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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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KENDALL GHEE and YANG SHEN, *on behalf of  
themselves and all others similarly situated,*

Plaintiffs,

Case No.:

v.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

APPLE-METRO, INC., a New York corporation;  
42nd APPLE, LLC d/b/a/ APPLEBEE'S  
NEIGHBORHOOD GRILL & BAR, a New York  
corporation; and BROADWAY APPLE, LLC  
d/b/a/ APPLEBEE'S NEIGHBORHOOD GRILL  
& BAR, a New York corporation,

Defendants.

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Plaintiffs, KENDALL GHEE and YANG SHEN (hereinafter, "Plaintiffs"), on behalf of themselves and all others similarly situated in the United States of America, by and through their undersigned counsel, hereby bring this Class Action Complaint against Defendants, APPLE-METRO, INC., 42nd APPLE, LLC and BROADWAY APPLE, LLC (collectively, Defendants) and allege the following upon their own knowledge, or where they lack personal knowledge, upon information and belief, including the investigation of their counsel:

### **NATURE OF THE ACTION**

1. Defendant APPLE-METRO, INC. operates a chain of approximately 37 Applebee's Restaurants in New York City and the surrounding area. These restaurants are subject to operational standards established by Defendants, including pricing. Defendants 42nd APPLE, LLC and BROADWAY APPLE, LLC operate the 42<sup>nd</sup> Street and 50<sup>th</sup> Street Applebee's Restaurants (respectively the "Times Square location" and the "Broadway location", collectively the "Restaurants") in central Manhattan. These two restaurants engage in deceptive pricing practices. Consumers dining at the Restaurants expect that when they purchase and consume menu items listed at some advertised price, they will be billed the advertised amount, but not more. However, Defendants impose on all patrons a hidden mandatory surcharge above the advertised price for all food and drink. Defendant 42nd APPLE, LLC charges an 18% surcharge and BROADWAY APPLE, LLC charges a 15% surcharge.

2. In addition to paying the purchase price for goods, American consumers are accustomed to tipping restaurant staff for good service by voluntarily paying them a percentage of their total bill as a gratuity or "tip," with 99% of American consumers reporting that they typically give tips when dining at full-service restaurants.<sup>1</sup> Different people choose to tip different amounts, with 42% typically giving 15% or less, 44% typically giving 16-20%, and 13% typically giving more than 21%.<sup>2</sup> While there are differences from person to person

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<sup>1</sup> See **EXHIBIT A**, an American Express restaurant industry newsletter reporting the results of a survey of 500 consumers representative of the U.S. population. <http://technomic.tn00.com/technomic/newsletters/images/MarketBriefingAugust2014.pdf> (last accessed March 17, 2017).

<sup>2</sup> *Ibid.*

regarding average given tip amount, etiquette guides all recommend that gratuity be voluntary and based on the quality of service received.<sup>3</sup>

3. Tax law recognizes that tipping is optional and that consumers tip different amounts. The IRS generally requires large restaurants to pay employment taxes on the assumption that customers tipped at least 8% of their total bill on average per year.<sup>4</sup> This takes into account the variability among gratuities collected by different servers. This average also takes into account that during some months, total gratuities could be lower than 8% of the bill for a server, while during other months, total gratuities could be higher. The legal structure of the United States tax code is in harmony with the habits of American consumers as well as the recommendations of etiquette guides: consumers tip their servers by paying them an extra amount based on their total bill and quality of service. This tip can be low or zero in some cases, but in the long run every server can expect to earn on average at least 8% of the cost of the food and drink they served as tips.

4. Notwithstanding this culture of voluntary tipping, Defendants require customers to pay an unadvertised mandatory surcharge in addition to the listed price of food and drink. This surcharge is hidden from consumers until after they have already eaten and are paying their bill at tabletop point-of-sale terminals. Consumers at the Times Square location who attempt to pay a

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<sup>3</sup> See e.g. money.cnn.com, (15% of bill (excl. tax) for adequate service; 20% for very good service; no less than 10% for poor service) <http://money.cnn.com/pf/features/lists/tipping/> (last accessed March 17, 2017); Tripadvisor.com (For waiters at sit-down restaurants ... the tip should be calculated as a percentage of your total bill as follows: 10% usually means you aren't totally happy, 15% usually means all was acceptable, 20% for excellent, over 20% for outstanding. 15-20 percent is considered standard in most communities); <https://www.tripadvisor.com/Travel-g191-s606/United-States:Tipping.And.Etiquette.html> (last accessed March 17, 2017); money.usnews.com (Tipping at a restaurant. If you're really pleased with your service, most experts will tell you to tip 20 percent. If you think the service was bad but not terrible, put down 10 percent. If you think the service was abominable, you can feel good about not leaving a tip) <http://money.usnews.com/money/personal-finance/articles/2013/05/16/your-ultimate-tipping-guide> (last accessed March 17, 2017).

