

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

JAN MAYHEU, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

CHICK-FIL-A, INC.,

Defendant.

CIVIL ACTION NO. 2022CV365400

**CONSOLIDATED AMENDED CLASS
ACTION**

JURY TRIAL DEMANDED

CONSOLIDATED AMENDED CLASS ACTION COMPLAINT

Plaintiffs JAN MAYHEU, ANEISHA PITTMAN, SUSAN UKPERE, RON GOLDSTEIN, and RONALD ORTEGA, individually and on behalf of all others similarly situated, complain and allege upon information and belief based, among other things, upon the investigation made by Plaintiffs and through their attorneys as follows:

NATURE OF ACTION

1. This is a proposed class action seeking monetary damages, restitution, and injunctive and declaratory relief from Defendant Chick-fil-A, Inc. (“Defendant” or “Chick-fil-A”), arising from its deceptive and untruthful promises to provide FREE or flat fee, low-price delivery on food deliveries ordered through its app and website.

2. Since the beginning of the Covid-19 pandemic, Chick-fil-A has moved aggressively into the food delivery business, exploiting an opportunity presented by Americans’ reduced willingness to leave their homes. To appeal to consumers in a crowded food delivery marketplace during the national crisis, early in the pandemic Chick-fil-A began promising its customers “FREE DELIVERY” or low-price delivery in its mobile application and on its website,

usually in the amount of \$2.99 or \$3.99.

3. These representations, however, are false, because that is not the true cost of having food delivered by Chick-fil-A. In fact, Chick-fil-A imposes hidden delivery charges on its customers in addition to the low “Delivery Fee” represented in its app and on its website.

4. On delivery orders only, Chick-fil-A secretly marks up food prices for delivery orders by a hefty 25-30%. In other words, the identical order of a 30-count chicken nuggets costs approximately \$5-6 more when ordered for delivery than when ordered via the same mobile app for pickup, or when ordered in-store.

5. This hidden delivery upcharge makes Chick-fil-A’s promise of FREE or low-cost delivery patently false. The true delivery costs are obscured, as described above, and far exceed its express representation that its “Delivery Fee” is FREE or a flat fee of only \$2.99 or \$3.99.

6. By falsely marketing a FREE or low-cost delivery charge, Chick-fil-A deceives consumers into making online food purchases they otherwise would not make.

7. Worse, Chick-fil-A was aware of consumer confusion regarding the secret menu upcharge and knew consumers were and would be deceived by hidden menu price markups of which they were not aware. Nonetheless, Chick-fil-A never informed its consumers of the menu price markup.

8. Upon information and belief, Chick-fil-A adopted its pricing strategy because it believed that consumers would make more purchases if Chick-Fil-A misrepresented the true cost of delivery by offering FREE or low-cost delivery, then secretly inflating menu prices on delivery orders only.

9. Chick-fil-A intentionally deceived its customers regarding the true cost of its delivery service, hiding its delivery charges in menu price markups it never disclosed to its

customers. Chick-fil-A did this because it was unhappy with the profitability and sales generated by truthful advertisements.

10. In fact, when Chick-fil-A first began offering delivery services in 2019, it offered a fair, truthful and transparent delivery fee of \$4.99 *without* secretly marking up menu prices in any way on delivery orders. Later, however, Chick-fil-A decided that it could increase the profitability and sales generated by its delivery service by lying about its delivery charges to its customers.

11. Specifically, early in the national Covid-19 crisis, Chick-fil-A saw an opportunity for exploitation. It claimed to *reduce* its delivery fee to FREE, \$2.99 or \$3.99 in order lure customers into making delivery purchases from Chick-fil-A in a crowded food delivery marketplace. But unbeknownst to those customers, at the same time Chick-fil-A secretly raised its menu prices on delivery orders only in order to cover the costs of delivery and profit—without once disclosing the manipulation to customers.

12. Chick-fil-A continues to misrepresent the nature of the delivery charges assessed on the Chick-fil-A mobile application and the website, by issuing in-app and online marketing materials that fail to correct reasonable understandings of its FREE or low-cost delivery promises, and that misrepresent the actual costs of the delivery service.

13. Specifically, Chick-fil-A omits and conceals material facts about the Chick-fil-A delivery service, never once informing consumers in any disclosure, at any time, that the use of the delivery service causes a substantial increase in food prices.

14. Hundreds of thousands of Chick-fil-A customers like Plaintiffs have been assessed hidden delivery charges they did not bargain for.

15. Consumers like Plaintiffs reasonably understand Chick-fil-A's express "Delivery

Fee” representation to disclose the total additional cost they will pay as a result of having their food delivered, as opposed to ordering online and picking up food in person, or ordering and picking up food in person.

16. By unfairly obscuring its true delivery costs, Chick-fil-A deceives consumers and gains an unfair upper hand on competitors that fairly disclose their true delivery charges. For example, other restaurants such as Del Taco and El Pollo Loco both offer delivery services through their app and website. But unlike Chick-fil-A’s current practice, Del Taco and El Pollo Loco fairly and prominently represent their true delivery charges—just as Chick-fil-A used to do.

17. Plaintiffs seek damages and, among other remedies, injunctive relief that fairly allows consumers to decide whether they will pay Chick-fil-A’s delivery mark-ups.

PARTIES

18. Plaintiff Jan Mayheu is a citizen of the State of Georgia who resides in Lilburn, Georgia.

19. Plaintiff Aneisha Pittman is a citizen of the State of New York who resides in New York, New York.

20. Plaintiff Susan Ukpere is a citizen of the State of New Jersey who resides in Woodbridge, New Jersey.

21. Plaintiff Ron Goldstein is a citizen of the State of Florida who resides in Sarasota, Florida.

22. Plaintiff Ronald Ortega is a citizen of the State of California who resides in Sacramento, California.

23. Defendant, Chick-fil-A Inc. is incorporated in Georgia and maintains its principal business offices in Atlanta, Georgia.

