

1 DAVID M. BECKWITH (CSB NO. 125130)
2 davidbeckwith@sandiegoiplaw.com
3 JAMES V. FAZIO, III (CSB NO. 183353)
4 jamesfazio@sandiegoiplaw.com
5 TREVOR Q. CODDINGTON, PH.D. (CSB NO. 243042)
6 trevorcoddington@sandiegoiplaw.com
7 SAN DIEGO IP LAW GROUP LLP
8 12526 High Bluff Drive, Suite 300
9 San Diego, CA 92130
10 Telephone: (858) 792-3446
11 Facsimile: (858) 408-4422

12 Attorneys for Plaintiff,
13 CONFIDENT TECHNOLOGIES, INC.

14
15 **UNITED STATES DISTRICT COURT**
16 **SOUTHERN DISTRICT OF CALIFORNIA**
17

18 CONFIDENT TECHNOLOGIES,
19 INC., a Delaware corporation,

20 Plaintiff,

21 vs.

22 AXS GROUP LLC, a Delaware
23 corporation, and AEG FACILITIES,
24 LLC, a Delaware corporation,

25 Defendants.
26
27
28

CASE NO. '17CV2181 GPC MDD

COMPLAINT FOR:

- (1) PATENT INFRINGEMENT –**
35 U.S.C. § 271; AND
(2) DECLARATORY RELIEF

DEMAND FOR JURY TRIAL

1 Plaintiff Confident Technologies, Inc. (collectively, “**Confident**” or
2 “**Plaintiff**”), by and through its attorneys, makes and files this Complaint against
3 Defendant AXS Group LLC (“**AXS**”) and Defendant AEG Facilities, LLC (“**AEG**”)
4 (collectively, “**Defendants**”). In support of this Complaint, Plaintiff alleges as
5 follows:

6 **NATURE OF THE ACTION**

7 1. This is an action for patent infringement under the patent laws of the
8 United States, 35 U.S.C. § 271, *et seq.*

9 **THE PARTIES**

10 2. Plaintiff Confident is a Delaware corporation with a principal place of
11 business in Solana Beach, CA.

12 3. Defendant AXS is a Delaware corporation with a principal place of
13 business in Los Angeles, CA.

14 4. Defendant Ticketmaster is a Delaware corporation with a principal
15 place of business in Los Angeles, CA.

16 **JURISDICTION AND VENUE**

17 5. This Court has original and exclusive subject matter jurisdiction over
18 this action under 28 U.S.C. §§ 1331 and 1338(a) because Confident’s claim of
19 patent infringement arises under the laws of the United States, including 35 U.S.C.
20 §§ 271.

21 6. This Court has personal jurisdiction over Defendants because they
22 have a continuous, systematic and substantial presence in this District, because they
23 regularly conduct business and/or solicit business within this District, because they
24 have committed and continue to commit patent infringement in this District,
25 including without limitation by performing the methods claimed in United States
26 Patent No. 8,621,578 (“the ‘578 patent”) in this District and by inducing residents
27 of this District to perform the methods claimed in the ‘578 patent.

28 7. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400

1 because Defendants have done business, have infringed, and continue to infringe
2 the '578 patent in this District, and have a regular and established place of business
3 in this District including, but not limited to the Valley View Casino Center.

4 **FACTUAL BACKGROUND**

5 8. On December 10, 2008, United States Patent Application No.
6 12/332,266 ("the '266 application") was filed covering methods and systems for
7 protecting website forms from automated access. On December 31, 2013, the
8 United States Patent and Trademark Office (PTO) duly and lawfully issued United
9 States Patent No. 8,621,578 ("the '578 patent") from the '266 application, entitled
10 "Methods and Systems for Protecting Website Forms from Automated Access." A
11 true and correct copy of the '578 patent is attached hereto as **Exhibit A**. Confident
12 owns all rights to the '578 patent via an Assignment, which was recorded at the
13 PTO on February 4, 2015, at Reel/Frame 034886/0691.

14 9. The '578 patent is directed to a method and system of telling apart a
15 human from a computer using a graphical image verification system. The methods
16 generally describe generating a matrix of images in response to an access request
17 from a user, wherein at least one image is known to belong to a selected image
18 category, at least one image is known to not belong to the selected image category,
19 and at least one image is suspected to belong to the selected image category. The
20 user is granted access to the website when the input from the user access device
21 comprises selection of the at least one image known to belong to the selected image
22 category and selection or omission of the at least one image suspected to belong to
23 the selected image category. The information gathered from users concerning the
24 image suspected to belong to the selected image category may be utilized to provide
25 an interpretation as to the proper category for the suspected image.

26 10. Defendants require customers to use ReCAPTCHA technology as a
27 precondition to utilizing Defendants' ticket-purchasing services and venues.
28 Customers seeking to purchase tickets through Defendants are directed to perform

1 the steps required to complete the ReCAPTCHA verification. The ReCAPTCHA
2 technology utilizes the claimed '578 technology in granting access to certain
3 website content authorizing certain electronic transactions by presenting users with
4 images wherein at least one image is known to belong to a selected image category,
5 at least one image is known to not belong to the selected image category, and at
6 least one image is suspected to belong to the selected image category. The user
7 gains access by, inter alia, selecting one or more images that belong to the selected
8 category. Defendants condition participation of the customer in the ticket
9 purchasing process upon performance of a step or steps of the '578 patented
10 method, and establish the manner or timing of that performance.