<sup>4</sup> See **EXHIBIT B**, IRS Tax Topic 761 and IRS Form 8027.

gratuity of less than 18% by credit card are not allowed to do so; consumers at the Broadway location who attempt to pay a gratuity of less than 15% by credit card are not allowed to do so.

5. This surcharge is misleadingly called a “tip” on the customer’s receipt and electronic bill, falsely indicating that the payment is optional. Customers who voluntarily pay the surcharge, or who pay more than the surcharge, are misled into believing that the entire amount is a discretionary gratuity, when only money in excess of the surcharge amount is actually discretionary. The 18% surcharge at the Times Square location and the 15% surcharge at the Broadway location are compulsory. Customers who try to pay less than the surcharge amount will be unable to close out their bill, and are forced to pay a supposedly discretionary gratuity of 18% (at the Times Square location) or 15% (at the Broadway location).

6. Defendants violate laws against false advertising by advertising prices that are literally false because they exclude the mandatory surcharge. Defendants fail to provide notice in any form to all consumers that they are subject to the mandatory surcharge until after they have eaten and are legally required to pay their bill. At neither of the restaurants are there any postings at the locations or on the menus that would provide customers notice of the mandatory surcharge.

7. As part of their extensive and comprehensive nationwide marketing campaign, Defendants actively promote their restaurants as high-value by advertising relatively low food and drink prices. The price representations are central to the marketing of the Defendants’ restaurants. *See EXHIBIT C*. Because Defendants charge an additional 18% (at the Times Square location) or 15% (at the Broadway location) above the advertised price, all of these advertisements contain false, deceptive and misleading statements regarding price.

8. By making false, deceptive and misleading statements to consumers, Defendants have deceived hundreds of thousands of consumers into purchasing food and drink at a low



advertised price, after which Defendants billed consumers a higher price once the food and drink had been consumed.

9. Defendants falsely itemized customers' bills by calling their surcharge a "tip," disguising the fact that the surcharge is a mandatory surcharge and is not optional.

10. At all material times hereto, Plaintiffs and other consumers have been deceived into spending significant amounts of money on food and drink as a surcharge in excess of the advertised price. Plaintiffs and other members of the Classes (as defined below), have been harmed by Defendants' fraudulent misrepresentations on the price of its food and drink.

11. As shown in **EXHIBIT D**, representations about food and drink prices are clearly and prominently displayed on the Restaurant menus, where they cannot be missed by consumers. There is no warning that a surcharge is mandatory in addition to the price of the food and drink.

12. As shown in **EXHIBIT E** (the receipt from Plaintiff GHEE'S first visit to the Times Square location), **EXHIBIT F** (the receipt from Plaintiff GHEE'S second visit to the Times Square location), and **EXHIBIT G** (the receipt from Plaintiff SHEN'S visit to the Broadway location), the surcharge is mischaracterized on customer receipts and electronic bills as a "tip." The fact that the restaurant does not permit customers to pay less than the bill plus the surcharge is hidden from consumers. If consumers knew that the surcharge was mandatory and not a mere suggested tip amount, they would not have been willing to pay the unfair surcharge because they did not receive prior notice of such an obligation. As such, the surcharge is a one-sided assessment that is not legally enforceable because there was never any meeting of the minds to establish a binding contract, so all such amounts must be reimbursed to all consumers.

13. This lawsuit seeks redress for the deceptive manner in which Defendants have marketed and continue to market its food and drink to the general public. Plaintiffs bring this

proposed consumer class action individually and on behalf of all other persons similarly situated, who, from the applicable limitations period of six years up to and including the present (“Class Period”), purchased Applebee’s® food and/or drink for consumption and not resale at the Restaurants and paid by credit or debit card.

14. Plaintiffs seek to secure, among other things, equitable and declaratory relief, restitution, and alternative damages, for similarly situated United States purchasers, against Defendants, for violating New York statutes that are designed to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising. These statutes include New York’s Deceptive Acts or Practices Law, Gen. Bus. Law § 349, and New York’s False Advertising Law, Gen. Bus. Law § 350.

15. Defendants have deceived Plaintiffs and other consumers nationwide by misrepresenting the pricing of their menu items and failing to provide any notice of the mandatory 18% surcharge.

16. Plaintiffs expressly do not seek to contest or enforce any state law that has requirements beyond those required by federal laws or regulations.