JURISDICTION AND VENUE

24. This Court has exclusive jurisdiction of this action. Defendant is subject to personal jurisdiction in this Court because Defendant conducts significant business in the State of Georgia and is registered to do business in this state. Moreover, the acts, omissions, conduct, and transactions complained of occurred within this state. The amount in controversy is in excess of the jurisdictional minimum of this Court.

25. Venue is proper in Fulton County pursuant to O.C.G.A. § 14-2-510(b)(2) because Chick-fil-A is headquartered and transacts business in this county. Defendant may be served by serving its registered agent for service of process, Susan Tammy Pearson, at 5200 Buffington Road, Atlanta, Georgia 30349.

COMMON FACTUAL ALLEGATIONS

A. Food Delivery Services Increase in Popularity, and then Explode in Popularity During the Pandemic.

26. In 2018, the online food delivery industry was an astounding \$82 billion in gross revenue and projected to exceed \$200 billion by 2025.¹

27. US Foods reports that the average American consumer has two food delivery apps installed on their mobile phone and uses those apps three times per month.²

28. The online food delivery industry predominately influences the country's most financially vulnerable populations. A nationwide research study conducted by Zion & Zion reveals

¹ See Frost & Sullivan, *\$9.6 Billion in Investments Spurring Aggressive Expansion of Food Delivery Companies*, October 25, 2019, accessible at <https://ww2.frost.com/news/press-releases/9-6-billion-in-investments-spurring-aggressive-expansion-of-food-delivery-companies/>, last accessed January 19, 2021.

² See US Foods, *New Study Shows What Consumers Crave in a Food Delivery Service*, 2019, accessible at <https://www.usfoods.com/our-services/business-trends/2019-food-delivery-statistics.html>, last accessed January 19, 2021.

that the largest user markets for online delivery food services are the young and the poor.³ During a 90-day timeframe, 63% of consumers between the ages of 18 and 29 used a multi-restaurant delivery website or app service, followed by 51% of consumers between the ages of 30 to 44.⁴ The study also demonstrated that the "less income a consumer earns, the more likely the consumer is to take advantage of restaurant delivery services," as those earning less than \$10,000 per year ordered online delivery the most (51.6%).⁵

29. Put plainly, the allure for online food delivery services has historically been based upon pure convenience. A 2019 Gallup study of third-party delivery services companies like GrubHub, DoorDash, and Uber Eats reported 72% of customers order online food delivery because they don't want to leave their house; 50% so that they can continue with their ongoing activities; and 41% to avoid bad weather.⁶

30. According to data compiled by Yelp, food delivery orders have *doubled* since the Covid-19 outbreak began.⁷

31. The arrival of the unprecedented Covid-19 pandemic escalated the value of online food delivery services from one of pure convenience to that of a comforting necessity for many consumers who are sick, in a high-risk population group for Covid-19, or simply do not feel safe

³ See Aric Zion and Thomas Hollman, Zion & Zion Research Study, *Usage and Demographics of Food Delivery Apps*, accessible at <https://www.zionandzion.com/research/food-delivery-apps-usage-and-demographics-winners-losers-and-laggards/>, last accessed January 19, 2021.

⁴ *Id.*

⁵ *Id.*

⁶ See Sean Kashanchi, Gallup, *Third-Party Delivery Will Grow; Is Your Restaurant Ready?*, May 6, 2019, accessible at <https://www.gallup.com/workplace/248069/third-party-delivery-grow-restaurant-ready.aspx>, last accessed January 19, 2021.

⁷ See Tal Axelrod, The Hill, *Yelp: Delivery and take-out twice as popular as usual amid coronavirus*, March 20, 2020, available at <https://thehill.com/policy/technology/488749-yelp-delivery-and-take-out-twice-as-popular-as-usual-amid-coronavirus>, last accessed January 19, 2021.

to leave their homes and venture out into the public to purchase food during quarantine.

32. In its 2019 Economic Report conducted by research firm Technomic, DoorDash reported that 86% of customers agreed that DoorDash played an important role in helping them access food during the pandemic and 77% of consumers increased their use of third-party delivery services during this time.⁸ Indeed, amidst the uncertainty of the novel virus, 68% of consumers now view ordering food online for delivery as the safer option.⁹

33. The era of Covid-19 undoubtedly caused a significant revenue boom for third party delivery services. SEC filings indicate that the top four U.S. food-delivery apps (DoorDash, Uber Eats, GrubHub, and Postmates) collectively experienced a *\$3 billion increase* in revenue in just two quarters, April through September, following the enactment of shelter-in-place restrictions throughout the nation.¹⁰

34. The ramp up in utilization of food delivery services also had a massive positive impact on restaurant owners who were quickly on the brink of facing permanent closures during lockdown: 67% of restaurant operators said DoorDash was crucial to their business during Covid-19 and 65% say they were actually able to *increase* profits during this time because of DoorDash.

35. In the wake of the food delivery surge, Consumer Reports highlighted the need for

⁸ See Technomic and DoorDash, 2019 Economic Impact Report, *The Impact of DoorDash on Economic Activity and Restaurant Resilience*, available at <https://doordashimpact.com/media/2019-Economic-Impact-Report.pdf>, last accessed January 19, 2021.

⁹ *Id.*

¹⁰ See Levi Sumagaysay, Market Watch, *The pandemic has more than doubled food-delivery apps' business. Now what?*, last updated November 27, 2020, available at <https://www.marketwatch.com/story/the-pandemic-has-more-than-doubled-americans-use-of-food-delivery-apps-but-that-doesnt-mean-the-companies-are-making-money-11606340169>, last accessed January 19, 2021.

fee transparency for consumers who use these apps and services.¹¹ A research team investigated food delivery companies and the report measured their compliance with new rules regarding fees enacted in seven US cities aimed at protecting consumers and businesses during the pandemic. It found that these companies continued to not comply with the new ordinances and continued to “employ design practices that obfuscate fees.” They concluded that “[c]onsumers deserve to have informed choices to understand what they are being charged for *and* how their dollars spent impacts the restaurants they support and patronize in their communities.”

B. Chick-fil-A’s App and Website Fails to Bind Users to Any Terms of Service.

36. When a consumer downloads the Chick-fil-A app, or uses the Chick-fil-A website, he may create an account in order to place an order for delivery or pickup.

