



December 23, 2019

The Honorable Frank Pallone, Jr.
Chairman
Committee on Energy and Commerce
U.S. House of Representatives

The Honorable Greg Walden
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives

The Honorable Diana DeGette
Chair
Subcommittee on Oversight
and Investigations

The Honorable Brett Guthrie
Ranking Member
Subcommittee on Oversight
and Investigations

The Honorable Jan Schakowsky
Chair
Subcommittee on Consumer
Protection and Commerce

The Honorable Cathy McMorris Rodgers
Ranking Member
Subcommittee on Consumer
Protection and Commerce

RE: Response to November 21, 2019 Request for Information

Dear Chairman Pallone, Ranking Member Walden, Chair DeGette, Ranking Member Guthrie, Chair Schakowsky, and Ranking Member McMorris Rodgers:

Thank you for the opportunity to contribute to the Energy and Commerce Committee’s investigation into the live event ticketing industry. StubHub shares the Committee’s commitment to the consumer interest and applauds the effort to look at the industry holistically on behalf of fans.

Founded in 2000, StubHub revolutionized secondary ticket sales by providing fans a safe, transparent, and trusted marketplace to buy and sell tickets. Today, StubHub is the world’s most trusted ticket marketplace, operating in more than 40 countries and giving our customers access to the highest standards of consumer protection in the industry.

StubHub enjoys more than 130 partnerships with major sports leagues, universities, teams, venues, and artists around the world and we continue to innovate to meet the needs of partners and fans globally.

Our commitment to the consumer interest is why we have earned the trust of fans. In fact, Newsweek named StubHub #1 in the ticket industry on its list of 2019 Best Customer Service Companies in the U.S.

StubHub holds our users to an extremely high standard and every transaction is protected by our industry-leading FanProtect™ Guarantee¹. It is the hallmark of our business and has defined the industry standard with respect to customer protections. In those rare instances where something goes wrong with a transaction, ticket buyers are guaranteed comparable or better replacement tickets to the event, or when that is not possible, a full refund inclusive of fees.

¹ “The StubHub Promise,” <https://www.stubhub.com/promise/>

Additionally, StubHub operates a world class Trust and Safety team who work diligently behind the scenes to combat against bad actors and protect consumers. StubHub uses a combination of fraud detection tools and strategies to prevent attempts at fraud in real time. These tools include those available on the commercial market as well as in-house expertise and custom tools built for our business.

We not only work to prevent fraud; but we investigate attempts at fraud and strive to understand any claims made so we can educate ourselves and penalize bad actors. Our investigations team partners directly with local, state, federal, and international law enforcement on proactive and reactive investigations as warranted. StubHub is incredibly proud of the work of our Trust and Safety team and believe it would be informative for the Committee to learn more about their work in a subsequent briefing.

StubHub has been active over the last several years in engaging with policy-makers and regulators to better understand the live event ticketing industry and identify areas where enforcement of existing laws, or regulatory or legislative efforts could be impactful to benefit consumers. StubHub testified in support of the “Better On-Line Ticket Sales Act of 2016” and engaged with the Government Accountability Office during its study of the ticketing industry. Further, StubHub actively engaged in the Federal Trade Commission’s (FTC) June 2019 Online Event Tickets Workshop, including through formal comments submitted in December 2018.²

StubHub believes that a fair, secure, and competitive ticket marketplace unequivocally supports the interests of fans. It drives industry players to compete on user experience, fees, consumer protections, and service. It also provides fans greater access to the events they want to experience and the ability to purchase tickets at a fair and market-driven price.

In recent years, StubHub’s ability to fulfill its mission has been complicated by various anticompetitive and anti-consumer practices in the ticket industry. Restrictive and anti-consumer practices witnessed in today’s marketplace include obscurity around ticket allocations, particularly the lack of transparency around the number of tickets available for sale to the general public, as well as restrictions on the transfer or resale of tickets that limit fans’ ability to transfer, give away, or resell the tickets they have rightfully purchased.

TRANSPARENCY & ACCESSIBILITY³

Bots are often singularly blamed as the reason fans have difficulty accessing tickets. However, it is important to note that another major contributor is that large percentages of tickets are actually never put on sale to the general public. Ticket issuers, artists, promoters, venues, and others involved in primary ticket sales frequently hold back large percentages of tickets for industry insiders and various pre-sales.

According to a 2016 report by the New York Attorney General’s office, an average of 46% of tickets go on sale to the general public during the general on-sale. The remaining 54% are held back for industry insiders, artists, fan clubs, credit card pre-sales, and other sources. The average number of tickets made

² Appendix I – “Comments of StubHub to the Federal Trade Commission in the Matter of Online Event Tickets Workshop,” (December 2018)

³ Ibid – for additional commentary on how the lack of transparency around ticket distribution and allocations impact consumers.

available to the public falls to 25% for top concerts and was noted to be as low as 12% for one concert at Madison Square Garden.⁴

In some instances, tickets that have been held back from the general on-sale are gradually released over time leading up to the event. These tickets are often priced higher than those originally sold and often reflect the market rates established on secondary marketplaces.⁵ Ticketmaster categorizes this ticket-sale model as “Official Platinum Tickets.”⁶ It utilizes market-based dynamic pricing.

StubHub respects the rights of artists and teams to price and sell their tickets as they deem appropriate. We also respect the rights of fans who have purchased those tickets to resell them at a mutually agreed upon price to a subsequent buyer. However, it should be noted that the need for transparency increases exponentially as ticket issuers embrace the use of dynamic pricing. The controlled distribution of supply can have a profound effect on pricing, and consumers need to be aware of how many tickets have been released versus held back in order to gauge those dynamics and make informed purchasing decisions.

Providing fans information on the number of tickets available for sale, when these tickets will be offered, and at what price will create a clearer picture of event accessibility and help to inform fans’ decisions on if, and when, to buy tickets. Absent this information, we have the situation that exists now which can be consumer frustration when tickets “sell out” quickly with no clear impression of why, only to find new tickets released for sale at a later time.

Consumer Choice & Restrictions on Transferability⁷

A competitive ticket market provides fans greater access to the events they want to experience and the ability to purchase tickets at a fair and market-drive price.

Unfortunately, as a condition of initial sale, ticket issuers, sports teams, artists, theatres, and venues are increasingly using terms and conditions, technology, and ticket delivery techniques to place restrictions on the tickets that fans have rightfully purchased.

In some instances, these restrictions may prevent fans from transferring, giving away, or reselling their tickets altogether. In other instances, these restrictions dictate that any transfer or resale must occur on a secondary ticket platform that is owned, operated, or officially partnered with the primary ticket seller. This type of behavior unfairly limits choice and forecloses competition in the market.

⁴ Office of the New York State Attorney General, “Obstructed View: What’s Blocking New Yorkers from Getting Tickets,” (January 2016), available at: https://ag.ny.gov/pdfs/Ticket_Sales_Report.pdf

⁵ Marco Chown Oved & Robert Cribb, “Got tickets to Saturday’s Bruno Mars show? The guy sitting beside you may have paid hundreds of dollars less,” *Toronto Star* (September 18, 2018), available at: <https://www.thestar.com/news/investigations/2018/09/18/got-tickets-to-this-weekends-bruno-mars-show-heres-why-the-guy-sitting-beside-you-may-have-paid-hundreds-of-dollars-less.html>

⁶ “Official Platinum Seats,” <https://www.ticketmaster.com/h/platinum/buyerfaq.html>

⁷ Reference Appendix I – “Comments of StubHub to the Federal Trade Commission in the Matter of Online Event Tickets Workshop,” (December 2018) – for additional commentary on the impact of ticket restrictions on consumers.

As the dominant player in primary ticket sales, Ticketmaster is uniquely positioned to control secondary ticket sales and eliminate consumer choice and competition through ticket restrictions. As a major player in secondary ticket sales through products such as TM+, NFL Ticket Exchange, NBATickets.com, etc. – Ticketmaster’s use of restrictive ticketing is on the rise.

StubHub recently submitted detailed comments to the House Judiciary Committee in response to its inquiry on competition in digital markets. The submission outlines Ticketmaster’s (and its parent company Live Nation’s) sustained and continuing dominance in the live event ticketing industry.⁸ This dominance is bolstered by anti-competitive conduct such as technological restraints, exclusivity, and retaliation.

For example, Ticketmaster’s SafeTix technology (at times referred to as “rolling barcodes”), enables them to completely control and dictate if, and how, ticket purchasers may transfer or resell their tickets to subsequent users. Through this technology, tickets can be made completely non-transferable, or a more likely outcome, transferability can be limited solely to Ticketmaster’s platforms. This is particularly concerning in a world where Ticketmaster tickets 79 of 93 NFL, NHL, and NBA teams and controls approximately 70-80% of every ticket initially sold. Further, Ticketmaster has publicly stated its intent to move all tickets to the SafeTix platform by 2021.⁹

With ticket restrictions, Ticketmaster can single-handedly eliminate consumer choice and foreclose competition. This situation recently occurred at a concert for the The Black Keys where hundreds of ticket-holding fans were denied entry when Ticketmaster employed its SafeTix technology and removed the ability for customers to transfer their tickets.¹⁰

In this instance, the venue (a Live Nation operated property) refused to scan tickets that were purchased or transferred on competing platforms before the technological restrictions were implemented. Ticketmaster deemed these purchases to be void and the venue refused to honor them.¹¹

While Ticketmaster subsequently issued a post-event statement claiming that the tickets had been marked as “non-transferable,” it did not provide any evidence to support such an assertion, and media reports

⁹ Dave Brooks, “Black Keys Ticketing Blame Game Overshadows Larger Issues Ahead for Concert Business,” *billboard* (September 24, 2019), available at: <https://www.billboard.com/articles/business/touring/8530801/black-keys-ticketing-ticketmaster-safetix>

¹⁰ Chris Willman, “Black Keys’ Anti-Reseller Policy Debated as Hundreds of L.A. Ticketholders Are Barred,” *Variety* (September 21, 2019), available at: <https://variety.com/2019/music/news/black-keys-hundreds-turned-away-wiltern-ticketmaster-1203344146/>

¹¹ Alejandra Reyes-Velarde, “Why the Black Keys shut out hundreds of fans, causing chaos at the Wiltern,” *L.A. Times* (September 20, 2019), available at: <https://www.latimes.com/california/story/2019-09-20/black-keys-wiltern-tickets-ticketmaster>

have not been able to substantiate it.¹² Regardless, after-the-fact public relations statements are not a cure for the harm caused by Ticketmaster's conduct.

Short of completely eliminating a consumers' ability to transfer a ticket, Ticketmaster is increasingly requiring consumers who purchase resale tickets on non-Ticketmaster sites (such as StubHub) to complete this transaction on Ticketmaster's own website or app in order for the user to obtain the purchased tickets.

In other words, a consumer that wants to use StubHub is forced to register with Ticketmaster, download the Ticketmaster app, and otherwise provide their consumer data and information to Ticketmaster in order to fulfil a purchase on StubHub.¹³ In addition to the affront to customers for making them utilize Ticketmaster when they had no intention to do so, the practice cements Ticketmaster's hold on ticketing for live events and harms consumers by limiting choice and thwarting rival ticket providers.

This practice introduces significant friction in the resale experience for the customer. It also harms competition by, among other aspects, allowing Ticketmaster access to competitors' customer and ticket sale data. This information can then be used to steal the customer relationship. As Ticketmaster admits, customer data is critical in terms of being able to efficiently market to customers. Moreover, customers who attempt to navigate the cumbersome Ticketmaster process are shown links to use Ticketmaster's own resale ticketing services, including "TM+". Fueled by these anticompetitive practices, TM+ is the fastest growing resale platform.

StubHub believes that fans should always have the option to purchase a transferable ticket at the initial point of sale that they can use, transfer, or resell freely to preserve competition in the market. Further, consumers who have purchased legitimate tickets should not be denied entry to an event based on a ticket issuer's attempt to control the entire ticket marketplace and shut down competition. Terms and conditions that prevent sellers from transferring or reselling their tickets are unconscionable and should not be enforceable upon consumers - particularly in instances where refunds on the original purchase are not offered.

We understand that opponents to transferability requirements will argue that restrictions on transferability are necessary to enhance security and limit fraud, but these claims do not justify anti-competitive actions. StubHub welcomes technological advancements to improve security and decrease fraud, however these advancements should not result in limited consumer choice or foreclosing competition. Further, we do not believe the arguments on security and fraud are fully informed.

¹² Dave Brooks, "Black Keys Ticketing Blame Game Overshadows Larger Issues Ahead for Concert Business," *billboard* (September 24, 2019), available at: <https://www.billboard.com/articles/business/touring/8530801/black-keys-ticketing-ticketmaster-safetix>

¹³ Appendix III – Screenshots of the Purchase Process for StubHub Customers when Digital Tickets Must be Fulfilled using Ticketmaster

While Ticketmaster claims to use digital ticketing and transferability restrictions to enhance security and understand who is attending events, those claims fall short with the acknowledgement that Ticketmaster does not conduct background checks on ticket purchasers in advance of the event. Similarly, the primary seller is only aware of the purchaser, not the guests of the purchasers (i.e. someone buys four tickets and brings three guests).

With respect to fraud, StubHub's own experience shows that the incidence of fraud is incredibly low – far less than one percent today on our platform. That said, digital ticketing may further enhance the industry's efforts to combat fraud and it can be achieved without limiting consumer choice or foreclosing competition. The sincerity of the fraud argument must be questioned when the capability to create freely transferable digital tickets exists today but is not being broadly utilized.

The National Football League's (NFL) use of Ticketmaster's SafeTix technology has been widely reported. It is an example of digital ticketing that has been coupled with interoperability across multiple ticket platforms to ensure consumer choice.

The NFL required Ticketmaster to integrate its SafeTix system with multiple ticketing platforms that entered into a partnership with the NFL to enable the free transferability of digital tickets across multiple platforms. This arrangement is unique in the live event ticketing industry and arguably the result of government intervention. The NFL moved in this direction after reaching a settlement with six Attorneys General where they agreed not to, “promote or require that its member clubs implement ticketing technologies or practices that are designed or intended to substantially impede or preclude the ability of consumers to buy or sell tickets on secondary ticket exchanges unless permissible under applicable law.”¹⁴

Unfortunately, we do not see the broader industry moving in this direction without additional direction from government. Luckily for consumers, several states have adopted laws ensuring that consumers have the option to purchase a transferable ticket at the point of sale, including: New York, Connecticut, Virginia, and Utah. Two more states – Illinois and Colorado– have laws in place that prohibit any restriction on the resale of a ticket.¹⁵ StubHub encourages federal action in this area to ensure consumers across the U.S. are afforded the same protections.

StubHub recognizes the Committee's interest in several additional topics that impact consumers of the live event ticketing industry and have provided responses to the Committee's specific questions below.

¹⁴ Offices of the Attorneys General of the States and Commonwealths of New York, Ohio Massachusetts, Florida, and Pennsylvania and the District of Columbia, and the National Football League, “Settlement Agreement in the Matter of NFL Ticketing Investigation,” (November 15, 2016), *available at*: [http://myfloridalegal.com/webfiles.nsf/WF/JMAR-AFOQEM/\\$file/NFL+Settlement+Agreement.pdf](http://myfloridalegal.com/webfiles.nsf/WF/JMAR-AFOQEM/$file/NFL+Settlement+Agreement.pdf)

¹⁵ Reference Appendix IV – “Ticket Restrictions Are a Growing Threat” – a list of state statutes that have consumer-oriented laws providing for the transability of tickets.



Response to Document and Information Request

1. Please provide a list of all primary market ticket platforms and secondary market ticket exchanges owned or operated by your company, and the total number of tickets sold on each platform or exchange in 2018.

The only platform owned and operated by StubHub in the United States is www.stubhub.com.

In 2018, StubHub sold [REDACTED] tickets in North America. This data is inclusive of the U.S. and Canada.

2. What fees does your company charge per ticket sale, and how are those fees calculated? Please provide a copy of any policies related to how your company sets and calculates fees.

For every ticket sold on StubHub, both the buyer and seller will pay fees. The StubHub User Agreement¹⁶ describes our fee policy in greater detail. All our fees are disclosed to users in a clear and conspicuous manner throughout the transaction. Our fees are competitive with the broader industry and change regularly to account for market dynamics.

For buyers, all transactions include a service fee and a fulfillment fee. The service fee is a percentage of the sale price and is dynamically calculated based on several factors, including the type of event, the event genre, venue type, location of the ticket, time of the event, and others. This type of dynamic pricing is prevalent across ecommerce because it provides the flexibility to test price sensitivity, optimize conversion, and allow companies to better compete. Currently, our service fees range from [REDACTED] of the ticket price, however there will be cases where the fee percentage falls above or below that range.

The fulfillment fee is a fixed amount that is based on the type of ticket purchased. Currently, the fees are set as: [REDACTED] for an instant mobile ticket, mobile transfer, or instant download (PDF); [REDACTED] for hard stock tickets that are delivered through UPS.

For sellers, it is free to list a ticket on StubHub. StubHub will only charge a service fee if the ticket sells. For consumer sellers, the sell fee is a fixed percentage of the list price and currently ranges from [REDACTED]

Professional sellers pay a service fee that is governed by the terms of StubHub's incentive-based Top Seller¹⁷ program or an individual agreement with StubHub. As is the case with many industry participants, StubHub's Top Seller program allows the business to build

relationships with trusted professional sellers to ensure our users have access to legitimate, diverse, and high-quality inventory for the events they want to attend. Entry into the top-seller program is contingent on sales volume as well as maintaining an exceptional record of delivering tickets without problems.

¹⁶ "User Agreement - #6. Fees and other charges," <https://www.stubhub.com/legal/?section=ua>



3. How much revenue did your company generate from ticket fees in calendar years 2016, 2017, and 2018? Please provide this figure for each of your company’s primary (if applicable) and secondary ticket sales platforms.

The following revenue was generated by www.stubhub.com in North America from ticket fees in 2016, 2017, and 2018 respectively. These figures are inclusive of the United States and Canada and are representative of transactional fees, less discounts, rebates, and cancellations.

	2016	2017	2018

4. Part A: At what point during the purchase process does your company make the consumer aware of the type and amount of ancillary fees charged? Where and how is this information communicated to consumers?

StubHub’s fees are clearly and conspicuously disclosed to buyers before we collect payment information.¹⁸

Our disclosures are prominent, properly placed, and repeatedly displayed to consumers throughout the checkout flow before a final purchase is made. For new users and users that do not have payment information saved within their profile, we disclose our fees before collecting payment information. For returning users who have payment information saved into their profile, we disclose our fees before confirming payment information and purchase. The “Order Total” is in a bold and larger font size, with the ticket price and fees itemized beneath. StubHub customers are never charged without the opportunity to see the full cost of their order, including fees.

Additionally, StubHub enables buyers to view ticket listings, inclusive of estimated fees, at the outset of their shopping experience. There is an optional toggle provided on the event page that customers can utilize to see the estimated “all-in” pricing at the earliest stages of ticket selection. StubHub is one of only a few platforms that provide this feature to buyers.

¹⁸ Reference Appendix VI – Screenshots of the StubHub Purchase Flow, Desktop and Mobile – for a visualization of StubHub’s pricing displays and fee disclosures.



StubHub began to offer this optional view in 2015 after an attempt to move to “all-in pricing” in 2014. StubHub moved to an “all-in pricing” model believing it was something that buyers wanted and that the industry would quickly follow suit. Unfortunately, the industry did not follow StubHub’s lead and as a result, consumers were confused. Ticket buyers incorrectly believed that StubHub tickets were exclusive of fees and thus more expensive than our competitors. Our business moved to the optional view to better align with industry standards, but continued to empower consumers to elect how they view ticket prices on StubHub.

As the Committee considers all-in pricing in the context of the BOSS ACT, we encourage the consideration of an industry-standard that would see all marketplaces provide a clear and conspicuous option to view tickets with the estimated “all-in” price. This would empower consumers to visualize prices as they prefer, as opposed to moving to an “all-in” pricing structure that will be difficult to enforce amongst rogue industry actors and have the unintended consequence of disadvantaging those who comply. Further, any public policy regarding pricing displays should be applied and enforced equally across the entire industry.

Part B: Since January 1, 2016, has any federal, state, or local entity or individual taken legal action against your company regarding the lack of “all-in” pricing? If so, please provide a list of such actions, the claim alleged in each action, and if applicable, the results of any such action.

The following is inclusive of any federal, state, or local entity or individual that has taken legal action against StubHub regarding a perceived lack of “all-in” pricing.

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]



5. **Does your company sell ticket insurance, or contract with or otherwise permit a third-party to sell ticket insurance on your platform or website? If so, please explain the ticket insurance that your company offers, including whether the ticket insurance is a set price or calculated based on the cost of the ticket, and what the ticket insurance covers.**

StubHub does not sell ticket insurance. Rather, we partner with Allianz, a trusted and global insurance provider, to offer our users the option at checkout to purchase an Allianz Ticket Insurance policy on their order. The cost of the policy is based on a percentage of the order total and generally provides StubHub customers an additional layer of protection beyond our industry-leading FanProtect™ Guarantee¹⁹. The Allianz policy is meant to cover the consumer's purchase if he or she cannot attend an event for covered reasons, including: covered illness; covered injury; jury duty/subpoena; military obligations; job relocation or loss; covered pregnancy; traffic accidents; or death of insured, companion, or family member. More information about this product, including a full description of coverage, can be found on the Allianz website²⁰.

6. **Does your company permit the sale of speculative tickets on your company's platform? What disclosure does your company make to alert consumers of the speculative nature of the ticket and how and when in the purchase process is this disclosure made? What actions has your company taken to address speculative tickets sold on your company's platform, including legal or other actions taken to enforce your company's speculative tickets policy? In the past year, have any speculative tickets been sold on your company's platforms? Please provide all policies related to the sale of speculative tickets.**

StubHub's User Agreement²¹ and the Top Seller Handbook²² both explicitly prohibits sellers from listing speculative tickets, however, it is reasonable to assume that speculative tickets are sometimes sold through the StubHub site.

As a marketplace, with ticket listings available for over 10 million sports, music, and theater events around the world, StubHub is not able to verify ownership of every ticket listed on our site. However, we have a robust set of tools and processes in place to help identify and remove suspicious listings and protect our customers.

Our approach is both proactive and reactive. Proactively, StubHub has a dedicated team of professionals that use cutting edge technological tools to investigate suspicious listings. We give particular scrutiny to major events, such as top concerts and theatre tours, festivals, and significant sporting events.

When a listing is flagged, our team contacts the seller to confirm proof of purchase. If proof cannot be provided, listings will be removed from our site. Reactively, when we receive notification and

¹⁹ "User Agreement: FanProtect™ Guarantee," <https://www.stubhub.com/legal/?section=fp>

²⁰ "Allianz Global Assistance: Event Ticket Protector," <https://www.allianzworldwidepartners.com/usa/terms-and-conditions/001004669>

²¹ "User Agreement: Seller Policies – 1. Some of the things you're not allowed to list," <https://www.stubhub.com/legal/?section=sp>

evidence from a venue, partner, artist, or team that a listing is speculative, we will investigate, and if we determine the listing is speculative, we will remove it. In some high-profile instances – like the Super Bowl – StubHub may require proof of purchase from sellers in order to list tickets.

It is important to note that due to holdbacks, presales, and season ticket holder agreements – ticket holders often have the rights to tickets before an event goes on sale to the general public. As such, we do not consider such listings to be speculative. However, we do require sellers to commit to a delivery deadline. Delivery information is provided to buyers in advance of purchase and may be a factor in their purchasing decision.

Our primary objective is to ensure our buyers receive the tickets they have purchased. Sellers are deterred from listing tickets that they cannot fulfill. StubHub’s User Agreement²³ stipulates that we can withhold payment and further charge a seller’s payment method an amount ranging from 40% of the ticket’s sale price to the full amount incurred by StubHub to remedy the situation (i.e. typically the cost of providing replacement tickets to the buyer), depending on the circumstances. Most notably, we reserve the right to remove listings, withhold payments, and temporarily or permanently suspend a seller’s account for abuse of our platform.

From a buyer perspective, our FanProtect™ Guarantee²⁴ is in place to address any issues that may arise with a ticket purchase. Our commitment to our fans is critical to our business’ success. That is why we invest so heavily in our Customer Service and Trust and Safety functions and strive to create an overall positive and trusted consumer experience.

In recent months StubHub has launched a strategic supply initiative that enables pre-approved professional sellers to source their ticket supply from available inventory on other platforms. Typically, this practice is utilized for low demand events where inventory is readily available across platforms.

7. **Does your company work with, own, or operate any platform and/or website that makes any representation of affiliation or endorsement to a venue, team, or artists, when in fact no formal affiliation or representation exists (also known as white-label websites)? If yes, please provide a list of these websites and explain...**

StubHub does not work with, own, or operate “white-label” websites. As the Committee is aware, operators of these “white-label” sites often use an URL that suggests the website is affiliated with an event venue, team, or artist. Consumers reasonably believe that they are purchasing tickets from the primary seller at the “face value” when in fact, they are purchasing from a reseller at prices that may exceed the initial sales price or even the prices offered on the ticket resale marketplace affiliated with the “white-label.” Due to the misleading presentation of the “white-label” site, consumers miss the opportunity to purchase lower priced tickets from a more reliable and reputable seller.

²³ “User Agreement: Seller Policies – 3.3 Reporting an issue and offering replacement tickets; Consequences for Dropped Sales and Invalid Tickets,” <https://www.stubhub.com/legal/?section=sp>

²⁴ “User Agreement: FanProtect Guarantee,” <https://www.stubhub.com/legal/?section=fp>

We have spent significant time advocating against this practice with federal and state policymakers and regulators.²⁵ Today, we understand seven states including Maryland, New Jersey, Nevada, New York, Tennessee, Texas, and Utah have passed legislation specifically prohibiting the use of deceptive ticket website URLs.

It is also important to note that the consumer harm around “white-label” sites is not limited to deceptive URLs. Rather, certain ticket marketplaces - like TicketNetwork and VividSeats – work with “white-label” sites in order to broadcast the same inventory to purchasers at different prices. This gives consumers a deceptive picture of the independent options available to them.

Specifically, using “white-labels” allows a single ticket resale marketplace to account for multiple links presented to consumers “above the fold” on search engine results pages. The links appear to be associated with independent, distinct ticket resale marketplaces and as such consumers believe that they are choosing among a host of competing alternatives. In reality, many of the links are different portals to the same inventory and back-end infrastructure.

Senator Booker and Former Senator Hatch have described this as a tactic “to skirt and subvert search engine marketing policies” that has the effect of preventing consumers from “enjoy[ing] true choice between the vendors appearing in search results.”²⁶

StubHub encourages the Committee to investigate the full list of harms associated with the “white-labels” and stands ready to assist.

8. What protocols are in place to ensure that tickets resold on your company’s platform(s) were not originally purchased using bots or fictitious accounts? What analysis has your company completed to determine the effectiveness of these protocols?

StubHub strongly supports legislation prohibiting the use of bots to procure tickets, including the 2016 BOTS Act.

Anti-bots laws should be strongly enforced and entities who abuse the law should be penalized accordingly. Strong enforcement of anti-bots laws requires cooperation between the industry and relevant enforcement agencies – particularly by primary ticket sellers who are attacked by the software. Without such cooperation, enforcement agencies will not be in a position to identify or penalize violators of the law.

When we think about bots in the ticket space, we typically think about software that either skips an electronic queue or bypasses established ticket limits to unfairly procure tickets. To that end, a “traditional” bot does not attack secondary sites the same way it might attack a primary ticket seller. Attacks against secondary sites may include attempts to scrape data or hack accounts.

