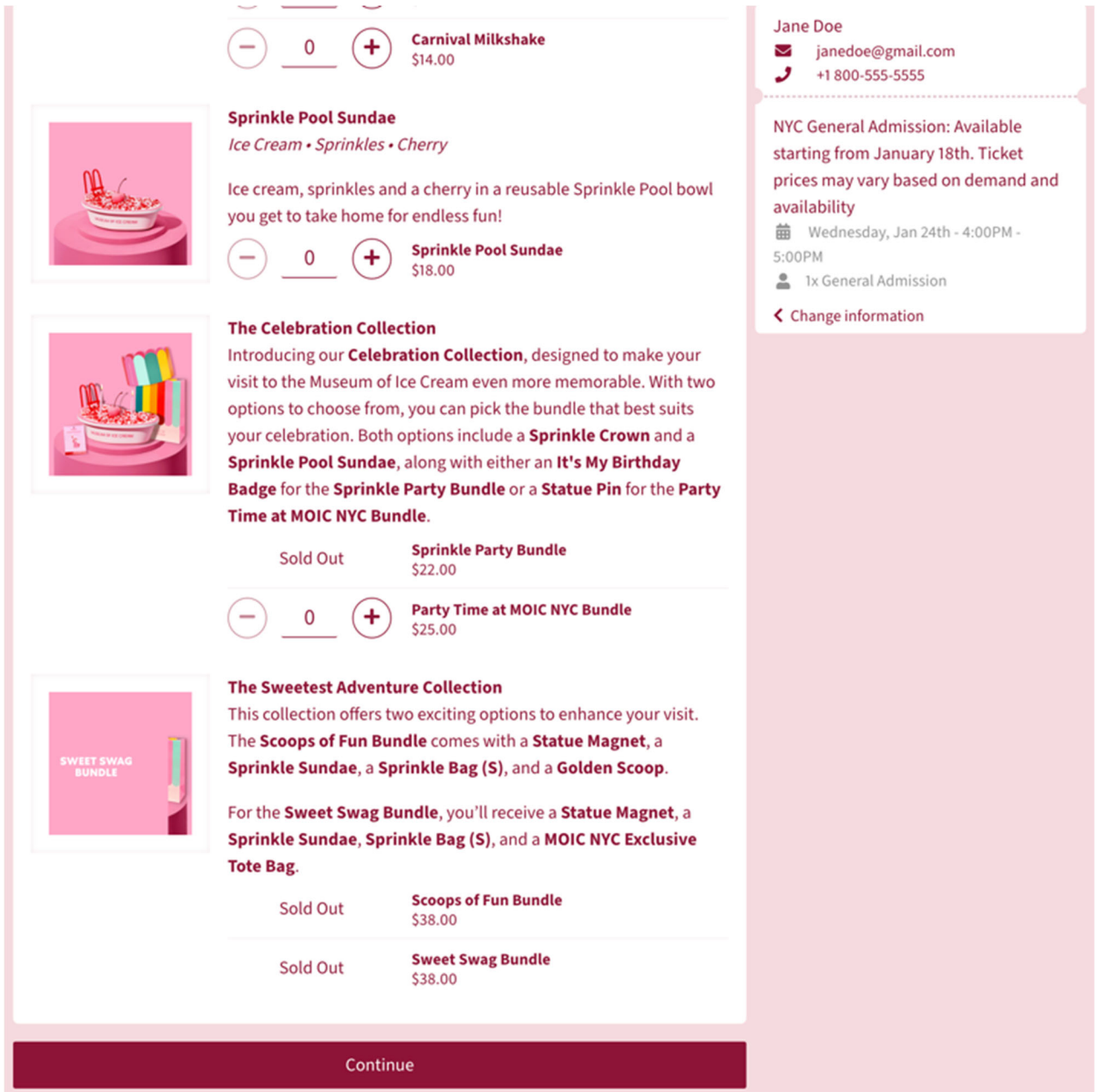


Figure 11-B

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.