37. In order to do so, a user enters in a name and contact information.

38. While the account creation screen contains a small hyperlink to view Chick-fil-A’s Terms of Service and Privacy Notice, users are not required to affirmatively consent to such terms, such as by clicking or checking a box.

C. Prior to the Pandemic, Chick-fil-A Offered a \$4.99 Delivery Fee with No Menu Price Markup, Then Discovered It Could Increase Sales by Shifting Delivery Costs to Hidden Menu Upcharges.

39. Chick-fil-A first began offering delivery services in 2019. At that time, it offered a truthful and transparent delivery fee of \$4.99 *without* secretly marking up menu prices in any way on delivery orders.

40. Specifically, it promised “Delivery Fee: \$4.99” during the checkout process and did not mark-up menu prices on delivery orders. This was a clear promise that the total, marginal

¹¹ See Consumer Reports, *Collecting Receipts: Food Delivery Apps & Fee Transparency*, September 29, 2020, accessible at https://digital-lab-wp.consumerreports.org/wp-content/uploads/2020/09/Food-delivery_-Report.pdf, last accessed January 19, 2021.

cost of having food delivered versus picking it up in store was represented by the \$4.99 Delivery Fee.

41. However, Chick-fil-A was not content with the profitability and sales generated by its delivery service and decided that it could increase the profitability and sales generated by its delivery service by lying about its delivery charges to its customers.

42. Chick-fil-A was aware of consumer confusion regarding the secret menu upcharge. Upon information and belief, Defendant was or should have been aware that consumers were and would be deceived by hidden menu price markups. Nonetheless, Chick-fil-A never informed its consumers of the menu price markup.

43. Chick-fil-A intended for consumers to make more purchases as a result of Chick-Fil-A lowering its delivery fee and raising menu prices in order to cover delivery costs and profit on the delivery service.

44. So that is precisely what Defendant did during the early days of the Covid-19 pandemic: it *lowered* its Delivery Fee, sometimes to FREE, and *raised* its menu prices by 25%-30% on delivery orders only.

45. Because it is well known that American consumers prefer FREE or low-cost delivery costs, Chick-fil-A made an intentional decision to absorb delivery charges into hidden menu upcharges.

46. Instead of fairly and transparently disclosing this change to its customers—who were already under tremendous stress from the pandemic—Chick-fil-A chose to operate in the shadows. It continued to make a clear promise that the total, marginal cost of having food delivered versus picking it up in store was represented by a new FREE or \$2.99 or \$3.99 Delivery Fee.

47. But because it secretly inflated menu prices on delivery orders only, and never

informed customers of this policy, it misrepresented the true cost of delivery.

48. Chick-fil-A intentionally deceived its customers regarding the true cost of its delivery service, hiding its delivery charges in menu price markups it never disclosed to its customers.

D. Chick-fil-A Prominently and Plainly Represents a Flat “Delivery Fee” on its App and Website.

49. Beginning in the early days of the Covid-19 pandemic, Chick-fil-A began prominently featuring FREE and low-cost delivery promises on its mobile application and on its website.

50. Such representations often are made on the home screen of the app or website and were always made on the check-out screen of the app and website, prior to the finalization of an order. On that screen, Chick-fil-A promised a flat “Delivery Fee” that was FREE, \$2.99 or \$3.99. As an example, for supposed “FREE DELIVERY” orders, the order finalization screen states:

Subtotal: [representing the cost of the food selected]

Tax: [representing sales tax]

Delivery Fee: FREE

Tip:

Total: [adding up the above]

51. As an example, for supposed “\$3.99 Delivery Fee” orders, the order finalization screen states:

Subtotal: [representing the cost of the food selected]

Tax: [representing sales tax]

Delivery Fee: \$3.99

Tip:

Total: [adding up the above]

52. In short, the Delivery Fee promises further the reasonable perception that such fee is what covers delivery costs.

E. Chick-fil-A Omits and Conceals Material Facts About the Costs of the Chick-fil-A Delivery Service.

53. But those disclosures were false and misleading, and the delivery charge was not, in fact, FREE or a flat fee of \$2.99 or \$3.99.

54. Chick-fil-A furtively marked up the cost of food reflected in the “Subtotal”—adding a hefty 25-30% to the cost of the food items ordered for delivery. Chick-fil-A did not and does not make similar markups for identical food items ordered via the same app or website, where such items are ordered for pickup instead of delivery.

55. Chick-fil-A omitted this material fact from its app and website disclosures, never informing users of this secret markup.

56. Worse, Chick-fil-A designed its app to make it *impossible* for consumers to catch its hidden menu price inflation. The company ensured that food prices were only displayed on the app or website *after* a customer chose delivery or pickup, ensuring delivery customers could not see the price inflation.

57. This secret markup—which Chick-fil-A *only* applies to delivery orders—is a hidden delivery fee. This renders false Chick-fil-A’s promise of a FREE or a flat, low-cost delivery fee of \$2.99 or \$3.99, which is made repeatedly in the app and the website, and then again in the “Delivery Fee” line item on the order screen.

58. This secret markup was specifically designed to cover the costs of delivering food and profit on that delivery. It was, in short, exclusively a charge for using Chick-fil-A’s delivery service.

59. In short, the “Delivery Fee” is not actually \$2.99 or \$3.99. The actual “Delivery Fee”—the extra charge for having food delivered as opposed to picking it up—is the listed “Delivery Fee” *plus* the hidden food markup applied exclusively to delivery orders.

60. Chick-fil-A does not inform consumers the true costs of its delivery service and it misrepresents its “Delivery Fee” as \$2.99 or \$3.99, when in fact that cost is actually much higher.

F. Other Restaurant Industry Actors Disclose Delivery Fees Fairly and Transparently—And Chick-fil-A Did So Before it Changed its Practice.

61. By unfairly obscuring its true delivery costs, Chick-fil-A deceives consumers and gains an unfair upper hand on competitors that fairly disclose their true delivery charges. For example, other restaurants like Del Taco and El Pollo Loco both offer delivery services through their app and website. But unlike Chick-fil-A, Del Taco and El Pollo Loco fairly and prominently represent their true delivery charges.