²⁵ Appendix I – “Comments of StubHub to the Federal Trade Commission in the Matter of Online Event Tickets Workshop,” (December 2018)

²⁶ Appendix VIII – “Letter from U.S. Senator Cory Booker and U.S. Senator Orrin Hatch, to The Honorable Maureen Ohlhausen, Acting Chairwoman of the FTC,” (September 13, 2017)

As a marketplace that has both primary and secondary inventory, StubHub has built the tools and functionality to identify and stop bots attacks against our site accordingly. With respect to primary sales, we have several back-end processes that review purchases in search of suspicious activity. If bots usage is identified, those purchases will be canceled.

StubHub's User Agreement²⁷ calls for all sellers to "comply with all applicable laws and regulations," including the BOTS ACT of 2016. StubHub does not use bots to procure tickets for sale and we do not encourage our users to utilize bots either. When bots usage is discovered, we will remove listings from our site and punish sellers accordingly.

StubHub is not in a position to identify how our sellers acquire the tickets they sell. It is important to note that the sheer fact a single seller has a large quantity of tickets to an event does not in and of itself equate to bots usage. Many professional resellers have direct relationships with venues, teams, artists or promoters and source their tickets accordingly.

That said, our Trust and Safety team has processes in place to flag irregular listings. For example, if a new user posts a significant number of tickets, then our systems will flag those listings and the Trust and Safety team will engage. This includes reaching out to sellers proactively to understand how they acquired the listed tickets.

StubHub aims to maintain an ongoing dialogue with primary ticket sellers so we are aware of ticket cancellations as a result of bots usage. We rely on this information sharing from primary ticket sellers and will remove listings of tickets that were canceled because they were purchased utilizing bots or fictitious accounts.

StubHub believes that the industry can work together to share information and do more to combat ticket bots. For example, StubHub was an active member of a group called the BOTs Defense Counsel (hosted by Distil Networks) until it was recently suspended after Distil Networks' acquisition by Imperva. The BDC was a forum for companies to discuss best practices in their efforts to combat bots.

StubHub believes that meaningful enforcement of the BOTS Act is critical to improving ticket availability and pricing for consumers. We are willing partners in this effort, but rely significantly on information sharing from primary ticket sellers who are pre-dominantly impacted by this software.

²⁷ "User Agreement - #7 Selling Tickets," <https://www.stubhub.com/legal/?section=ua>



Conclusion

Thank you for the opportunity to present this information to the Committee and your consideration of our comments.

We look forward to engaging the Committee in more detailed and informative discussions on your areas of interest, as well as being a partner in your effort to provide greater consumer protection and transparency to consumers in the live event ticketing industry.

Sincerely,

A handwritten signature in black ink that reads "Laura Dooley". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Laura Dooley
Head of Global Government Relations

Appendix

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Before the
Federal Trade Commission
Washington, D.C. 20580

In the Matter of

Online Event Tickets Workshop

March 27, 2019

Project No.: P18450



COMMENTS OF STUBHUB

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M. Sean Royall
SRoyall@gibsondunn.com

Richard H. Cunningham
RHCunningham@gibsondunn.com

GIBSON, DUNN & CRUTCHER LLP

COMMENTS OF STUBHUB

StubHub welcomes the opportunity to provide comments on consumer protection and competition issues related to the online event-ticket marketplace in advance of the Federal Trade Commission's Online Event Ticket Workshop. StubHub shares the Commission's commitment to ensuring that consumers are able to purchase tickets online in a fair, transparent, and competitive environment. StubHub hopes that this submission contributes to the dialogue on this important topic and assists in the Commission's efforts to protect consumers.

StubHub would like to draw attention to four issues that impact the online event-ticket marketplace and that we believe warrant Commission attention and/or enforcement action:

1. Ticket Availability Restrictions – Ticket sellers are increasingly withholding large blocks of tickets to popular events from public sale. These practices, particularly if they are opaque to consumers, may significantly impact event-ticket accessibility, affordability, and availability. The Commission should evaluate whether ticket sellers and event platforms are adequately disclosing information about the volume of tickets diverted away from sale to the general public. Further, the Commission should enforce the BOTS Act and take other steps to prevent consumers from losing access to tickets at the initial sale price due to the unlawful use of ticketing bots.
2. Ticket Transfer Restrictions – Ticket sellers are increasingly imposing legal and practical restrictions on consumers' rights to donate, transfer, or resell tickets. Such restrictions frustrate the functioning of a healthy and competitive ticket market and harm consumers by limiting their ability to transfer or resell tickets they have rightfully purchased. The Commission should require transparency around such restrictions and closely evaluate whether these practices violate Section 5 of the FTC Act.
3. White-Labeled Websites – Certain market participants use white-label marketing practices to mislead consumers into believing they are purchasing tickets from official venues when, in fact, consumers are purchasing tickets from resellers, often at prices that far exceed prices for the same ticket on the affiliated resale marketplace. White-label marketing is also used to deceptively manipulate search engine results in a way that prevents consumers from accurately evaluating their lowest-cost options. The Commission should prosecute market participants that mislead consumers using white-labeled websites.
4. Consistency in Price & Fee Displays – Certain industry participants fail to appropriately disclose costs and fees added to the base price of tickets. StubHub believes that both primary ticket sellers (the seller first making event tickets available

to the public) and secondary ticket sellers and platforms should fully disclose the total purchase price, with a clear delineation of all applicable fees, prior to checkout. StubHub believes that the Commission should pursue enforcement actions against market participants who fail to adequately disclose the total price of tickets. In addition, if the Commission seeks to reconsider or change its policies relating to pre-checkout price disclosures, StubHub respectfully submits that the Commission should do so in a transparent manner that incorporates stakeholder input and fair notice to market participants.

As explained below, Commission action in these areas would promote transparency, eliminate deceptive practices, and increase consumer choice in the market. These effects would benefit consumers and industry stakeholders by increasing consumer confidence in the online event-ticket marketplace.

As a preliminary matter, StubHub observes that the Commission’s request for comment segments the ticket marketplace into “primary” and “resale” markets. StubHub respectfully submits that this delineation is neither clear nor particularly meaningful from the perspective of many of the consumer protection and competition issues currently present in the marketplace. The line between primary and secondary ticketing is blurred because, among other reasons, primary sellers in some instances have special relationships with secondary sellers, such as ticket brokers and exchanges, and engage in sales processes, such as holdbacks, that influence and compete with secondary sales.¹ Further, market participants increasingly present consumers

¹ For example, a large industry player, Ticketmaster, serves as a seller of both primary and secondary tickets. Musical acts, sports teams, venues, and others frequently retain Ticketmaster to sell “first sale” tickets on their behalf, and Ticketmaster also serves as the preferred—and in some cases only—secondary marketplace for tickets for those same events. *See, e.g.,* Amended Class Action Complaint, *Olsen v. New Jersey Devils, LLC*, No. 2:15-CV-002807, at ¶ 25 (D.N.J. July 31, 2015) (“Ticketmaster is the ‘official resale partner’ of the NHL and other sports leagues and venues . . . including the NFL, NBA, New York Yankees, Los Angeles Angels and major metropolitan area sports venues such as Madison Square Garden (home of the NHL New York Rangers); the Prudential Center (home of the NHL Devils) and Nassau Coliseum (home of the NHL Islanders).”). Ticketmaster has also recently begun offering customers the opportunity to resell their tickets through the “Fan-to-Fan Resale” option, as well as through Ticket Exchange, services that are substantively the same as the service that StubHub, Vivid Seats, and others provide today in what has traditionally been called the secondary market. *See* Ticketmaster, available at <https://www.ticketmaster.com/verified>; Ticket Exchange by Ticketmaster, available at <https://www.ticketexchangebyticketmaster.com/>.

with “blended” experiences in which primary and secondary tickets are offered simultaneously. Finally, and perhaps most importantly, a uniform approach is aligned with consumers’ interests and shopping experience. Consumers looking to purchase tickets for an event are often indifferent as to whether the tickets come from a primary or secondary source, as long as the tickets are reliably valid and priced fairly. For these reasons, regulatory consistency between the primary and secondary marketplaces is sensible, and the Commission’s posture and goals should not turn on artificial distinctions between primary and secondary sellers or “markets.”

I. AVAILABILITY RESTRICTIONS

Ticket issuers’ use of various forms of tranche sales and holdbacks, as well as the use of ticketing bots to unfairly and illegally procure tickets, are increasingly diminishing consumers’ ability to purchase event tickets at or near the time tickets initially go on sale to the general public.² Both issues warrant Commission attention.

A. Tranche Sales and Holdbacks

Tranche sales involve staggered releases of small groups of tickets, either before or after sales are made to the general public. Blocks of tickets are often offered to artist fan club members or patrons of a venue before tickets are sold to the general public. Allocating large blocks of tickets to users of certain credit cards is frequently done as part of co-promotion agreements between venues, promoters, and credit card networks. This is another form of tranche sales. Holdbacks generally refer to the reservation of blocks of tickets for industry insiders—promoters, venues, executives, agents, and the like—and pre-sale programs.³

² *Obstructed View: What’s Blocking New Yorkers From Getting Tickets* (“New York AG Report”), New York State Office of the Attorney General, https://ag.ny.gov/pdfs/Ticket_Sales_Report.pdf, at 4.

³ *Id.* at 11.

The use of tranche sales and holdbacks appears significant, particularly with regard to the most popular acts and events. In 2016, the New York Attorney General found that, on average, 54% of all tickets in observed events were diverted to holds and pre-sales—leaving only 46% for the general public.⁴ The report found that for ten popular shows, for acts such as Coldplay, Jay-Z, and Steely Dan, “over 50%” of tickets were earmarked through pre-sale events, even with “none explicitly reserved for fan clubs.”⁵ For some events, such as two 2012 Justin Bieber concerts, “less than 25 percent of tickets were actually released to the general public in an initial public on-sale.”⁶ A Katy Perry concert was reported to have put only 12% of seats on sale to the general public.⁷ The use of tranche sales and holdbacks on this scale can create artificial ticket scarcity and, in turn, lead to artificially inflated prices.

Ticket sellers have begun to take advantage of this artificial scarcity through “premium” or “VIP” programs that offer tickets to the general public at a significant markup to the face value attributed to other, similarly situated tickets, and may be subject to adjustment based on supply and demand.⁸ For example, VIP tickets to a July 13, 2019, Shawn Mendes concert were being advertised at \$249, as compared to \$69.50 for standard tickets.⁹ Ticketmaster also offers “platinum” tickets to select events that are not sold at face value but instead are subject to

⁴ *Id.*

⁵ *Id.* at 14.

⁶ *Id.* at 15.

⁷ *Id.*

⁸ Premium and VIP tickets may be accompanied by perks, such as lounge access or merchandise that are not included with standard tickets.

⁹ Ticketmaster, Shawn Mendes: The Tour, July 13, 2019 Concert at Oracle Arena, Oakland, CA, https://www1.ticketmaster.com/undefined/event/1C0054A3FCF4C3A3?artistid=1983434&majorcatid=10001&minorcatid=1&tm_link=ms_sub_event_link&ac_link=ms_sub_event_premusmusic (last visited on Dec. 2, 2018).

“market-based pricing (adjusting prices according to supply and demand).”¹⁰ The United Kingdom’s Advertising Standards Authority recently noted that these tickets are frequently no better, but often far more expensive than, those offered to the general public through other channels.¹¹ The Advertising Standards Authority found that “[i]n many cases, particularly for popular events, [Platinum tickets] were likely to be more expensive than the general tickets for that event, which had a fixed price that never changed . . . [but] did not offer a tangible benefit compared to some of the general seating tickets and the experience offered by the Platinum tickets was no better than the experience offered by some of the general tickets.”¹²

The Commission should evaluate whether ticket sellers that divert large volumes of tickets to tranche sales and/or holdbacks are adequately disclosing the existence of such practices to consumers. Commission guidance on the FTC Act states that “omissions of material information . . . likely to mislead reasonable consumers” violate Section 5.¹³ Many consumers may be unaware that a sizable majority of tickets for popular events are sold through tranche sales and holdbacks. In the absence of any disclosure of these practices, reasonable consumers may review advertisements and sales announcements and misunderstand the actual level of ticket availability. And, correspondingly, disclosure of these practices would provide consumers with the ability to make more informed purchase decisions. For example, it may be deceptive for sellers to advertise an “on sale” date or talk about the “face value” of tickets without also

¹⁰ Ticketmaster, *Official Platinum Seats*, <https://www.ticketmaster.com/h/platinum/buyerfaq.html>.

¹¹ Advertising Standards Authority, *ASA Ruling on Ticketmaster UK Ltd*, <https://www.asa.org.uk/rulings/ticketmaster-uk-ltd-a17-378277.html>.

¹² *Id.*

¹³ *FTC Policy Statement on Deception*, appended to *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174-178 (Oct. 14, 1983), www.ftc.gov/bcp/policystmt/ad-decept.htm.

explaining the sale dates, as well as ticket prices and availability, that are applicable for sales to fan club members, credit card holders, or the release of “platinum” and VIP tickets.

B. Ticket Bots

Ticket bots are computer software programs that “barrage ticket systems” by automating the process of searching for and buying tickets.¹⁴ Specifically, bots often attempt to make multiple connections with a primary seller’s website via hundreds or thousands of proxy IP addresses, sometimes rendering the website virtually inoperable for other users trying to purchase tickets.¹⁵ These bots can help users jump to the front of electronic queues and bypass ticket limits.¹⁶

According to a 2016 report by the New York State Office of the Attorney General, bots can complete thousands of simultaneous transactions on a primary seller’s website within minutes or even seconds.¹⁷ Ticket bots provide an unfair advantage over the average fan, and “[t]here is consensus in the ticket industry that Ticket Bots have no place in a fair and equitable ticket market.”¹⁸

In 2016, Congress passed the Better Online Ticketing (“BOTS”) Act.¹⁹ This federal legislation was co-sponsored by members of both parties and passed with overwhelming support

¹⁴ Paula Simons, *Bot-battling NDP Bill an Exercise in Futility*, EDMONTON JOURNAL (Dec. 2, 2017), <https://edmontonjournal.com/news/politics/paula-simons-bot-battling-ndp-bill-an-exercise-in-futility>.

¹⁵ New York AG Report at 18.

¹⁶ See Eric Flack, *‘Ticket Bots’ Help Scalpers Shut Out Fans*, WUSA9 (May 26, 2017), <https://www.wusa9.com/article/entertainment/ticket-bots-help-scalpers-shut-out-fans/65-438467731>.

¹⁷ New York AG Report at 4.

¹⁸ U.S. Gov’t Accountability Office, *Event Ticket Sales: Market Characteristics and Consumer Protection Issues*, at “What GAO Found” (“GAO Report”), at 37 (Apr. 2018), <https://www.gao.gov/assets/700/691247.pdf>.

¹⁹ Pub. L. No. 114-274, 130 Stat. 1401 (2016), 15 U.S.C. § 45c(a)(1).

in both houses of Congress.²⁰ The BOTS Act makes it unlawful to “circumvent a security measure, access control system, or other technological control or measure on an Internet website or online 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 to “sell or offer to sell any event ticket in interstate commerce obtained” in violation of this prohibition.²¹ The BOTS Act applies to “any concert, theatrical performance, sporting event, show, or similarly scheduled activity” that takes place in a venue with a capacity of over 200 people, provided that it is open to the general public and advertised in interstate commerce.²² The BOTS Act endows both the FTC and State Attorneys General with enforcement authority.²³

As reported by the GAO in 2017, “it is not yet clear the extent to which the [A]ct has reduced [the] use [of bots].”²⁴ To date, neither the Commission nor the states have initiated a single enforcement action under the BOTS Act.²⁵ While the use of bots can be difficult to prosecute, because many perpetrators are individuals using false names or conducting their business from overseas locations²⁶ and ticket bots appear to be advancing technologically to

²⁰ Joe Mullin, *Congress Passes BOTS Act to Ban Ticket-Buying Software*, ARS Technica (Dec. 8, 2016), <https://arstechnica.com/tech-policy/2016/12/congress-passes-bots-act-to-ban-ticket-buying-software/>.

²¹ 15 U.S.C. § 45c(a)(1).

²² *Id.*

²³ *Id.*

²⁴ GAO Report at 20.

²⁵ *Id.* at 48.

²⁶ New York State AG Report at 20.

eschew detection,²⁷ it is not impossible. For example, states have prosecuted individuals under their own state laws prohibiting the use of bots.²⁸

StubHub believes that meaningful enforcement of the BOTS Act is critical to improving ticket availability and pricing for consumers, and that enforcement is contingent upon the cooperation of primary ticket sellers. Unfortunately, a lawsuit²⁹ and recent media reports³⁰ suggest that certain primary ticket sellers are knowingly turning a blind eye to bot usage in instances in which the brokers who use the bots resell the purchased tickets through platforms and/or inventory management systems owned by the ticket sellers. These claims are concerning

²⁷ Rami Essaid and Niels Sodemann, *Viewpoint: Did the BOTS Act Clean Up?*, THE TICKETING BUSINESS (Feb. 14, 2018), <http://www.theticketingbusiness.com/2018/02/14/viewpoint-bots-act-clean/>.

²⁸ GAO Report at 49; see New York State Office of the Attorney General, *A.G. Schneiderman Announces \$4.19 Million in Settlements with Six Companies That Illegally Purchased and Resold Hundreds of Thousands of Tickets to Concerts and Other NY Events* (May 11, 2017), <https://ag.ny.gov/press-release/ag-schneiderman-announces-419-million-settlements-six-companies-illegally-purchased>; New York State Office of the Attorney General, *A.G. Schneiderman Announces \$2.7 Million in Settlements with Six Ticket Brokers That Illegally Bought and Resold Tickets in Bulk* (Apr. 27, 2016), <https://ag.ny.gov/press-release/ag-schneiderman-announces-27-million-settlements-six-ticket-brokers-illegally-bought>; Washington State Office of the Attorney General, *Ticket Sales Company to Pay \$60k for Use of Ticket Bots* (Feb. 8, 2018), <https://www.atg.wa.gov/news/news-releases/ticket-sales-company-pay-60k-use-ticket-bots>.

²⁹ In a lawsuit filed by Ticketmaster in October 2017 against Prestige Entertainment and Renaissance Ventures, two ticket brokerage firms, Ticketmaster alleged that the firms breached a May 2017 settlement agreement with the New York Attorney General by continuing to use ticket bots to purchase tickets from Ticketmaster's platform. Complaint, *Ticketmaster LLC v. Prestige Entertainment, et al.*, 2:17-cv-07232 (C.D. Cal. Oct. 2, 2017). In response, Prestige and Renaissance filed a counterclaim accusing Ticketmaster of, among other things, creating and disseminating its own ticket bots. Answer and Counterclaim, *Ticketmaster LLC v. Prestige Entertainment, et al.*, 2:17-cv-07232 (C.D. Cal. June 25, 2018).

³⁰ In September, two separate media outlets reported on undercover operations in which investigative journalists attended the Ticket Summit 2018 convention—an event catering primarily to ticket scalpers—where a Ticketmaster Resale representative informed them that Ticketmaster facilitates the mass scalping of tickets by selling its proprietary software program designed to help bulk buyers resell thousands of tickets. Despite the fact that such sales violate Ticketmaster's terms of service, which prohibit customers from purchasing tickets in excess of event-specific caps (usually 6-8 seats per purchaser), the Ticketmaster representative assured the reporters that “[a] blind eye [would] be turned” for ticket scalpers who break this rule using Ticketmaster's software. Robert Cribb and Marco Chown Oved, *We Went Undercover as Ticket Scalpers – and Ticketmaster Offered to Help Us Do Business*, THE TORONTO STAR (Sept. 19, 2018), <https://www.thestar.com/news/investigations/2018/09/19/we-went-undercover-as-ticket-scalpers-and-ticketmaster-offered-to-help-us-do-business.html>; see also Dave Seglins, Rachel Houlihan, Laura Clemtson, ‘A Public Relations Nightmare’: Ticketmaster Recruits Pros for Secret Scalper Program, CBC (Sept. 19, 2018), <https://www.cbc.ca/news/business/ticketmaster-resellers-las-vegas-1.4828535>.

and suggest a blatant disregard for existing law. The Commission should investigate these claims and ensure primary ticket sellers are partners in the enforcement of the BOTS Act.

II. TICKET TRANSFER RESTRICTIONS

Ticket issuers are increasingly imposing technical, legal, and practical limits restricting purchasers' ability to resell or gift tickets. Several of the practices StubHub and others have observed in the marketplace are summarized below:

- Non-transferable Tickets – As a condition of initial purchase, some ticket businesses, sports team owners, artists, and venues have implemented non-transferable tickets designed to make it difficult, if not impossible, for the original purchaser to freely transfer the ticket.³¹ One example is the credit-card entry system, where purchasers are required to present the credit card that was used to purchase the tickets and/or matching identification to gain admission.³² This delivery method prevents purchasers from transferring or reselling a ticket without providing the new ticket purchaser access to their credit card and ID.
- Mandatory Resale Processes – Some ticket issuers permit resale only through channels and/or processes they authorize. For example, a lawsuit against the New Jersey Devils alleged that the club requires season ticket holders to use Ticketmaster as the secondary marketplace for unused tickets.³³
- Season Ticket Cancellation Policies and Practices – Several sports franchises have enacted cancellation policies whereby season ticket holders who attempt to sell or give away their tickets are barred *from* being season ticketholders the next year, or are denied some other benefit, such as free merchandise or access to fan events. The Las Vegas Golden Knights of the NHL, for example, reportedly have cancelled hundreds of season ticket subscriptions held by customers who sold unused tickets on third-party websites that had not been authorized by the team.³⁴

³¹ New York AG Report at 36.

³² GAO Report at 23.

³³ Amended Class Action Complaint, *Olsen v. New Jersey Devils LLC*, No. 2:15-CV-002807 (D.N.J. July 31, 2015).

³⁴ KTNV, *Vegas Golden Knights Season Ticket Holders Say Their Membership Was Unfairly Revoked* (Sept. 20, 2018), <https://www.ktnv.com/sports/golden-knights/vegas-golden-knights-season-ticket-holders-say-their-membership-was-unfairly-revoked/>; Olivia Perrault, *Vegas Golden Knights Season Ticket Holders Had Memberships Revoked*, TICKETNEWS (Sept. 24, 2018), <https://www.ticketnews.com/2018/09/vegas-golden-knights-season-ticket-membership-revoked/>.

Ticket transfer restrictions harm consumers. For one, they force consumers to commit themselves financially to an event that they may not ultimately be able to attend.³⁵ Ticket holders who have to cancel their plans for any number of unpredictable reasons are unable to recoup their money through resale or give away their tickets as a gift or donation to others.³⁶ This is both impractical and inconvenient, particularly when tickets for many events sell out (and/or escalate in price) quickly and consumers may feel pressure to make quick purchase decisions. In addition, ticket transfer restrictions “materially and substantially degrade” ticket values.³⁷ The ability to easily resell or transfer a ticket serves as “insurance” that the consumer will not lose their investment if they ultimately cannot use the ticket.³⁸ Resale restrictions degrade ticket values by removing this guarantee, making some consumers less likely to purchase tickets.³⁹ Finally, ticket transfer restrictions harm consumers by suppressing competition among distributors. One critic has characterized resale restrictions as “an effort to control the secondary-ticketing market and stifle competition from independent resellers and resale marketplaces . . . where tickets are often sold for less than face value.”⁴⁰ Notably, an estimated 40% of ticket resales occur at prices *at or below* the ticket’s face price.⁴¹ Thus, as a 2008 Stanford study concluded, “[t]o the extent that online marketplaces like eBay, StubHub,

³⁵ James D. Hurwitz, *Restrictive Paperless Tickets: A White Paper by the American Antitrust Institute* (“AAI White Paper”), AAI.org (Jan. 20, 2012), at 38.

³⁶ *Id.* at 33, 36.

³⁷ *Id.* at 32, 70.

³⁸ *Id.* at 38.

³⁹ *Id.*

⁴⁰ Albert A. Foer, *Who Owns My Ticket?*, NEW YORK TIMES (Jan. 19, 2012), <https://www.nytimes.com/2012/01/20/opinion/who-owns-my-ticket.html>.

⁴¹ AAI White Paper at 35.

craigslist, and others facilitate secondary market exchanges by lowering transaction costs, we can infer that their services *increase the total surplus generated by the market for event tickets.*”⁴²

The consumer harm associated with transfer restrictions and inadequate disclosure thereof is illustrated by *Olsen v. New Jersey Devils LLC*.⁴³ In *Olsen*, a New Jersey Devils’ season ticket holder challenged the club’s policy of forcing all secondary sales of tickets to go through Ticketmaster’s Ticket Exchange platform. This policy was enforced by two means: first, season ticket holders that the club determined had sold too many tickets were denied the ability to renew their tickets for upcoming seasons; and second, the club denied resellers benefits that other season ticket holders enjoyed, such as free memorabilia, extra tickets, and seat upgrades.⁴⁴ The plaintiff alleged that the Devils failed to disclose this policy to season ticket purchasers at the point of sale, but instead only informed the plaintiff retroactively that his right to renew had been cancelled, citing a letter that stated that the Devils “will no longer generally be offering season tickets to accounts, such as yours, that our records show have engaged in the resale of tickets for 50% or more of the home games that have been played thus far during the 2013-14 Season.”⁴⁵ The cancellation blindsided the plaintiff, who “reasonably expected that they could sell tickets that they purchased which would otherwise go unused. Indeed, it was not until the Devils’ ‘important changes to [their] season ticket program[,]’ which terminated

⁴² Phillip Leslie and Alan Sorensen, *The Welfare Effects of Ticket Resale*, Stanford University (July 2008), <http://faculty.haas.berkeley.edu/wolfram/InnovSem/PapersF08/resale.pdf> (emphasis added).

⁴³ Amended Class Action Complaint, *Olsen v. New Jersey Devils LLC*, No. 2:15-CV-002807 (D.N.J. July 31, 2015).

⁴⁴ *Id.* ¶¶ 33, 37.

⁴⁵ *Id.* ¶¶ 37-38.

Plaintiffs’ right to renew, that the Devils had disclosed any negative consequences to selling individual tickets.”⁴⁶

Recognizing the clear potential for consumer harm, several states have taken steps to limit or prohibit the use of non-transferable paper tickets. In 2010, New York outlawed the issuance of non-transferable paperless tickets unless consumers are given the option of an alternative, easily transferable ticketing format at no extra cost.⁴⁷ Similarly, a Virginia law passed in 2017 prohibits the issuance of tickets “solely through a delivery method that substantially prevents the purchaser of the ticket from lawfully reselling the ticket on the Internet ticketing platform of the ticket purchaser’s choice.”⁴⁸ Colorado, Connecticut, and Illinois have enacted similar laws protecting ticket transferability, and several other states continue to consider similar fan-friendly proposals.⁴⁹

StubHub would encourage the FTC to take action in two areas relating to ticket transferability restrictions. First, the FTC should determine whether some or all transferability restrictions violate Section 5 of the FTC Act, even in instances in which the restrictions are clearly and conspicuously disclosed to consumers. Section 5 prohibits unfair methods of competition, including “vertical restraints of trade that . . . artificially foreclose legitimate consumer options.”⁵⁰ Consequently, “[v]ertical restraints have long been a part of the antitrust

⁴⁶ *Id.* ¶¶ 60-61.

⁴⁷ *Id.*

⁴⁸ Va. Code Ann. c 59.1-466.6

⁴⁹ Co. Code Ann. § 6-1-718 (3); 815 I.L.C.S. 414/1; Conn. Public Act No. 17-28; *see* GAO Report at 6.

