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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
11

12 STANLEY NIEDBALSKI, an individual,
on behalf of himself and all others similarly
13 situated,

14 Plaintiff,

15 v.

16 TICKETMASTER L.L.C., a Virginia
corporation; and LIVE NATION
17 ENTERTAINMENT, INC., a Delaware
corporation,
18

19 Defendants.

Case No. 2:18-cv-10241

CLASS ACTION

**CLASS ACTION COMPLAINT FOR
DAMAGES AND EQUITABLE RELIEF**

JURY TRIAL DEMANDED

20 Plaintiff Stanley Niedbalski (“Niedbalski” or “Plaintiff”), on behalf of himself and
21 all others similarly situated, by and through undersigned counsel, brings this class action
22 for damages and equitable relief against defendants Ticketmaster L.L.C. (“Ticketmaster”)
23 and Live Nation Entertainment, Inc. (“Live Nation” and with Ticketmaster, “Defendants”).
24 Plaintiff alleges the following upon information and belief based on the investigation of
25 counsel, except as to those allegations that specifically pertain to Plaintiff, which are
26 alleged upon personal knowledge:

27 **NATURE OF THE ACTION**

28 1. This is a civil action brought by Plaintiff on behalf of himself and all others

1 similarly situated against Ticketmaster and Live Nation.

2 2. Ticketmaster is the “largest ticket marketplace in the world.”¹ Ticketmaster
3 is the “go-to event search engine for billions of live event fans across the globe.”²
4 Ticketmaster sells tickets to concerts, sports games, arts and theater shows, and other
5 events.³

6 3. As Ticketmaster is the leading ticket provider in the United States,
7 Ticketmaster essentially serves as the gatekeeper to the entertainment industry’s most
8 coveted events, such as music, sports, and theatre. In that capacity, Ticketmaster purports
9 to maintain that it limits the number of tickets per purchase to prevent scalpers from using
10 bots to snatch up large quantities of tickets for resale.

11 4. In recent years, consumers have experienced a shortage of tickets on the
12 primary market, namely, ticketmaster.com, but only to find them on the secondary reseller
13 market priced at far more than the original value of the tickets, including higher fees.

14 5. Ticketmaster has expanded into the secondary ticketing market of reselling
15 tickets through its “verified resale” program. Through its “verified resale” program,
16 scalpers sell directly on Ticketmaster’s site, including Ticketmaster’s resale sites such as
17 ticketsnow.com, ticketexchangebyticketmaster.com, and ticketmaster.com/verified.

18 6. Although Ticketmaster claims they are offering a marketplace that provides a
19 “safe and fair place” for fans to buy resale tickets,⁴ its “verified resale” program is simply
20 another way for Ticketmaster to generate additional revenue by collecting more fees and
21 getting a second cut on tickets, which is even more than the original cut it receives on the
22

23 ¹ Ticketmaster, https://business.ticketmaster.com/?_ga=2.228738204.1261629835.1542002751-2122496149.1542002751 (last visited Dec. 10, 2018).

24 ² *See id.*

25 ³ Ticketmaster, <https://www.ticketmaster.com/about/about-us.html> (last visited Dec. 10,
26 2018).

27 ⁴ Ethan Baron, *Ticketmaster schemes with scalpers so you pay more, report says*, Los
28 Angeles Times (Sep. 20, 2018, 10:05 a.m.),
<https://www.latimes.com/business/hollywood/la-fi-ct-ticketmaster-scalpers-20180920-story.html>.

1 first sale. For example, Ticketmaster collects \$25.75 in fees on a \$209.50 ticket on the
2 initial sale. When the same ticket is posted for resale Ticketmaster's site for \$400,
3 Ticketmaster stands to collect an additional \$76 on the same ticket.⁵

4 7. Ticketmaster facilitates the sale of tickets to the secondary market through its
5 professional reseller program called TradeDesk. TradeDesk is a web-based inventory
6 management system for scalpers. TradeDesk allows scalpers to upload large quantities of
7 tickets purchased from Ticketmaster's site and quickly list them again for resale. This
8 practice is not only contrary to Ticketmaster's code of conduct for sellers but also is in
9 violation of its own terms of use limiting ticket quantities purchased per person per event.
10 According to Ticketmaster, it "specifically prohibits resellers from purchasing tickets that
11 exceed the posted ticket limit for an event," and "prohibits the creation of fictitious user
12 accounts for the purpose of circumventing ticket limit detection in order to amass tickets
13 intended for resale."⁶ However, Ticketmaster has in fact created an incentive for scalpers
14 to acquire large quantities of tickets through its reseller program, TradeDesk, whereby
15 scalpers get a reduction in the commission fee the scalpers pay.

16 8. Ticketmaster's resale ticketing practice of allowing scalpers to disregard the
17 rules set by Ticketmaster and laws prohibiting the use of ticket bots is unfair and unlawful
18 resulting in harm to consumers. This practice creates a shortage of tickets in the primary
19 market, encourages inflated prices, and increase in fees in the secondary market, all for
20 the benefit of Ticketmaster and at the expense of consumers. Consumers are then left
21 with no choice but to purchase tickets on the secondary market.