### **JURISDICTION AND VENUE**

17. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, because this is a class action, as defined by 28 U.S.C § 1332(d)(1)(B), in which a member of the putative class is a citizen of a different state than Defendants, and the amount in controversy exceeds the sum or value of \$5,000,000, excluding interest and costs. *See* 28 U.S.C. § 1332(d)(2).

18. The Court has jurisdiction over the federal claims alleged herein pursuant to 28 U.S.C. § 1331 because they arise under the laws of the United States.

19. The Court has jurisdiction over the state law claims because they form part of the same case or controversy under Article III of the United States Constitution.

20. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to 28 U.S.C § 1332 because the matter in controversy exceeds the sum or value of \$75,000 and is between citizens of different states.

21. This Court has personal jurisdiction over Plaintiff because Plaintiff submits to the Court's jurisdiction. This Court has personal jurisdiction over Defendants, pursuant to New York Statute N.Y. CVP. Law § 302, because it conducts substantial business in this District, some of the actions giving rise to the Complaint took place in this District, and some of Plaintiff's claims arise out of Defendants operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state; committing a tortious act in this state; and causing injury to person or property in this state arising out of Defendants' acts and omissions outside this state. Additionally, this court has personal jurisdiction over Defendants because its food and drink is advertised, marketed, distributed, and sold throughout New York State; Defendants engaged in the wrongdoing alleged in this Complaint throughout New York State; and Defendants have sufficient minimum contacts with New York and/or otherwise have intentionally availed itself of the markets in New York State, rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play and substantial justice. Moreover, Defendants is engaged in substantial and not isolated activity within New York State.

22. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to these claims occurred in this District, the Defendants have caused harm to class members residing in this District, and the Defendants is

residents of this District under 28 U.S.C. 1391(c)(2) because it is subject to personal jurisdiction in this district.

### **PARTIES**

#### ***Plaintiffs***

23. Plaintiff KENDALL GHEE is, and at all times relevant hereto has been, a citizen of the State of New York and resides in Kings County. On October 19, 2016 (the “first visit”), Plaintiff GHEE purchased food at the Applebee's Neighborhood Grill and Bar at 234 W 42nd St, New York, NY 10036 (the “Times Square location”) within the State of New York. The total bill before taxes was approximately \$17.38. Before paying, GHEE was asked to select a tip amount on Defendants’ iPad-like tabletop credit card reader. Plaintiff GHEE did not change the default amount of 18% (approximately \$3.13) because he was satisfied with the food and service and was willing to pay an 18% tip. Plaintiff GHEE was not willing to pay any hidden service charge. Plaintiff GHEE was not informed that the money he had left as a tip was in fact a mandatory hidden service charge of 18%. Plaintiff GHEE reasonably relied on the characterization of his payment as a “tip” when he decided to pay 18% more for his food than the amount listed on the menu.

24. On November 8, 2016 (the “second visit”), Plaintiff GHEE purchased food at the Times Square location. The total bill before taxes was \$12.59. Plaintiff GHEE was induced to purchase the food based on the advertised price and was financially injured as a result of Defendants’ deceptive conduct as alleged herein. At the time he ordered his food, Plaintiff GHEE did not know that Defendants would mandatorily assess 18% of the advertised price of his food to his bill as a mandatory surcharge. Plaintiff GHEE would not have purchased the food had he known that the advertised prices were false and deceptive. Plaintiff GHEE was not satisfied with the food and service and so attempted to leave a smaller tip than 18%, but Defendants’ payment system would

not allow him to pay less than the price of the food plus the 18% service charge. *See* **EXHIBIT H**. Plaintiff GHEE relied on and was reasonably misled by Defendants' mischaracterization of the price of its food in advertisements and on menus. Plaintiff GHEE suffered injury in fact and lost money as a result of Defendants' deceptive, false and misleading practices as described herein. Plaintiff GHEE was not willing to pay any hidden service charge at either of his visits.