⁵⁰ 15 U.S.C. § 45(a)(1) (2006); Pamela Jones Harbour, *Vertical Restraints: Federal and State Enforcement of Vertical Issues* (“Vertical Restraints”), ALI-ABA Course of Study 4 (March 2004), https://www.ftc.gov/sites/default/files/documents/public_statements/vertical-restraints-federal-and-state-enforcement-vertical-issues/0403vertical.pdf.

lexicon.”⁵¹ Vertical restraints, including ticket transferability restrictions, are evaluated pursuant to a rule of reason analysis involving a “detailed market analysis to determine whether the agreement has or is likely to create or increase market power or facilitate its exercise.”⁵² Importantly, “[r]estrictions imposed on customers”—such as ticket transferability restrictions—“often produce greater competitive harm than restrictions imposed on intermediaries, for restrictions of the latter permit customers to continue to make substitutes.”⁵³ The Commission is uniquely situated to determine whether some or all ticket transferability restrictions on balance harm consumers and thus violate the antitrust laws. The agency’s internal economic analysis resources and capabilities are unparalleled, and the authority to pursue conduct that is “unfair” pursuant to Section 5, even if it does not rise to the level of a Sherman Act violation, gives the agency a unique tool to address this conduct that harms consumers.⁵⁴

Second, the Commission should work to improve transparency around ticket resale restrictions so that consumers fully understand the restrictions prior to purchasing tickets. As noted above, “omissions of material information” that are “likely to mislead reasonable consumers” violate Section 5.⁵⁵ Given the prevalence of ticket transfer and resale, and the

⁵¹ *Vertical Restraints* at 5.

⁵² *Vertical Agreements: The regulation of distribution practices in 34 jurisdictions worldwide* (“GCR Vertical Agreements”), Global Competition Review 212 (2008), <https://www.sidley.com/-/media/files/publications/2008/03/getting-the-deal-through--vertical-agreements-2008/files/view-united-states-chapter/fileattachment/united-states-21.pdf>; see also Fed. Trade Comm’n, *Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act* (“*Statement of Enforcement Principles*”) (Aug. 13, 2015) (noting that an act or practice challenged as an unfair method of competition in violation of Section 5 on a stand-alone basis will be evaluated “under a framework similar to the rule of reason, that is . . . [it] must cause, or be likely to cause, harm to competition or the competitive process, taking into account any associated cognizable efficiencies and business justifications”).

⁵³ 11 Phillip E. Areeda, *Antitrust Law* ¶ 1800 (2015).

⁵⁴ See *Statement of Enforcement Principles* (“Section 5’s ban on unfair methods of competition encompasses not only those acts and practices that violate the Sherman or Clayton Act but also those that contravene the spirit of the antitrust laws and those that, if allowed to mature or complete, could violate the Sherman or Clayton Act.”).

⁵⁵ *FTC Policy Statement on Deception*, appended to *Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174-178 (Oct. 14, 1983), www.ftc.gov/bcp/policystmt/ad-decept.htm.

substantial economic and practical significance of transferability to consumers, it is sensible and consistent with Section 5 that consumers be provided with clear and conspicuous disclosure of any such limits prior to purchase.

III. WHITE-LABELED EVENT TICKET WEBSITES

In the event-ticket marketplace, the term “white labeling” refers to ticket resale marketplaces granting access to their ticket inventories, venue maps and photos, customer service functions, and e-commerce engine—the backbone of their website and business—to third-party marketers who “re-skin” the website so that it appears to be an independent website with a unique URL (*e.g.*, web address). Through white-label sites, these ticket resale marketplaces can essentially operate multiple iterations of their website so that each appear independent, but which in reality are all selling the same tickets. As discussed below, white-labeling practices of this nature can harm consumers in at least two ways: first, by deceiving consumers into believing that the white-label site is affiliated with the venue, and second, by saturating online search results, thereby deceiving consumers who believe they are shopping a range of competitors to find the best value, when in fact they are seeing the same inventory relisted across affiliate websites.⁵⁶ The FTC has already pursued a successful enforcement

⁵⁶ In other areas of the economy, such as grocery and cleaning products, “white label” or “private label” marketing often refers to a retailer rebranding a product sourced from a manufacturer with the retailer’s own “house” brand and pricing the product lower than other branded alternatives. *See generally*, Francois Glemet and Rafael Mira, *The Brand Leader’s Dilemma*, THE MCKINSEY QUARTERLY (Spring 1993), <https://go.galegroup.com/ps/i.do?p=AONE&sw=w&u=googlescholar&v=2.1&it=r&id=GALE%7CA14556413&sid=classroomWidget&asid=47777dcf>. Target, for example, uses white-label marketing to sell brand name manufacturers’ products, ranging from detergent to over-the-counter medicine, under its own label at a reduced cost to the consumer. *See, e.g.*, Khadeeja Safdar, *Target’s Answer to Discounters Is an Even Cheaper Store Brand*, WALL STREET JOURNAL (Oct. 6, 2018), <https://www.wsj.com/articles/targets-answer-to-discounters-is-an-even-cheaper-store-brand-1538827200>. White-label practices of this nature can benefit consumers by introducing additional purchasing options to the marketplace at a lower cost than the branded alternatives, but stand in stark contrast from the types of misleading white-labeling practices that, as explained above, frequently occur in the event-ticket marketplace.

action challenging TicketNetwork’s deceptive use of white-label marketing, but the practice remains prevalent and further Commission action is needed to protect consumers.

A. Consumer Deception Regarding Affiliation with the Event Venue

The operator of a white-labeled site may use a URL or make representations that suggest that the website belongs to, or is affiliated with, the event venue. Consumers see these representations and reasonably believe that they are purchasing tickets from the primary seller and are doing so at the face value of the tickets when, in fact, they are purchasing from a reseller at prices that may far exceed the initial sales price or even the prices offered on the ticket resale marketplace powering their site. And, in some cases, consumers make these purchases at a time when the actual venue (or its authorized primary seller) is still selling inventory. Thus, due to the misleading presentation of the white-labeled site, consumers may miss the opportunity to purchase significantly lower priced tickets from a more reliable and reputable seller.

The FTC has explicitly recognized the potential for consumer harm of this nature. In 2014, the FTC and the State of Connecticut settled charges against TicketNetwork and two of its white-label partners for misrepresenting to consumers that they were official venues selling tickets at face value.⁵⁷ As the FTC found in that case, TicketNetwork and its affiliates used the white-labeling tactics described above to perpetrate their deception on consumers—i.e., TicketNetwork opened its ticket inventory and purchase software to its affiliates who then deployed hundreds of differently branded microsites often with identical inventory to market the tickets. Each of these microsites “mimick[ed] an individual event venue” by using nearly identical domain or subdomain names to the official venue site (*e.g.*, radiocity.musichall-

⁵⁷ Final Judgment and Order for Permanent Injunction and Other Relief as to Defendants TicketNetwork, Inc. and Ticket Software LLC, *FTC v. TicketNetwork, Inc., et al.*, No. 3:14-cv-01046 (D. Conn. Aug. 12, 2014).

ny.com).⁵⁸ The affiliates then crafted paid Google advertisements to give the false impression that these microsites were the “official” ticket source for the venue and to ensure that consumers would see their microsites as top hits when searching for event venues.⁵⁹ The microsites themselves likewise did not effectively disclose to consumers that the tickets were being offered by a reseller at prices well above face value.⁶⁰ To the contrary, the white-label sites sought to reinforce the impression that they were offering face-value tickets from the venue by, for example, displaying banners with the venue’s name across multiple landing pages (*e.g.*, Radio Music Hall).⁶¹ As the FTC recognized in pursuing this enforcement action against TicketNetwork, these sorts of white-labeling practices cause substantial consumer harm in the online ticket industry by deceiving a significant number of consumers into making above-market ticket purchases that the consumer would not otherwise have made.

Unfortunately, the enforcement action against TicketNetwork has not eliminated deceptive white-labeling practices. A recent Government Accountability Office report found that white-label practices comparable to those used by TicketNetwork remain ubiquitous.⁶² As the GAO summarized, white-label resale sites continue to “appear as paid results of Internet searches for venues and events, often charge[] higher fees than other ticket websites—sometimes in excess of 40% of the ticket prices—and use[] marketing that might mislead users to think they

⁵⁸ Complaint for Permanent Injunction and Other Relief, *FTC v. TicketNetwork, Inc. et al.*, No. 3:14-cv-01046, ¶ 24 (D. Conn. July 24, 2014).

⁵⁹ *See, e.g., id.* ¶¶ 27-31.

⁶⁰ *See, e.g., id.* ¶¶ 30-45.

⁶¹ *Id.*

⁶² It should be noted that since the publication of the GAO Report, Google has changed its policies to prohibit advertisements with “display URL[s] that do not accurately reflect the URL of the landing page,” as discussed further below. Google, Advertising Policies Help, <https://support.google.com/adspolicy/answer/6008942?hl=en>.

were buying tickets from the venue.”⁶³ The agency further concluded that white-label websites were so pervasive that they “commonly appear [at the top of] search results for all types of venues, including smaller venues like clubs and theaters.”⁶⁴ In fact, for the nine venues surveyed by the GAO, *all nine* had at least one white-label site appear as a leading search result.⁶⁵ Moreover, the vast majority of the white-label sites examined by the agency still “use the venue’s name in the search engine’s display URL” and present disclosures disclaiming affiliation with the venue “in small font or in an inconspicuous location” on their key consumer landing pages.⁶⁶

According to the GAO Report, through the use of these deceptive practices, white-label sites are able to charge, on average, 106% higher ticket prices and 7% higher fees than other ticket resale sites.⁶⁷ This was the case even when “comparable tickets were still available from the primary seller at a [significantly] lower price.”⁶⁸ For example, the GAO Report found that “two white-label sites were offering tickets to an event for \$90 and \$111, respectively, whereas the venue’s official ticketing website was offering comparable seats for \$34.”⁶⁹

The GAO Report further notes, “government officials, event organizers, and other secondary ticket sellers” have all expressed serious concerns about white-label sites in the online ticket industry and called on the FTC to do more to protect consumers from these deceptive

⁶³ GAO Report at p. I.

⁶⁴ *Id.* at 25.

⁶⁵ *Id.* at 27.

⁶⁶ *Id.* at 27-28.

⁶⁷ *Id.* at 28.

⁶⁸ *Id.*

⁶⁹ *Id.*

practices.⁷⁰ In particular, prominent members of both major political parties in the United States Senate and House of Representatives have urged the FTC to take further action against white-label resellers.⁷¹ These legislators affirm the GAO Report’s findings that, despite the FTC’s prior TicketNetwork action, “[m]ultiple ticket resellers [continue to] describe their programs as enabling third party websites to control ticket markup prices and service fees, allowing the affiliate to determine its own commission.”⁷² The result is “that a ticket available on a white label site is often substantially more expensive than the *exact same ticket* available on the [undisclosed] reseller’s main website,” which is the actual source of the ticket.⁷³

Consumer complaint websites include hundreds, if not thousands, of submissions from consumers who have purchased tickets using white-labeled ticket websites expressing confusion and frustration about being misled into believing that they were purchasing face-value tickets from an event’s official ticket website.⁷⁴ State legislators and consumer-oriented advocacy groups have begun taking action to try to mitigate the harm done to consumers by these practices.⁷⁵ In 2017, for example, Nevada passed a consumer protection law specifically

⁷⁰ *Id.* at 27.

⁷¹ Letter from Representatives Tom Marino and Anna G. Eshoo, Members of Congress, to The Honorable Maureen K. Ohlhausen, Acting FTC Chairwoman (July 28, 2017), <https://www.scribd.com/document/360195025/7-28-17-Marino-Eshoo-Letter-to-FTC>; Letter from Cory Booker, U.S. Senator, and Orrin Hatch, U.S. Senator, to The Honorable Maureen Ohlhausen, Acting Chairwoman of the FTC (Sept. 13, 2017), https://www.hatch.senate.gov/public/_cache/files/67e7e158-c580-4fbc-85a0-a1de407cfff8/Ticket%20Resale%20Letter%20-%20FTC%20-%20HatchBooker.pdf; Letter from Frank Pallone, Jr., Ranking Member of the U.S. House Committee on Energy and Commerce, and Bill Pascrell, Jr., Member of Congress, to Joseph Simons, Chairman of the FTC (July 20, 2018), https://pascrell.house.gov/sites/pascrell.house.gov/files/FTC%20Letter%20on%20Ticket%20Sales_072018.pdf.

⁷² Letter from Reps. Marino and Eshoo at 2.

⁷³ *Id.*

⁷⁴ *See, e.g.*, Better Business Bureau, Consumer Complaints Against Online City Tickets, *available at* <https://www.bbb.org/chicago/business-reviews/ticket-broker/online-city-tickets-in-chicago-il-88700586/reviews-and-complaints>.

⁷⁵ *See, e.g.*, Testimony of Brian Hess, Executive Director of Sports Fan Coalition, Before the Maryland House of Delegates, *available at*

prohibiting ticket resellers or their affiliates from “display[ing] a trademarked or copyrighted URL, title, designation, image or mark or other symbol without the written consent of the trademark or copyright holder” or from “us[ing] any combination of text, images, web designs, or Internet addresses, or any combination thereof, which is substantially similar to the Internet website of an entertainment facility, athletic contest or live entertainment event without permission.”⁷⁶

Google has attempted to address the issue of deceptive URLs in its Advertising Policy, which prohibits, among other things, advertisements with “display URL[s] that do[] not accurately reflect the URL of the landing page.”⁷⁷ It has also issued revised guidance for event ticket sellers that requires them to more clearly disclose whether they are resellers and limits their ability to include certain terms in their URL domain name.⁷⁸ Unfortunately, Google’s policy applies only to advertisements and not the search engine results themselves, and Google cannot address deceptive results and labeling on other search engines. Also, corporate policies such as these, however well-intentioned, are not developed with the benefit of public comment, and, being self-policed, may be subject to inconsistent and self-interested enforcement.

The continued prevalence of deceptive white labeling in the event-ticket marketplace underscores the need for additional Commission action in this area. As both Democratic and Republican legislators have noted,⁷⁹ the Commission is well-positioned to prosecute the

https://d3n8a8pro7vhm.cloudfront.net/sportsfans/pages/1732/attachments/original/1518630411/SFC_FINAL_MD_Deceptive_URL_Testimony.pdf?1518630411 (showing the widespread and deceptive nature of specific white-label sites).

⁷⁶ N.R.S. 598.3978 (2017).

⁷⁷ Google, Advertising Policies Help, <https://support.google.com/adspolicy/answer/6008942?hl=en>.

⁷⁸ Google, About Event Ticket Seller Certification, <https://support.google.com/adspolicy/answer/7577050?hl=en>.

⁷⁹ *See supra*, n. 71.

perpetrators of these scams, and the agency has already found that the underlying conduct violates Section 5's prohibition on deceptive practices.

B. Online Shopping Deception

The potential for consumer harm associated with white labeling extends beyond the deceptive venue-impersonation tactics described above and targeted in the Commission's TicketNetwork action. A large proportion of the consumers who purchase event tickets online use search engines, such as Google and Bing, to identify potential ticket merchants from which to purchase. Often consumers use keywords, such as the name of the artist, venue, or sports team(s), in combination with words such as "ticket" to signal their interest in locating and purchasing event tickets. In general, search engines respond to such queries by presenting paid advertisements and non-paid ("native") links to merchant websites that the search engine's algorithms have identified as potentially relevant sellers. Using white-labeled copies of a website permits a single ticket resale marketplace to account for a large proportion of the links presented to consumers "above the fold" on search engine results pages. Because the links appear to be associated with independent, distinct ticket resale marketplaces, consumers believe that they are choosing among a host of competing alternatives when, in fact, many of the links are different portals to the same inventory. Thus, as a result of white labeling, consumers may reasonably believe that they have cross-shopped the pricing offered by multiple ticket resale marketplaces when, in fact, they have repeatedly viewed the inventory of a single resale marketplace through multiple white-labeled sites that merely appear distinct and independent. Consumers reasonably conclude that they have done a thorough search and discovered the range of market pricing when, instead, they have reviewed the inventory of only one or a handful of sites. Thus, white labeling tricks consumers into curtailing their shopping process, which, in

turn, causes some consumers to purchase tickets from a high-cost, white-labeled site, rather than a lower-priced alternative. Senators Booker and Hatch have described this as a tactic “to skirt and subvert search engine marketing policies” that has the effect of preventing consumers from “enjoy[ing] true choice between the vendors appearing in search results.”⁸⁰

StubHub respectfully submits that the Commission should closely evaluate the potential for white-labeling practices to harm consumers by presenting a deceptive picture of the independent options available to them. White labeling with the intent and effect of creating a false perception of market pricing and ticket availability is deceptive because the white-labeled sites do not clearly and conspicuously disclose the material fact that they are, in effect, jointly operated with other sites. In addition, such conduct is unfair because the practices (1) harm consumers by surreptitiously frustrating the ability to survey market pricing, and thus cause consumers to pay above-market prices; (2) cannot be reasonably avoided by consumers, due to the undisclosed nature of the white labeling; and (3) have the clear propensity to harm the free exercise of consumer choice without providing any offsetting benefits to either consumers or competition.⁸¹ The Commission has previously recognized that “present[ing] the user [of a search engine] with a greater diversity of websites” above the fold in search queries “improv[es] the overall quality of Google’s search results” to the benefit of the consumer.⁸² Taking deceptive actions to do just the opposite, by contrast, serves only to hinder consumers’ ability to

⁸⁰ Letter from Senators Booker and Hatch at 1-2.

⁸¹ A business practice is unfair under Section 5 of the FTC Act if the practice “causes or is likely to cause [i] substantial injury to consumers which is [ii] not reasonably avoided by consumers themselves and [iii] is not outweighed by countervailing benefits to consumers or to competition.” 15 U.S.C. § 45(n).

⁸² See Statement of the Federal Trade Commission Regarding Google’s Search Practices, *In the Matter of Google Inc.*, FTC File N. 111-0163, at 3 (Jan. 3, 2013), https://www.ftc.gov/sites/default/files/documents/public_statements/statement-commission-regarding-googles-search-practices/130103brillgooglesearchstmt.pdf.

successfully navigate market options. And, again, although Google has sought to restrict such abuses by adopting policies that forbid the practice of advertisers using affiliate programs to promote the same or similar content from multiple accounts on the same or similar queries, these policies do not apply to other search engines and may not be consistently enforced.⁸³ In fact, StubHub regularly observes practices that appears to be in violation of this policy when running ticket queries.

For all of these reasons, StubHub echoes the call issued by the bipartisan and bicameral legislators for increased FTC enforcement focus on white-label practices in the online ticket industry. In its own online searches, StubHub has increasingly seen white-label tickets that impersonate the most renowned sports stadiums, music halls, and theaters in the country. Moreover, StubHub—like consumers—often sees multiple white-label sites returned as top hits, even when the sites are operated as fronts for the same ticket marketplaces. Such tactics are designed to mislead consumers and permit white-label resellers to successfully charge supra-competitive prices. StubHub respectfully submits that this is precisely the context where the FTC’s enforcement power is needed to protect consumers and the integrity of the marketplace.

IV. PRICE AND FEE TRANSPARENCY

Inadequate disclosure of total ticket cost—including an appropriate delineation of all applicable fees—continues to be a problem in the event-ticket marketplace.

Full disclosure of pricing information prior to purchase is a longstanding and fundamental principle of consumer protection law. As the Commission’s *.com Guides* points out, “all cost information — including any . . . additional fees — should be presented to

⁸³ Google, Abusing the ad Network, <https://support.google.com/adspolicy/answer/6020954>.

[consumers] clearly and conspicuously prior to purchase.”⁸⁴ With regard to whether the initial price presented to consumers (whether in an advertisement, a product listing page online, or otherwise) should include all applicable costs and fees added to the base price depends on the expectations of reasonable consumers in light of industry practice. “If the purchase or use of the advertised product entails significant additional charges beyond the basic price of the product and consumers reasonably might not expect those charges,” then those charges should be disclosed in a clear and conspicuous manner with the initial presentation of price.⁸⁵ Consumers’ expectations depend on “industry norms” and the “general practices” of buyers and sellers in the marketplace.⁸⁶ With regard to fees that consumers reasonably expect, “disclosures should be provided before the consumer makes the decision to buy, *e.g.*, before clicking on an ‘order now’ button or a link that says ‘add to shopping cart.’”⁸⁷

In the event-ticket marketplace, most primary and secondary sellers charge fees that are added to the base ticket price. Fees are assessed for various reasons, such as to recoup costs for operating the ticket platform, pay delivery costs, or to account for “facility fee[s] charged by the venue.”⁸⁸ A recent report by the New York Attorney General observed that such fees are commonplace in the industry (particularly for larger venues) and, based on a sample of 800 events, average approximately 21 percent of the base ticket price.⁸⁹ As such, consumers reasonably expect event-ticket sellers to charge fees, and such fees may be disclosed after the

⁸⁴ Fed. Trade Comm’n, *.com Disclosures: How to Make Effective Disclosures in Digital Advertising* (“*.com Guides*”), at 11 (Mar. 2013), <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-staff-revises-online-advertising-disclosure-guidelines/130312dotcomdisclosures.pdf>.

⁸⁵ *Id.* at A-15.

⁸⁶ *Spirit Airlines, Inc. v. Dep’t of Transp.*, 687 F.3d 403, 416 (D.C. Cir. 2012).

⁸⁷ *.com Guides* at 14.

⁸⁸ GAO Report at 15.

⁸⁹ New York AG Report at 29, 41.

initial presentation of price, provided that clear and conspicuous disclosure occurs before the consumer decides to purchase. Recognizing that some consumers may prefer for such fees to be disclosed earlier in the ticket-buying process, StubHub several years ago moved to an “all-in” pricing structure (i.e., listing ticket prices that were inclusive of all fees). Unfortunately, StubHub’s competitors did not follow. As a result, consumers searching comparable tickets across platforms, expecting that StubHub continued to follow the industry practice, incorrectly believed that StubHub tickets were always more expensive when in fact the total prices were the same or cheaper. In 2015, StubHub reverted to the industry norm. StubHub continues to offer its customers an optional view that shows an “all-in” price early in the purchase flow process.

Some unscrupulous event-ticket sellers fail to disclose all applicable fees before consumers make buying decisions. This plainly abusive practice amounts to a bait-and-switch and harms consumers by denying them the benefit of the bargain presented in the purchase process, thus warranting Commission enforcement resources.

In addition, certain industry stakeholders, and the GAO, have questioned whether event-ticket sellers should be required to disclose the “all-in” price, *e.g.*, a price that includes all applicable fees, in the initial presentation of pricing.⁹⁰ Such a requirement would be a significant change to current law. StubHub believes that the current approach, as set forth in the *.com Guides*, is sensible and balances the competing considerations associated with price disclosures.⁹¹ That said, StubHub would have no objection to a change in existing law that would require up-front disclosure of the all-in price, provided that any such requirement or

⁹⁰ GAO Report at 36 (evaluating advantages and disadvantages of “[r]equiring up-front disclosure of ticket fees or requiring all-in pricing”).

⁹¹ One benefit of the current policy is that it permits sellers to disclose reasonably expected fees on a “shopping cart” or other page where there is more space for explanation and context relative to an advertisement or product page. On the other hand, early disclosure of an all-in has the benefit of giving customers more specific price information very early in the shopping process, which could facilitate price shopping. GAO Report at 36.

related change in FTC policy is clearly announced and applied equally to all industry participants, including both primary and secondary sellers. If the Commission elected to consider advocating for such a change, StubHub submits that the process should be public, incorporate the opportunity for stakeholder comments, and involve clear notice to market participants through formal or informal guidance.⁹²

This potentially could be an appropriate area for FTC enforcement action, although it would be most appropriate to postpone any such enforcement actions until after the Commission has clarified its policy positions, including through formal published guidance, with adequate notice to industry stakeholders. Providing clear, specific, and authoritative guidance in advance of pursuing enforcement actions to enforce a new Commission policy also would increase the Commission's likelihood of success in any such actions.⁹³

V. ADDITIONAL COMMENTS

As noted in the Commission's announcement of the Online Event Ticketing Workshop, speculative ticketing is an issue that is often referenced by industry stakeholders. Speculative ticketing, which is also referred to as "speculative listing" or "spec tickets," refers to the practice of offering and selling "tickets" in circumstances in which the seller does not yet have the rights

⁹² For example, the Commission held a roundtable and incorporated several rounds of public comment concerning changes to the Children's Online Privacy Protection Rule in 2013. See Press Release, Fed. Trade Comm'n, *FTC Strengthens Kids' Privacy, Gives Parents Greater Control Over Their Information by Amending Children's Online Privacy Protection Rule* (Dec. 19, 2012), <https://www.ftc.gov/news-events/press-releases/2012/12/ftc-strengthens-kids-privacy-gives-parents-greater-control-over>.

⁹³ The Supreme Court has acknowledged more than once that a lack of prior authoritative guidance from the Commission militates in favor of finding that a respondent's own actions and related statutory interpretations are not objectively unreasonable, and thus not appropriately subject to FTC enforcement. See *Safeco Insurance Co. of Am. v. Burr*, 551 U.S. 47, 69-70 (2007) (concluding that interpretations with a "foundation in the statutory text" are not objectively unreasonable, particularly in the absence "of guidance from the courts of appeals or the [FTC] that might have warned [the defendant] away from" its reading); see also *Steed v. Equifax Info. Servs.*, No. 1:14-cv-00437, 2016 WL 7888040, at *16 (N.D. Ga. July 15, 2016) (finding that the defendant's interpretation of a statute was not objectively unreasonable in the absence of "any authoritative regulatory guidance from the FTC . . . issued before or during the time period at issue in [the] lawsuit").

to the tickets being sold. StubHub's user policy prohibits the practice of ticket speculation; however, we recognize that it is a practice that occurs in the broader industry.⁹⁴

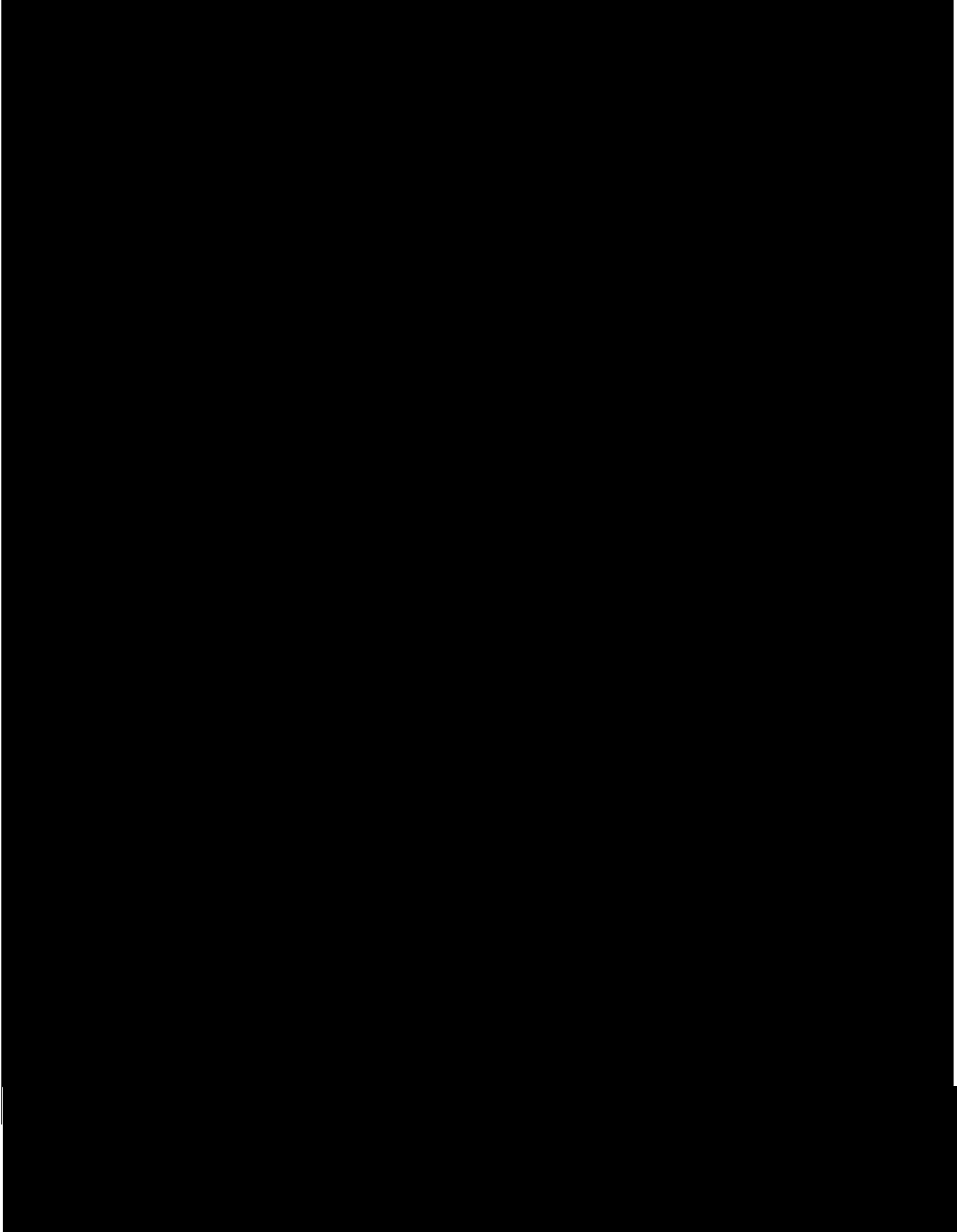
StubHub is aware of three state statutes that address the practice. California has long had ticket-specific regulation in place with respect to speculative sales, and New York and New Jersey followed suit in 2018.⁹⁵ In California and New York, the statutes focus on consumer notice and adequate protections in the case of speculative sales. Many in the industry want to use a possession standard to define speculation, which is impracticable and ignores the fact that ticket issuers accept payment for tickets long before they are delivered to ticket purchasers, as well as the industry trend of delaying the delivery of tickets until mere hours before an actual event.