22 9. Accordingly, Plaintiff brings this case and asserts claims on behalf of himself
23 and a Class of similarly-situated consumers (defined below) for violations of the Cal. Bus.
24 & Prof. Code §§ 17200, *et seq.* and the Ohio Rev. Code Ann. §§ 1345.01, *et seq.*; and for
25

26 ⁵ *Id.*

27 ⁶ Ethan Baron, *Ticketmaster schemes with scalpers so you pay more: report*, Mercury
28 News (updated Sept. 20, 2018 at 10:10 a.m.), [https://www.mercurynews.com/2018/09/
19/ticketmaster-schemes-with-scalpers-so-you-pay-more-report/](https://www.mercurynews.com/2018/09/19/ticketmaster-schemes-with-scalpers-so-you-pay-more-report/).

1 unjust enrichment.

2 **JURISDICTION AND VENUE**

3 10. This Court has subject matter jurisdiction pursuant to the Class Action
4 Fairness Act, 28 U.S.C. § 1332(d), because the aggregate amount in controversy exceeds
5 \$5 million, exclusive of interests and costs; the number of members of the proposed Class
6 exceeds 100; and many members of the proposed Class are citizens of different states than
7 Defendants.

8 11. This Court has personal jurisdiction over Defendants as they have their
9 headquarters in this State and in this Judicial District and/or have sufficient minimum
10 contacts with this State.

11 12. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b)
12 because Defendants reside in this Judicial District and/or because a substantial part of the
13 events or omissions giving rise to Plaintiff's and Class members' claims occurred in this
14 Judicial District.

15 13. Application of California law is proper because Defendants' headquarters are
16 in California, decisions given rise to the underlying facts at issue in this Complaint were
17 presumably made in California, and the misconduct emanated from California.
18 Additionally, Defendants' employees involved in the misconduct are presumably located
19 at Defendants' headquarters.

20 **PARTIES**

21 14. Plaintiff Stanley Niedbalski is a resident and citizen of Bellevue, Ohio.
22 Plaintiff purchased tickets on August 21, 2018, originally sold by Ticketmaster, on the
23 secondary market, specifically at ticketsnow.com, for a concert event to be held in
24 October 2019.

25 15. Ticketmaster L.L.C., is a Virginia corporation headquartered in Beverly
26 Hills, California. Ticketmaster is the live-event ticket sales and distribution subsidiary of
27 Live Nation Entertainment, Inc.

28 16. Live Nation Entertainment, Inc., is a Delaware corporation headquartered in

1 Beverly Hills, California.

2 **FACTUAL ALLEGATIONS**

3 17. Ticketmaster is the “largest ticket marketplace in the world.”⁷ In 2010,
4 Ticketmaster merged with Live Nation and became Live Nation Entertainment, which is
5 the world’s leading live entertainment company that brought in \$10.3 billion in revenue in
6 2017.⁸

7 18. The reselling of tickets has grown into a \$5 billion industry in the United
8 States.⁹ For Ticketmaster, this resale market is “particularly lucrative.”¹⁰

9 19. Ticketmaster has publicly criticized scalpers—people or businesses who buy
10 tickets and then resell them at higher prices for a profit. Meanwhile, behind the scenes,
11 Ticketmaster has been quietly permitting, facilitating, and actively encouraging secondary
12 market ticket sales by scalpers.

13 20. In 2009, then-CEO Irving Azoff, of Ticketmaster, testified before the Senate
14 judiciary antitrust subcommittee that he believed “scalping and resale should be illegal.”¹¹
15 However, Ticketmaster has markedly changed course with its secret launch of its
16 professional reseller program, TradeDesk.

17 21. TradeDesk is a web-based inventory management system for “scalpers to
18 upload large quantities of tickets purchased from Ticketmaster’s website and quickly list
19 them again for resale. With the click of a button, scalpers can hike or drop prices on
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21 ⁷ Ticketmaster, https://business.ticketmaster.com/?_ga=2.228738204.1261629835.1542002751-2122496149.1542002751 (last visited Dec. 10, 2018).

22 ⁸ *Id.*; Live Nation Entertainment, <http://investors.livenationentertainment.com/news-center/news-center-details/2018/Live-Nation-Entertainment-Reports-Fourth-Quarter-And-Full-Year-2017-Results/default.aspx> (last visited Dec. 10, 2018).

23 ⁹ Baron, *supra*, <https://www.latimes.com/business/hollywood/la-fi-ct-ticketmaster-scalpers-20180920-story.html>.

24 ¹⁰ *Id.*

25 ¹¹ Anastasia Tsioulcas, *Ticketmaster Has Its Own Secret ‘Scalping Program,’ Canadian Journalists Report*, NPR (Sept. 20, 2018 at 7:34 a.m. ET), <https://www.npr.org/2018/09/20/649666928/ticketmaster-has-its-own-secret-scalping-program-canadian-journalists-report>.

1 reams of tickets on Ticketmaster’s site based on their assessment of fan demand.”¹²

2 Ticketmaster has proclaimed TradeDesk as “the most powerful ticket sales tool. Ever.”¹³

3 22. Ticketmaster’s resale program and TradeDesk are closely guarded that
4 neither are mentioned anywhere on Ticketmaster’s website or in its corporate reports. In
5 order to access TradeDesk’s website, one must first submit a registration request.