25. Plaintiff YANG SHEN is, and at all times relevant hereto has been, a citizen of the State of New Jersey and resides in Essex County. On February 19, 2017, Plaintiff SHEN purchased food at the Applebee's Neighborhood Grill and Bar at 205 W 50th St, New York, NY 10019 (the "Broadway location") within the State of New York. The total bill before taxes was approximately \$17.29. At the time he ordered his food, Plaintiff SHEN did not know that Defendants would mandatorily assess 15% of the advertised price of his food to his bill as a mandatory surcharge. Plaintiff SHEN would not have purchased the food had he known that the advertised prices were false and deceptive. Before paying, SHEN was asked to select a tip amount on Defendants' iPad-like tabletop credit card reader. Plaintiff SHEN attempted to change the default amount to below 15% (approximately \$2.60) because he was not satisfied with the food and service and was not willing to pay a 15% tip. Plaintiff SHEN was not willing to pay any hidden service charge and had not been informed that a service charge would be added to his bill. Plaintiff was unable to close out his bill until he paid the hidden mandatory 15% surcharge. *See* **EXHIBIT I**. Plaintiff SHEN relied on and was reasonably misled by Defendants' mischaracterization of the price of its food in advertisements and on menus. Plaintiff SHEN suffered injury in fact and lost money as a result of Defendants' deceptive, false and misleading practices as described herein.

***Defendants***

26. Upon information and belief, Defendant APPLE-METRO, INC., is a corporation organized under the laws of New York with its headquarters and an address for service of process at Attn: President, 550 Mamaroneck Ave, Harrison, New York, 10528. APPLE-METRO, INC. d/b/a/ APPLEBEE'S NEIGHBORHOOD GRILL & BAR is an Applebee's franchisee and operates approximately 35 Applebee's locations in the New York City area,<sup>5</sup> including the Times Square location at which Plaintiff GHEE was forced to pay an 18% surcharge and the Broadway location at which Plaintiff SHEN was forced to pay a 15% surcharge.<sup>6</sup>

27. Defendant 42nd APPLE, LLC d/b/a/ APPLEBEE'S NEIGHBORHOOD GRILL & BAR is a limited liability corporation organized and existing under the laws of the State of New York with its headquarters and address for service of process at Attn: President, 550 Mamaroneck Ave, Harrison, New York, 10528. Defendant 42nd APPLE, LLC is an Applebee's franchisee and operates an Applebee's restaurant located at 234 W. 42<sup>nd</sup> Street, New York, NY 10036 (the "Times Square location").

28. Defendant BROADWAY APPLE, LLC d/b/a/ APPLEBEE'S NEIGHBORHOOD GRILL & BAR, is a limited liability corporation organized and existing under the laws of the State of New York with its headquarters and address for service of process at Attn: President, 550 Mamaroneck Ave, Harrison, New York, 10528. Defendant BROADWAY APPLE, LLC is an Applebee's franchisee and operates an Applebee's restaurant located at 205 West 50<sup>th</sup> Street, New York, NY 10019 (the "Broadway location").

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<sup>5</sup> <http://www.applemetrorestaurants.com/EN/about/> (last accessed 3/7/16).

<sup>6</sup> [http://www.hoovers.com/company-information/cs/company-profile.APPLE-METRO\\_INC.c5a8eef6550a28af.html?cm\\_ven=Biz\\_Dev&cm\\_cat=Google&cm\\_pla=Free&cm\\_ite=Factsheet](http://www.hoovers.com/company-information/cs/company-profile.APPLE-METRO_INC.c5a8eef6550a28af.html?cm_ven=Biz_Dev&cm_cat=Google&cm_pla=Free&cm_ite=Factsheet) (last accessed 3/7/17).

29. Plaintiffs allege that, at all times relevant herein, the subsidiaries, affiliates, and employees of 42nd APPLE, LLC, and BROADWAY APPLE, LLC were the agents, servants and employees of APPLE-METRO, INC., and at all times relevant herein each was acting within the purpose and scope of that agency and employment. Plaintiffs further allege on information and belief that at all times relevant herein, the distributors who delivered and sold food and drink, as well as their respective employees, also were APPLE-METRO, INC.'s agents, servants and employees, and at all times herein, each was acting within the purpose and scope of that agency and employment. In addition, Plaintiffs allege that, in committing the wrongful acts alleged herein, APPLE-METRO, INC., in concert with its subsidiaries, affiliates, and/or other related entities and their respective employees, planned, participated in and furthered a common scheme to induce members of the public to purchase food and drink by means of untrue, misleading, deceptive, and/or fraudulent representations, and that APPLE-METRO, INC., 42nd APPLE, LLC, and BROADWAY APPLE, LLC participated in the making of such representations in that it disseminated those misrepresentations and/or caused them to be disseminated.

30. Whenever reference in this Complaint is made to any act by APPLE-METRO, INC., or its subsidiaries, affiliates, distributors, and other related entities, such allegation shall be deemed to mean that the principals, officers, directors, employees, agents, and/or representatives of APPLE-METRO, INC., committed, knew of, performed, authorized, ratified and/or directed that act or transaction on behalf of APPLE-METRO, INC., while actively engaged in the scope of their duties.