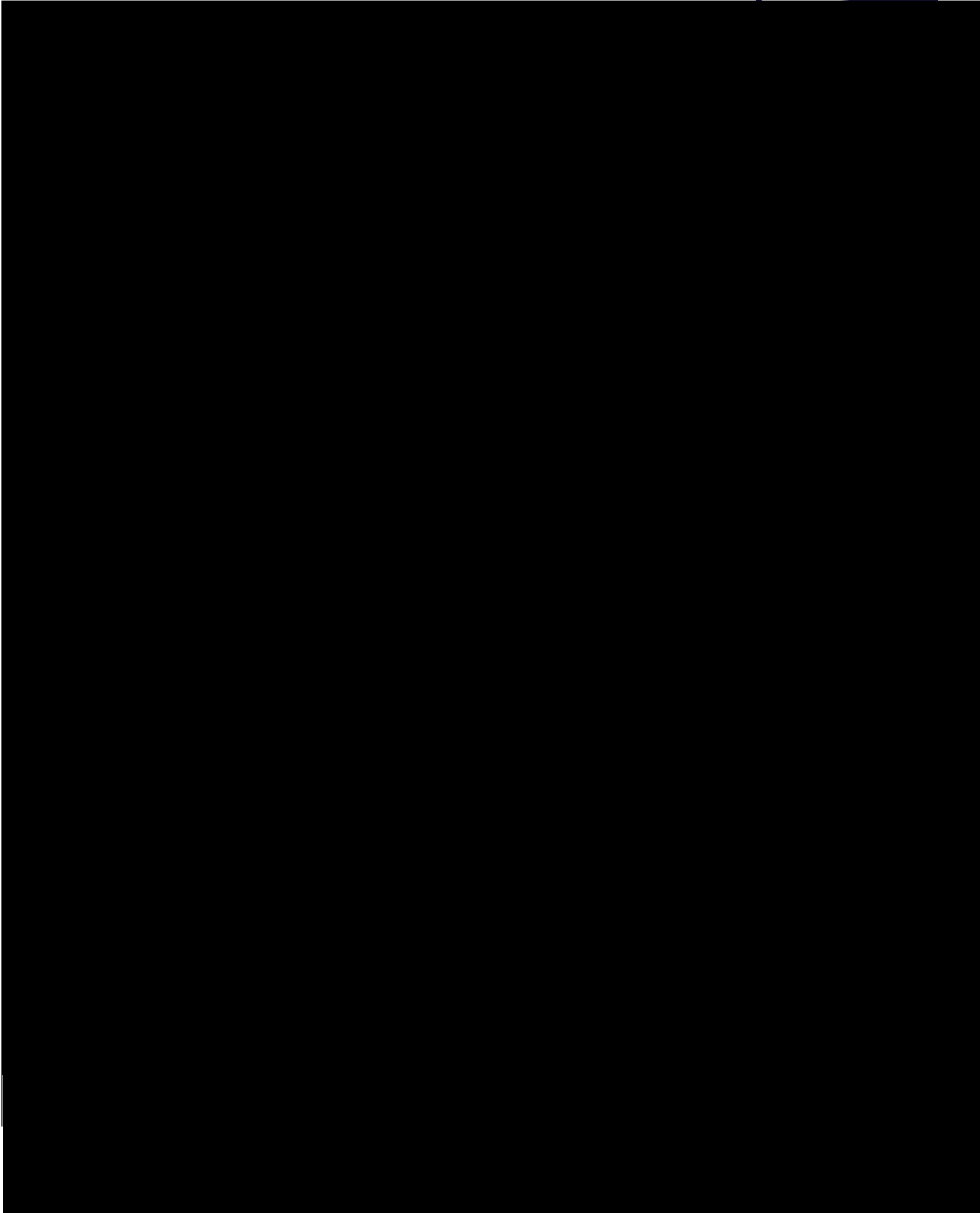
StubHub believes the Commission could provide needed clarity in this area by setting clearer standards for what ticket sellers must do to ensure that consumers receive adequate disclosures and protections with respect to purely speculative sales. A paramount concern is to ensure that any reseller has, at a minimum, secured the right to the ticket they are selling before marketing to consumers or adequately notices consumers that the right to the ticket being sold has not yet been secured.

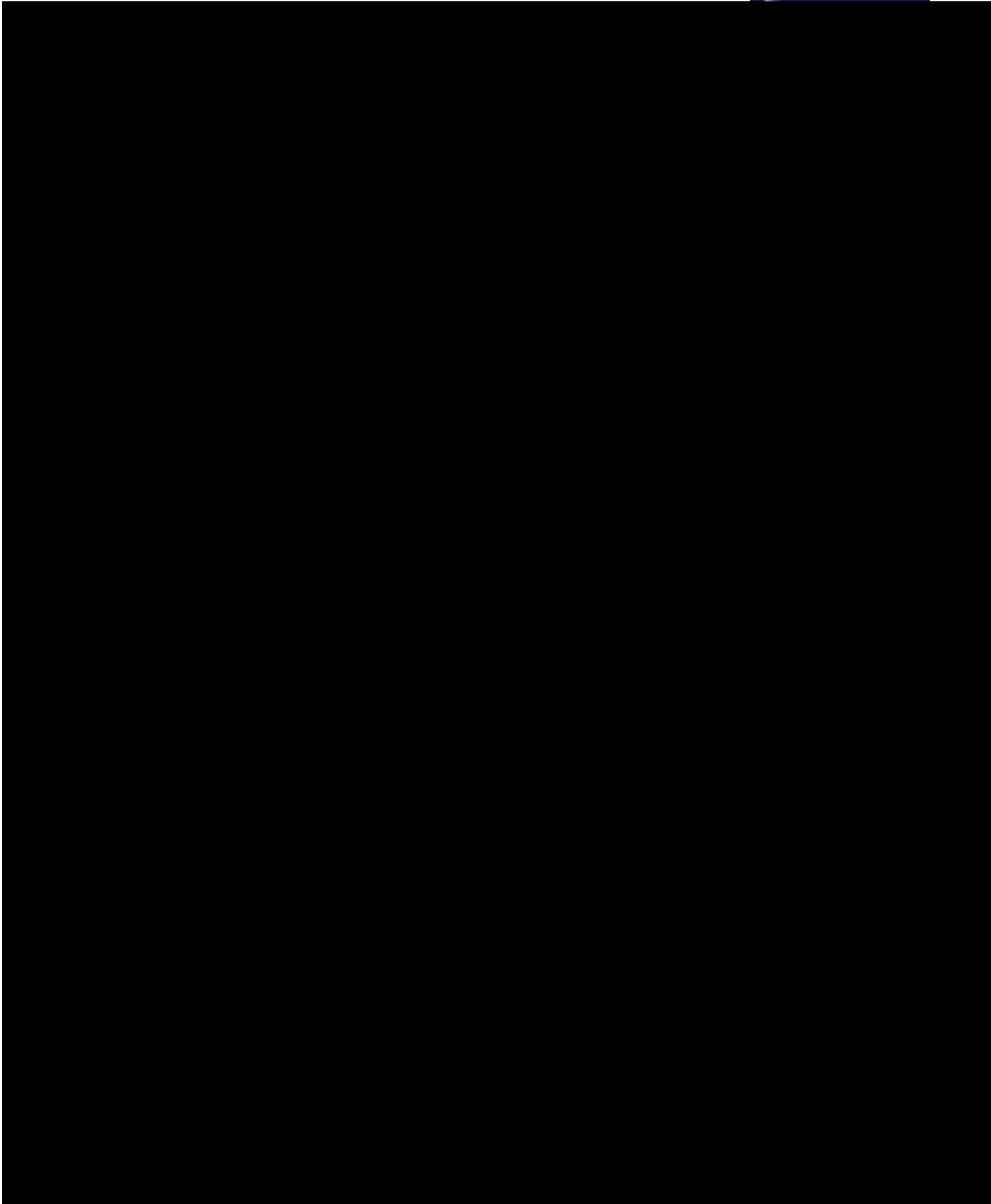
⁹⁴ StubHub, StubHub Marketplace Global User Agreement, Seller Policies (Oct. 1, 2018), <https://www.stubhub.com/legal/?section=ua> (“You must only list tickets that you already have in your possession (‘In Hand’) or that have been allocated to you. Speculative tickets or ‘spec tickets’ are tickets that are listed for sale or sold before the seller actually owns the tickets or before the tickets have been allocated to the seller. Listing or selling speculative tickets on StubHub is not allowed and may result in account suspension, fees, charges or other consequences.”).

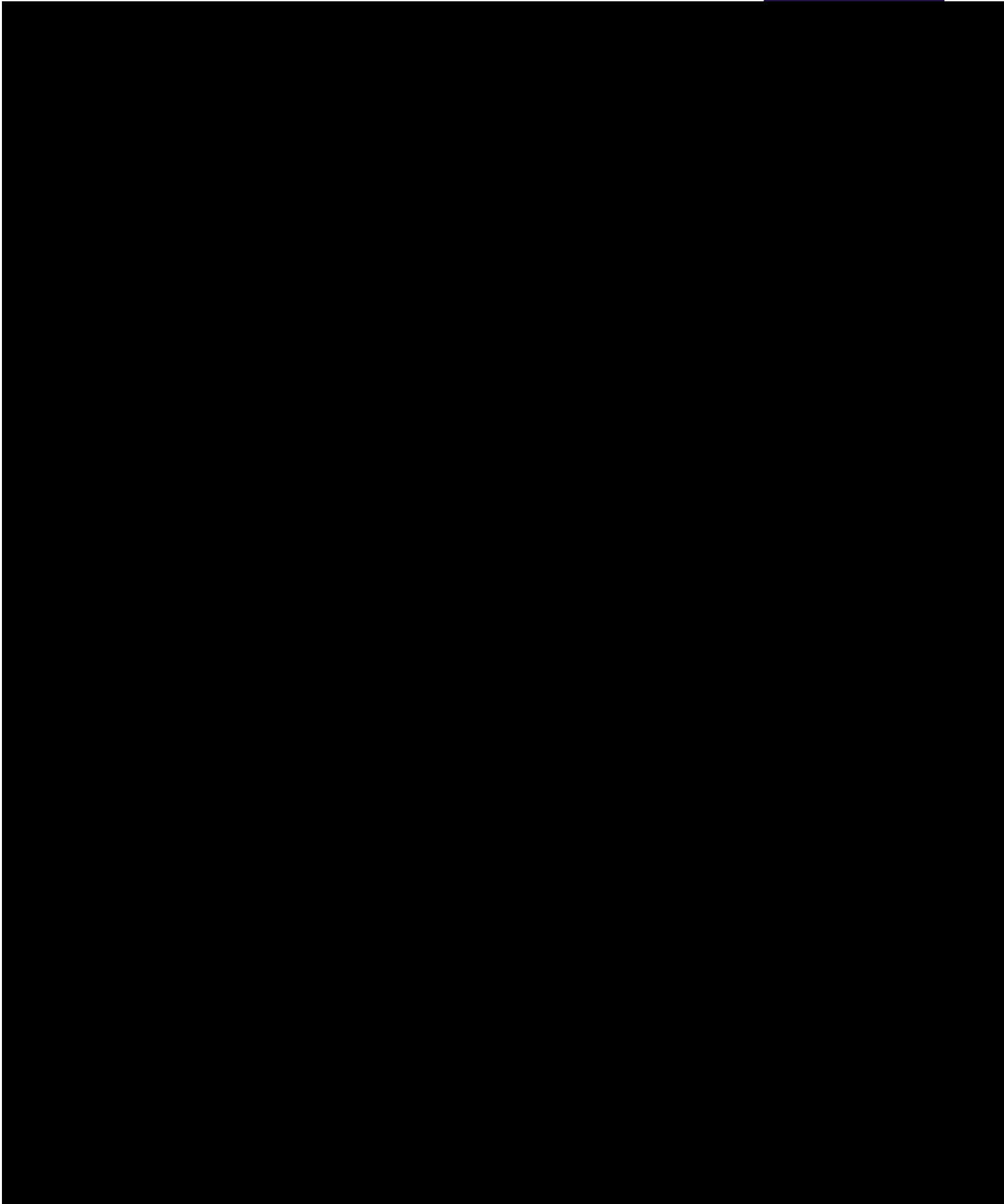
⁹⁵ N.Y. Arts & Cult. Aff. Law § 25.10; N.J. Stat. Ann. § 56:8-34; Cal. Bus. & Prof. Code § 22502.1.

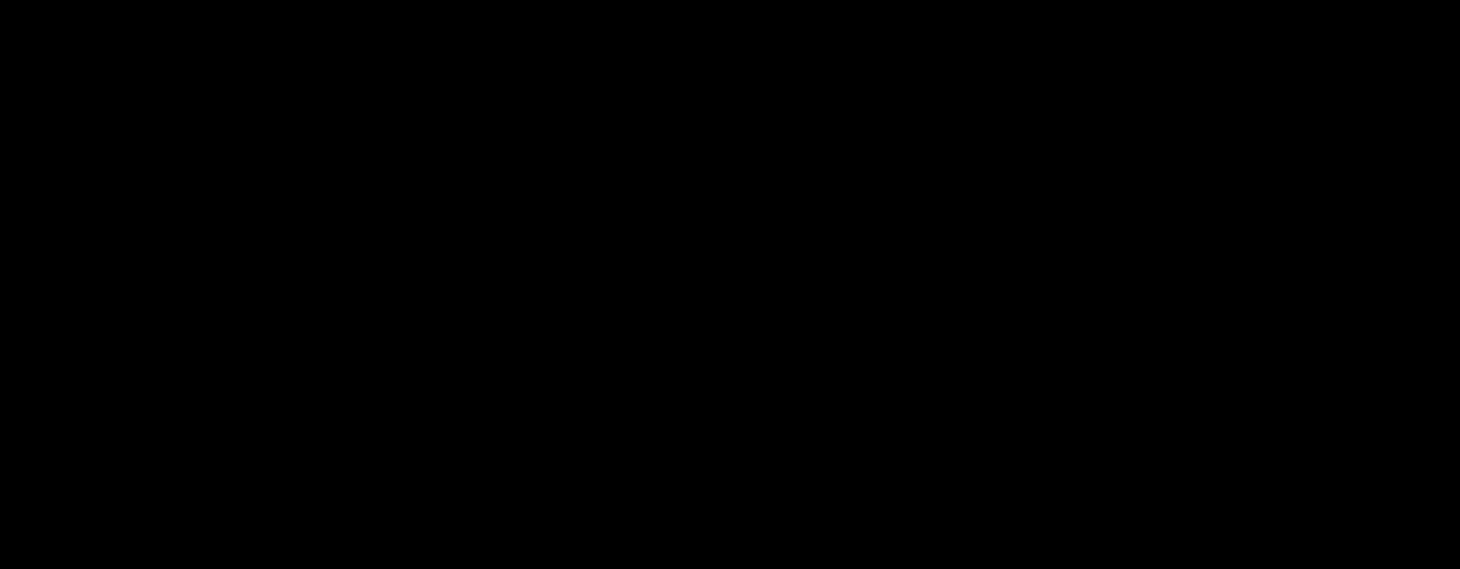
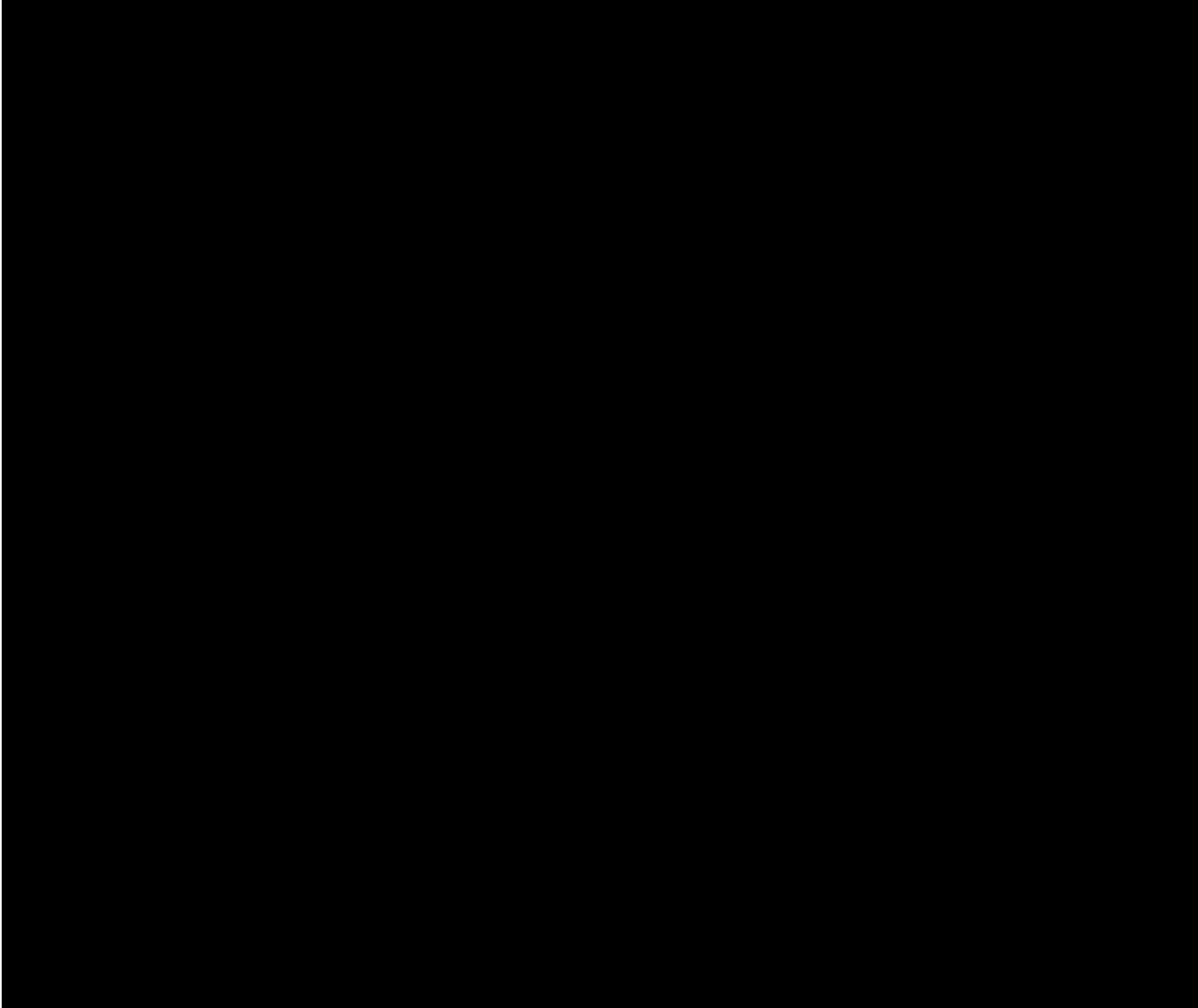
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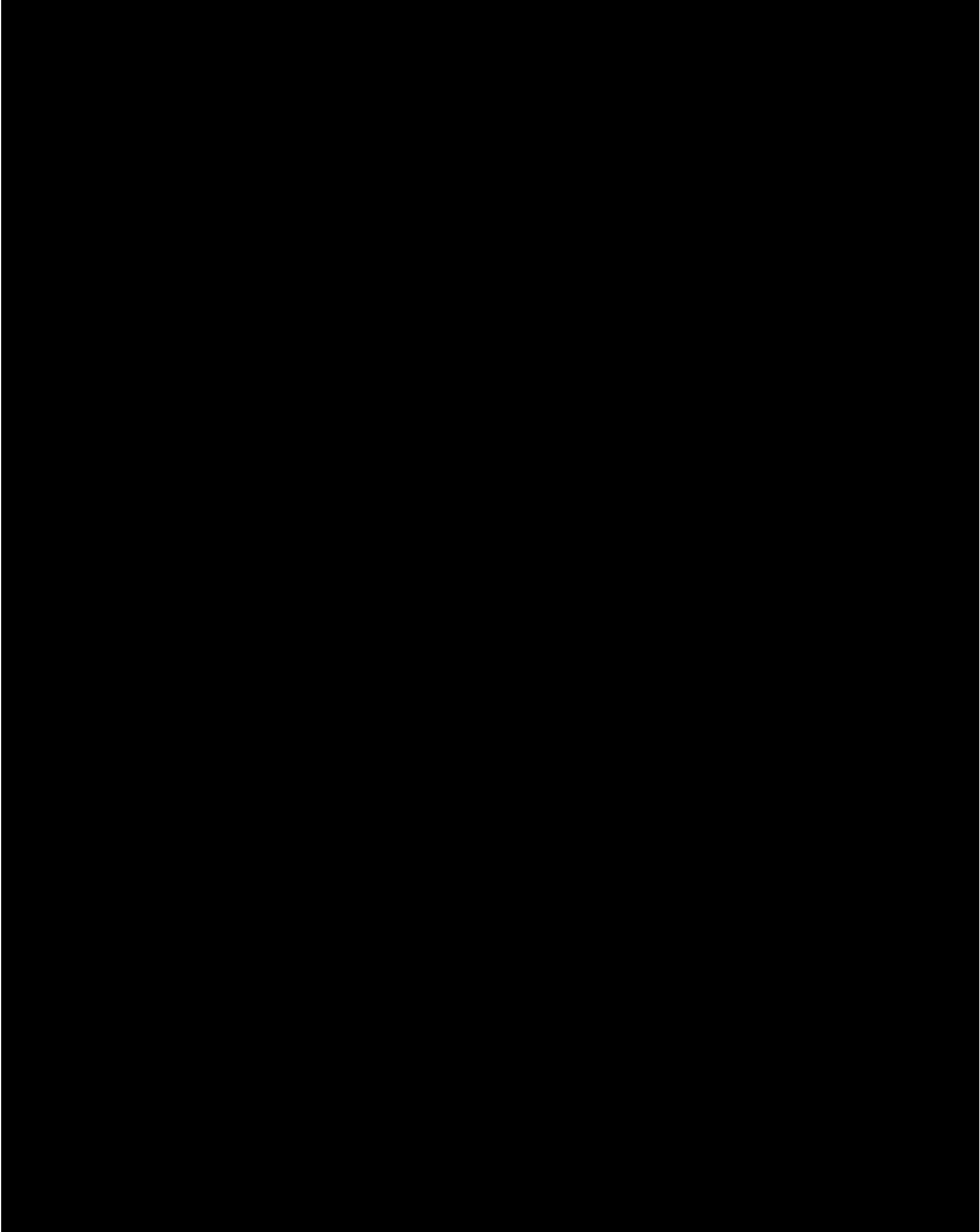