6 23. Recent investigative reporting by Canada’s national broadcaster CBC and the
7 Toronto Star newspaper revealed how Ticketmaster turns a “blind eye to scalpers who use
8 ticket-buying bots and fake identities to snatch up tickets and then resell them on the
9 [Ticketmaster site and its resale sites] for inflated prices.”¹⁴

10 24. In July 2018, the CBC and the Toronto Star sent undercover reporters to
11 Ticket Summit, a ticketing and live-entertainment convention that took place at Caesars
12 Palace in Las Vegas. Ticketmaster reportedly held a private event for scalpers, whom the
13 company refers to as “resellers” and “brokers.”¹⁵

14 25. During a closed session to the media, the undercover reporters, posing as
15 scalpers and equipped with hidden cameras, were pitched on Ticketmaster’s professional
16 reseller program, TradeDesk. In fact, Ticketmaster’s Resale Director, Casey Klein, held a
17 closed session called, “We appreciate your partnership: More brokers are listing with
18 Ticketmaster than ever before.”¹⁶

19 26. According to the CBC and the Toronto Star, a Ticketmaster sales
20 representative said, “I have brokers that have literally a couple of hundred accounts. It’s
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22 ¹² Baron, *supra*, [https://www.latimes.com/business/hollywood/la-fi-ct-ticketmaster-](https://www.latimes.com/business/hollywood/la-fi-ct-ticketmaster-scalpers-20180920-story.html)
23 [scalpers-20180920-story.html](https://www.latimes.com/business/hollywood/la-fi-ct-ticketmaster-scalpers-20180920-story.html).

24 ¹³ Dave Seglins, et al., ‘A public relations nightmare’: Ticketmaster recruits pros for
25 *secret scalper program*. CBC (updated Sept. 21, 2018), [https://www.cbc.ca/news/](https://www.cbc.ca/news/business/ticketmaster-resellers-las-vegas-1.4828535)
[business/ticketmaster-resellers-las-vegas-1.4828535](https://www.cbc.ca/news/business/ticketmaster-resellers-las-vegas-1.4828535).

26 ¹⁴ *Id.*

27 ¹⁵ Baron, *supra*, [https://www.latimes.com/business/hollywood/la-fi-ct-ticketmaster-](https://www.latimes.com/business/hollywood/la-fi-ct-ticketmaster-scalpers-20180920-story.html)
[scalpers-20180920-story.html](https://www.latimes.com/business/hollywood/la-fi-ct-ticketmaster-scalpers-20180920-story.html).

28 ¹⁶ Seglins, et al., *supra*, [https://www.cbc.ca/news/business/ticketmaster-resellers-las-](https://www.cbc.ca/news/business/ticketmaster-resellers-las-vegas-1.4828535)
[vegas-1.4828535](https://www.cbc.ca/news/business/ticketmaster-resellers-las-vegas-1.4828535).

1 not something that we look at or report.”¹⁷ Another presenter said that Ticketmaster’s
2 resale division isn’t interested in whether clients use automated software and fake
3 identities to bypass the box office’s ticket buying limits. “If you want to get a good show
4 and the ticket limit is six or eight . . . you’re not going to make a living on six or eight
5 tickets.”¹⁸

6 27. While Ticketmaster has a “buyer abuse” department that monitors suspicious
7 online activity, a Ticketmaster sales representative said that its resale department does not
8 police users of TradeDesk. When asked whether Ticketmaster cares if scalpers use bots to
9 buy their tickets, the representative said: “We don't share reports, we don't share names,
10 we don't share account information with the primary site. Period.”¹⁹

11 28. In March 2018, during an online video conference demonstration of
12 TradeDesk, an undercover reporter asked a Ticketmaster representative whether
13 Ticketmaster would ban scalpers who violated Ticketmaster’s terms of use by getting
14 around ticket-buying limits, the representative said: “[Ticketmaster] spent millions of
15 dollars on this tool. The last thing we’d want to do is get brokers caught up to where they
16 can’t sell inventory with us.”²⁰ This Ticketmaster representative also said that
17 100 scalpers in North America, including a handful in Canada, are using TradeDesk to
18 move between a few thousand and several million tickets per year. “I think our biggest
19 broker right now has probably grabbed around five million.”²¹

20 29. Ticketmaster’s Professional Reseller Handbook reveals how the company
21 rewards scalpers for their sales performance. According to Ticketmaster, it “rewards
22 professional reseller partners” for sales performance, unlocking discounts on the seller fee
23 percentage if, for example, their purchase order total reflects improvement year-over-year,
24

25 ¹⁷ *Id.*

26 ¹⁸ *Id.*

27 ¹⁹ *Id.*

28 ²⁰ *Id.*

²¹ *Id.*

1 or they achieve “a year-over-year increase in the number of tickets [] sold on Ticketmaster
2 Resale platforms.”²²

3 30. When scalpers reach certain sales figures such as \$500,000 or \$1 million in
4 annual sales, scalpers will receive a percentage discount on the seller fee. For example,
5 when a scalper reaches \$500,000 in sales, they receive a one percent reduction in fees and
6 another percentage is discounted when they hit \$1 million. Thus, Ticketmaster actively
7 engages in rewarding scalpers for selling on its secondary market, such as
8 ticketsnow.com, ticketexchangebyticketmaster.com, and ticketmaster.com/verified.

9 31. The CBC and the Toronto Star also tracked seat and prices for a Bruno Mars
10 concert at Scotiabank Arena in Toronto. They monitored Ticketmaster’s website for seven
11 months leading up to the Bruno Mars concert. The reporters found that “Ticketmaster
12 doesn’t list every seat when a sale begins; Hikes prices mid-sale; and Collects fees twice
13 on tickets scalped on its site.”²³ Ticketmaster’s actions create an illusion that there is a
14 shortage of tickets, which then forces the consumer to pay inflated prices and higher fees
15 through its resale sites.