## **FACTUAL ALLEGATIONS**

### **Franchise Restaurants**

31. Defendants operate on a predominately “franchise” model, with individual stores owned by APPLE-METRO, INC. through holding companies. APPLE-METRO, INC. exercises operational control over the Times Square and Broadway locations through its subsidiaries 42nd APPLE, LLC and BROADWAY APPLE, LLC.

32. Upon information and belief, Defendants actively engage in advertising Applebee’s food and drink through advertisements and menus, and such marketing deceives consumers because advertised prices fail to include the mandatory surcharge. Defendants possess and exercise the authority to make changes in the policies and practices at their location and to ensure that the franchisor’s standards and policies are being followed, including its advertising and pricing practices.

### **Defendants’ Mandatory Surcharge was Hidden from Plaintiffs and the Class**

33. Defendants violate laws against consumer fraud and false advertising by advertising prices that are literally false because they exclude the mandatory surcharge. The price representations are central to the marketing of the Defendants’ restaurants. *See EXHIBIT C*. Because Defendants charge an additional mandatory surcharge above the advertised price, all of these advertisements contain false, deceptive and misleading statements. Defendants’ menus reflect those advertised prices, again without prominently displaying a notice that there is a surcharge. *See EXHIBIT D*. Defendants have deceived Plaintiff and the Classes into purchasing food and drink at low advertised prices, after which Defendants billed at a higher price once the food and drink was consumed.

34. Defendants’ deceptive representations and omissions regarding the existence of the surcharge are material in that a reasonable person would attach importance to such



information and would be induced to act upon such information in deciding whether or not to purchase food and drink. Thus, Plaintiffs' and the other Class members' reliance upon Defendant's misleading and deceptive representations may be presumed. The materiality of those representations and omissions also establishes causation between Defendant's conduct and the injuries sustained by Plaintiff and the Classes.

35. Reasonable consumers, such as Plaintiffs and the Classes, rationally expect that when food and drink are advertised at some price and labeled on a menu as being that price, they will be billed that same price after they buy the food.

36. The presence of pricing statements on advertisements and menus that do not take into account the mandatory surcharge makes such advertisements and menus false, misleading and likely to deceive a reasonable consumer.

37. Plaintiffs and the Classes reasonably relied to their detriment on Defendants' false and misleading pricing misrepresentations.

38. Reasonable consumers (including Plaintiffs and the Classes) must and do rely on restaurants such as Defendants' to honestly advertise and list prices, and corporations such as Defendants intend and know that consumers rely upon advertisements and menu labeling statements in making their purchasing decisions. Such reliance by consumers is also eminently reasonable, since companies are prohibited from engaging in deceptive acts or practices in the conduct of any business, trade or commerce under New York State law and the consumer protection laws of every state in the United States and the District of Columbia.

39. While Defendants labeled and advertised their food and drink at one price, Defendants applied a hidden surcharge to all customer bills. The misrepresentation was

significant and material given the emphasis on price and value throughout Defendants' marketing.

**The Surcharge was Disguised as a Tip**

40. Defendants falsely labeled the surcharge as a "tip" on the bills of Plaintiffs and the Classes in an effort to induce Plaintiff and the Classes into paying it. *See* **EXHIBITS E, F, and G**. In fact, the surcharge is not a tip that is voluntarily paid but is a mandatory service charge. Had Plaintiffs and the Classes known that they were being tricked and coerced, they would not have been willing to pay it.

41. Merriam-Webster's Ninth New Collegiate Dictionary defines a "tip" as: "a gift or a sum of money tendered for a service performed or anticipated : GRATUITY." Merriam-Webster's Ninth New Collegiate Dictionary defines a "gratuity" as: "something given voluntarily or beyond obligation usu. in return for or in anticipation of some service; esp : TIP." Webster Ninth New Collegiate Dictionary 345 (9th ed. 1988). To deceive consumers into believing that the surcharge is voluntary, Defendants falsely label it a "tip."

42. In deciding whether or not to pay a voluntary tip, reasonable consumers would consider it important whether they are obligated to pay a mandatory surcharge and whether a merchant had deceptively hidden such surcharge from them. Defendants' deceptive representations and omissions regarding the mandatory nature of the surcharge are material in that a reasonable person would attach importance to such information and would be induced to act upon such information. Thus, Plaintiffs' and the other Class members' reliance upon Defendant's misleading and deceptive representation of the surcharge as a tip may be presumed. The materiality of those representations and omissions also establishes causation between Defendant's conduct and the injuries sustained by Plaintiffs and the Classes.