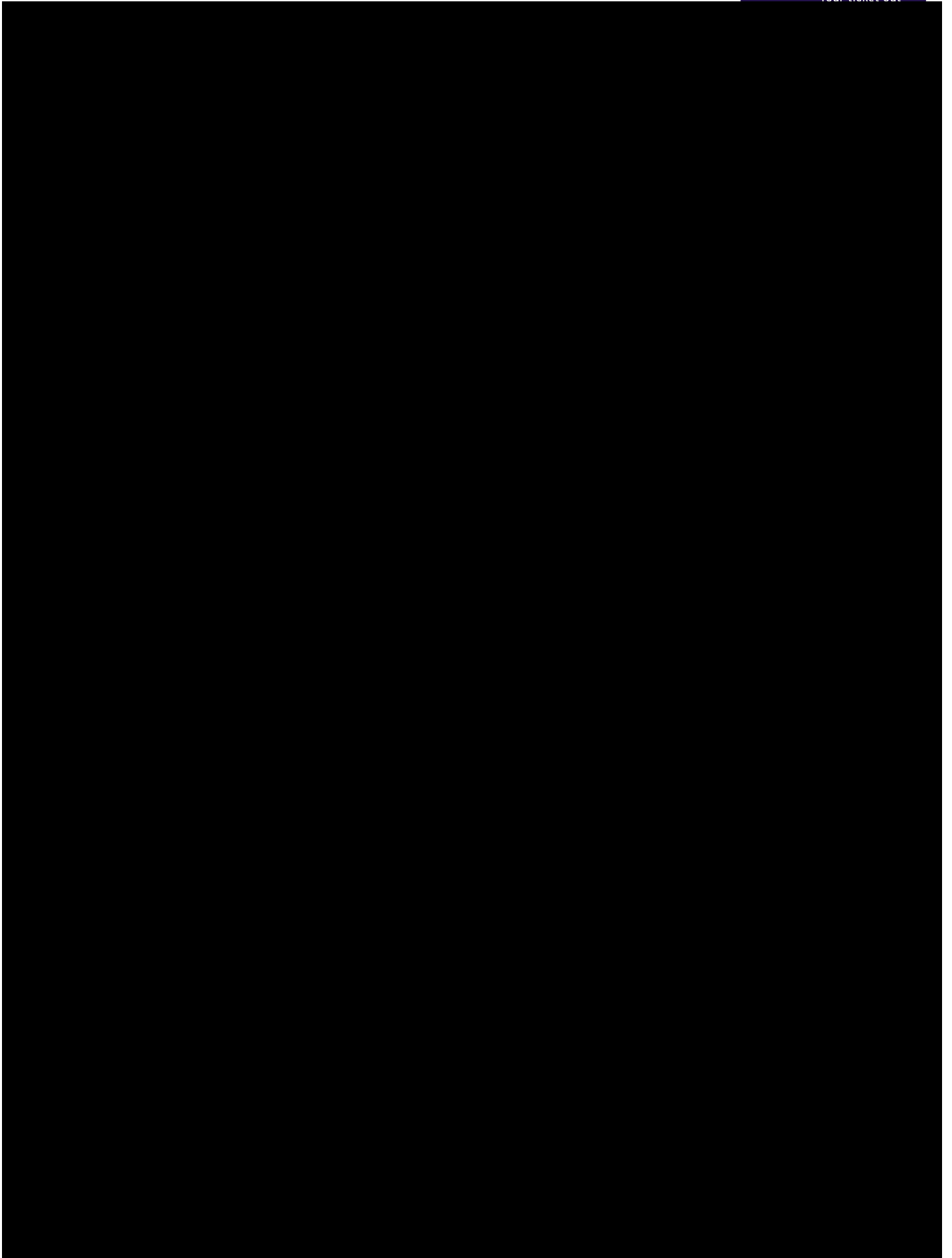


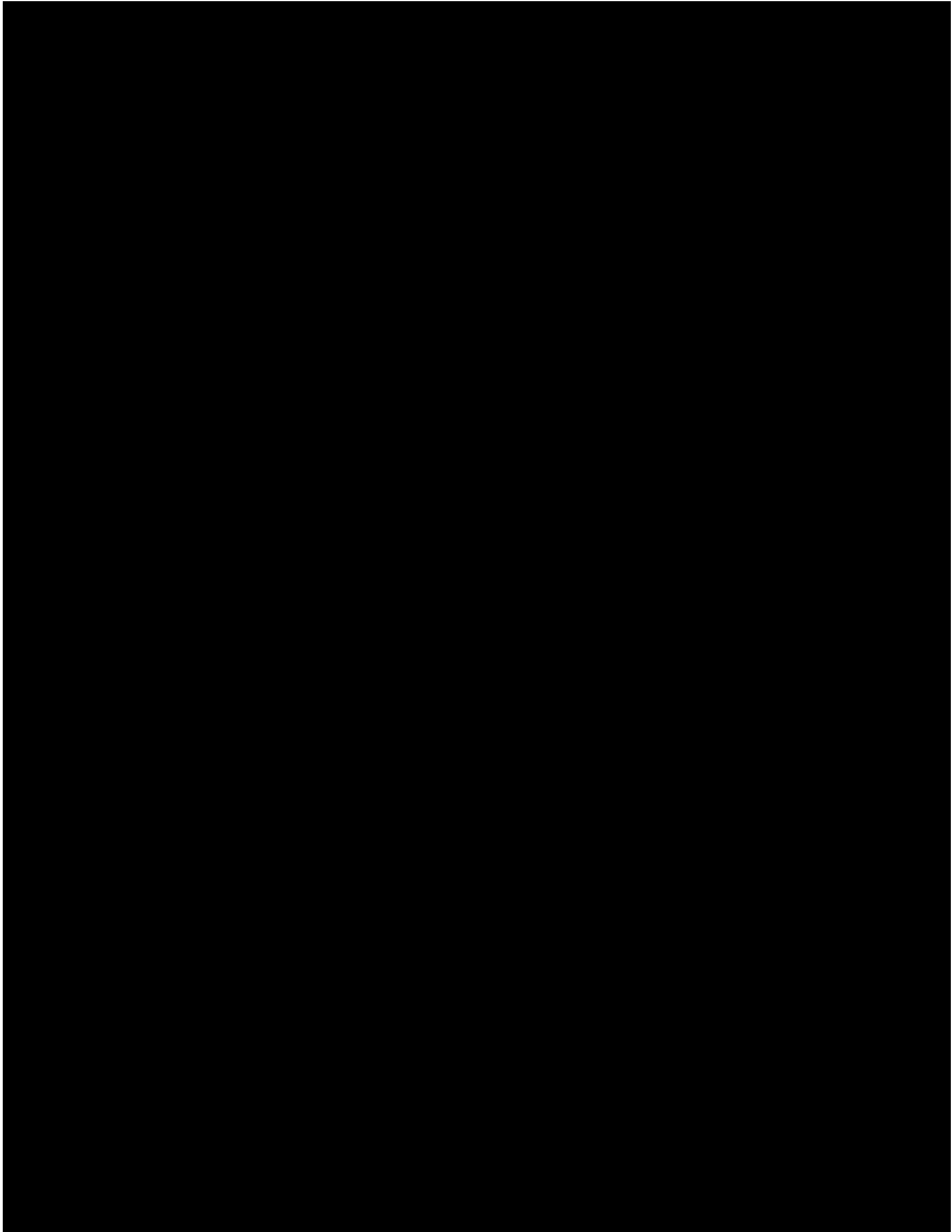


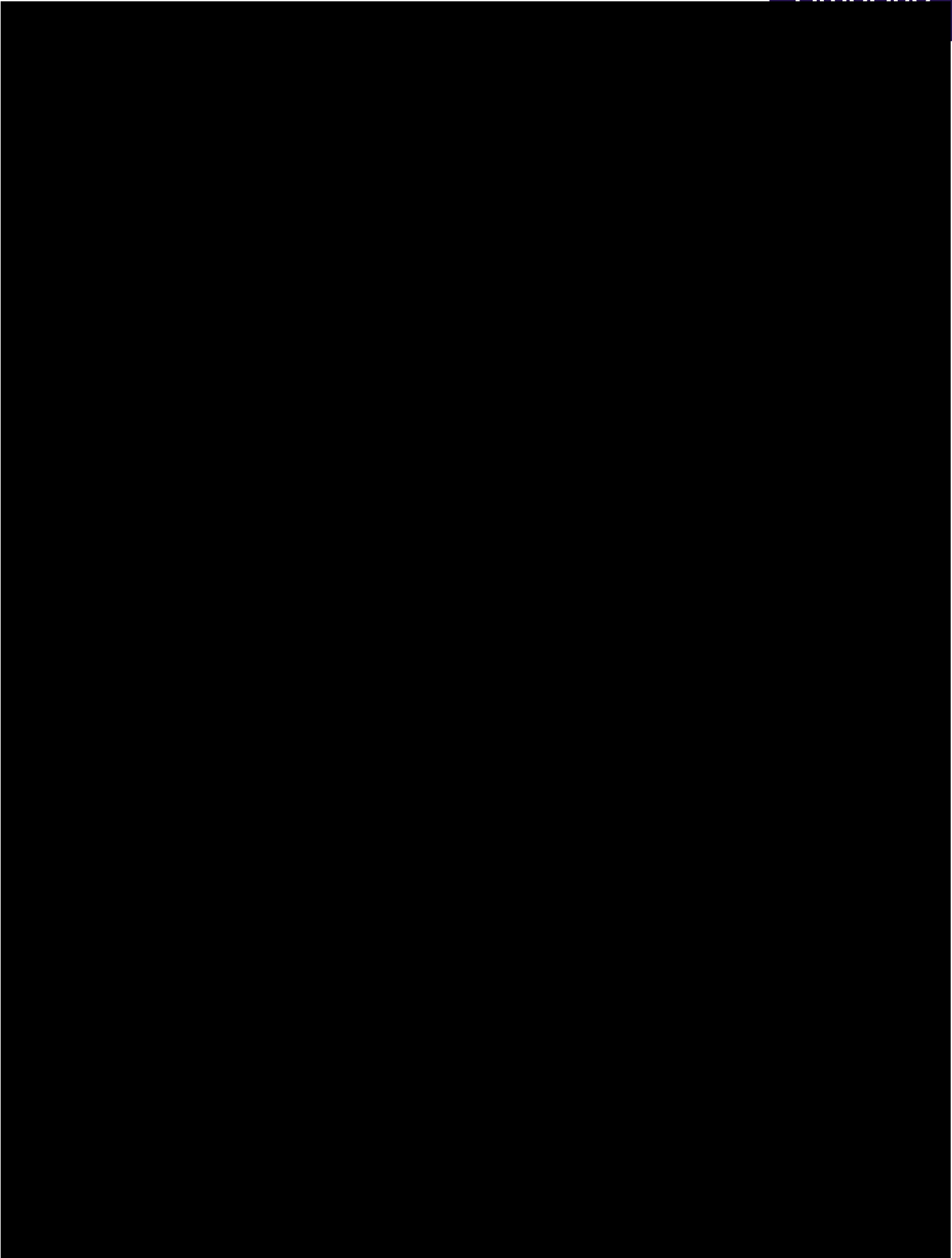


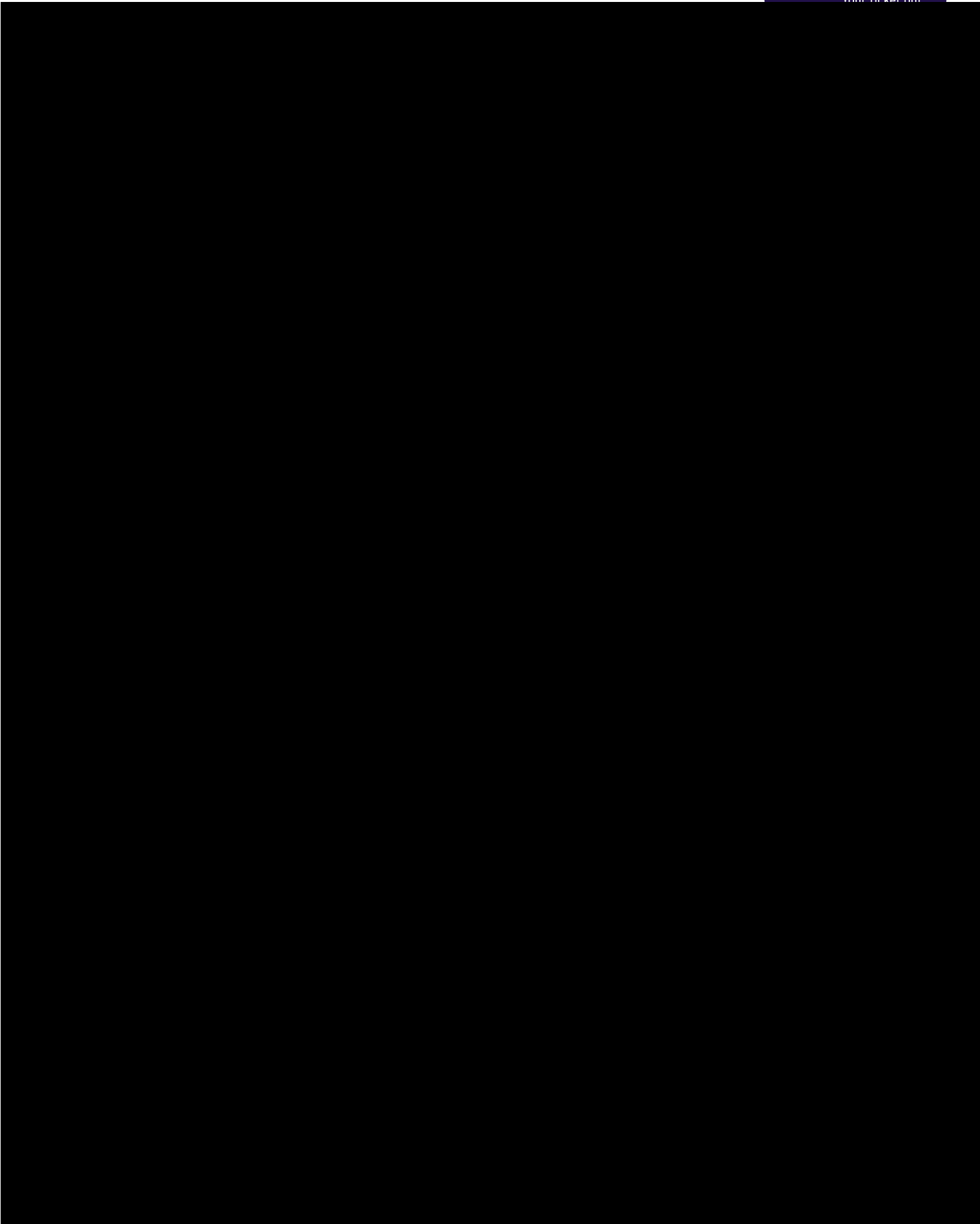


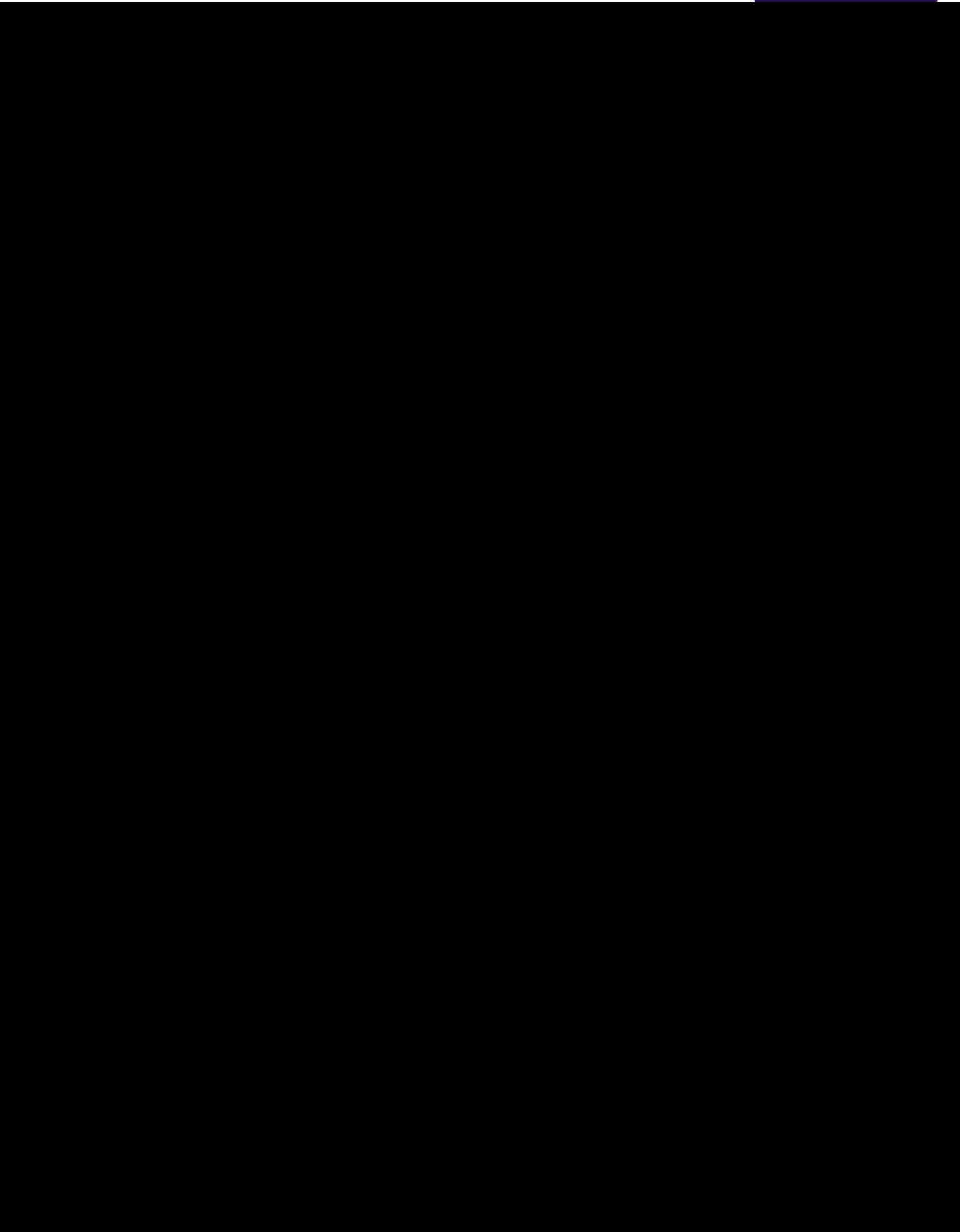






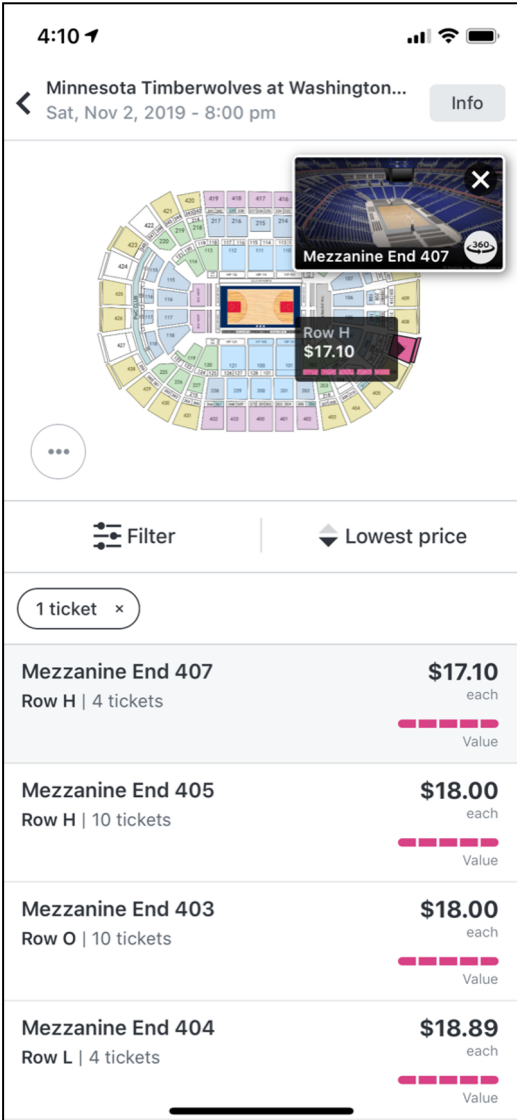
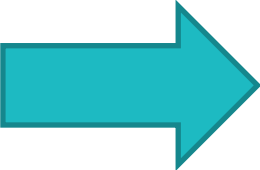
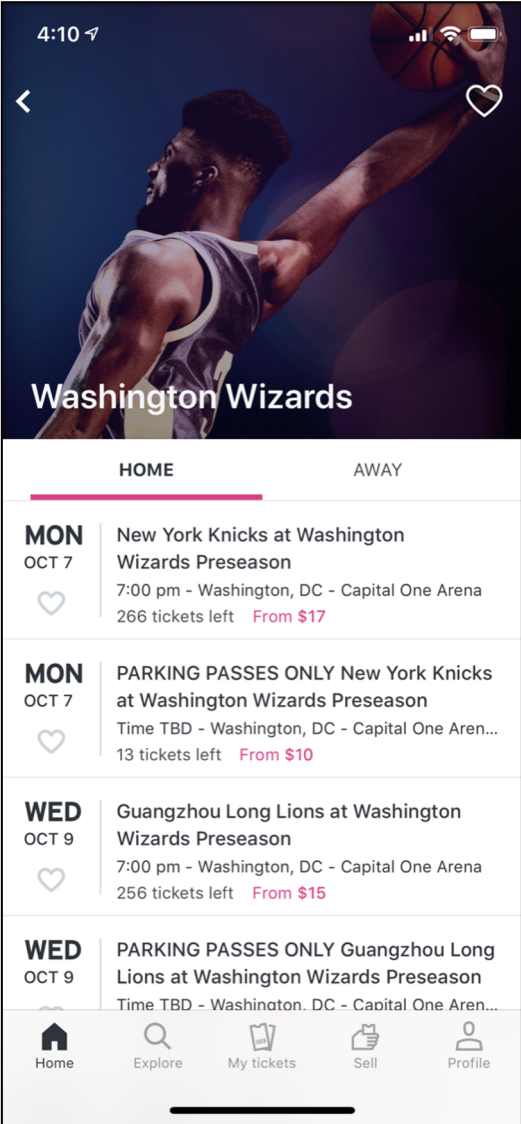




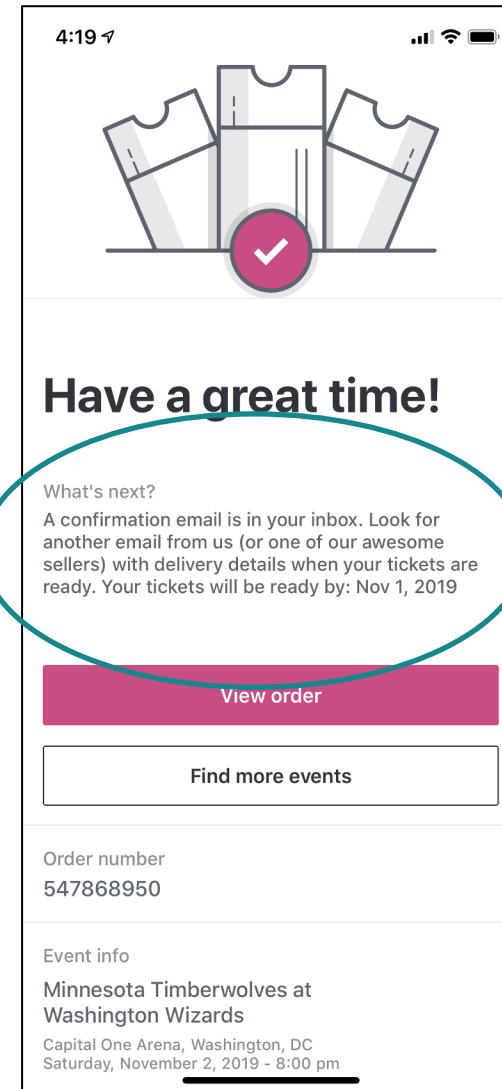
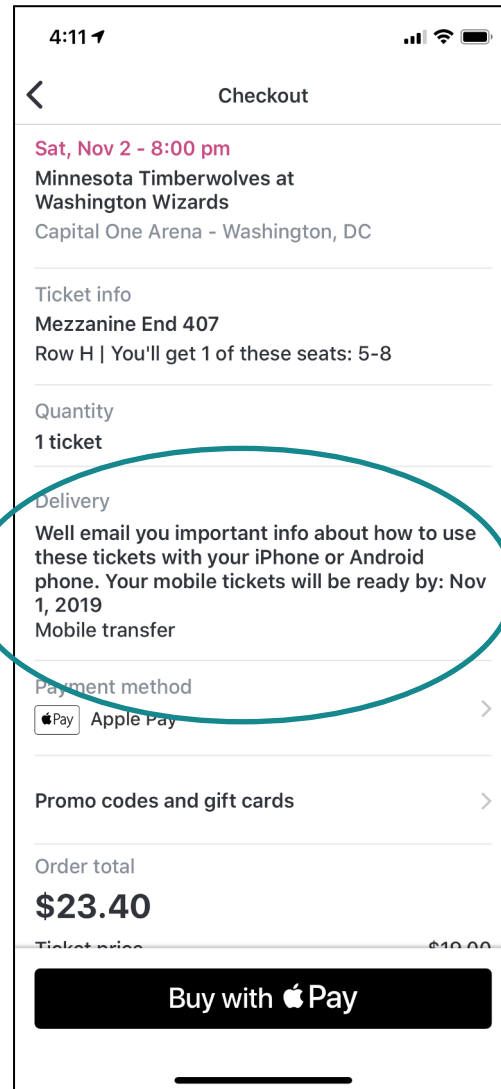
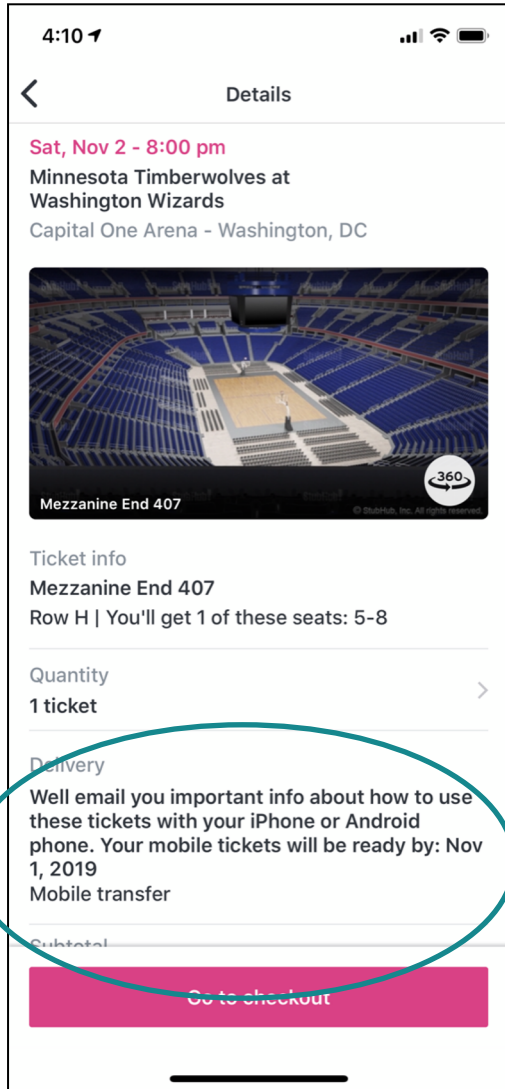


Purchase Process for StubHub Customers when Digital Tickets Must be Fulfilled by Ticketmaster

Placing an Order on StubHub for an NBA Game



Placing an Order on StubHub



- Fans are communicated that they **MUST** have an iPhone or Android phone to use the ticket.
- Fans being told that their tickets will not arrive till the day before the event causes confusion and drives call volume

Communication Received Once the Order is Placed

#1 Email

SO StubHub Order <orders@service.stubhub.cc> 1- 4

Thanks for your order #547868950

Retention Policy Global Deletion Policy 17 (1 year, Expires 3/4/2021)

i If there are problems with how this message is displayed, click here to view it in a web browser.

Hi, [Redacted] Thanks for your order!

When your tickets are ready, you'll receive an email from the original ticket provider with instructions on how to accept the ticket transfer. Please make sure to carefully read the details. Remember, you're responsible for bringing your ticket to the venue! Your mobile tickets will be ready by **Friday, November 1, 2019.**

- Order placed on Sep 11
- ✔ Seller notified
The seller will transfer your ticket to Buyer email by Nov 1.
- Ready by Nov 1
Check your email to accept your ticket.

Order #547868950

#2 Email

T Ticketmaster <customer_support@email.t> 1- 4:2

- sent you ticket(s) for Washington Wizards vs. Minn..

Retention Policy Global Deletion Policy 17 (1 year, Expires 3/4/2021)

i If there are problems with how this message is displayed, click here to view it in a web browser.

Your Ticket Transfer From - Is Ready To Be Accepted!