16 32. As reported by the CBC and the Toronto Star, Ticketmaster’s resale program
17 results in Ticketmaster collecting fees multiple times on a single ticket.²⁴ For the Bruno
18 Mars concert at Scotiabank Arena in Toronto, the CBC counted more than 4,500 resale
19 tickets on Ticketmaster, meaning that if Ticketmaster sells every seat in the arena, it
20 would collect an initial \$350,000 in service fees, plus \$308,000 in fees on scalped tickets,
21 for a double-dipped total of \$658,000.²⁵

22 33. As a result of this “lucrative” prospect in the reselling of tickets,
23

24 ²² *Professional Reseller Handbook* at 9, 12, [https://www.documentcloud.org/documents/](https://www.documentcloud.org/documents/4901430-TMR-Professional-Reseller-Handbook-)
25 [4901430-TMR-Professional-Reseller-Handbook-](https://www.documentcloud.org/documents/4901430-TMR-Professional-Reseller-Handbook-).

26 ²³ Dave Seglins, et al., *‘I’m getting ripped off’: A look inside Ticketmaster’s price-hiking*
27 *bag of tricks*, CBC (updated Sept. 18, 2018), [https://www.cbc.ca/news/business/](https://www.cbc.ca/news/business/ticketmaster-prices-scalpers-bruno-mars-1.4826914)
[ticketmaster-prices-scalpers-bruno-mars-1.4826914](https://www.cbc.ca/news/business/ticketmaster-prices-scalpers-bruno-mars-1.4826914).

28 ²⁴ *Id.*

²⁵ *Id.*

1 Ticketmaster has created at least three different secondary ticket market websites,
2 including: ticketsnow.com, ticketexchangebyticketmaster.com, and
3 ticketmaster.com/verified.

4 34. In response to the CBC and Toronto Star news report, on September 21,
5 2018, United States Senators Jerry Moran and Richard Blumenthal, chairman and ranking
6 member of the U.S. Senate Commerce Subcommittee on Consumer Protection Product
7 Safety, Insurance and Data Security, sent a letter to the CEO of Live Nation concerning
8 the allegations that Ticketmaster's TradeDesk allows ticket scalpers to access
9 Ticketmaster's ticket supply in order to circumvent ticket sale limits to resell tickets at
10 inflated prices with the full support of Ticketmaster.²⁶ According to the Senators, the
11 alleged "harms to consumers made in this piece are serious and deserve immediate
12 attention."²⁷

13 35. The Senators are concerned that Ticketmaster's conduct harms consumers
14 and violates the Better Online Ticket Sales (BOTS) Act of 2016. The BOTS Act prohibits
15 the "circumvention of a security measure, access control system, or other technological
16 control or measure on an Internet website or online service that is used by the ticket issuer
17 to enforce posted event ticket purchasing limits or maintain the integrity of posted online
18 ticket purchasing order rule."²⁸ The BOTS Act also prohibits Ticketmaster from selling
19 tickets where they "knew or should have known that the event ticket was acquired in
20 violation of subparagraph (A)."

21 36. On October 5, 2018, Ticketmaster's President, Jared Smith, responded to the
22 Senators' letter. Mr. Smith wrote: "Ticketmaster does not have, and has never had, any
23 product or program that allows ticket scalpers, or anyone else, to buy tickets ahead of fans
24

25 _____
26 ²⁶ Jem Aswad, *Senators Question Ticketmaster, Live Nation on Alleged Scalper Collusion*,
27 *Variety* (Sept. 25, 2018 at 9:15 a.m. PT), [https://variety.com/2018/music/news/senators-
question-ticketmaster-live-nation-on-alleged-scalper-collusion-1202956495/](https://variety.com/2018/music/news/senators-question-ticketmaster-live-nation-on-alleged-scalper-collusion-1202956495/).

28 ²⁷ *Id.*

²⁸ *Id.*

1 and circumvent the policies we have on our site regarding on-line ticket purchasing
2 limits.”²⁹

3 37. Ticketmaster’s response mischaracterizes the Senators’ inquiry. TradeDesk
4 is not alleged to allow scalpers earlier access to tickets or allow them to circumvent the
5 ticket purchasing limits, but rather, it is the incentive of collecting double commission
6 fees on resale tickets that has caused Ticketmaster to turn a blind eye from these resellers
7 blatantly violating the terms of use ticket limits. By permitting the BOTS Act violations
8 on its website and then serving as a broker to sell those tickets back to the consumer,
9 Ticketmaster is clearly in violation of the law.

10 38. In the wake of allegations that Ticketmaster turns a blind eye to scalpers who
11 use ticket-buying bots and fake identities to scoop up large quantities of tickets in
12 violation of company rules, Mr. Smith, during an interview with Billboard Magazine
13 acknowledged that “there’s clearly some things that we’re not doing well enough. We’ll
14 learn from it and we’ll make some changes We probably don’t do enough to look
15 into TradeDesk.”³⁰ Mr. Smith did not explain why Ticketmaster created a feature on
16 TradeDesk that allows resellers to synchronize multiple Ticketmaster accounts for quick
17 resale in the secondary marketplace.³¹ Having multiple Ticketmaster accounts to
18 circumvent the ticket limit imposed per event is in clear violation of Ticketmaster’s terms
19 of use.