11 **FIRST CLAIM FOR RELIEF**

12 **(Infringement of the '578 patent Against All Defendants)**

13 11. Plaintiff realleges and incorporates by reference the allegations
14 contained in the previous paragraphs of this Complaint as though fully set forth
15 herein.

16 12. Defendants and/or those acting in concert with Defendants have
17 infringed and continue to infringe, and/or induce infringement of the '578 patent,
18 either literally or under the doctrine of equivalents. Defendants' infringing activities
19 in the United States and this District include, among other things making, using,
20 selling, and inducing others to use ReCAPTCHA technology in connection with
21 gaining access to AXS' websites, mobile apps, and ticket purchasing services.
22 ReCAPTCHA technology infringes at least claim 1 of the '578 patent as indicated
23 in the attached claim chart, **Exhibit B**, incorporated herein. Performance of all steps
24 of the claimed methods can be attributed to the Defendants. This infringement chart
25 is based on Confident's current understanding of the Defendants' use of infringing
26 ReCAPTCHA technology, which only considers publicly available information.
27 The chart does not set forth all of Confident's infringement theories – Defendants'
28 use of infringing ReCAPTCHA technology embodies other claims set forth in the

1 '578 patent.

2 13. Confident reserves the right to amend or supplement its infringement
3 theories upon more information becoming available through formal discovery
4 and/or this Court completing its claim construction proceedings. Pursuant to CivLR
5 3.1, Confident will serve a Disclosure of Asserted Claims and Infringement
6 Contentions (that may alter and/or supplement the infringement chart submitted
7 herewith).

8 14. Confident is informed and believes that Defendants, and/or those
9 acting in concert with Defendants, with actual knowledge of the '578 patent before
10 the filing of this action, induced customers to infringe the '578 patent, by requiring
11 its direct and indirect customers to use infringing ReCAPTCHA technology to
12 purchase tickets through AXS' websites and mobile apps. Defendants intend to and
13 instructs their direct and indirect customers to infringe at least claim 1 of the '578
14 patent by using ReCAPTCHA technology as a precondition to purchasing tickets
15 through AXS' websites and mobile apps. Defendants profit from the use of the
16 infringing ReCAPTCHA technology by, among other things, charging customers a
17 service fee, and to prevent automated ticket purchases by ticket "scalpers." Use of
18 infringing ReCAPTCHA technology hampers ticket purchases by automated bots
19 and thereby increases the desire of customers to use Defendants' ticket purchasing
20 services protected by the '578 patent.

21 15. Defendants were aware or should have been aware or where willfully
22 ignorant of the '578 Patent by at least January of 2014.

23 16. Upon information and belief, Defendants have generated millions of
24 dollars in annual revenue from service fees and the use of Plaintiff's technology,
25 exposing Defendants to significant liability for their infringement of the '578
26 patent.

27 17. Upon information and belief, unless enjoined, Defendants, and/or
28 others acting on behalf of Defendants, will continue their infringing acts, thereby

1 causing irreparable harm to Confident for which there is no adequate remedy at
2 law.

3 18. As a result of Defendants' infringement of the '578 patent, Confident
4 has suffered and will continue to suffer harm and injury, including monetary
5 damages in an amount to be determined at trial, and is entitled to recovery of all
6 said damages.

7 **SECOND CLAIM FOR RELIEF**

8 **(Declaratory Relief)**

9 19. Plaintiff realleges and incorporate by reference the allegations
10 contained in the previous paragraphs of this Complaint as though fully set forth
11 herein.

12 20. A dispute exists as to the infringement of the '578 patent.

13 21. Confident is entitled to a declaration that Defendants infringe the '578
14 patent.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Confident prays for entry of judgment in its favor and
17 against Defendants as follows:

18 (a) An Order adjudging Defendants to have infringed, or induced the
19 infringement of the '578 patent under 35 U.S.C. § 271;

20 (b) A permanent injunction under 35 U.S.C. § 283 enjoining Defendants,
21 its officers, directors, agents, servants, resellers, retailers, employees and attorneys,
22 and those persons acting in concert or participation with them, from infringing or
23 inducing the infringement of the '578 patent in violation of 35 U.S.C. § 271;

24 (c) An award to Confident of its lost profits and/or a reasonable royalty on
25 Defendants' service fees;

26 (d) An Order adjudicating that this is an exceptional case;

27 (e) An award to Confident of all attorneys' fees and costs incurred by
28 Confident in connection with this action under 35 U.S.C. § 285;

1 (f) An award of pre-judgment and post-judgment interest and costs of this
2 action against Defendants;

3 (g) For such other and further relief as the Court deems just and proper.

4 Dated: October 25, 2017

SAN DIEGO IP LAW GROUP LLP

6 By: /s/Trevor Coddington/

7 DAVID M. BECKWITH
8 JAMES V. FAZIO, III
9 TREVOR Q. CODDINGTON, PH.D.

10 Attorneys for Plaintiff,
11 Confident Technologies, Inc.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury of all issues so triable.

Dated: October 25, 2017 SAN DIEGO IP LAW GROUP LLP

By: /s/Trevor Coddington/

DAVID M. BECKWITH
JAMES V. FAZIO, III
TREVOR Q. CODDINGTON, PH.D.

Attorneys for Plaintiff,
Confident Technologies, Inc.