Received

Accepted

Complete

Washington Wizards vs. Minnesota Timberwolves

Sat, Nov 2 @ 8:00 PM
Capital One Arena, Washington, DC

Section 407, Row H, Seat 5

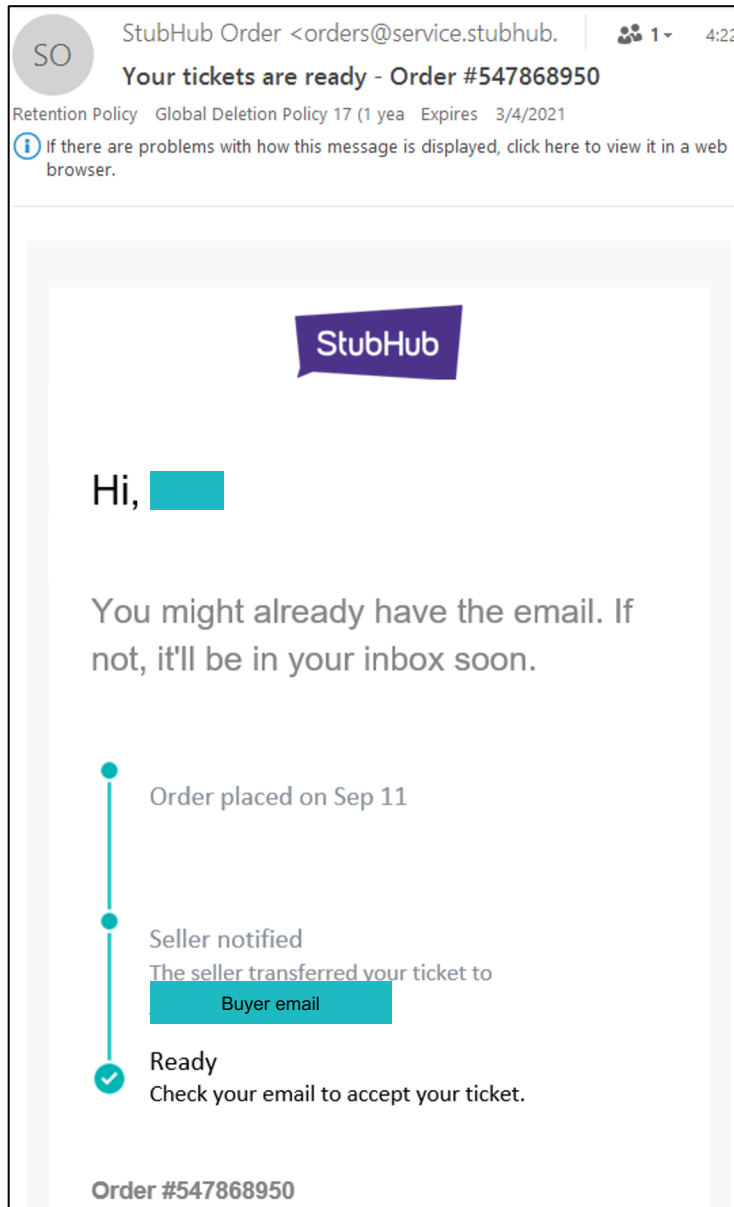
ACCEPT TICKETS

By clicking "ACCEPT TICKETS", you agree to our [Terms of Use](#).

Ticket Tip: When tickets are sent to you, we highly recommend that you know and trust the person transferring the tickets to you. If the tickets were obtained fraudulently by the person transferring them, they may be canceled at any time, removed from your account, and no longer available for use.

- Fan receives email #1 from STUBHUB after the order is placed letting them know they will receive an email with instructions on how to accept a ticket transfer in order to physically receive their tickets.
- Fan receives email #2 from TICKETMASTER letting them know their tickets are ready to be accepted.

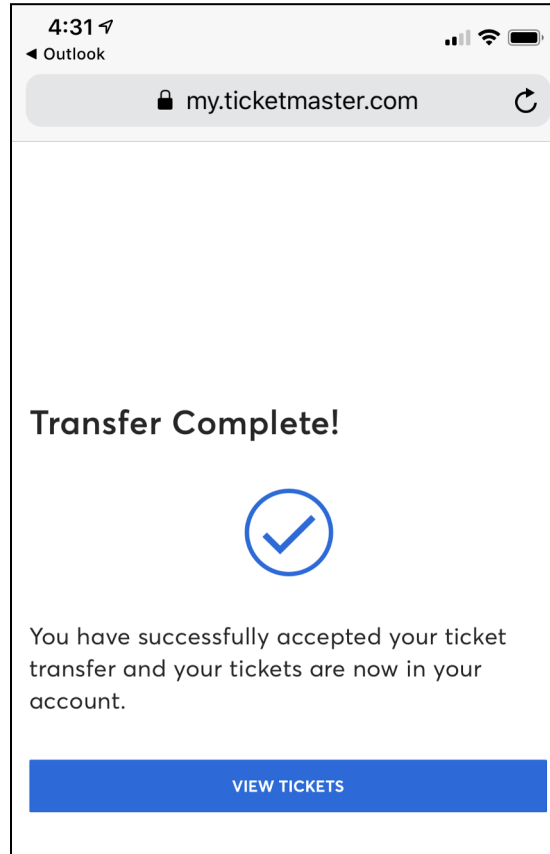
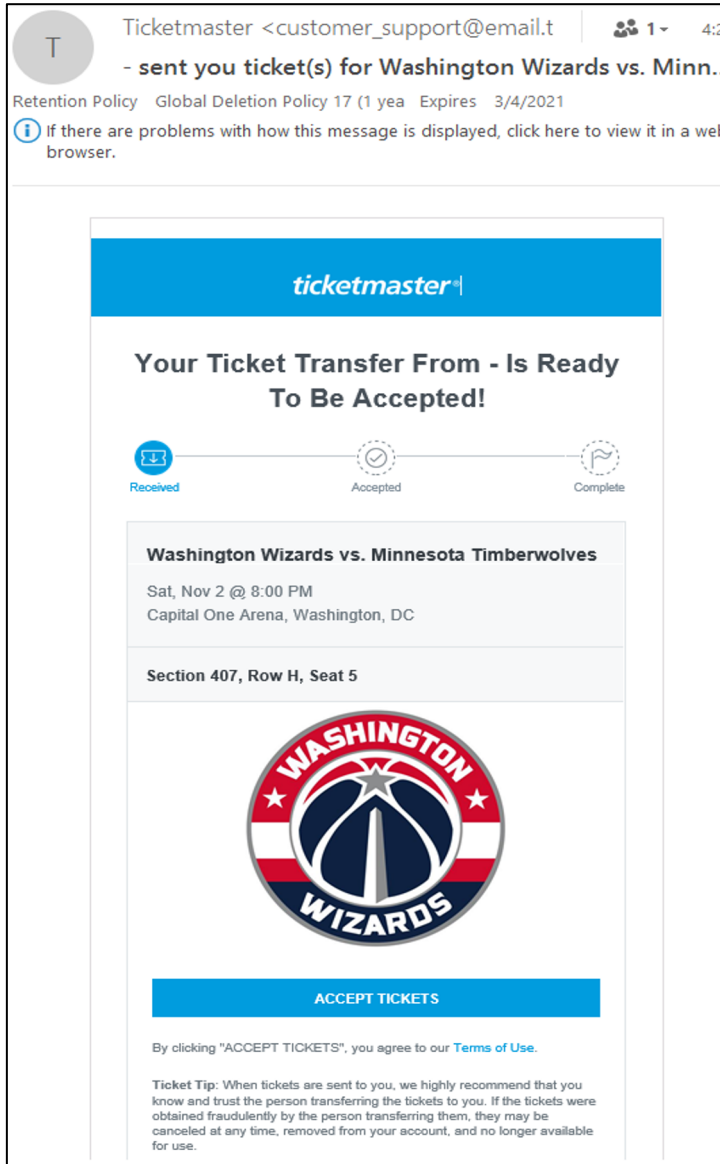
Communication Received Once the Order is Placed



#3
Email

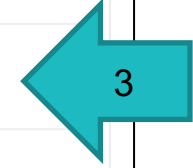
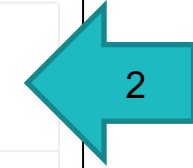
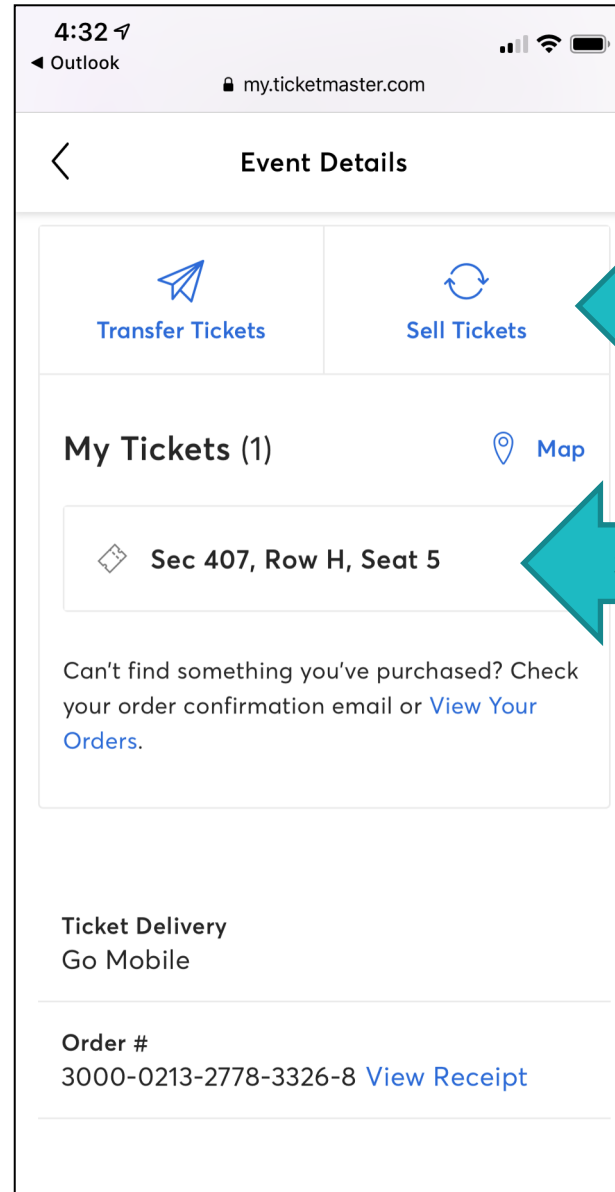
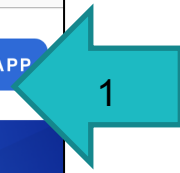
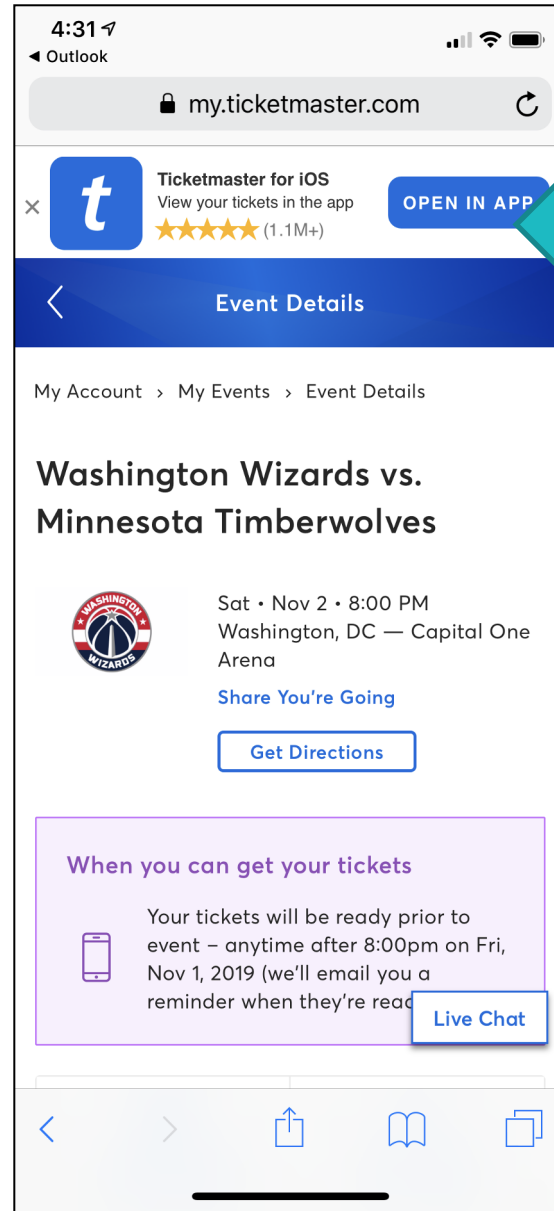
- Fan receives email #3 letting the fan know they should have received an email from the seller and that the need to look in their inbox for the email from Ticketmaster.

Process of Retrieving a Ticket on Ticketmaster that was Purchased on StubHub



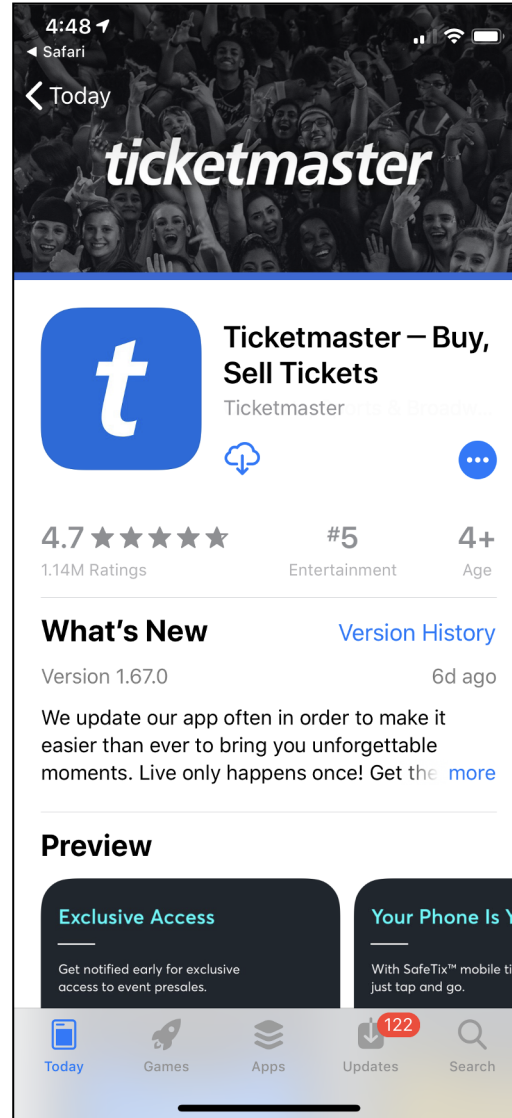
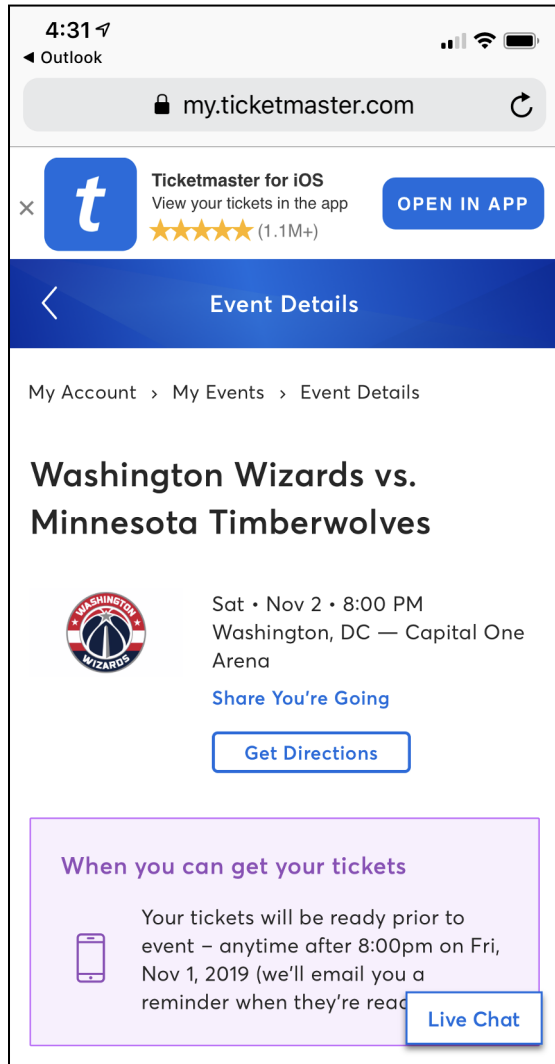
- Fan clicks on the email from Ticketmaster (email #2) and is taken to the Ticketmaster website where the ticket is transferred.

Process of Retrieving a Ticket on Ticketmaster that was Purchased on StubHub



- These two images are the screen that the ticket purchaser is taken to in order to access their tickets on Ticketmaster.
- #1: Ticketmaster is promoting their app to a StubHub fan trying to access their Wizards tickets.
- #2 Ticketmaster is trying to promote the fans ability to sell their ticket on Ticketmaster.
- #3 is a non-clickable link requiring the fan to download the Ticketmaster app in order to access their ticket for the game.

Process of Retrieving a Ticket on Ticketmaster that was Purchased on StubHub



- Fans click on, “Open in the App,” and go directly to it if they have an account. If they do not have an account, they are taken to the App or Android store to download the TICKETMASTER app
- Ticketmaster gains a new app download and customer every time a StubHub fan accepts tickets and currently is not a Ticketmaster customer.

Process of Retrieving a Ticket on Ticketmaster that was Purchased on StubHub

4:33
Safari

Cancel Sign In

Sign In. Get Going.

Discover millions of live events, receive alerts when your favorites hit the road, and checkout with ease with your Ticketmaster account.

Email Address

Password

Remember Me

Sign In

[Forgot Password?](#)

New to Ticketmaster? [Sign up](#)

By continuing past this page, you agree to our [Terms of Use](#).



4:33
Safari

Cancel Create New Account

Sign Up. Get Access.

Explore millions of live events, receive alerts about your favorite artists and make checkout a snap when you sign up for a Ticketmaster account.

First Name

Last Name

Email Address

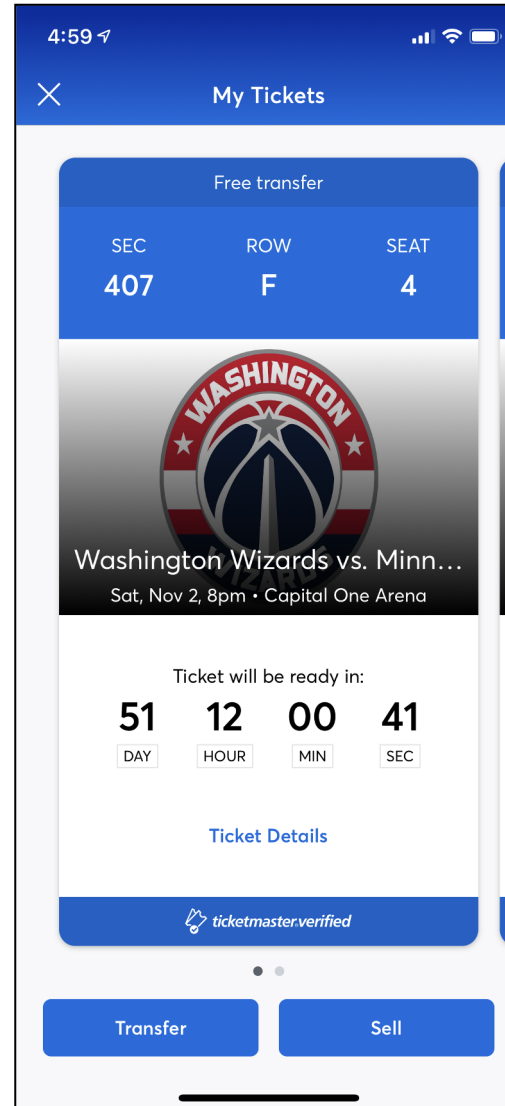
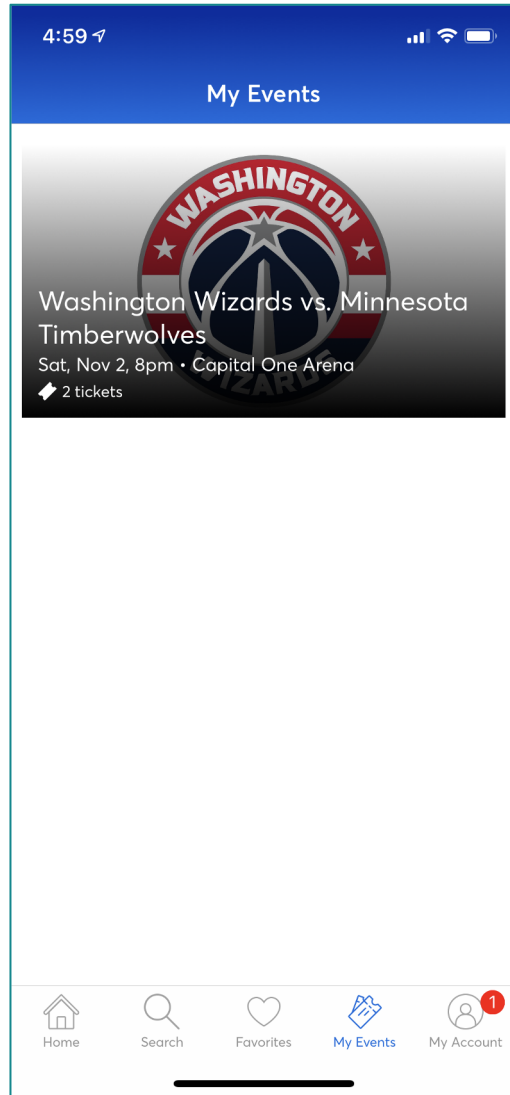
Confirm Email Address

Phone Number All phone numbers require verification

New Password

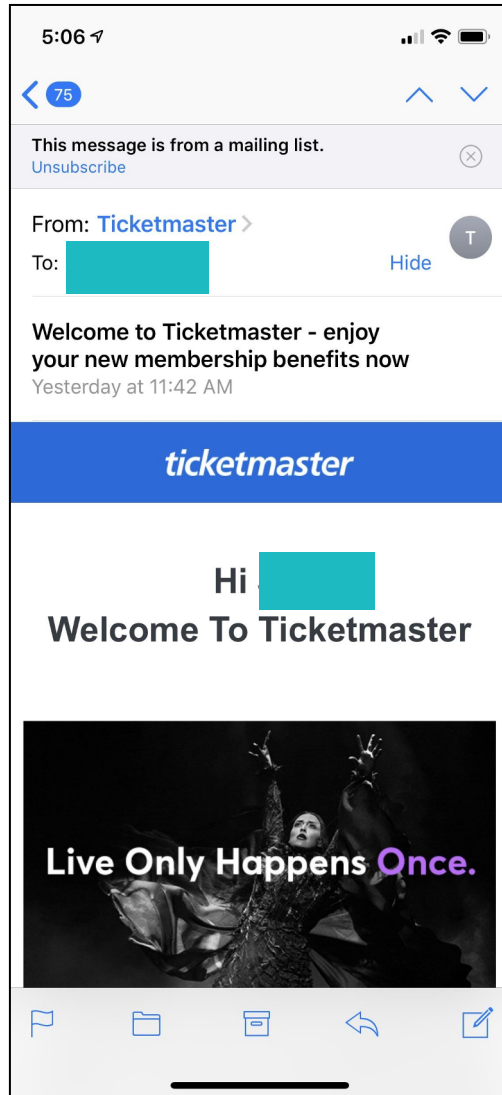
- Fan now signs up for a new TICKETMASTER account or signs in if they are already a customer.
- TICKETMASTER has now gained a new customer (and all of their data) for remarketing in the future.

Process of Retrieving a Ticket on Ticketmaster that was Purchased on StubHub



- Fan is still in the Ticketmaster app retrieving their tickets.
- Fan can now see their tickets, but my return prior to the game in order to get the actual ticket to populate on their phone for entry into the venue.

Ticketmaster is Now Marketing to the NEW Customer who they Acquired via StubHub



- TICKETMASTER is now marketing to the new customer acquired via StubHub.
- TICKETMASTER now has this customers data, and ticket preferences and will continue to market to them in an ongoing manner.

TICKET RESTRICTIONS ARE A GROWING THREAT

Forty-four states have agreed that selling tickets at the market rate—either above or below “face value”—is in the public’s interests and have changed their laws accordingly. Now, restrictive ticketing practices are growing across the country. The largest ticket company in the U.S.—Ticketmaster— controls approximately 70% of the revenue generated on the primary ticket market. With restrictive ticketing practices, Ticketmaster, in partnership with ticket issuers, is attempting to establish a similar monopoly in the secondary market.

Legislation is needed to ensure a free, open, and competitive ticket marketplace for consumers. Thankfully, several states have already led on this issue.

States with Laws Fighting Ticket Restrictions



IN COLORADO [§ 6-1-718 (3)], “It is void as against public policy to apply a term or condition to the original sale to the purchaser to limit the terms or conditions of resale.” Also, “a person or entity, including an operator, that regulates admission to an event shall not deny access to the event to a person in possession of a valid ticket to the event...based solely on the ground that such ticket was resold through a reseller that was not approved by the operator.”



IN NEW YORK [NY Arts & Cult Aff L § 25.30], the law states “...it shall be prohibited for any operator of a place of entertainment, or operator’s agent, to: (a) restrict by any means the resale of any tickets...(b) deny access to a ticket holder who possesses a resold subscription or season ticket to a performance based solely on the grounds that such ticket has been resold; or (c) employ a paperless ticketing system unless the consumer is given an option to purchase paperless tickets that the consumer can transfer at any price, and at any time, and without additional fees, independent of the operator or operator’s agent.”



IN VIRGINIA [§ 59.1- 466.6.], their 2017 law says “A. No person that issues tickets for admission to an event shall issue any such ticket solely through a delivery method that substantially prevents the purchaser of the ticket from lawfully reselling the ticket on the Internet ticketing platform of the ticket purchaser’s choice.” And, “B. No person shall be discriminated against or denied admission to an event solely on the basis that the person resold a ticket, or purchased a resold ticket, on a specific Internet ticketing platform.”



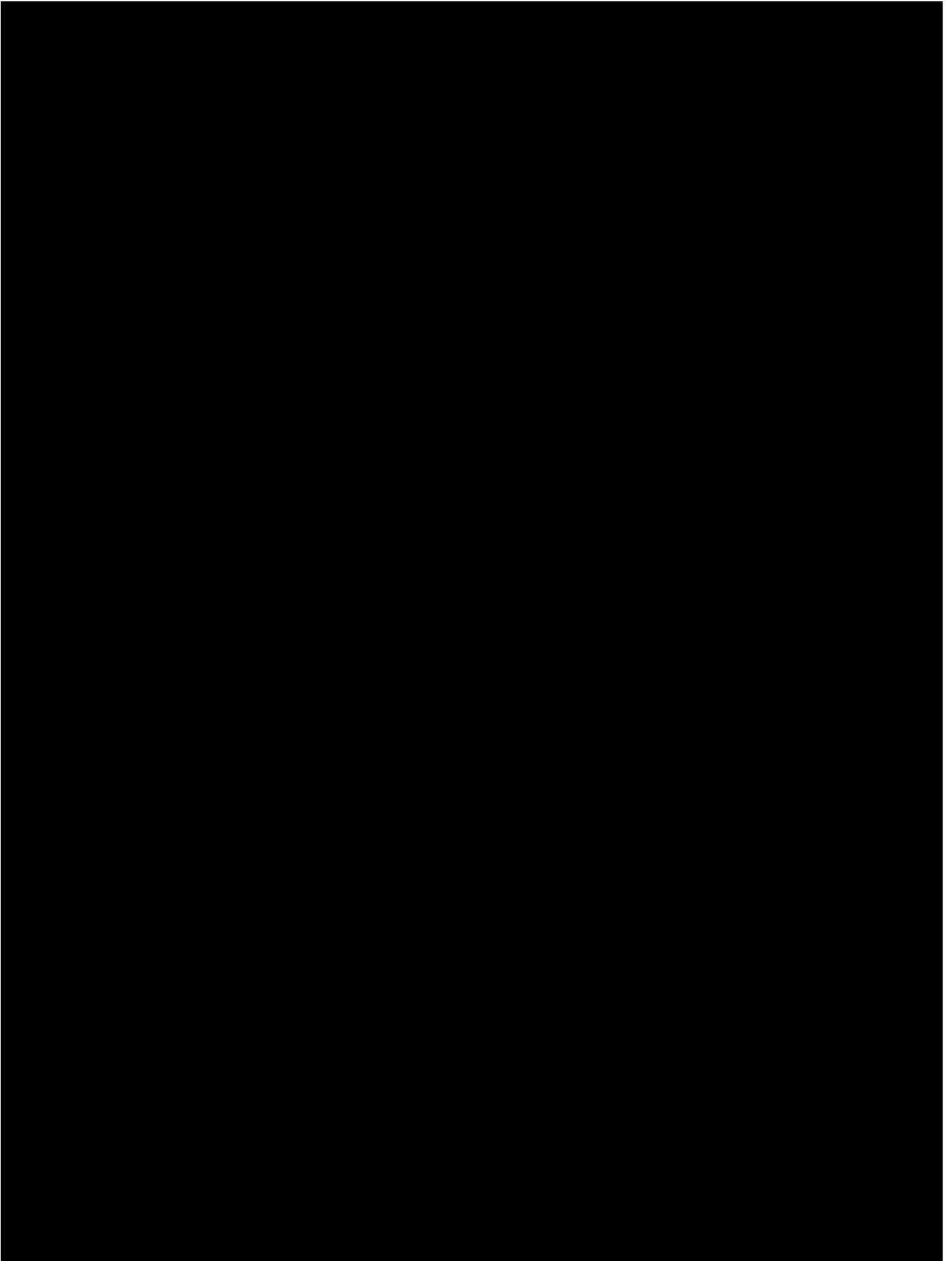
IN ILLINOIS [815 ILCS 414/1], their ticketing regulations state “Any term or condition of the original sale of a ticket to any theater, circus, baseball park, or place of public entertainment or amusement where tickets of admission are sold that purports to limit the terms or conditions of resale of the ticket (including but not limited to the resale price of the ticket) is unenforceable, null, and void if the resale transaction is carried out by any of the means set forth in subsections (b), (c), (d), and (e) of Section 1.5 of this Act.”