43. Reasonable consumers, such as Plaintiffs and the Classes, rationally expect that when an item on their bill is labeled as a “tip” it is in fact voluntary and that they may choose to pay it or not pay it. Such consumers might agree to pay an itemized tip listed in their bill when they would not have agreed to pay a hidden surcharge fee. Such consumers only agree to pay the service charge labeled as a “tip” because they believe it to be a tip – i.e. a voluntary gratuity.

44. The presence of the “tip” label on customer’s electronic bills makes such bills false, misleading and likely to deceive a reasonable consumer.

45. Plaintiffs and the Classes reasonably relied to their detriment on Defendants’ false and misleading misrepresentation of the surcharge as a tip.

46. Reasonable consumers (including Plaintiffs and the Classes) must and do rely on restaurants such as Defendants’ to honestly itemize bills, and companies such as Defendants’ intend and know that consumers are frequently willing to pay tips equal to or in excess of 18% (at the Times Square location) or 15% (at the Broadway location), but only if the customers believe that they are choosing the amount they pay. Such reliance by consumers is also eminently reasonable, since companies are prohibited from engaging in deceptive acts or practices in the conduct of any business, trade or commerce under New York state law. The misrepresentation was significant and material given consumers’ willingness to pay gratuities and consumers’ unwillingness to be tricking into paying a higher price for food and drink that they had agreed to purchase at a lower price.

47. As a result of Defendants’ deception, consumers – including Plaintiffs and members of the proposed Class – have purchased food and drink relying on the advertised menu price, and then were billed that amount plus a hidden surcharge of 18% (at the Times Square

location) or 15% (at the Broadway location). Plaintiffs and members of the proposed Class then relied on the characterization of the surcharge as a “tip” in ultimately deciding to pay it.

**Plaintiffs Relied on Defendants’ Claims and Were Injured**

48. Within the last twelve months, Plaintiffs were attracted to Applebee’s Neighborhood Grill & Bar because they preferred to consume high-value food and drink at establishments that were relatively low-cost.

49. Plaintiffs believed that the food would be cheaper than similar fare at other restaurants would be, as promised by Defendants’ menu and marketing campaign advertising prices and emphasizing value.

50. On Plaintiff GHEE’S first visit to the Times Square location, he was presented with his bill on Defendants’ iPad-like tabletop credit card reader. Defendants asked GHEE to “SELECT YOUR TIP” in either a custom amount or as a percentage of his bill. Plaintiff GHEE was satisfied with the food and service and GHEE did not change the default tip amount from 18% of his bill (approximately \$3.13). Defendants’ practice is to collect at least 18% above the listed cost of every bill as a mandatory service charge. Upon information and belief, Defendants had this policy during Plaintiff GHEE’s first visit, and disguised the mandatory 18% surcharge as a tip by labeling it a “tip” on GHEE’s bill. Plaintiff GHEE would not have been willing to pay any hidden mandatory service charge, and only paid 18% more than the listed cost of his bill because he thought it was an optional tip.

51. On Plaintiff GHEE’S second visit to the Times Square location, he was again presented with his bill on Defendants’ iPad-like tabletop credit card reader. Plaintiff GHEE was not satisfied with the food or service and attempted to leave a custom amount lower than 18% as a tip. At that time, he learned that Defendants always charge a mandatory 18% service charge

and that he would not be permitted to pay any less. In effect, every item on the menu really cost 18% more than it was advertised at.

52. On Plaintiff SHEN'S visit to the Broadway location, he was presented with his bill on Defendants' iPad-like tabletop credit card reader. Plaintiff SHEN was not satisfied with the food or service and attempted to leave an amount lower than 15% as a tip. At that time, he learned that Defendants always charge a mandatory 15% service charge and that he would not be permitted to pay any less. In effect, every item on the menu really cost 15% more than it was advertised at.

53. Granted that they were not allowed to choose their own tip amount as a consequence of the design of the payment system, Plaintiffs were forced to pay the surcharge – 18% and 15%, respectively.

54. New York has placed requirements on companies that are designed to ensure that the claims they are making about their products to consumers are truthful and accurate.

55. Defendants' labeling and advertising of the food and drink violates New York consumer protection laws against deceptive acts and practices in the conduct of business.

56. Although Defendants marketed their food and drink based on price, they failed to also disclose material information about the cost of the food; the fact that there was a surcharge and that the surcharge as listed on the bill was not optional. These non-disclosures, while at the same time marketing the food based on a listed price excluding the surcharge, were deceptive and likely to mislead a reasonable consumer.

57. Plaintiffs did, and a reasonable consumer would, attach importance to whether Defendants' advertising and billing scheme is deceptive or misleading and therefore unlawful.