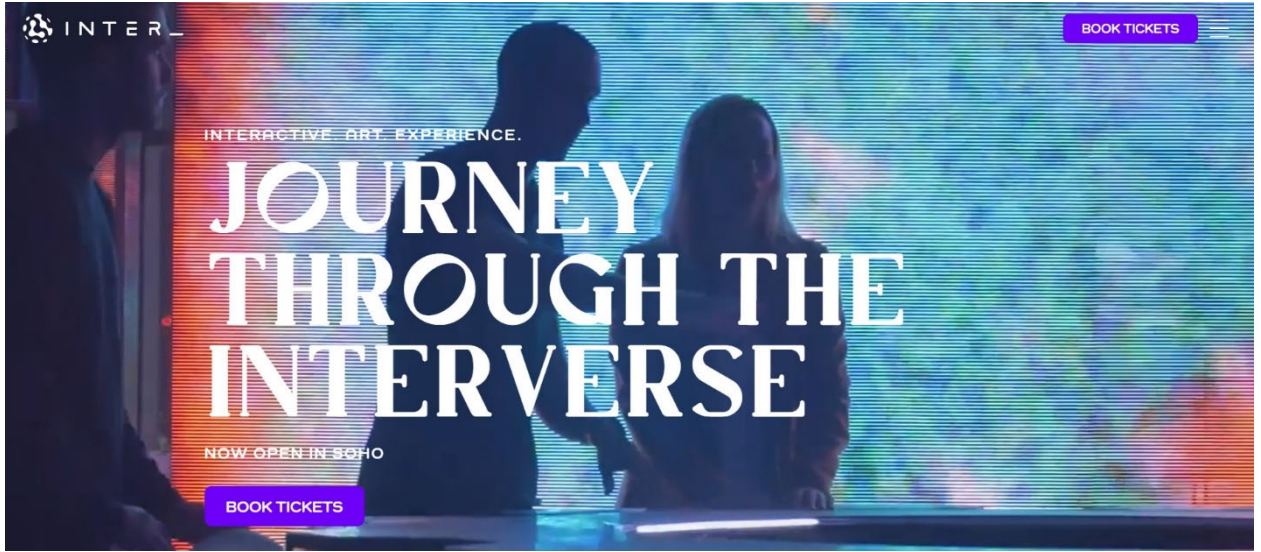


Figure 14

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.

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Powered by Peek.com peek

Choose your date and time below:

View Dates ▾

Monday, February 5

wINTERverse Admission Details ⓘ

Afternoon Evening

7:00 PM 7:15 PM 7:30 PM 7:45 PM 8:00 PM 5:00 PM

5:15 PM 5:30 PM 5:45 PM 6:00 PM 6:15 PM 6:30 PM

6:45 PM

The wINTERverse + DIY Beaded Snowflake Details ⓘ

Afternoon Evening

6:45 PM 5:00 PM 5:15 PM 5:30 PM 5:45 PM 6:00 PM

6:15 PM 6:30 PM

Tuesday, February 6 Sold Out

Wednesday, February 7

Mon, Feb 5 • 7:45 PM
the wINTERverse Book Now

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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.

