

CAUSE NO. \_\_\_\_\_

**JOSHUA P. DAVIS,**

**Plaintiff.**

vs.

**TICKETMASTER, L.L.C.,**

**Defendant.**

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**IN THE DISTRICT COURT OF**

**HARRIS COUNTY, TEXAS**

**\_\_\_\_ JUDICIAL DISTRICT**

**PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE**

Plaintiff, Joshua P. Davis ("Davis"), files this Original Petition and Request for Disclosure complaining of Defendant, Ticketmaster, L.L.C. ("Ticketmaster"), and in support thereof shows the court and the jury the following:

**DISCOVERY CONTROL PLAN**

1. Plaintiff intends that discovery be conducted under Discovery Level 2.

**PARTIES**

2. Plaintiff is an individual residing in Harris County, Texas.
3. Ticketmaster is a foreign limited liability company and may be served with process through its registered agent, Corporate Creations Network Inc., 2425 W. Loop South, Suite 200, Houston, Texas 77027.

**JURISDICTION AND VENUE**

4. This Court has jurisdiction over this controversy because the damages sought by Plaintiff are within the jurisdictional limits of this Court. Plaintiff's damages are less than \$100,000.00, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney's fees.

5. The Court has jurisdiction over the parties because they are companies doing business in Texas and/or individuals who reside in Texas.

6. Venue is proper in this county because the facts giving rise to this litigation occurred in Harris County. The laws of the state of Texas apply to the subject matter of this dispute.

### **FACTUAL BACKGROUND**

7. On January 9, 2019, Davis attempted to purchase tickets for Hamilton, a Broadway musical currently showing in New York. During Davis's attempt to purchase tickets for March 14 or 15, 2019, Davis clicked the "Back" button of his internet browser. Unbeknownst to Davis, when clicking back to a prior page, the calendar changed from March to January. Then, not knowing of the changed calendar, Davis selected what he thought was the desired Thursday date and time, and proceeded to checkout.

8. At checkout Davis's credit card information was already saved, and it was a simple click for purchase—unfortunately Davis did not notice that the selected date was for January 17, 2019 and not the expected Thursday in March until clicking on the purchase option. But Davis noticed the problem prior to arriving at a confirmed purchase page and attempted to stop the transaction by leaving the webpage. Davis's American Express charge card was still charged, despite this effort.

9. Davis had accidentally spent \$2,325.20 for three tickets for himself, his wife and his oldest daughter. Hamilton was a birthday gift, as she turns 12 on March 9, 2019.

10. Davis immediately—within minutes—of making the mistaken purchase called Ticketmaster to advise of the mistake and make the corrected purchase.

11. After a prolonged hold, and then speaking to a “resolution specialist,” Ticketmaster refused to make the change or refund the money. Davis sues for damages.

## CLAIMS

### *Fraudulent Inducement*

12. Ticketmaster, as a monopolist seller for tickets of all sorts, including Hamilton, committed fraud in the inducement by selling tickets in the manner described above. Not only did Ticketmaster’s website fail to respond to Davis’s attempt to cancel the charge, but Ticketmaster failed to refund the most basic of internet browsing errors literally minutes after the mistake is identified.

### *Breach of Contract*

13. Ticketmaster, through its contractual relationship with Plaintiff, breached its contract with Plaintiff through its acts and omissions, and has caused Plaintiff damages that are greater than the jurisdictional limits of this Court.

### *Violation of the Sherman Antitrust Act*

14. Plaintiff sues for damages under 15 USC section 15, the Sherman Antitrust Act. Ticketmaster’s business conduct, described above, is designed to unlawfully restrain trade under the Act. Furthermore, Ticketmaster’s position within the marketplace constitutes a monopoly on the lawful sale of tickets, specifically Hamilton tickets, giving Ticketmaster an unlawful position as a monopolist that can abuse consumers in violation of the Act.

15. Ticketmaster’s only recourse for any recovery of damages forces Plaintiff to resale the mistakenly purchased tickets through Ticketmaster’s own sales platform, in which Ticketmaster maintains a fee. Additionally, Ticketmaster refuses to allow Plaintiff

to sell the mistakenly purchased tickets for *less* money than what they were purchased for, artificially inflating ticket prices and impairing Plaintiff's ability to mitigate his damages and sell his tickets.

### **DAMAGES**

16. As a direct and proximate result of the acts, omissions, breaches and violations more fully described above, Plaintiff has been damaged by Ticketmaster's acts and/or omissions and those damages are within the jurisdictional limits of this Court.

17. Ultimately, Plaintiff will ask a jury of his peers to assess a fair and reasonable amount of money damages as compensation for his economic and non-economic injuries, as well as punishment for Ticketmaster's actions. These damages will include statutory and consequential damages. Additionally, Plaintiff seeks pre- and post-judgment interest, costs of court, and reasonable and necessary attorney's fees.

### **CONDITIONS PRECEDENT**

18. All necessary conditions precedent to the filing of this suit have been, or will be, met as required by law.

### **JURY DEMAND**

19. Plaintiff demands a trial by jury.

### **DISCOVERY**

20. Plaintiff requests that Ticketmaster disclose within 50 days of the receipt of this suit the information listed in TEXAS RULE OF CIVIL PROCEDURE 194.2 (a) – (1).

**CONCLUSION**

Plaintiff requests that Ticketmaster be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for Plaintiff against Ticketmaster for the following:

- a. Actual and consequential damages;
- b. Statutory penalties;
- c. Attorney's fees and expenses;
- d. Pre- and post-judgment interest at the maximum legal rate;
- e. Costs of suit; and,
- f. All other and further relief, at law or in equity, to which Plaintiff may show himself justly entitled.

Respectfully submitted,

**DAVIS LAW GROUP**

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