20 39. The music industry professionals, such as band managers, are outraged over
21 Ticketmaster’s conduct. On October 18, 2018, the CBC published leaked emails from
22

23 ²⁹ Dave Brooks, *Ticketmaster Responds to Senate Letter Investigating Resale*
24 *Controversy: Exclusive*, Billboard (Oct. 5, 2018), [https://www.billboard.com/articles/
business/8478525/ticketmaster-responds-senate-letter](https://www.billboard.com/articles/business/8478525/ticketmaster-responds-senate-letter).

25 ³⁰ Dave Brooks, *Ticketmaster President Talks TradeDesk Scandal: ‘We Absolutely Do Not*
26 *Turn a Blind Eye to the Misuse of Our Products’*, Billboard (Sept. 24, 2018),
[https://www.billboard.com/articles/business/8476697/ticketmaster-president-tradedesk-
scandal-exclusive-interview](https://www.billboard.com/articles/business/8476697/ticketmaster-president-tradedesk-scandal-exclusive-interview).

27 ³¹ Robert Cribb, et al., *Ticketmaster’s ‘TradeDesk’ scalper tool explained*, The Star (Sept.
28 25, 2018), [https://www.thestar.com/news/investigations/2018/09/25/ticketmasters-
tradedesk-scalper-tool-explained.html](https://www.thestar.com/news/investigations/2018/09/25/ticketmasters-tradedesk-scalper-tool-explained.html).

1 band managers to Ticketmaster blasting it for the secretive partnership with scalpers and
2 demanding answers.³² Paul Crockford, manager of former Dire Straits frontman Mark
3 Knopfler, said, “It was always hidden in the shadows a bit and nobody really knew.
4 Whenever you asked you were always told that they didn’t have any relationship with
5 power brokers or resellers or scalpers.”³³ He told CBC that “he feels deceived by
6 Ticketmaster and believes that by helping scalpers to resell tickets, the box office strips
7 artists of their ability to set prices for fans.”³⁴ Richard Jones, manager of the Pixies and
8 Teenage Fanclub said, “They are a conflicted company The more the ticket is, the
9 more they earn from the fees. So if a ticket is sold once, two times, three times at inflated
10 prices, they get a greater percentage for each ticket.”³⁵ That is why the managers were
11 appealing to Ticketmaster to stop facilitating the resale of tickets, which inevitably drives
12 up prices for fans. Mumford & Sons and Radiohead have both recently insisted that
13 Ticketmaster not allow resale tickets for their shows on their website.

14 40. As the gatekeeper to the entertainment industry’s most coveted events,
15 Ticketmaster essentially has a monopoly on the sale of tickets to all kinds of events,
16 including music, sports, and theatre in North America and the United Kingdom. Although
17 Ticketmaster purports to maintain strict purchasing limits designed to prevent scalpers
18 from using bots to buy tickets on a mass scale, it has instead, encouraged this exact
19 activity for its own monetary benefit at the expense of consumers. As a result, Plaintiff
20 and the Class are harmed through paying inflated ticket prices and higher fees.

21 41. To the extent that Ticketmaster asserts that any waiver of class action claims
22 and/or enforcement of arbitration clause(s) are applicable to the allegations contained in
23

24 ³² Rachel Houlihan, et al., *‘Hand caught in a cookie jar’: Band managers demand*
25 *answers about Ticketmaster’s secret scalper program*, CBC (updated Oct. 18, 2018),
26 <https://www.cbc.ca/news/business/ticketmaster-scalper-program-band-managers-1.4867652>.

27 ³³ *Id.*

28 ³⁴ *Id.*

³⁵ *Id.*

1 this Complaint, Plaintiff contends that such provisions should not be enforceable upon
2 Plaintiff as a result of Ticketmaster's non-compliance with its own Terms of Use and/or
3 void as against public policy as a result of Ticketmaster's fraudulent and/or or deceptive
4 business practices to the detriment of consumers.

5 **CLASS ACTION ALLEGATIONS**

6 42. Plaintiff brings this action on behalf of himself and two classes: A
7 Nationwide Class and an Ohio Subclass (together "Classes").

8 43. The Nationwide Class is initially defined as follows:

9 **All end-user purchasers in the United States who purchased a**
10 **secondary market Ticketmaster ticket from a professional reseller**
11 **participating in Ticketmaster's resale partner program and/or using**
12 **TradeDesk or a similar system operated by Defendants.**

13 Excluded from the Nationwide Class are Defendants, their parents, subsidiaries, affiliates,
14 officers, and directors, any entity in which Defendants have a controlling interest, and all
15 judges assigned to hear any aspect of this litigation, as well as their immediate family
16 members.

17 44. The Ohio Subclass is initially defined as follows:

18 **"All persons in the State of Ohio who purchased a secondary market**
19 **Ticketmaster ticket from a professional reseller participating in**
20 **Ticketmaster's resale partner program and/or using TradeDesk or a**
21 **similar system operated by Defendants."**

22 Excluded from the Ohio Subclass are Defendants, their parents, subsidiaries, affiliates,
23 officers, and directors, any entity in which Defendants have a controlling interest, and all
24 judges assigned to hear any aspect of this litigation, as well as their immediate family
25 members.

26 45. Plaintiff reserves the right to seek to amend these class definitions or to
27 define classes and subclasses as required, based on the investigation and research of his
28 counsel.