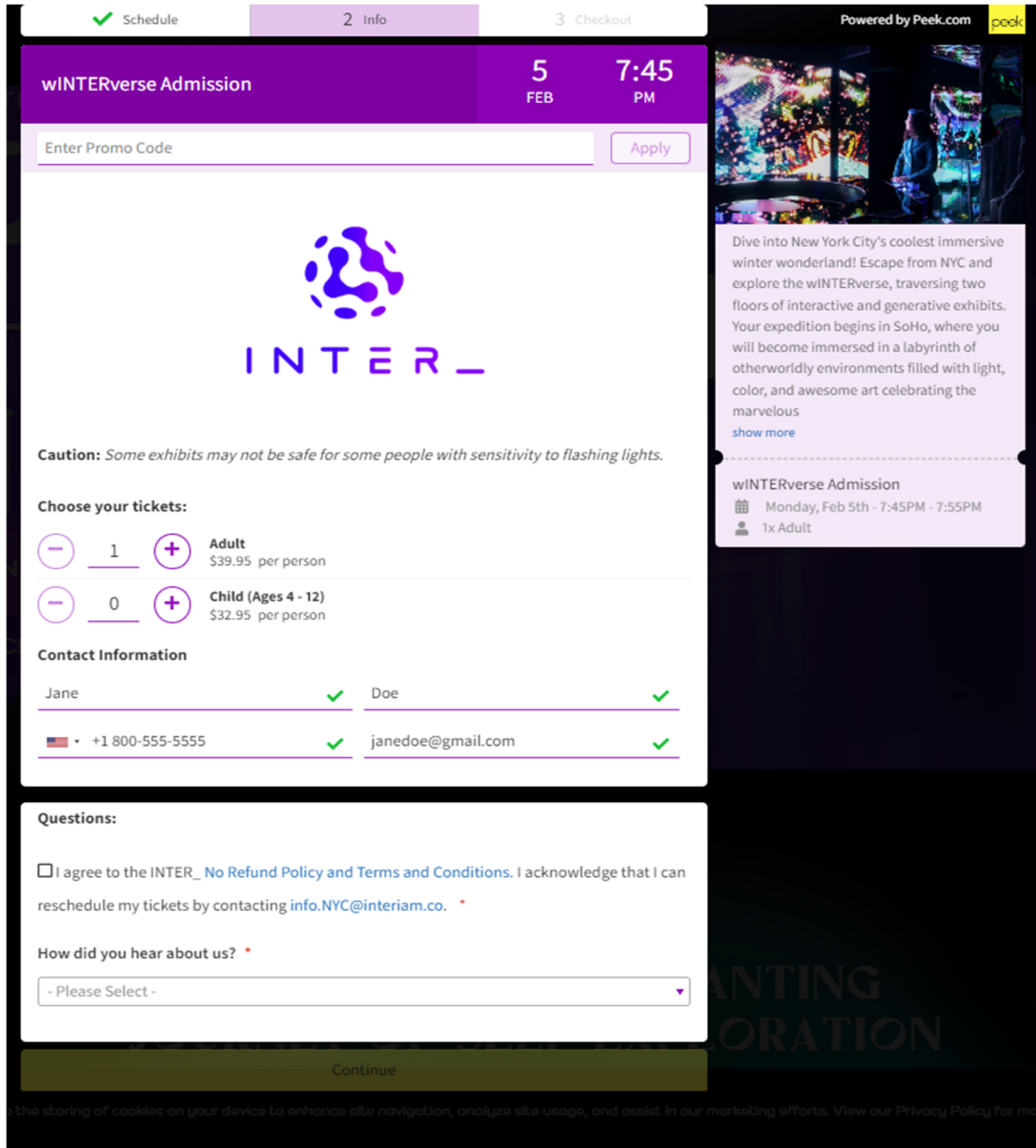


Figure 16

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.