IN CONNECTICUT [Public Act NO.17-28], “No person shall employ an entertainment event ticketing sales system that fails to give the purchaser an option to purchase tickets that the purchaser may transfer to any party, at any price and at any time, without additional fees and without the consent of the person employing such ticketing system. Further, “a person employing such a ticketing sales system may employ a paperless ticketing system that does not allow for independent transferability of tickets, provided the purchaser of such tickets is offered the option, at the time of initial sale, to purchase the same tickets in another form that is transferable, independent of such a ticketing sales system, including, but not limited to, paper tickets or e-tickets and without additional fees, regardless of the form or transferability of such tickets.” And, “No person shall deny admission to an entertainment event to a ticket holder who possesses a resold ticket to such entertainment event based solely on the grounds that such ticket has been resold.”



IN UTAH [§13-54-201], “Up to 10% of the total number of tickets issued for an event may be restricted.” All other tickets must be “transferable”, barring certain exemptions. Additionally, “a person may not discriminate against an individual or deny an individual admission to an event solely because the individual: resold a ticket to the event independent of the person who issued the ticket or the person’s agent or operator; or purchased a resold ticket to the event.”



Screenshots of the StubHub Purchase Flow
Desktop & Mobile
12/17/2019

Desktop

1. Visit Stuhub.com and view home page

Check out our just added holiday packages. These girls will score you big points! [Gift tickets](#)

Stuhub

Event, artist or team

Sell My tickets Sign in

Sports Concerts Theater & Comedy Gift cards Top Cities

Chicago, IL Select dates

COLLEGE FOOTBALL. TRADITION NEVER GRADUATES. [Get tickets](#)

IT'S ARIANA GRANDE. ONE LAST TIME. [Get tickets](#)

COURT IS IN SESSION. EXPERIENCE THE NBA. [Get tickets](#)

THE NFL IS CALLING. JOIN THE GAME. [Get tickets](#)

Concerts Pop Rock Country Hip-Hop R&B Festivals

- [Wilco](#)
- [Jingle Ball Concert](#)
- [Alanis Morissette](#)
- [Mötley Crüe](#)
- [WGCI Big Jam](#)

Sports MLB NFL NCAA Football Soccer Motorsports More

- [Chicago Blackhawks](#)
- [Chicago Bears](#)
- [Harlem Globetrotters Tour](#)
- [Chicago Bulls](#)
- [Northwestern Wildcats Basketball](#)

Theater Musicals Plays Comedy Family More

- [Chris D'Elia](#)
- [Gabriel Iglesias](#)
- [Hamilton Chicago](#)
- [The Joffrey Ballet](#)
- [Ricky Gervais](#)

2. Search for event, artists or team

Check out our just added holiday packages. These gifts will score you big points! [Gift tickets](#)

StubHub × Sell My tickets Sign in

[Sports](#) [Concerts](#) [Theater & Comedy](#) [Gift cards](#) [Top Cities](#) Chicago, IL


Theater and Arts / Musicals / Hamilton / Hamilton Chicago

Hamilton Chicago Tickets

Events [Parking](#) [VIP](#) [Others](#) All dates Sort by date

23 events near Chicago, IL

WED DEC 18	Hamilton Chicago 7:30 PM - CIBC Theatre, Chicago, IL, US	from \$375	Only 2 tickets left at lowest price
THU DEC 19	Hamilton Chicago 7:30 PM - CIBC Theatre, Chicago, IL, US	from \$314	218 people are viewing this event
FRI DEC 20	Hamilton Chicago 7:30 PM - CIBC Theatre, Chicago, IL, US	from \$270	
SAT DEC 21	Hamilton Chicago 2:00 PM - CIBC Theatre, Chicago, IL, US	from \$263	
SAT DEC 21	Hamilton Chicago 8:00 PM - CIBC Theatre, Chicago, IL, US	from \$299	
SUN DEC 22	Hamilton Chicago 2:00 PM - CIBC Theatre, Chicago, IL, US	from \$368	68 tickets left
MON DEC 23	Hamilton Chicago 7:30 PM - CIBC Theatre, Chicago, IL, US	from \$298	88 tickets left
THU DEC 26	Hamilton Chicago 1:30 PM - CIBC Theatre, Chicago, IL, US	from \$315	
THU DEC 26	Hamilton Chicago 7:30 PM - CIBC Theatre, Chicago, IL, US	from \$299	



About Hamilton Chicago
[Sell tickets](#)

3. View listing prices and optional filters before selecting tickets

FRI DEC 20 Hamilton Chicago Tickets
7:30 PM at CIBC Theatre, Chicago, IL

Filters

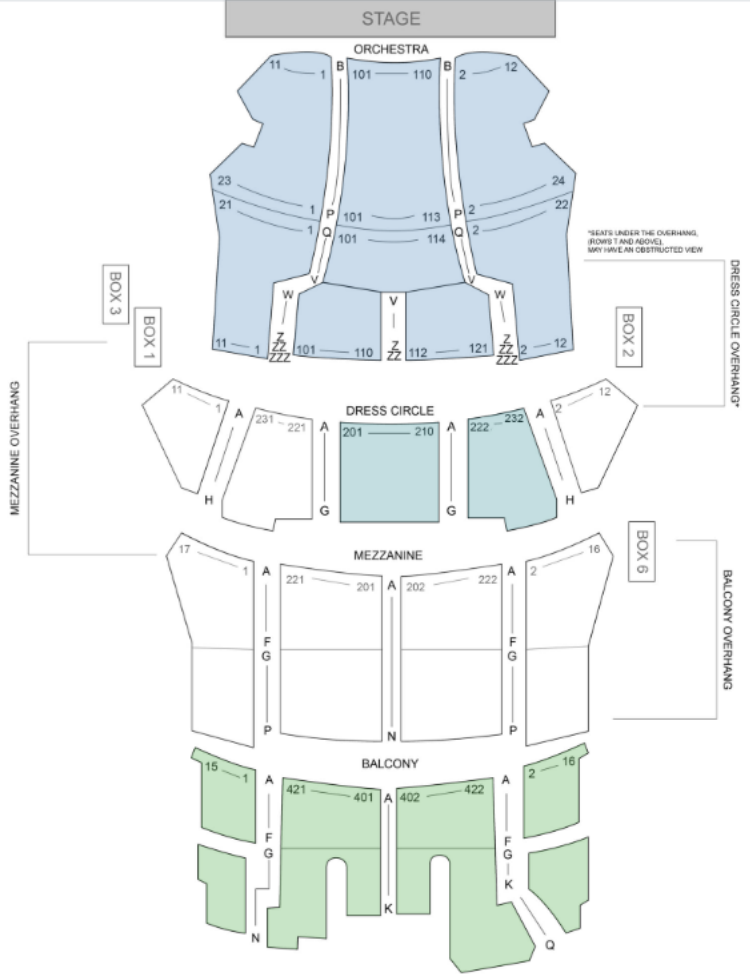
Get notified at the right price! [Set price alert](#)

All tickets

Lowest price Best value Best seats

Section	Row	Price
Balcony Left and Right	C	\$270.00 /ea
1-4 tickets Mobile ticket (Instant) Good value		
Balcony Left Center	J	\$271.60 /ea
2 tickets Mobile ticket (Instant) Good value		
Balcony Left Center	E	\$286.15 /ea
1-4 tickets Mobile ticket (Instant) Good value		
Balcony Left Center	C	\$291.00 /ea
1-3 tickets Mobile ticket (Instant) Good value		
Balcony Left Center	F	\$298.20 /ea
2-4 tickets Instant Download Value		
Balcony Left and Right	C	\$298.20 /ea
1-6 tickets Instant Download Value		
Balcony Right Center	C	\$299.25 /ea
1-3 tickets Instant Download Value		
Orchestra Left and Right	M	\$315.00 /ea
2 tickets Mobile ticket (Instant) Best value		

Price



- Select filters including the option to show prices inclusive of estimated fees
Note: In this demonstration we elected **not** to select the option inclusive of estimated fees

FRI
DEC 20

Hamilton Chicago Tickets
7:30 PM at CIBC Theatre, Chicago, IL

Get notified at the right price! [Set price alert](#)

NUMBER OF TICKETS

All tickets ▼

\$337 ○ ○ \$1,011+
/ea

Show prices with estimated fees

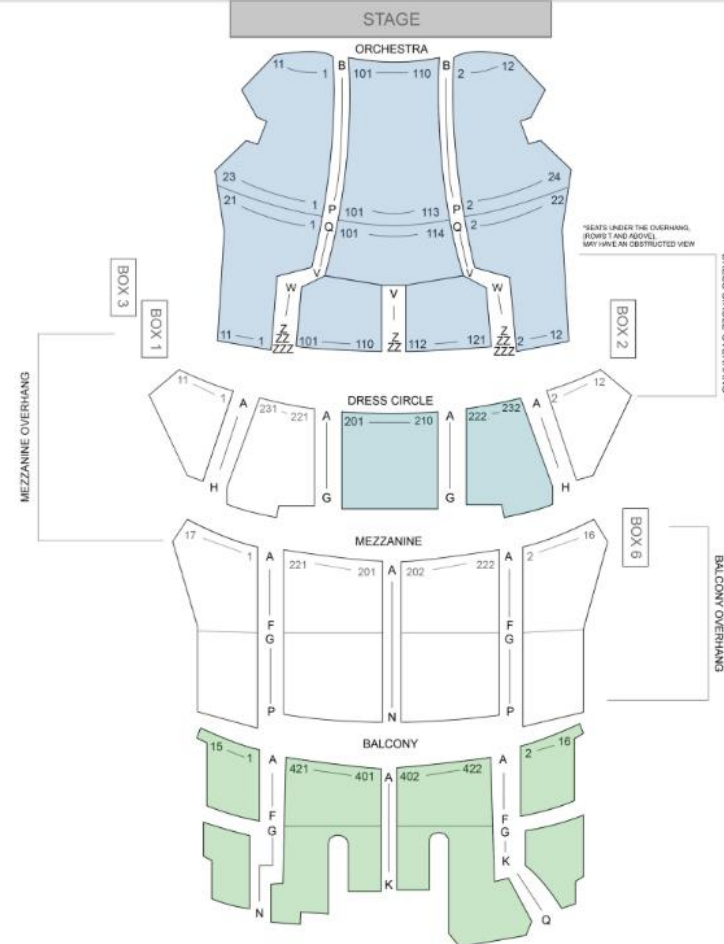
DELIVERY ▼

SEAT FEATURES ▼

SEAT MAP OPTIONS ▼

Reset

Done



5. View event, seat, delivery, and ticket price before going to checkout

StubHub

Find events

Search

Gift cards Help

English

Sell tickets

My tickets

Sign in

ORDER DETAILS



FRI
DEC 20

Hamilton Chicago Tickets

7:30 PM at CIBC Theatre, Chicago, IL

SELECTED SEATS

SECTION	ROW	SEATS
Balcony Left Center	J	415 - 417

You'll get 2 of these seats together: 415, 417

DELIVERY

Mobile ticket (Instant)

Straight to the StubHub app - and your StubHub account - on your phone within minutes.

TICKET PRICE

\$271.60 each

NUMBER OF TICKETS

2 tickets

View from section is an approximate view. Your view may differ based on row and seat.

Better seats for only \$43.40 more per ticket

SECTION	ROW	SEATS
Orchestra Left and Right	M	5 - 7

You'll get 2 of these seats together: 5, 7

View more

+

Compare seats

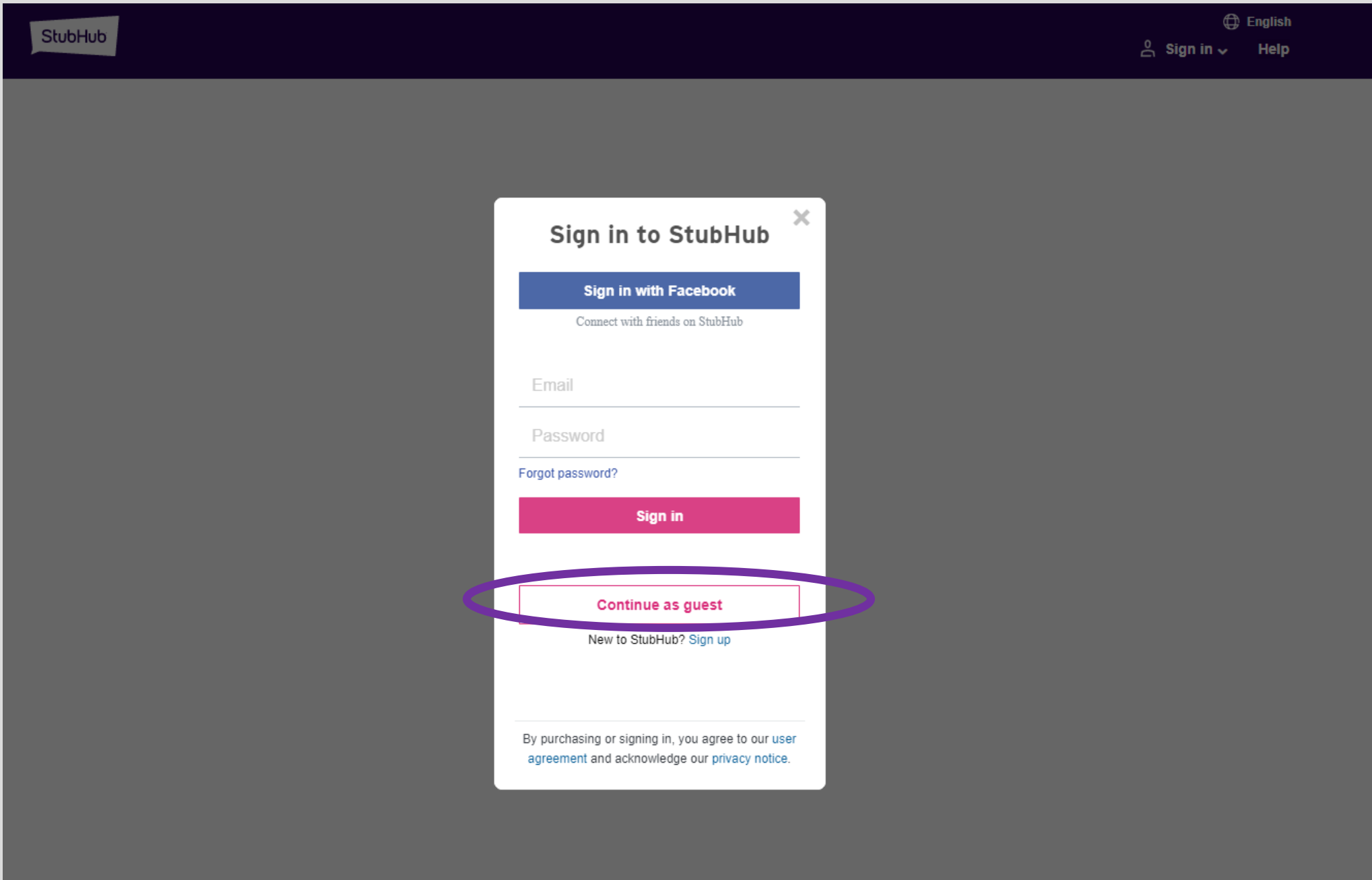
TICKET PRICE

\$315.00 each

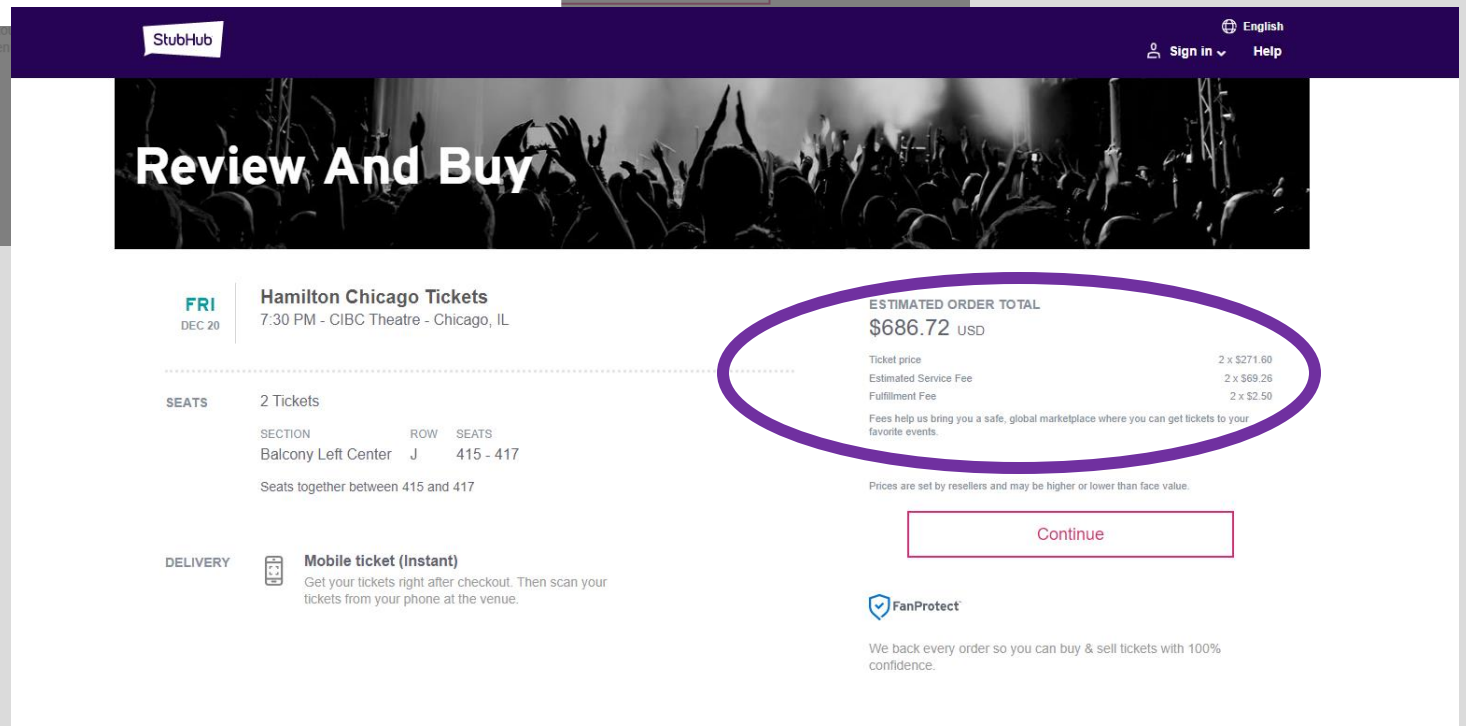
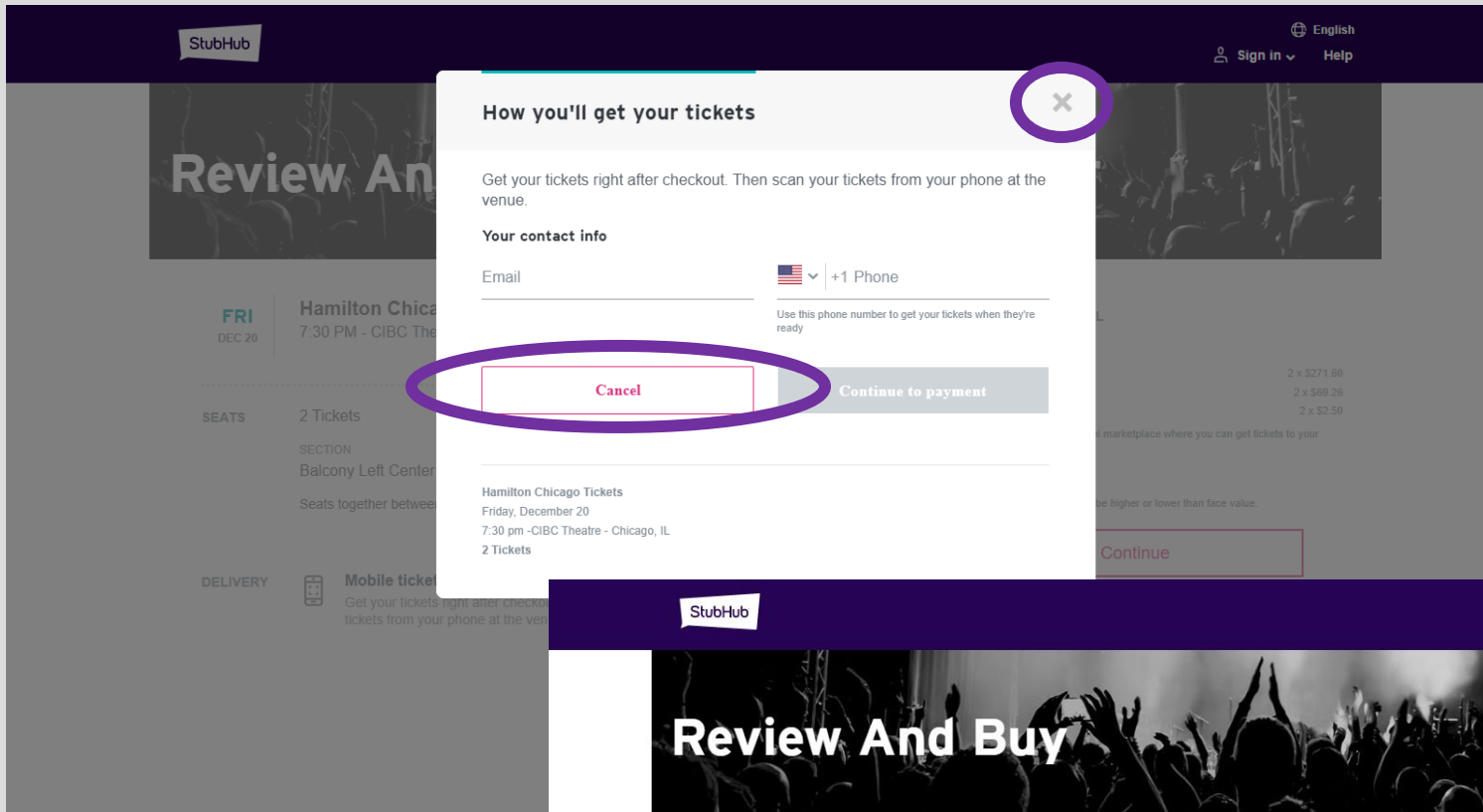
Upgrade

Go to checkout

6. Sign in, Sign up, or Continue as guest



7. After continuing as guest, you may enter your contact information and continue to payment, or you can cancel out to view pricing details before entering contact information



8. After entering contact information, order total is displayed. Buyer enters payment details.

StubHub

English

Help

Review An

FRI
DEC 20

Hamilton Chicago
7:30 PM - CIBC The

SEATS

2 Tickets

SECTION
Balcony Left Center

Seats together between

DELIVERY



Mobile ticket
Get your tickets
tickets from you

Payment

Payment type

- PayPal
- Credit or debit card
- affirm**
Pay as low as \$61/month. [Learn more](#)
- Promo code / Gift card

Card number



MM

YYYY

CVV

Continue to billing

Hamilton Chicago Tickets
Friday, December 20
7:30 pm -CIBC Theatre - Chicago, IL
2 Tickets

Order total (USD) \$686.72

Ticket price	2 x \$271.60
Service Fee	2 x \$69.26
Fulfillment Fee	2 x \$2.50

Fees help us bring you a safe, global marketplace where you can get tickets to your favorite events.

2 x \$271.60
2 x \$69.26
2 x \$2.50

marketplace where you can get tickets to your

be higher or lower than face value.

add payment

can buy & sell tickets with 100%

9. Review all event, ticket, and pricing details before finalizing your purchase

StubHub

English
Help

Review And Buy

FRI
DEC 20

Hamilton Chicago Tickets
7:30 PM - CIBC Theatre - Chicago, IL

SEATS 2 Tickets

SECTION	ROW	SEATS
Balcony Left Center	J	415 - 417

Seats together between 415 and 417

DELIVERY



Mobile ticket (Instant)

Get your tickets right after checkout. Then scan your tickets from your phone at the venue.

YOUR CONTACT INFO

Edit

PAYMENT METHOD

Change payment

ADD TICKET PROTECTION

Allianz

- Yes! Protect my ticket purchase for only \$19.74 per ticket. **Highly Recommended**
- Get reimbursed 100% of your ticket cost if you can't attend the event due to covered illness, job loss, travel accidents, and more.
 - Receive 24/7 assistance that can find parking info, book hotels and more.
- No, do not protect my \$686.72 ticket purchase.

20,204 fans protected their tickets in the last 7 days

Recommended, offered by Allianz Global Assistance. Underwritten by Jefferson Insurance Company. Terms and exclusions (incl. for pre-existing conditions) apply. [Plan details and disclosures.](#)

ORDER TOTAL
\$686.72 USD

Ticket price	2 x \$271.60
Service Fee	2 x \$69.26
Fulfillment Fee	2 x \$2.50

Fees help us bring you a safe, global marketplace where you can get tickets to your favorite events.

affirm

Pay as low as \$81/month. [Learn more](#)

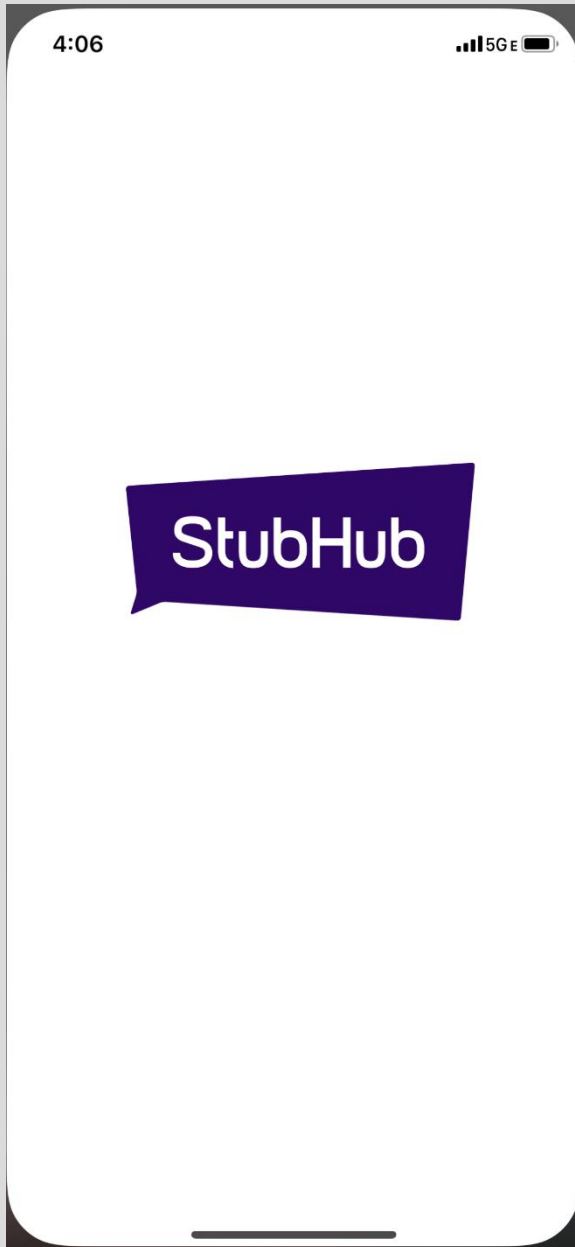
Switch to Affirm

Buying means you agree to our [user agreement](#) and [privacy notice](#).