62. For example, Del Taco does not mark-up food charges for delivery orders through its app. Instead, for delivery orders its ordering screen presents the following:

Subtotal:

Tax:

Delivery Charge:

Tip:

63. All line-item amounts are **identical** for delivery and pick-up orders, except for the plainly and fairly disclosed delivery charge—allowing consumers to understand the true cost of the delivery service.

64. Similarly, El Pollo Loco does not mark-up food charges for delivery orders through its app. Instead, for delivery orders its ordering screen presents the following:

Subtotal:

Delivery Charge:

Tax:

65. All line-item amounts are **identical** for delivery and pick-up orders, except for the plainly and fairly disclosed delivery charge—allowing consumers to understand the true cost of the delivery service.

66. As described above, this is exactly what Chick-fil-A itself did prior to the Covid-19 pandemic.

67. Lastly, although Instacart, the grocery delivery service, does mark-up item charges for delivery orders made through its app, it provides an express warning to consumers that the item prices listed on its app are “higher than in-store prices.” Instacart’s clear disclaimer is made visible to consumers before they place their orders and allows consumers to understand that they are paying a higher price for utilizing the delivery service, as opposed to what they would pay had they purchased the same items in-store.

G. Plaintiff Mayheu’s Experience

68. As an example, from within Georgia, Plaintiff Mayheu made an online purchase of food from the Chick-fil-A restaurant located in Norcross, Georgia on September 7, 2021, in the total amount of \$8.52.

69. Prior to placing her order, the Chick-fil-A app stated that the Delivery Fee was \$2.99.

70. However, the cost of food ordered by Plaintiff Mayheu bore a hidden delivery fee markup.

71. Upon information and belief, the same item would have cost Plaintiff Mayheu 25-30% less than what she paid had she picked it up from the Chick-fil-A location instead.

72. Plaintiff Mayheu would not have made the purchase had she known the Chick-fil-A delivery fee was not in fact \$2.99.

73. If she had known the true delivery fee, Plaintiff Mayheu would have chosen another method for receiving food from Chick-fil-A or ordered food from another provider.

H. Plaintiff Pittman's Experience

74. From within New York, Plaintiff Pittman made an online purchase of food from the Chick-fil-A restaurant located in New York, New York on November 13, 2020, in the total amount of \$22.88.

75. Prior to placing her order, the Chick-fil-A website stated that the Delivery Fee was \$3.99.

76. However, the cost of food ordered by Plaintiff Pittman bore a hidden delivery fee markup. To illustrate, Chick-fil-A charged Plaintiff Pittman \$12.85 for an 8-count of Chick-Fil-A nuggets meal.

77. Upon information and belief, the same item would have cost Plaintiff Pittman 25-30% less than what she had paid had she picked it up from the Chick-fil-A location instead.

78. Plaintiff Pittman would not have made the purchase had she known the Chick-fil-A delivery fee was not in fact \$3.99.

79. If she had known the true delivery fee, Plaintiff Pittman would have chosen another method for receiving food from Chick-fil-A or ordered food from another provider.

I. Plaintiff Ukpere's Experience

80. From within New Jersey, Plaintiff Susan Ukpere made an online purchase of food from the Chick-fil-A restaurant located in Woodbridge, New Jersey on August 29, 2020, in the total amount of \$26.30.

81. Prior to placing her order, the Chick-fil-A website stated that the Delivery Fee was \$2.99.

82. However, the cost of food ordered by Plaintiff Ukpere bore a hidden delivery fee markup. To illustrate, Chick-fil-A charged Plaintiff Ukpere \$11.05 for a Chick-fil-A spicy deluxe sandwich meal.

83. Upon information and belief, the same item would have cost Plaintiff Ukpere 25-30% less than what she had paid had she picked it up from the Chick-fil-A location instead.

84. Plaintiff Ukpere would not have made the purchase had she known the Chick-fil-A delivery fee was not in fact \$2.99.

85. From within New Jersey, On November 4, 2020, and February 17, 2021, Plaintiff Ukpere placed similar online orders of food for delivery from the Chick-fil-A restaurant located in Woodbridge, New Jersey, and in each instance, Chick-fil-A represented the Delivery Fee as \$2.99. However, in each instance, the cost of food ordered by Plaintiff Ukpere bore a hidden delivery fee markup of 25-30% more than what she would have paid for the identical items had she picked them up from the Chick-fil-A location instead. Plaintiff Ukpere would not have made these purchases had she known the Chick-fil-A delivery fee was not in fact \$2.99.

86. If she had known the true delivery fee, Plaintiff Ukpere would have chosen another method for receiving food from Chick-fil-A or ordered from another provider.

J. Plaintiff Goldstein's Experience

87. From within Florida, Plaintiff Goldstein made an online purchase of food from the Chick-fil-A restaurant located in Miami Lakes, Florida on September 1, 2021, in the total amount of \$25.30.

88. Prior to placing his order, the Chick-fil-A app stated that the Delivery Fee was

\$2.99.

89. However, the cost of food ordered by Plaintiff Goldstein bore a hidden delivery fee markup. To illustrate, Chick-fil-A charged Plaintiff Goldstein \$9.49 for a Chick-fil-A sandwich meal.

90. Upon information and belief, the same item would have cost Plaintiff Goldstein 25-30% less than what he had paid had he picked it up from the Chick-fil-A location instead.

91. Plaintiff Goldstein would not have made the purchase had he known the Chick-fil-A delivery fee was not in fact \$2.99.

92. If he had known the true delivery fee, Plaintiff Goldstein would have chosen another method for receiving food from Chick-fil-A or ordered food from another provider.

K. Plaintiff Ortega's Experience

93. From within California, Plaintiff Ortega used the Chick-fil-A app to make a purchase of food on January 29, 2021, in the total amount of \$28.51.