1 46. This action has been properly brought and may properly be maintained as a
2 class action under Rules 23(a)(1-4), 23(b)(1), (2), or (3), and/or 23(c)(4) of the Federal
3 Rules of Civil Procedure and case law thereunder.

4 **Numerosity of the Class**

5 **(Fed. R. Civ. P. 23(a)(1))**

6 47. Members of each Class are so numerous that their individual joinder is
7 impractical. The Classes comprise many millions of people. The precise number of the
8 members of each Class, and their addresses, are unknown to Plaintiff as this time, but can
9 be ascertained from Defendants' records. Members of the Classes may be notified of the
10 pendency of this action by mail or email, supplemented (if deemed necessary or
11 appropriate by the Court) by published notice.

12 **Predominance of Common Questions of Fact and Law**

13 **(Fed. R. Civ. P. 23(a)(2); 23(b)(3))**

14 48. Common questions of law and fact exist as to all members of the Classes.
15 These questions predominate over the questions affecting only individual members of the
16 Classes. The common legal and factual questions include, without limitation:

17 (a) Whether Defendants permitted, facilitated, and/or actively encouraged
18 sales on the secondary market by scalpers in return for a second cut on ticket sales;

19 (b) Whether Defendants allowed scalpers to violate their terms of use by
20 purchasing tickets that exceed the posted ticket limit for an event in order to encourage
21 scalpers to resell those same tickets through Ticketmaster's resale sites.

22 (c) Whether Defendants allowed scalpers to create fictitious user accounts
23 and maintain multiple accounts for the purpose of circumventing ticket limit detection in
24 order to amass tickets intended for resale.

25 (d) Whether Defendants allowed scalpers to use bots to upload large
26 quantities of tickets for resale.

27 (e) Whether Defendants' violated the Better Online Ticket Sales Act of
28 2016 ("BOTS Act of 2016");

1 (f) Whether Defendants’ practices, actions, and omissions constitute
2 unlawful, fraudulent, and/or unfair business practices in violation of California’s Unfair
3 Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200-17209;

4 (g) Whether Defendants’ practices, actions, and omissions constitute
5 unlawful, fraudulent, and/or unfair business practices in violation of the Ohio Consumer
6 Sales Practices Act (“OCSPA”), Ohio Rev. Code Ann. §§ 1345.01, *et seq.*

7 (h) Whether Defendants are liable for unjust enrichment; and

8 (i) The nature of the relief, including damages and equitable relief, to
9 which Plaintiff and members of the Classes are entitled.

10 **Typicality of Claims**

11 **(Fed. R. Civ. P. 23(a)(3))**

12 49. Plaintiff’s claims are typical of the claims of the Classes because Plaintiff,
13 like all other members of the Classes, have been subjected to the same wrongful conduct
14 because they all have purchased and paid more for Ticketmaster tickets on the secondary
15 market.

16 **Adequacy of Representation**

17 **(Fed. R. Civ. P. 23(a)(4))**

18 50. Plaintiff is an adequate representative of the Classes, because his interests do
19 not conflict with the interests of the members of the Classes and he has retained counsel
20 competent and experienced in complex class action and consumer litigation.

21 51. The interests of the members of the Classes will be fairly and adequately
22 protected by Plaintiff and his counsel.

23 **Superiority of a Class Action**

24 **(Fed. R. Civ. P. 23(b)(3))**

25 52. A class action is superior to all other available means for the fair and efficient
26 adjudication of the claims of Plaintiff and members of the Classes. The damages suffered
27 by each individual members of the Classes, while significant, are small given the burden
28 and expense of individual prosecution of the complex and extensive litigation necessitated

1 by Defendants' conduct. Further, it would be virtually impossible for the members of the
2 Classes individually to redress effectively the wrongs done to them. And, even if
3 members of the Classes themselves could afford such individual litigation, the court
4 system could not, given the thousands or even millions of cases that would need to be
5 filed. Individualized litigation would also present a potential for inconsistent or
6 contradictory judgments. Individualized litigation would increase the delay and expense
7 to all parties and the court system, given the complex legal and factual issues involved.
8 By contrast, the class action device presents far fewer management difficulties and
9 provides the benefits of single adjudication, economy of scale, and comprehensive
10 supervision by a single court.

11 **Risk of Inconsistent or Dispositive Adjudications and the Appropriateness of Final**

12 **Injunctive or Declaratory Relief**

13 **(Fed. R. Civ. P. 23(b)(1) And (2))**

14 53. In the alternative, this action may properly be maintained as a class action
15 with respect to each Class because:

16 (a) the prosecution of separate actions by individual members of the
17 Classes would create a risk of inconsistent or varying adjudication with respect to
18 individual Class members, which would establish incompatible standards of conduct for
19 the Defendants; or

20 (b) the prosecution of separate actions by individual Class members would
21 create a risk of adjudications with respect to individual members of the Classes which
22 would, as a practical matter, be dispositive of the interests of other members of the
23 Classes not parties to the adjudications, or substantially impair or impede their ability to
24 protect their interests; or

25 (c) Defendants have acted or refused to act on grounds generally
26 applicable to the Classes, thereby making appropriate final injunctive or corresponding
27 declaratory relief with respect to each Class as a whole.

28 **Issue Certification**

1 (Fed. R. Civ. P. 23(c)(4))

2 54. In the alternative, common questions of law and fact, including those set
3 forth in Paragraph 48 above, are appropriate for issue certification.