58. Plaintiffs did not know, and had no reason to know, that there was a mandatory hidden surcharge.

59. Defendants' prices as listed in advertisements and on menus were a material factor in Plaintiffs' and Class members' decisions to choose to eat at Defendants' restaurants and to purchase the type and quantity of food that they purchased. Relying on Defendants' misleading advertisements and menu, Plaintiffs and Class members believed that they were getting food at a lower price than they ultimately paid. Had Plaintiffs and the Classes known Defendants' food and drink would cost more than promised, they would not have purchased them.

60. Defendants' itemization of the surcharge as a "tip" on customer bills was a material factor in Plaintiffs' and Class members' payment of the surcharge. Relying on Defendants' itemization, Plaintiffs and Class members believed that the surcharge, wrongfully hidden by Defendants, was actually optional because it was ostensibly a tip. Had Plaintiffs and the Classes known Defendants' surcharge was mandatory, they would not have paid it.

61. Defendants' price labeling as alleged herein is deceptive and misleading and was designed to increase sales of food and drink above what it would have been if listed at its true price, including the surcharge. Defendants' misrepresentations are part of its systematic pricing, advertising, and billing practice.

62. At the point of sale, Plaintiffs and Class members did not know, and had no reason to know, that the food and drink were deceptively priced as set forth herein, and would not have bought the food and drink had they known the truth about them.

63. As a result of Defendants' misrepresentations, Plaintiffs and thousands of others throughout the United States purchased food and drink from Defendants' restaurants.

64. Plaintiffs and the Classes (defined below) have been damaged by Defendants' deceptive and unfair conduct in that they purchased food with false and deceptive labeling and paid a surcharge above the advertised menu prices they had agreed to pay.

**CLASS ACTION ALLEGATIONS**

65. Plaintiffs seek relief in their individual capacity and as representatives of all others who are similarly situated. Pursuant to Rule 23(a), 23(b)(2) and/or 23(b)(3) of the Federal Rules of Civil Procedure, Plaintiffs seeks certification of the following classes:

i. The Nationwide Class

All persons in the United States who have made retail purchases by credit or debit card of Applebee's food and drink with deceptive menu prices at the Restaurants, as set forth herein, during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

ii. The New York Class

All persons in New York who have made retail purchases by credit or debit card of Applebee's food and drink with deceptive menu prices at the Restaurants, as set forth herein, during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

66. Excluded from these Classes are current and former officers and directors of Defendants, members of the immediate families of the officers and directors of Defendants, Defendants' legal representatives, heirs, successors, assigns, and any entity in which they have or have had a controlling interest. Also excluded from the Class is the judicial officer to whom this lawsuit is assigned.

67. Plaintiffs reserve the right to revise the Class definitions based on facts learned in the course of litigating this matter.

68. Certification of Plaintiffs' claims for class-wide treatment is appropriate because Plaintiff can prove the elements of his claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

69. **Numerosity:** Each Class is so numerous that individual joinder of all class members is impracticable. The precise number of members of the Classes is unknown to Plaintiffs, but it is clear that the number greatly exceeds the number that would make joinder practicable, particularly given Defendants' comprehensive nationwide distribution and sales network. Members of the Classes may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

70. **Commonality and Predominance:** This action involves common questions of law and fact, which predominate over any questions affecting individual members of the Classes. All members of the Classes were exposed to Defendants' deceptive and misleading prices because those claims were next to every menu item. Furthermore, common questions of law or fact include:

- a. whether prices on advertisements and menus were false and misleading because they excluded the surcharge;
- b. whether labeling the surcharge a "tip" was false and misleading;
- c. whether Defendants engaged in a marketing practice intended to deceive consumers;
- d. whether Defendants deprived Plaintiffs and the other members of the Classes of the benefit of the bargain because Defendants billed more than was promised;
- e. whether Defendants have been unjustly enriched at the expense of Plaintiffs and other Class members by their misconduct;
- f. whether Defendants must disgorge any and all profits it has made as a result of their misconduct;



g. whether Defendants should be barred from marketing its prices without including all surcharges and/or fees, however characterized; and

h. whether Defendants should be barred from mislabeling surcharges as “tips.”

71. Defendants engaged in a common course of conduct in contravention of the laws sought to be enforced by Plaintiffs individually and on behalf of the other members of the Classes. Similar or identical statutory and common law violations, business practices, and injuries are involved. Individual questions, if any, pale by comparison, in both quality and quantity, to the numerous common questions that dominate this action. Moreover, the common questions will yield common answers.