94. Prior to placing his order, the Chick-fil-A app stated that the Delivery Fee was \$3.99.

95. However, the cost of the food ordered by Plaintiff Ortega bore a hidden delivery fee markup. To illustrate, Chick-fil-A charged Plaintiff Ortega \$20.39 for a 30-count of Chick-fil-A nuggets.

96. Upon information and belief, the same item would have cost Plaintiff Ortega 25-30% less than what he paid had he picked it up from the Chick-fil-A location instead.

97. Plaintiff Ortega would not have made the purchase if he had known the Chick-fil-A delivery fee was not in fact \$3.99.

98. If he had known the true delivery fee, Plaintiff Ortega would have chosen another

method for receiving food from Chick-fil-A or ordered food from another provider.

CLASS ALLEGATIONS

99. Pursuant to O.C.G.A. § 9-11-23, Plaintiff Mayehu brings this action individually and on behalf of a class of similarly situated persons defined as follows:

The Georgia Class:

All persons in Georgia who, within the applicable statute of limitations preceding the filing of this action to the date of class certification, ordered food delivery through the Chick-fil-A mobile app or website.

100. Plaintiff Pittman brings this action individually and on behalf of a class of similarly situated persons defined as follows:

The New York Class:

All persons in New York who, within the applicable statute of limitations preceding the filing of this action to the date of class certification, ordered food delivery through the Chick-fil-A mobile app or website.

101. Plaintiff Ukpere brings this action individually and on behalf of a class of similarly situated persons defined as follows:

The New Jersey Class:

All persons in New Jersey who, within the applicable statute of limitations preceding the filing of this action to the date of class certification, ordered food delivery through the Chick-fil-A mobile app or website.

102. Plaintiff Goldstein brings this action individually and on behalf of a class of similarly situated persons defined as follows:

The Florida Class:

All persons in Florida who, within the applicable statute of limitations preceding the filing of this action to the date of class certification, ordered food delivery through the Chick-fil-A mobile app or website.

103. Plaintiff Ortega brings this action individually and on behalf of a class of similarly situated persons defined as follows:

The California Class:

All persons in California who, within the applicable statute of limitations preceding

the filing of this action to the date of class certification, ordered food delivery through the Chick-fil-A mobile app or website.

104. Excluded from the Class is Defendant, any entities in which they have a controlling interest, any of their parents, subsidiaries, affiliates, officers, directors, employees and members of such persons' immediate families, and the presiding judge(s) in this case, and their staff. Plaintiffs reserve the right to expand, limit, modify, or amend this class definition, including the addition of one or more subclasses, in connection with their motion for class certification, or at any other time, based upon, *inter alia*, changing circumstances and/or new facts obtained during discovery.

105. **Numerosity:** At this time, Plaintiffs do not know the exact size of the Class; however, due to the nature of the trade and commerce involved, Plaintiffs believe that the Class members are well into the thousands, and thus are so numerous that joinder of all members is impractical. The number and identities of Class members is administratively feasible and can be determined through appropriate discovery in the possession of the Defendant.

106. **Commonality:** There are questions of law or fact common to the Class, which include, but are not limited to the following:

- a. Whether during the class period, Defendant deceptively and/or negligently misrepresented Delivery Fees on food deliveries ordered through the Chick-fil-A website and mobile app;
- b. Whether Defendant's alleged misconduct misled or had the tendency to mislead consumers;
- c. Whether Defendant engaged in unfair, unlawful, and/or fraudulent business practices under the laws asserted;

- d. Whether Defendant's alleged conduct constitutes violations of the laws asserted;
- e. Whether Plaintiffs and members of the Class were harmed by Defendant's misrepresentations;
- f. Whether Plaintiffs and the Class have been damaged, and if so, the proper measure of damages; and
- g. Whether an injunction is necessary to prevent Defendant from continuing to deceptively represent low-price, flat delivery fees on food deliveries ordered through the Chick-fil-A website and mobile app.

107. **Typicality:** Like Plaintiffs, many other consumers ordered food for delivery from Chick-fil-A's website or mobile app, believing delivery to be the flat fee represented based on Defendant's representations. Plaintiffs' claims are typical of the claims of the Class because Plaintiffs and each Class member was injured by Defendant's false representations about the true nature of the delivery fee. Plaintiffs and the Class have suffered the same or similar injury as a result of Defendant's false, deceptive and misleading representations. Plaintiffs' claims and the claims of members of the Class emanate from the same legal theory, Plaintiffs; claims are typical of the claims of the Class, and, therefore, class treatment is appropriate.

108. **Adequacy of Representation:** Plaintiffs are committed to pursuing this action and have retained counsel competent and experienced in prosecuting and resolving consumer class actions. Plaintiffs will fairly and adequately represent the interests of the Classes and do not have any interests adverse to those of the Classes.

109. **The Proposed Class Satisfies the Prerequisites for Injunctive Relief.** Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate

final injunctive and equitable relief with respect to the Class as a whole. Plaintiffs remain interested in ordering food for delivery through Chick-fil-A's website and mobile app; there is no way for them to know when or if Defendant will cease deceptively misrepresenting the cost of delivery.

110. Specifically, Defendant should be ordered to cease from representing their delivery service as a low-price, flat delivery fee and to disclose the true nature of their delivery fee.

111. Defendant's ongoing and systematic practices make declaratory relief with respect to the Class appropriate.

112. **The Proposed Class Satisfies the Prerequisites for Damages.** The common questions of law and fact enumerated above predominate over questions affecting only individual members of the Class, and a class action is the superior method for fair and efficient adjudication of the controversy. The likelihood that individual members of the Class will prosecute separate actions is remote due to the extensive time and considerable expense necessary to conduct such litigation, especially when compared to the relatively modest amount of monetary, injunctive, and equitable relief at issue for each individual Class member.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

Negligent Misrepresentation

(Asserted on Behalf of Plaintiffs and All Classes)

113. Plaintiffs repeat and reallege the above allegations as if fully set forth herein.

114. Defendant has negligently represented that delivery of Chick Fil A food is FREE or a flat, low price.

115. Defendant, in promoting and marketing food delivery to consumers, had a duty of care to inform customers of the true costs of having its food delivered. These is a material fact that was only known by Defendant, but it was never disclosed to consumers.