4 **FIRST CAUSE OF ACTION**

5 **(Violations of the Unfair Competition Law, Bus. & Prof. Code §§ 17200, et seq.)**

6 **(On Behalf of Plaintiff and the Nationwide Class)**

7 55. Plaintiff realleges, as if fully set forth, each and every allegation set forth
8 above, and pleads this cause of action on behalf of himself and all members of the
9 Nationwide Class.

10 56. The application of California law is appropriate here because Defendants'
11 headquarters are in California, key decisions regarding their resale program and the
12 TradeDesk platform, and their related business practices described herein were
13 presumably developed and created at their California headquarters, such that the unfair,
14 unlawful, and fraudulent business practices described herein emanated from California.

15 57. Defendants' business practices as complained of herein violate the UCL.

16 58. Defendants' practices constitute "unlawful" business practices in violation of
17 the UCL because they violate the BOTS Act of 2016, 15 U.S.C.A. § 45c.

18 59. Defendants' actions and practices constitute "unfair" business practices in
19 violation of the UCL, because, among other things, they are immoral, unethical,
20 oppressive, unconscionable, unscrupulous or substantially injurious to consumers, and/or
21 any utility of such practices is outweighed by the harm caused consumers; and engaged in
22 conduct as alleged in this Complaint that violates legislatively-declared policies of the
23 BOTS Act of 2016.

24 60. Defendants' action and practices constitute "fraudulent" business practices in
25 violation of the UCL because, among other things, they have a capacity and tendency to
26 deceive members of the public.

27 61. Defendants' action and practices, as set forth in this Complaint, show a
28 violation of the BOTS Act of 2016. The BOTS Act of 2016 states in subsection (a)(1)

1 that it shall be unlawful for any person:

2 (A) To circumvent a security measure, access control system, or other
3 technological control or measure on an Internet website or online
4 service that is used by the ticket issuer to enforce posted event ticket
purchasing limits or to maintain the integrity of posted online ticket
purchasing order rules; or

5 (B) To sell or offer to sell any event ticket in interstate commerce obtained
6 in violation of subparagraph (A) if the person selling or offering to sell
the ticket either -

7 i. Participated directly in or had the ability to control the conduct
8 in violation of subparagraph (A); or

9 ii. Knew or should have known that the event ticket was acquired
in violation of subparagraph (A).

10 62. The BOTS Act of 2016 states in subsection (b) “A violation of subsection
11 (a) shall be treated as a violation of a rule defining an unfair or a deceptive act or practice
12 under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57(a)(1)(B)).”
13 Accordingly, Defendants’ actions and practices also violate the unfair prong of Cal. Bus.
14 & Prof. Code § 17200.

15 63. Defendants’ wrongful business practices present an ongoing and continuing
16 threat to the general public.

17 64. As a result of Defendants’ wrongful business practices, Plaintiff and
18 members of the Classes have suffered injury in fact, including the loss of money.

19 65. As a direct and proximate result of Defendants’ violations of the UCL,
20 Plaintiff and Class members have suffered actual damage in that they paid more for
21 tickets and double fees.

22 66. Pursuant to Section 17203 of the UCL, Plaintiff and the Classes seek an order
23 that require Defendants (a) to enforce their terms of use by limiting ticket quantities to all
24 customers, including participants in their resale partner program; (b) to make full
25 restitution of all moneys wrongfully obtained from their violations of the UCL, as alleged
26 in this Complaint; and (c) require Defendants to pay attorneys’ fees and costs incurred by
27 counsel for Plaintiff and the proposed Classes in accordance with California Code of Civil
28 Procedure § 1021.5.

SECOND CAUSE OF ACTION

(Violation of the Ohio Consumer Sales Practices Act, Ohio Rev. Code Ann.

§§ 1345.01, *et seq.*)

(On Behalf of Plaintiff and the Ohio Subclass)

67. Plaintiff realleges, as if fully set forth, each and every allegation set forth above, and pleads this cause of action on behalf of himself and all members of the Ohio Subclass.

68. Defendants’ acts and practices violate the Ohio Consumer Sales Practices Act, Ohio Rev. Code Ann. §§ 1345.01, *et seq.* (“OCSA”).

69. The cornerstone of the Ohio Consumer Sales Practices Act is to protect consumers from unfair, deceptive, and unconscionable sales practices in connection with consumer transactions.

70. Plaintiff and the Ohio Subclass members are “consumers” within the meaning of O.R.C. § 1345.01(D).

71. Defendants are a “supplier” within the meaning of O.R.C. § 1345.01(C).

72. The purchase by Plaintiff on August 21, 2018, and any transaction by an Ohio Subclass member with Defendants, constitutes a “consumer transaction” within the meaning of O.R.C. § 1345.01(A).

73. The conduct and actions of Defendants complained of herein constitute the violation of O.R.C. § 1345.02(A) as an unfair or deceptive act in connection with a consumer transaction.

74. The conduct and actions of Defendants complained of herein also constitute violations of O.R.C. §§ 1345.02(B)(1), (B)(2), (B)(4), (B)(5), (B)(6), and (B)(8).

