

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

HO KI MOK, individually and on behalf of all
others similarly situated,

Plaintiff,

v.

ATG TICKETS US, LLC,

Defendant.

Index No.:

SUMMONS

Plaintiff designates KINGS COUNTY as the
place of trial

The basis of venue is: PLAINTIFF'S
RESIDENCE

To the above named Defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's Attorney within twenty days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: February 23, 2024
New York, New York

BURSOR & FISHER, P.A.

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

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Attorney for Plaintiff

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**CLASS ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL**

Plaintiff Ho Ki Mok brings this action on behalf of herself, and all others similarly situated against ATG Tickets US, LLC (“Defendant”). Plaintiff makes the following allegations pursuant to the investigation of her counsel and based upon information and belief, except as to the allegations specifically pertaining to herself, which are based on personal knowledge.

NATURE OF THE ACTION

1. This is a class action based on ATG Tickets US, LLC’s (“Defendant”) failure to properly disclose the total cost for the purchase of tickets in violation of New York law.

2. New York Law was recently enacted, effective August 29, 2022, to demand greater price transparency from ticket sellers. The law requires that all ticket sellers list the total cost of a ticket, inclusive of mandatory fees, before the consumer selects the tickets for purchase to allow consumers to make more informed decisions.

3. Specifically, New York Arts and Cultural Affairs Law § 25.07(4) requires that “every operator ... of a place of entertainment ... shall disclose the total cost of the ticket, inclusive of all ancillary fees that must be paid in order to purchase the ticket.” *See*. “Such disclosure of the total cost and fees shall be displayed in the ticket listing prior to the ticket being selected for

purchase.” *Id.* (emphasis added). And “[t]he price of the ticket shall not increase during the purchase process.” *Id.*

4. Defendant has violated this law by failing to disclose a \$5.00 “Order Processing Fee” which increases the total cost of the ticket during the purchase process but is only disclosed *after* the ticket is selected for purchase. The Order Processing Fee is added to the total cost of the ticket price regardless of the delivery method of the ticket.

5. Plaintiff therefore demands, on behalf of herself and all others similarly situated, actual damages, reasonable attorneys’ fees and costs, and injunctive relief under New York Arts and Cultural Affairs Law § 25.33.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action as a court of general jurisdiction.

7. Venue is proper in this district pursuant to CPLR 503 because Plaintiff resides in this County and because a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this County.

8. This Court has personal jurisdiction over Defendant because Defendant maintains its principal place of business in New York.

PARTIES

9. Plaintiff Ho Ki Mok is an individual consumer who, at all times material hereto, was a citizen and resident of Brooklyn, New York who resides in Kings County, New York. Plaintiff purchased two GA Pit tickets on August 22, 2023, from Defendant’s website: <https://www.kingstheatre.com/> to see a play at Defendant’s Kings Theatre. The transaction flow

process she viewed on Defendant's website was substantially similar to that depicted in Figures 1 through 2 in this Complaint.

10. Defendant ATG Tickets, LLC is a Delaware limited liability company with its principal place of business in New York, New York. Defendant owns and operates brick-and-mortar theatres throughout New York and the United States.

RELEVANT FACTUAL ALLEGATIONS

11. When a customer visits Defendant's website to purchase a ticket from a New York based theatre owned by Defendant, such as Kings Theatre, she is first presented with ticket prices when she selects a particular event as follows:

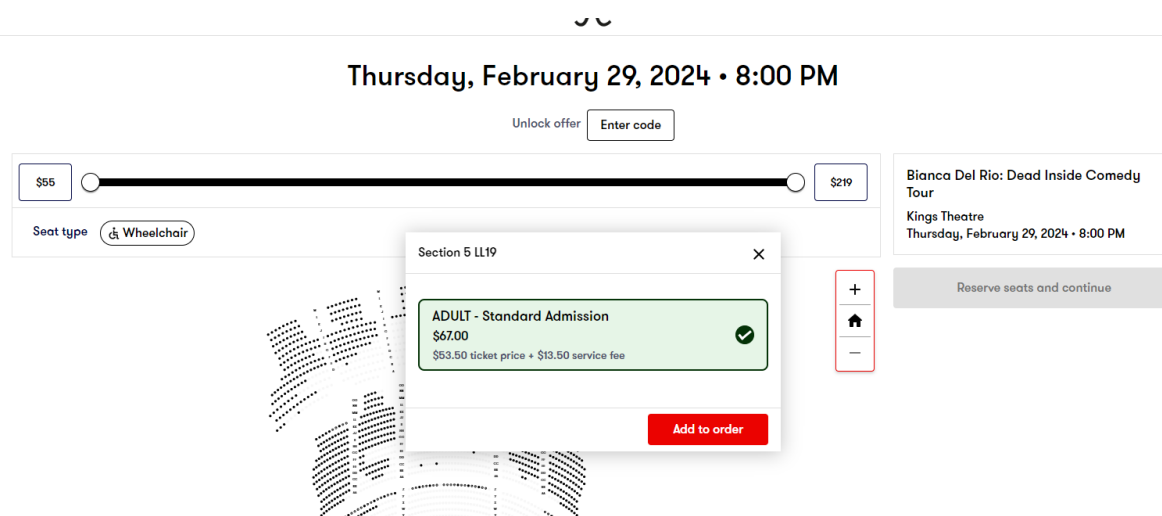


Figure 1

12. Regardless of which ticket the customer selects, the purchase price that customer is offered is misleading as it is not the total cost of the ticket, inclusive of all fees. In fact, Defendant purports to show the total cost by displaying the inclusion of an additional “service fee” at this stage.

13. It is only after the customer selects a ticket that Defendant discloses a \$5.00

“Order Processing Fee” which increases the total cost of the ticket during the purchase process on every ticket purchase.

14. The “Order Processing Fee” which is added on every ticket during the purchase process appears as follows:

Bianca Del Rio: Dead Inside Comedy Tour	
Kings Theatre	
Thursday, February 29, 2024 • 8:00 PM	
✗ Section 5 LL19	\$67.00
ADULT	
Standard Admission	
\$53.50 ticket price + \$13.50 service fee	
Order total	\$72.00
incl. \$5.00 order processing fee	

Reserve seats and continue

Figure 2

15. Therefore, as displayed in the example in Figure 2, the total ticket cost for an Adult Standard Admission ticket is \$72.00, despite Defendant’s lower misleading representation of \$67.00 when a consumer first selects this ticket for purchase.

16. Defendant’s practice of failing to disclose the total ticket price prior to the ticket being selected for purchase, which increases the cost of the ticket that a purchaser must pay just to purchase the ticket is in violation of New York Arts and Cultural Affairs Law § 25.07(4).

NEW YORK ARTS & CULTURAL AFFAIRS LAW

17. Effective August 29, 2022, New York enacted Arts & Cultural Affairs Law § 25.07(4), which provides that “[e]very operator or operator’s agent of a place of entertainment...

shall disclose the total cost of the ticket, inclusive of all ancillary fees that must be paid in order to purchase the ticket, and disclose in a clear and conspicuous manner the portion of the ticket price stated in dollars that represents a service charge, or any other fee or surcharge to the purchaser. Such disclosure of the total cost and fees shall be displayed in the ticket listing prior to the ticket being selected for purchase.” *Id.* (emphasis added). And “[t]he price of the ticket shall not increase during the purchase process.” *Id.*; *Compare with* Figures 2 through 6.

18. Shortly after the law was enacted, ticketing websites peppered the State of New York’s Division of Licensing Services with questions about the scope of the law. As explained by the Division of Licensing Services, “the ticket purchasing process begins once a consumer visits a ticket marketplace and first sees a list of seat prices.” *See* N.Y. Dep’t of State, Div. Licens. Servs., *Request for Additional Guidance – New York State Senate Bill S.9461*, attached hereto as **Exhibit A**, at 1. “From the moment the prospective purchaser assesses the [] ticket lists through the final payment ... there should be no price increases to the purchaser for the ticket itself.” *Id.* “When a prospective purchaser selects a ticket with full disclosure of the ticket price, the purchaser should not then have to search for the total price of the ticket as the purchaser proceeds through the purchasing process, it should continue to be readily available to the purchaser.” *Id.* at 2 (emphasis added). “In short, the ticket listing must include the total cost of the ticket, with a breakdown of all service charges, fees and surcharges, that the purchaser must pay just to purchase the ticket.” *Id.* (emphasis added).

CLASS REPRESENTATION ALLEGATIONS

19. Plaintiff seeks to represent a class defined as all individuals in the United States who purchased tickets online from Defendant’s website to any theatre owned by Defendant located

in the State of New York¹ on or after August 29, 2022 (the “Nationwide Class”). Excluded from the Nationwide Class is any entity in which Defendant has a controlling interest, and officers or directors of Defendant.

20. Plaintiff also seeks to represent a subclass defined as ann individuals in New York who purchased tickets online from Defendant’s website to any theatre owned by Defendant located in the State of New York on or after August 29, 2022 (the “New York Subclass”). Excluded from the New York Subclass is any entity in which Defendant has a controlling interest, and officers or directors of Defendant.