116. Defendant made misrepresentations of material fact that were false.

117. Defendant knows its misrepresentations about delivery costs are material to the reasonable consumer.

118. Defendant knew and intended that Plaintiffs and members of the Classes would rely upon their misrepresentations when deciding whether or not to order food for delivery from Defendant.

119. Defendant was negligent because it knew or should have known that its representations in marketing materials about the cost of delivery are inaccurate and misleading.

120. Defendant omitted the fact that as a matter of secret policy, delivery charges were added over and above those represented.

121. Plaintiffs and members of the Classes justifiably acted in reliance upon Defendant's false and misleading statements by ordering food for delivery at the represented delivery cost.

122. Neither Plaintiffs nor any reasonable consumer would have ordered food delivery if they had known of the true cost of it--a cost Defendant alone was aware of and actively misrepresented.

123. As a direct and proximate result of Defendant's misrepresentations, Plaintiffs and members of the Classes were induced into using the delivery service and have been harmed and suffered actual damages in the amount of delivery costs paid in excess of those expressly represented.

124. Plaintiffs seek all available remedies, damages, and awards as a result of Defendant's negligent misrepresentations.

SECOND CLAIM FOR RELIEF
Violation of Georgia's Unfair Business Practices Act
Ga. Code Ann. § 10-1-390 *et seq.*
(Asserted on Behalf of Mayheu and the Georgia Class)

125. Plaintiffs repeat and reallege the above allegations as if fully set forth herein.

126. The Georgia Fair Business Practices Act (“Georgia FBPA”) declares “[u]nfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce” to be unlawful. Ga. Code Ann. § 10-1-393(a).

127. In the course of its business, Defendant, through its agents and/or employees, violated the Georgia FBPA.

128. Defendant affirmatively misrepresented the Products’ capacity -- a material fact that was false. In so doing, and by marketing, offering for sale, and selling the Products, Defendant engaged in one or more of the following unfair or deceptive acts or practices as defined in Ga. Code Ann. § 10-1-393(b): 1) “[r]epresenting that goods or services have . . . characteristics, uses, benefits, or quantities that they do not have[;]” 2) “[r]epresenting that goods or services are of a particular standard, quality, or grade . . . if they are of another;” and 3) “[a]dvertising goods or services with intent not to sell them as advertised[.]”

129. Defendant’s scheme and concealment of the true characteristics of the Products’ capacity was material to Plaintiff Mayheu and the other Georgia Class members’ as Defendant intended. Had they known the truth, Plaintiff Mayheu and the other Georgia Class members would not have purchased the Products or would have paid significantly less for them.

130. Plaintiff Mayheu and the other members of the Georgia Class had no way of discerning that Defendant’s representations were false and misleading, or otherwise learning the facts that Defendant had concealed or failed to disclose.

131. Defendant had an ongoing duty to Plaintiff Mayheu and the other Georgia Class members to refrain from unfair and deceptive practices under the Georgia FBPA in the course of its business. Specifically, Defendant owed Plaintiff Mayheu and the other Georgia Class members

a duty to disclose all of the material facts concerning the Products' capacity because Defendant possessed exclusive knowledge and intentionally concealed it from Plaintiff Mayheu and the other members of the Georgia Class, and/or made misrepresentations that were rendered misleading because they were contradicted by withheld facts.

132. Plaintiff Mayheu and the other Georgia Class members suffered ascertainable loss and actual damages as a direct and proximate result of Defendant's concealment, misrepresentations, and/or failure to disclose material information.

133. Defendant's violations present a continuing risk to Plaintiff Mayheu and the other members of the Georgia Class, as well as to the general public. Defendant's unlawful acts and practices complained of herein affect the public interest.

134. Pursuant to Ga. Code Ann. § 10-1-399, Plaintiff Mayheu and the other members of the Georgia Class seek an order: 1) enjoining Defendant's unfair and/or deceptive acts or practices; 2) awarding general and punitive damages in an amount to be proven at trial; 3) awarding costs and attorneys' fees; and 4) awarding any other just and proper relief available under the Georgia FBPA.

135. On July 18, 2018, Plaintiff Mayheu sent notice to Defendant complying with Ga. Code Ann. § 10-1-399(b). Because Defendant failed to remedy its unlawful conduct within the requisite time period, Plaintiff Mayheu seeks all damages and relief to which Plaintiff Mayheu and the other Georgia Class members are entitled.

THIRD CLAIM FOR RELIEF
Violation of New York's General Business Law
N.Y. Gen. Bus. Law § 349, *et seq.*
(Asserted on Behalf of Pittman and the New York Class)

136. Plaintiffs repeat and re-allege the above allegations as if fully set forth herein.

137. This cause of action is brought under New York's General Business Law § 349, *et*

seq.

138. N.Y. Gen. Bus. Law § 349(a) provides that “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.”

139. Chick-fil-A committed deceptive acts and practices in violation of N.Y. Gen. Bus. Law § 349 by affirmatively and knowingly misrepresenting on its website and mobile app that it provides a flat, low-cost delivery fee of \$2.99 or \$3.99 for food orders, when, in reality, it hides delivery charges through hidden food markups applied exclusively to delivery orders.

140. Chick-fil-A’s actions regarding its food delivery service, as described herein, are deceptive acts or practices in the conduct of business trade or commerce of food and in the furnishing of food delivery services.

141. N.Y. Gen. Bus. Law § 349(h) provides that “any person who has been injured by reason of any violation of this section may bring an action in his own name to enjoin such unlawful act or practice, an action to recover his actual damages or fifty dollars, whichever is greater, or both such actions.”

142. Plaintiff Pittman and other members of the New York Class have been injured by Defendant’s violations of N.Y. Gen. Bus. Law § 349.

143. Defendant’s misleading and deceptive conduct occurred, and continues to occur, in the course of Chick-fil-A’s business.

144. As an actual and proximate result of Defendant’s misconduct, Plaintiff Pittman and other members of the New York Class were injured and suffered damages.