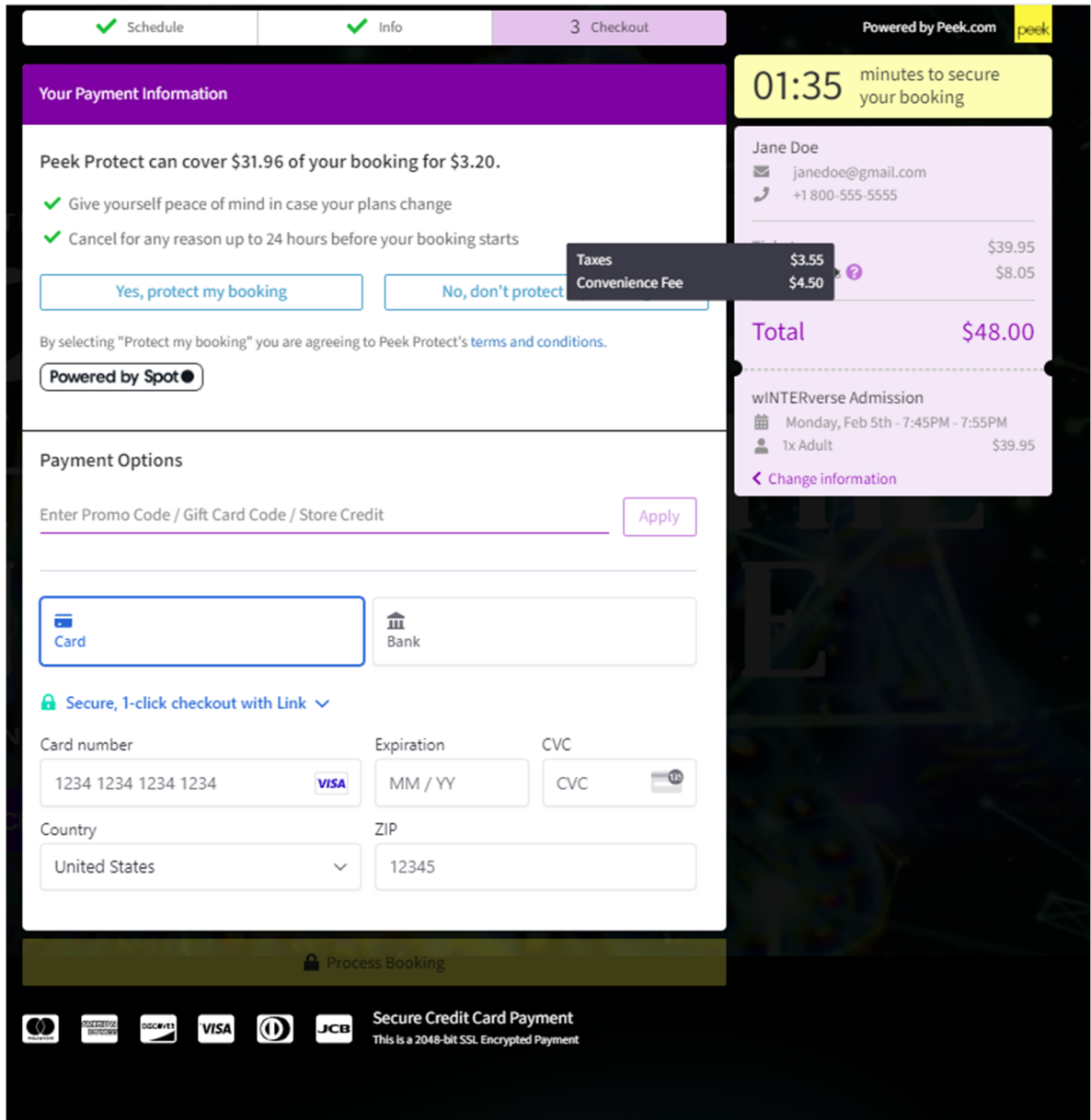


Figure 18

1 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

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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 Dated: July 11, 2024

BURSOR & FISHER, P.A.

2 By: /s/ Philip L. Fraietta
Philip L. Fraietta

3
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11 *Attorneys for Plaintiff*

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ZHARIA CHARLES, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff Kings (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Philip L. Fraietta, Bursor & Fisher, P.A., 1330 Avenue of the Americas, 32nd Floor New York, NY 10019 Tel.: (646) 837-7150

DEFENDANTS

PEEK TRAVEL, INC.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d)

Brief description of cause: Defendant violated New York's Arts and Cultural Affairs Law.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 5,000,000.00+

CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 07/11/2024

SIGNATURE OF ATTORNEY OF RECORD

/s/ Philip L. Fraietta