75. Defendants’ acts, practices, representations, omissions, and courses of conduct with respect to the promotion, marketing, and sale of the goods at issue violate the OCSA in that, among other things:

(a) Defendants represented that the subject of a consumer transaction had sponsorship, approval, performance characteristics, accessories, uses, or benefits which

1 they do not have in violation of O.R.C. § 1345.02(B)(1);

2 (b) Defendants represented that the subject of a consumer transaction was
3 of a particular standard, quality, grade, style, prescription, or model, which it was not, in
4 violation of O.R.C. § 1345.02(B)(2);

5 (c) Defendants represented that the subject of a consumer transaction was
6 available to the consumer for a reason that does not exist, in violation of O.R.C.
7 § 1345.01(B)(4);

8 (d) Defendants represented that the subject of a consumer transaction had
9 been supplied in accordance with a previous representation, which they did not, in
10 violation of O.R.C. § 1345.01(B)(5);

11 (e) Defendants represented that the subject of a consumer transaction
12 would be supplied in greater quantity than the supplier intended in violation of O.R.C.
13 § 1345.01(B)(6); and

14 (f) Defendants represented that a specific price advantage exists, which
15 they did not, in violation of O.R.C. § 1345.01(B)(8).

16 76. Furthermore, the conduct and actions of Defendants complained of herein
17 also constitute a violation of O.R.C. § 1345.03 as an unconscionable act or practice in
18 connection with a consumer transaction by virtue of its fraudulent and deceitful conduct in
19 violation of the BOTS Act of 2016, 15 U.S.C.A. § 45c; as well as in violation of the
20 legislatively-declared policies set forth in the BOTS Act of 2016 against the
21 “circumvention of control measures used by Internet ticket sellers to ensure consumer
22 access to tickets for any given event.”

23 77. Defendants’ action and practices, as detailed above, show a violation of the
24 BOTS Act of 2016. The BOTS Act of 2016 states in subsection (a)(1) that it shall be
25 unlawful for any person:

26 (A) To circumvent a security measure, access control system, or other
27 technological control or measure on an Internet website or online
28 service that is used by the ticket issuer to enforce posted event ticket
purchasing limits or to maintain the integrity of posted online ticket
purchasing order rules; or

1 (B) To sell or offer to sell any event ticket in interstate commerce obtained
2 in violation of subparagraph (A) if the person selling or offering to sell
the ticket either -

- 3 i. Participated directly in or had the ability to control the
4 conduct in violation of subparagraph (A); or
5 ii. Knew or should have known that the event ticket was
acquired in violation of subparagraph (A).

6 78. The BOTS Act of 2016 states in subsection (b) “A violation of subsection (a)
7 shall be treated as a violation of a rule defining an unfair or a deceptive act or practice
8 under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57(a)(1)(B)).”

9 79. Defendants knew or should have known that their actions detailed above,
10 were in violation of the BOTS Act of 2016.

11 80. Defendants knew that at the time the consumer transaction was entered into
12 of the inability of the consumer to receive a substantial benefit from the subject of the
13 consumer transaction in violation of O.R.C. § 1345.03(B)(3).

14 81. Defendants knew that the terms were substantially one-sided in favor of
15 Defendants when the consumer entered into a consumer transaction with Defendants in
16 violation of O.R.C. § 1345.03(B)(5).

17 82. Defendants’ violations of the OCSA continue to this day. As a direct and
18 proximate result of Defendants’ violations of the OCSA, Plaintiff and members of the
19 Ohio Subclass were injured and have suffered actual damage in that they paid more for
20 tickets and double fees.

21 83. Plaintiff and the Ohio Subclass members seek all monetary and non-
22 monetary relief allowed by law, including actual damages or statutory damages, injunctive
23 relief, and attorneys’ fees and costs.

24 **THIRD CAUSE OF ACTION**

25 **(Unjust Enrichment)**

26 **(On behalf of Plaintiff, the Nationwide Class, and the Ohio Subclass)**

27 84. Plaintiff realleges and incorporates each and every preceding factual
28 allegation as if fully written herein and pleads this claim for unjust enrichment on behalf

1 of himself and all members of the Classes.

2 85. Plaintiff and members of the Classes conferred a benefit upon Defendants.
3 Plaintiff and members of the Classes paid higher ticket prices and fees. Defendants
4 retained that benefit.

5 86. Defendants retained that benefit under circumstances that make it inequitable
6 for them to retain such benefit.

7 87. Plaintiff and members of the Classes are therefore entitled to disgorgement
8 and/or restitution as prayed for hereunder.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, individually and on behalf of all members of the Classes,
11 pray for relief and judgment against Defendants, as follows:

- 12 A. Certifying the proposed Classes pursuant to Rule 23 of the Federal Rules of
13 Civil Procedure, certifying Plaintiff as representative of the Classes and designating
14 Plaintiff's counsel as counsel for the Classes;
- 15 B. Awarding Plaintiff and the Classes compensatory damages, in an amount
16 exceeding \$5,000,000, to be determined by proof;
- 17 C. Awarding Plaintiff and the Classes statutory damages;
- 18 D. Awarding Plaintiff and the Classes punitive damages;
- 19 E. For declaratory and equitable relief, including restitution and disgorgement;
- 20 F. For an order enjoining Defendants from continuing to engage in the wrongful
21 acts and practices alleged herein;
- 22 G. Awarding Plaintiff and the Classes the costs of prosecuting this action,
23 including expert witness fees;
- 24 H. Awarding Plaintiff and the Classes reasonable attorneys' fees;
- 25 I. Awarding pre-judgment and post-judgment interest; and
- 26 J. Granting such other relief as this Court may deem just and proper.
- 27
28

JURY DEMAND

Plaintiff Stanley Niedbalski hereby demands a trial by jury of all claims so triable.

Dated: December 10, 2018

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