145. Defendant is liable to Plaintiff Pittman and other members of the New York Class for damages in amounts to be proven at trial.

FOURTH CLAIM FOR RELIEF
Violation of New Jersey Consumer Fraud Act
N.J. Stat. Ann. § 56:8-1 *et seq.*
(Asserted on Behalf of Ukpere and the New Jersey Class)

146. Plaintiffs repeat and re-allege the above allegations as if fully set forth herein.

147. This cause of action is brought under New Jersey’s Consumer Fraud Act, § 56:8-1, *et seq.*, (the “NJCFA”).

148. The NJCFA protects consumers from “any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission, in connection with the sale or advertisement of any merchandise...” N.J. Stat. Ann. § 56:8-2.

149. Chick-fil-A’s food items constitute “merchandise” within the definition of the NJCFA. § 56:8-1(c).

150. Chick-fil-A violated the NJCFA by knowingly misrepresenting on its mobile app and website that it provides a flat, low-cost delivery fee of \$2.99 or \$3.99 for food orders, when, in reality, it hides delivery charges through hidden food markups applied exclusively to delivery orders.

151. Defendant’s affirmative misrepresentations and material omissions regarding the true nature of Chick-fil-A’s Delivery Fee constitutes an unlawful practice under the NJCFA.

152. Plaintiff Ukpere and other members of the New Jersey Class had no way of discerning that Defendant’s representations were false and misleading, or otherwise learning the facts that Defendant had concealed or failed to disclose.

153. As a direct and proximate result of Defendant’s deceptive, misleading, and unlawful acts and practices, Plaintiff Ukpere and other members of the New Jersey Class suffered an ascertainable loss in that they paid a higher delivery charge than they had bargained for.

Accordingly, they have suffered and will continue to suffer actual damages.

154. Plaintiff Ukpere and other members of the New Jersey Class are entitled to relief including, but not limited to, actual damages, treble damages, statutory damages, injunctive relief, and/or attorneys fees and costs.

FIFTH CLAIM FOR RELIEF
Violation of Florida’s Deceptive and Unfair Trade Practices Act (“FDUTPA”)
Fla. Stat. § 501.201, *et seq.*
(Asserted on Behalf of Goldstein and the Florida Class)

155. Plaintiffs repeat and re-allege the above allegations as if fully set forth herein.

156. This cause of action is brought under Florida’s Deceptive and Unfair Trade practices Act § 501.201, *et seq.*

157. The stated purpose of the FDUTPA is to “protect the consuming public ... from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” Fla. Stat. § 501.202(2).

158. Plaintiff Goldstein and other members of the Florida Class are “consumers” as defined by Fla. Stat. § 501.203(7).

159. Chick-fil-A committed deceptive acts and practices in violation of the FDUTPA by affirmatively and knowingly misrepresenting on its website and mobile app that it provides a flat, low-cost delivery fee of \$2.99 or \$3.99 for food orders, when, in reality, it hides delivery charges through hidden food markups applied exclusively to delivery orders.

160. Chick-fil-A’s actions regarding its food delivery service, as described herein, are deceptive acts or practices in the conduct of business trade or commerce of food and in the furnishing of food delivery services.

161. Plaintiff Goldstein and other members of the Florida Class have been injured by Defendant’s violations of the FDUTPA.

162. Defendant’s misleading and deceptive conduct occurred, and continues to occur, in the course of Chick-fil-A’s business.

163. Chick-fil-A’s conduct, as described herein, is a practice that is likely to mislead a consumer acting reasonably under the circumstances, to the consumer’s detriment.

164. As a direct and proximate result of Defendant’s misconduct, Plaintiff Goldstein and other members of the Florida Class were injured and suffered actual damages.

165. Defendant is liable to Plaintiff Goldstein and other members of the Florida Class for damages in amounts to be proven at trial.

SIXTH CLAIM FOR RELIEF
Violation of California’s Unfair Competition Law (“UCL”)
Cal. Bus. & Prof. Code § 17200, *et seq.*
(Asserted on Behalf of Ortega and the California Class)

166. Plaintiffs repeat and reallege the above allegations as if fully set forth herein.

167. California Business & Professions Code § 17200 prohibits acts of “unfair competition,” including any “unlawful, unfair or fraudulent business act or practice.” Chick-fil-A’s conduct related to deceptively representing that it provides a flat “Delivery Fee” of \$3.99 on food deliveries ordered through its website and mobile app violates each of the statute’s “unfair,” “unlawful,” and “fraudulent” prongs.

168. The UCL imposes strict liability. Plaintiff Ortega need not prove that Chick-fil-A intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices—but only that such practices occurred.

169. A business act or practice is “unfair” under the UCL if it offends an established public policy or is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers, and that unfairness is determined by weighing the reasons, justifications, and motives of the practice against the gravity of the harm to the alleged victims.

170. A business act or practice is “fraudulent” under the UCL if it is likely to deceive members of the public.

171. A business act or practice is “unlawful” under the UCL if it violates any other law or regulation.

172. Defendant committed unfair and fraudulent business acts and practices in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*, by affirmatively and knowingly misrepresenting on its website and mobile app that it provides a flat \$3.99 “Delivery Fee” for food orders, when, in reality, it hides delivery charges through hidden food markups by 25-30% applied exclusively to delivery orders.

173. Defendant’s acts and practices offend an established public policy of fee transparency in the marketplace, and constitute immoral, unethical, oppressive, and unscrupulous activities that are substantially injurious to consumers.

174. The harm to Plaintiff Ortega and the other members of the California Class outweighs the utility of Defendant’s practices. There were reasonably available alternatives to further Defendant’s legitimate business interests, other than the misleading and deceptive conduct described herein.

175. Defendant’s conduct also constitutes an “unlawful” act under the UCL because, as detailed in Plaintiffs’ Fifth Claim for Relief below, it also constitutes a violation of sections 1770(a)(5) and (a)(9) of the California Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*, *infra*, in that Defendant deceptively represents that it provides a flat, low-price “Delivery Fee” for food orders made on its website or mobile app; in reality, however, this marketing message is false because Defendant’s use of the delivery service causes a substantial increase in food prices.