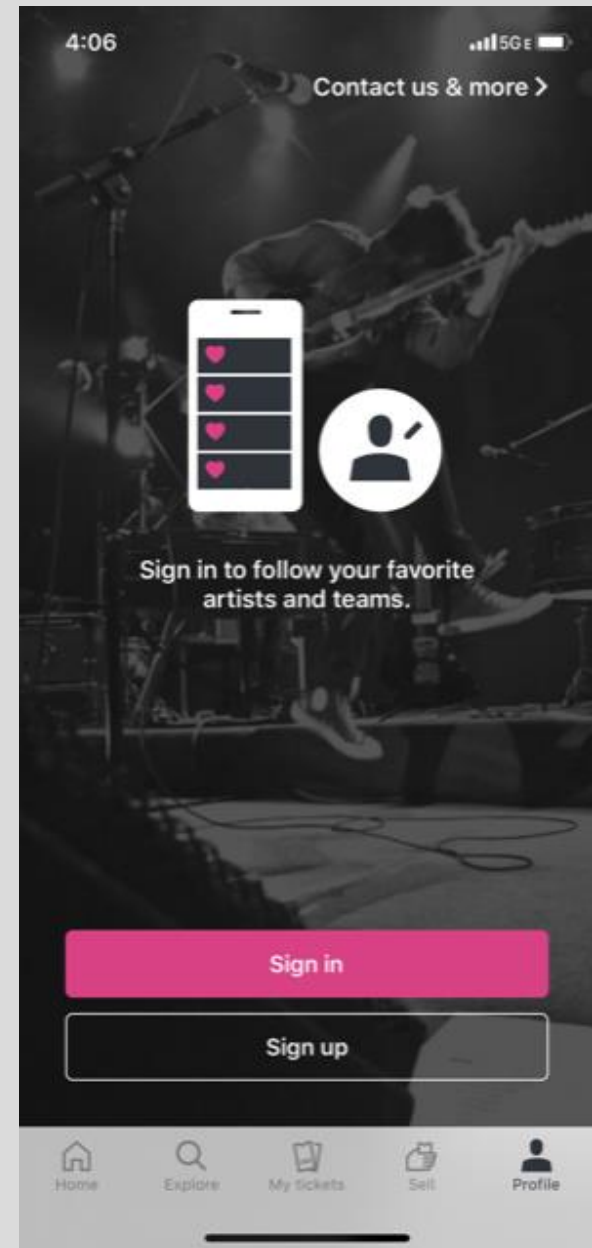
Buy now

Mobile

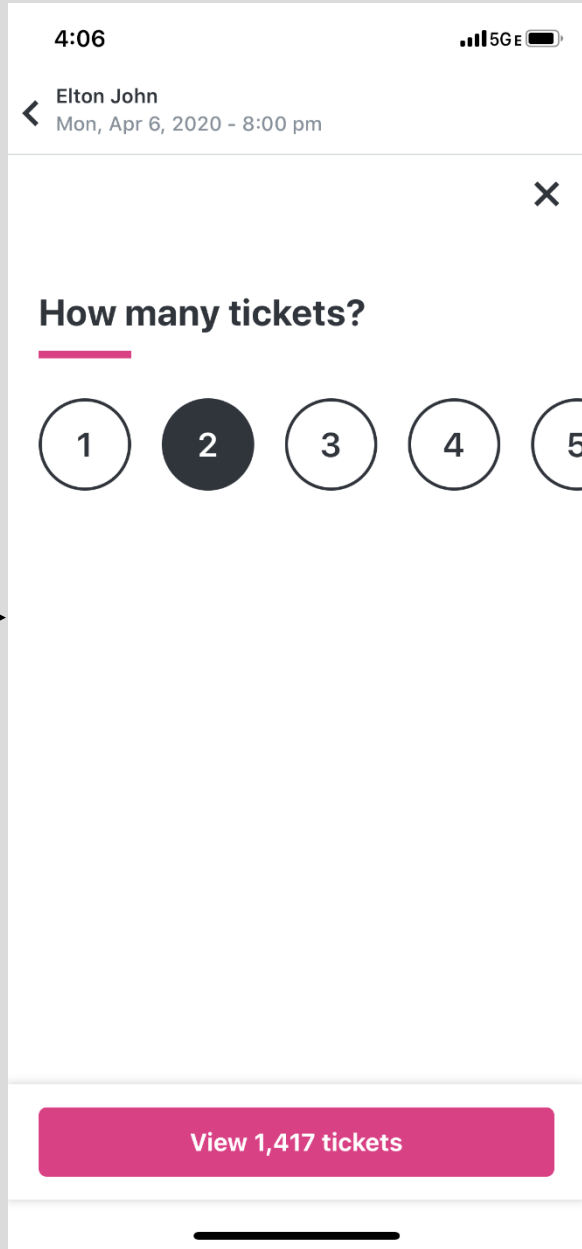
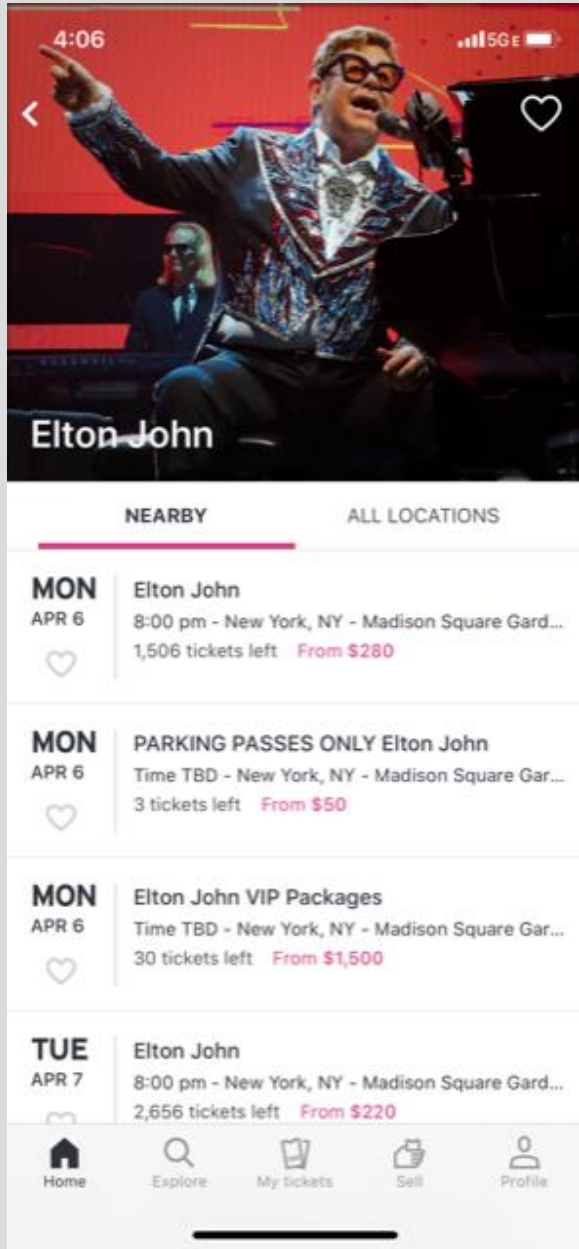
1. Download or open StubHub App



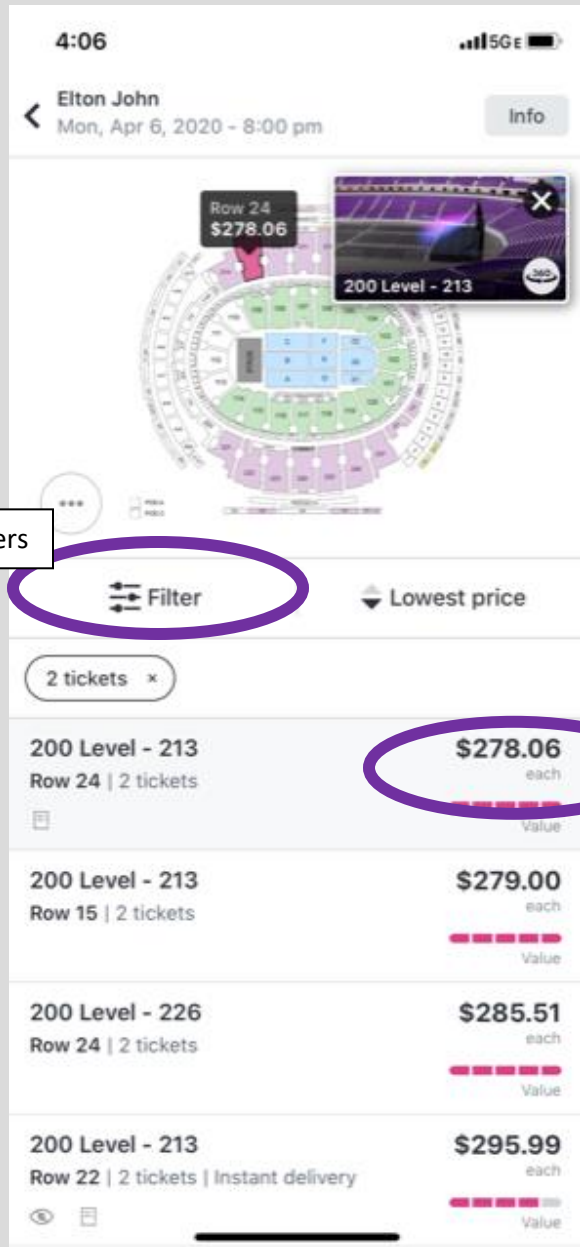
2. Sign in or Sign Up



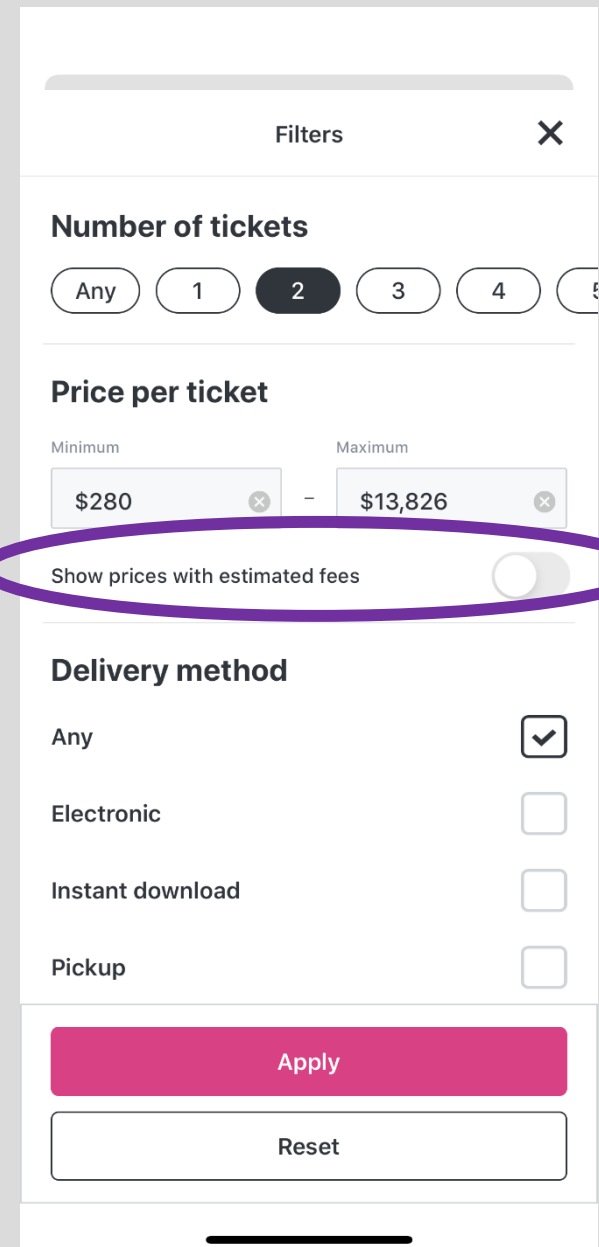
3. Select artist, team, venue, or event



4. View available seating options, prices, and filters

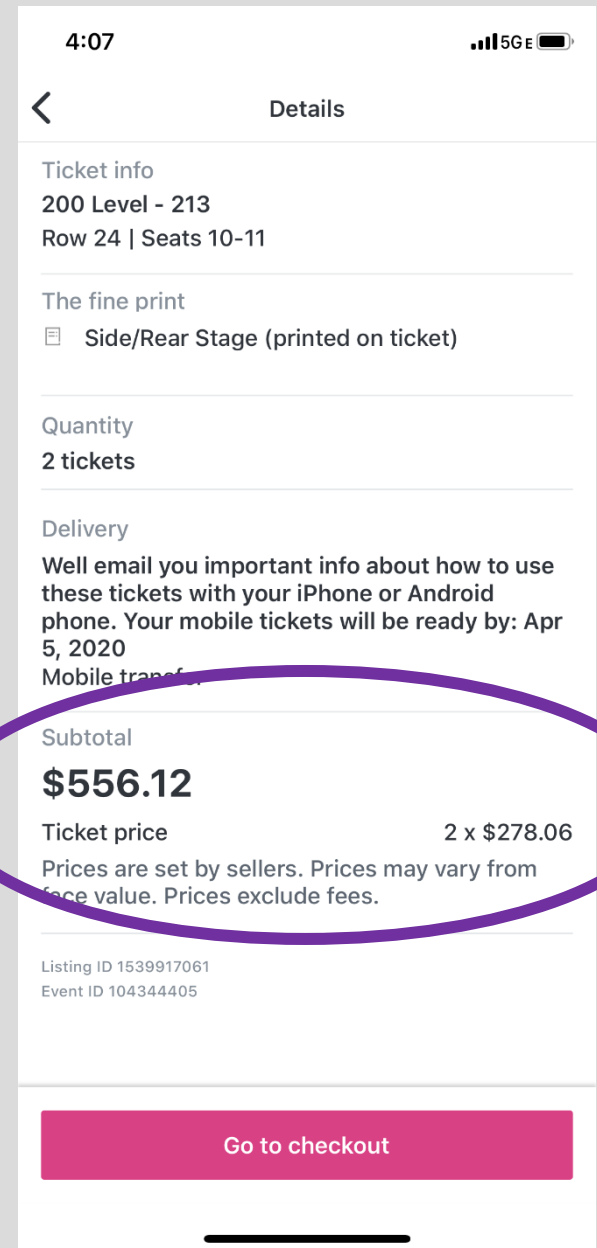
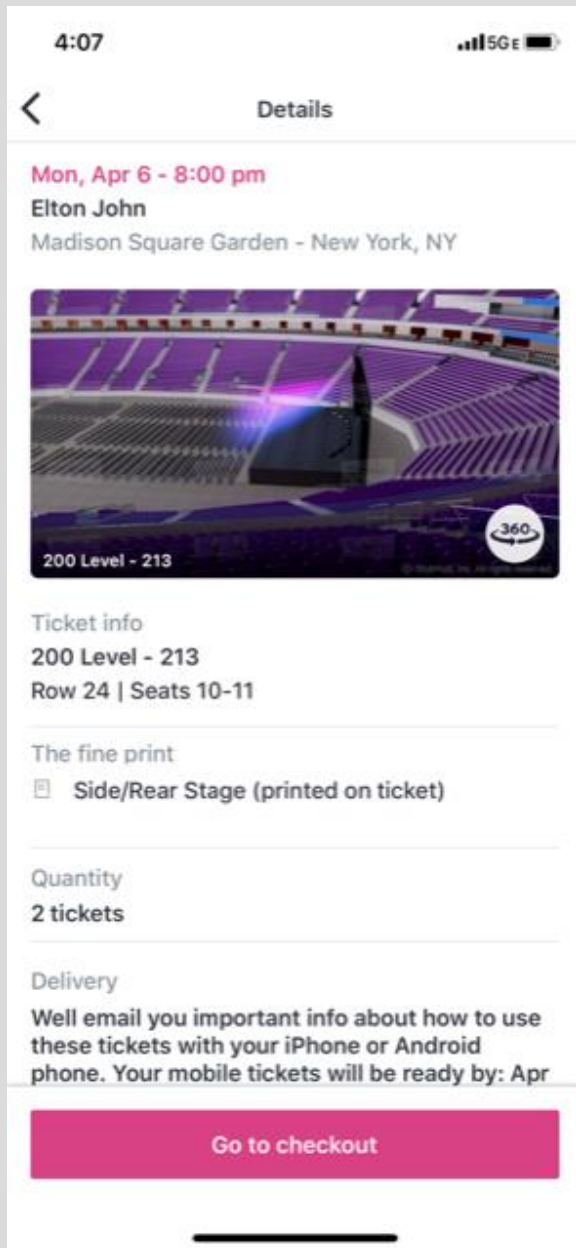


5. Select desired filters including the option to view prices inclusive of estimated fees – **Note:** In this demonstration we elected **not** to select prices inclusive of estimated fees

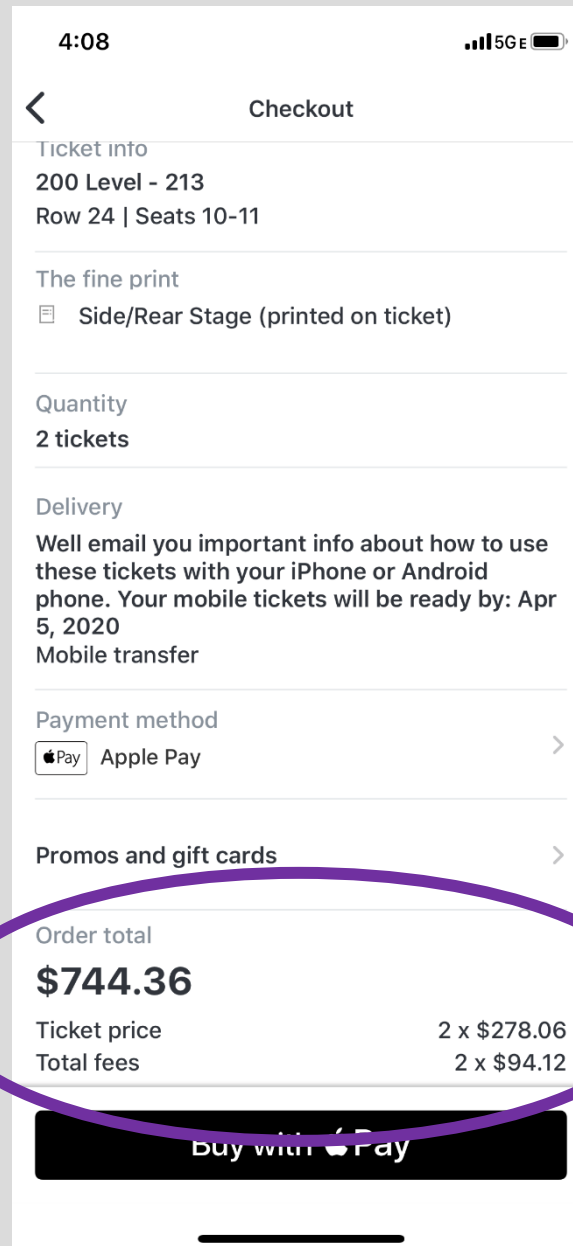


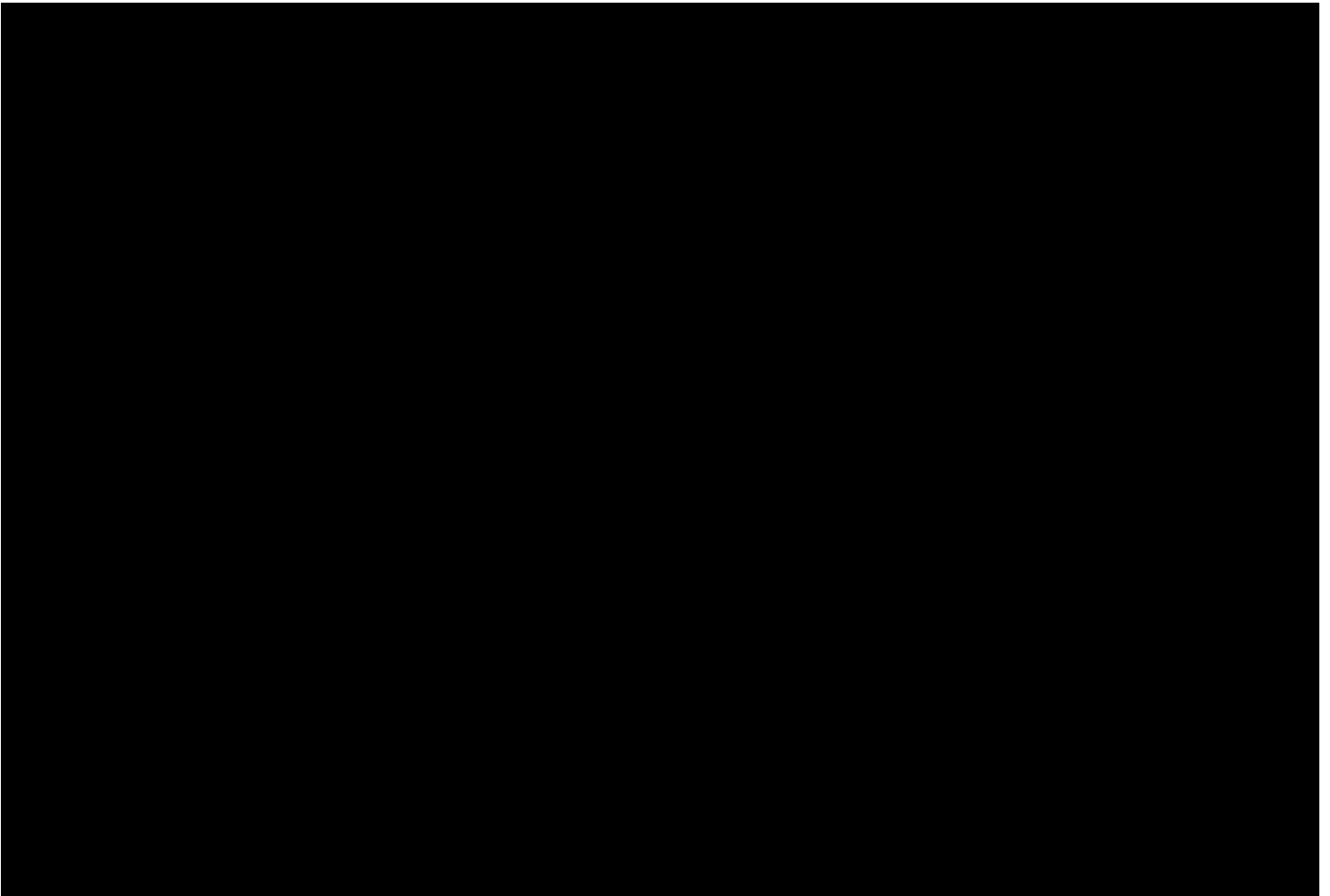
6. Review all event, ticket, and pricing details before continuing to checkout

Note: This is one screen



7. Select payment method, view price breakdown inclusive of fees, review your order details, and finalize your order





United States Senate

WASHINGTON, DC 20510

September 13, 2017

The Honorable Maureen Ohlhausen
Acting Chairman
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

Dear Acting Chairman Ohlhausen:

We write to convey our concerns with certain recent practices in the ticket resale market and to request the FTC review the use of “white label” or “private label” marketing programs in the online ticket resale industry.

The event ticket resale industry has proven to be a boon to consumers and event organizers alike. Like so many other commercial spheres improved by the internet’s capacity to reduce transaction costs and bring disparate buyers and sellers together, the market for ticket resales has thrived in recent years. But – as in almost any market that exists primarily online – vigilance in protection of consumers is paramount. We are specifically concerned with reports about three types of possibly anti-consumer behavior in this industry.

First, we understand that certain actors in the market employ practices to confuse consumers regarding the identity of vendors. Several private label domains appear to intentionally suggest to consumers a direct and formal affiliation with a particular event venue. For example, our staffs recently entered the search “Madison Square Garden Tickets” into an online search engine, only to find the top paid result “madisonsquaregarden.ticketoffices.com.” This domain is not at all affiliated with the venue, but is owned by a third-party vendor. Such a domain name may suggest to consumers that they are receiving an original ticket price without a resale markup, or at a minimum may convey a level of reliability not warranted by the relationship between the third party and the venue. This was precisely the type of conduct that merited the 2014 complaint filed by the FTC against TicketNetwork and its private label partners.

Second, even where a private label domain name does not create the undue impression of association with a venue, such a label may still obfuscate the kind of choice a consumer enjoys when shopping online. For example, private label sites are typically granted full access to a resale company’s ticket inventory as well as its fulfillment operations and processing services, essentially becoming a front for the same inventory and back-end operations as the resale company itself. While there are, undoubtedly, perfectly legitimate reasons ticket resale vendors would opt to create private labels, it is apparent that one possible purpose for these arrangements is to create the impression that these private labels are distinct from and unconnected to the original resale company brand. By doing so, these resale companies may be able to skirt and subvert search engine marketing policies that are intended to assure consumers enjoy true choice

between the vendors appearing in search results. When a consumer sees *only* a resale vendor and its various private label affiliates – entities that are connected, but for appearances' sake, distinct – serious transparency problems arise.

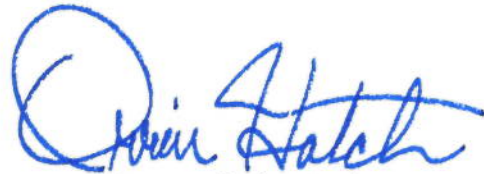
Finally, private labels are sometimes used to conceal high, hidden service fees from consumers. As mentioned above, private labels often employ the exact same inventory and processing as their affiliated resale company. The profit margin for these private brands, then, is often found in an additional markup. There is, of course, a market corrective to such additional fees: consumers are unlikely to pay a private label more for the exact same product that can be found elsewhere. However, some private label domains have taken to disclosing such markups and fees only at the end of the checkout process, thus preventing the kind of price comparison which would otherwise discipline pricing.

Consumers and regulators are used to seeing private labels – in everything from groceries to house cleaning services, in markets online and otherwise. That said, such private labels are liable to abuse if not monitored closely, and especially so online. Therefore, we respectfully ask that the FTC review the use of private labels as vehicles for confusion, price obfuscation, and overall consumer harm. We appreciate your prompt review of this request.

Sincerely,



Senator Cory Booker



Senator Orrin Hatch