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

22. Common questions of law and fact exist as to all the Nationwide Class and New York Subclass members and predominate over questions affecting only individual class members. Common legal and factual questions include, but are not limited to: (a) whether Defendant failed to disclose the total cost of the ticket, including all ancillary fees, prior to the tickets being selected for purchase in violation of New York Arts & Cultural Affairs Law § 25.07(4); (b) whether the displayed price of Defendant’s tickets increases during the purchase process in violation of New York Arts & Cultural Affairs Law § 25.07(4); and (c) whether Defendant failed to disclose its

¹ This includes, but is not limited to tickets purchases online for shows at Kings Theatre, Walter Kerr Theatre, Eugene O’Neill Theatre, Al Hirschfeld Theatre, St. James Theatre, Lyric Theatre, and Hudson Theatre.

order processing fee in a clear and conspicuous manner in violation of New York Arts & Cultural Affairs Law § 25.07(4).

23. The claims of the named Plaintiff are typical of the claims of the Nationwide Class and New York Subclass in that the named Plaintiff sustained damages as a result of Defendant's failure to properly disclose the total ticket cost of its tickets during the online ticket purchase process.

24. Plaintiff is an adequate representative of the Nationwide Class and New York Subclass because Plaintiff's interests do not conflict with the interests of the class members Plaintiff seeks to represent, Plaintiff has retained competent counsel experienced in prosecuting class actions, and Plaintiff intends to prosecute this action vigorously. The interests of class members will be fairly and adequately protected by Plaintiff and Plaintiff's counsel.

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

FIRST CAUSE OF ACTION

New York Arts & Cultural Affairs Law § 25.07

(On Behalf Of The Nationwide Class and New York Subclass)

26. Plaintiff repeats the allegations contained in the foregoing paragraphs as if fully set forth herein.

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

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

29. Defendant violated New York Arts & Cultural Affairs Law § 25.07(4) by failing to disclose the “total cost of a ticket, inclusive of all ancillary fees that must be paid in order to purchase the ticket” after a ticket is selected, as depicted in this Complaint. *See* Figures 1 and 2.

30. Defendant also violated New York Arts & Cultural Affairs Law § 25.07(4) by increasing the total cost of its tickets during the purchase process, as depicted in this Complaint. *See* Figures 1 and 2.

31. Defendant also violated New York Arts & Cultural Affairs Law § 25.07(4) by failing to “disclose in a clear and conspicuous manner the portion of the ticket price stated in dollars that represents a service charge, or any other fee or surcharge to the purchaser,” as depicted in Figures 1 and 2 of this Complaint.

32. Defendant’s “Order Processing Fee” is an “ancillary fee[] that must be paid in

order to purchase the ticket.” N.Y. Arts & Cult. Aff. Law § 25.07(4).

33. On or about August 22, 2023, Plaintiff purchased tickets on Defendant’s website and was forced to pay Defendant’s Order Processing Fee. Plaintiff was harmed by paying this Order Processing Fee since the total cost was not disclosed to Plaintiff at the beginning of the purchase process, and therefore, is unlawful pursuant to New York Arts & Cultural Affairs Law § 25.07(4).

34. On behalf of Plaintiff and members of the Nationwide Class and New York Subclass, Plaintiff seeks to enjoin the unlawful acts and practices described herein, to recover actual damages and reasonable attorneys’ fees. *See* N.Y. Arts & Cult. Aff. Law § 25.33.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendant, as follows:

- (a) For an order certifying the Nationwide Class and the New York Subclass under CPLR 901 and naming Plaintiff as representative of the Class and New York Subclass and Plaintiff’s attorneys as Class Counsel to represent the Nationwide Class and New York Subclass members;
- (b) For an order declaring that Defendant’s conduct violates the statutes referenced herein;
- (c) For an order finding in favor of Plaintiff, the Nationwide Class, and the New York Subclass on all counts asserted herein;
- (d) For compensatory and punitive damages in amounts to be determined by the Court and/or jury;
- (e) For prejudgment interest on all amounts awarded;
- (f) For an order of restitution and all other forms of equitable monetary relief;
- (g) For injunctive relief as pleaded or as the Court may deem proper; and
- (h) For an order awarding Plaintiff and the Nationwide Class and New York Subclass their reasonable attorneys’ fees and expenses and costs of suit.

JURY TRIAL DEMANDED

Pursuant to CPLR 4102(a), Plaintiff demands a trial by jury of any and all issues in this action so triable of right.

Dated: February 23, 2024

Respectfully submitted,

BURSOR & FISHER, P.A.

By: /s/ Philip L. Fraietta
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