176. Defendant's business practices have misled Plaintiff Ortega and the other members of the California Class and will continue to mislead them in the future.

177. Plaintiff Ortega and other members of the California Class relied on Defendant's misrepresentations about the falsely advertised cost of delivery in choosing to utilize the Chick-fil-A food delivery service in ordering food from Defendant's website or mobile app.

178. By falsely marketing the true costs of food delivery, Defendant deceived Plaintiff Ortega and other members of the California Class into making online food purchases they otherwise would not make,

179. Had Plaintiff Ortega and other members of the California Class known the truth of the delivery service fee, *i.e.*, that Chick-fil-A's hidden food markups were in all reality "delivery fees," he would have chosen another method for receiving food from Chick-fil-A or ordered food from another provider.

180. As a direct and proximate result of Defendant's unfair, fraudulent, and unlawful practices, Plaintiff Ortega and other members of the California Class suffered and will continue to suffer actual damages. Defendant's fraudulent conduct is ongoing and present a continuing threat to Plaintiff Ortega and other members of the California Class that they will be deceived into ordering food for delivery under the false belief that delivery was \$3.99.

181. As a result of its unfair, fraudulent, and unlawful conduct, Chick-fil-A has been unjustly enriched and should be required to disgorge its unjust profits and make restitution to Plaintiff Ortega and other members of the California Class pursuant to Cal. Bus. & Prof. Code § 17203 and 17204.

SEVENTH CLAIM FOR RELIEF
Violation of California's Consumer Legal Remedies Act ("CLRA")
Cal. Civ. Code § 1750, *et seq.*
(Asserted on Behalf of Ortega and the California Class)

182. Plaintiffs repeat and reallege the above allegations as if fully set forth herein.

183. This cause of action is brought pursuant to the Consumers Legal Remedies Act (CLRA), California Civil Code § 1750, *et seq.* Plaintiff Ortega and each member of the California Class are “consumers” as defined by California Civil Code § 1761(d). Defendant’s sale of food products to consumers for delivery ordered through its website and mobile app were “transactions” within the meaning of California Civil Code § 1761(e). Defendant’s online delivery service utilized by Plaintiff Ortega and other members of the California Class is a “service” within the meaning of California Civil Code § 1761(b). The food products purchased by Plaintiff Ortega and other members of the California Class are “goods” within the meaning of California Civil Code § 1761(a).

184. Defendant violated and continues to violate the CLRA by engaging in the following practices proscribed by California Civil Code § 1770(a) in transactions with Plaintiff Ortega and other members of the California Class which were intended to result in, and did result in, the sale of Chick-fil-A food orders for delivery:

- a. “Representing that goods or services have . . . characteristics . . . that they do not have” (a)(5); and
- b. “Advertising goods or services with intent not to sell them as advertised” (a)(9).

185. Specifically, Chick-fil-A advertises to customers that use of its delivery service is a flat, low-price charge, such as \$3.99, but this is false because Defendant imposes hidden delivery charges to consumers by secretly marking up food items applied exclusively for delivery orders by 25-30%.

186. At no time does Chick-fil-A disclose the true nature of its delivery fee to

consumers; instead, it repeatedly conceals and misrepresents this material information at several steps of the transaction process.

187. Pursuant to § 1782(a) of the CLRA, Plaintiff Ortega's counsel notified Defendant in writing by certified mail of the particular violations of §1770 of the CLRA and demanded that it rectify the problems associated with the actions detailed above and give notice to all affected consumers of Defendant's intent to act. If Defendant fails to respond to Plaintiff Ortega's letter or agree to rectify the problems associated with the actions detailed above and give notice to all affected consumers within 30 days of the date of written notice, as proscribed by §1782, Plaintiffs will move to amend his Complaint to pursue claims for actual, punitive and statutory damages, as appropriate against Defendant. As to this cause of action, at this time, Plaintiffs seeks only injunctive relief.

EIGHTH CLAIM FOR RELIEF

**Violation of California's False Advertising Law ("FAL")
Cal. Bus. & Prof. Code §§ 17500, *et seq.*
(Asserted on Behalf of Ortega and the California Class)**

188. Plaintiffs re-allege and incorporate the preceding allegations by reference as if fully set forth herein.

189. California's False Advertising Law ("FAL"), Cal. Bus. & Prof. Code § 17500, states that "[i]t is unlawful for any ... corporation ... with intent ... to dispose of ... personal property ... to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated ... from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement...which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading...."

190. Defendant's material misrepresentations and omissions alleged herein violate Bus. & Prof. Code § 17500.

191. Defendant knew or should have known that its misrepresentations and omissions were false, deceptive, and misleading.

192. Pursuant to Business & Professions Code §§ 17203 and 17500, Plaintiff Ortega and other members of the California Class, on behalf of the general public, seek an order of this Court enjoining Defendant from continuing to engage, use, or employ their practice of misrepresenting its delivery fees.

193. Further, Plaintiff Ortega and other members of the California Class seek an order requiring Defendant to disclose such misrepresentations, and additionally request an order awarding Plaintiff Ortega and other members of the California Class restitution of the money wrongfully acquired by Defendant by means of said misrepresentations.

194. Additionally, Plaintiff Ortega and other members of the California Class seek an order requiring Defendant to pay attorneys' fees pursuant to Cal. Civ. Code § 1021.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of themselves and the Classes seek judgment in an amount to be determined at trial, as follows:

- (a) For an order enjoining Defendant from continuing the unlawful practices set forth above;
- (b) For declaratory and injunctive relief as set forth above;
- (c) For an order requiring Defendant to disgorge and make restitution of all monies it acquired by means of the unlawful practices set forth above;
- (d) For compensatory damages according to proof;

- (e) For reasonable attorneys' fees and costs of suit;
- (f) For pre-judgment interest; and
- (g) Awarding such other and further relief as this Court deems just, proper and equitable.

JURY DEMAND

Plaintiffs hereby demand a jury trial on all claims so triable.

Dated: September 29, 2023

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