72. **Typicality:** Plaintiffs’ claims are typical of those of the members of the Classes because Plaintiffs and the other Class members sustained damages arising out of the same wrongful conduct, as detailed herein. Plaintiffs patronized Defendants’ restaurants and sustained similar injuries arising out of Defendants’ conduct in violation of New York State law. Defendants’ unlawful, unfair and fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. The injuries of the Classes were caused directly by Defendants’ wrongful misconduct. In addition, the factual underpinning of Defendants’ misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all members of the Classes. Plaintiffs’ claims arise from the same practices and course of conduct that give rise to the claims of the members of the Classes and are based on the same legal theories.

73. **Adequacy:** Plaintiff will fairly and adequately represent and pursue the interests of the Class and has retained competent counsel experienced in prosecuting nationwide class actions. Plaintiffs understand the nature of his claims herein, have no disqualifying conditions,

and will vigorously represent the interests of the Classes. Neither Plaintiffs nor Plaintiffs' counsel have any interests that conflict with or are antagonistic to the interests of the Classes. Plaintiffs have retained highly competent and experienced class action attorneys to represent their interests and those of the Classes. Plaintiffs and Plaintiffs' counsel have the necessary resources to adequately and vigorously litigate this class action, and Plaintiffs and counsel are aware of their fiduciary responsibilities to the Classes and will diligently discharge those duties by vigorously seeking the maximum possible recovery for the members of the Classes.

74. **Superiority:** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and the other members of the Classes are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendants, so it would be impracticable for members of the Classes to individually seek redress for Defendants' wrongful conduct. Even if the members of the Classes could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Given the similar nature of the members of the Classes' claims and the absence of material or dispositive differences in the statute and common laws upon which the claims are based when such claims are grouped as proposed above and below, the Nationwide Class and New York Class will be easily managed by the Court and the parties.

75. **Declaratory and Injunctive Relief:** The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(2) are met, as Defendants have acted or refused to act on grounds generally applicable to the Classes, thereby making appropriate final injunctive or equitable relief with respect to the Classes as a whole.

76. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Classes predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

77. Defendants' conduct is generally applicable to the Classes as a whole and Plaintiffs seek, *inter alia*, equitable remedies with respect to the Classes as a whole. As such, Defendants' systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

78. Further, in the alternative, the Classes may be maintained as class actions with respect to particular issues, pursuant to Fed.R.Civ.P. 23(c)(4).

## **CAUSES OF ACTION**

### **COUNT I**

#### **INJUNCTION FOR VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349 (DECEPTIVE AND UNFAIR TRADE PRACTICES ACT) (Brought on Behalf of the New York Class)**

79. Plaintiffs GHEE and SHEN reallege and incorporate by reference the allegations contained in all preceding paragraphs of this Complaint and further allege as follows:

80. Plaintiffs GHEE and SHEN bring this claim on behalf of themselves and the other members of the New York Class for an injunction for violations of New York's Deceptive Acts or Practices Law, Gen. Bus. Law § 349 ("NY GBL").

81. NY GBL § 349 provides that “deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are . . . unlawful.”

82. To establish a claim under NY GBL § 349, it is not necessary to prove justifiable reliance. (“To the extent that the Appellate Division order imposed a reliance requirement on General Business Law [§] 349 ... claims, it was error. Justifiable reliance by the plaintiff is not an element of the statutory claim.” *Koch v. Acker, Merrall & Condit Co.*, 18 N.Y.3d 940, 941 (N.Y. App. Div. 2012) (internal citations omitted)).

83. Any person who has been injured by reason of any violation of the NY GBL may bring an action in their own name to enjoin such unlawful act or practice, an action to recover their actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the Defendants willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

84. The practices employed by Defendants, whereby Defendants advertised, promoted, and marketed that their food and drink cost the listed price and then characterized their hidden surcharge as a “tip” was unfair, deceptive, and misleading to Plaintiffs and other New York Class members and in violation of NY GBL § 349 for, inter alia, one or more of the following reasons:

- a. Defendants engaged in deceptive, unfair and unconscionable commercial practices in failing to reveal material facts and information about the prices of their food and drink and nature of their surcharge, which did, or tended to, mislead Plaintiffs and the New York Class about facts that could not reasonably be known by them;

- b. Defendants knowingly and falsely represented and advertised lower prices for their food and drink than their food and drink really had with an intent to cause Plaintiffs and members of the New York Class to believe that the price was no more than the listed price;
  - c. Defendants knowingly and falsely represented that their hidden surcharge was a “tip” with an intent to cause Plaintiffs and members of the New York Class to believe that the surcharge amount would go to the serving staff;
  - d. Defendants failed to reveal facts that were material to the transactions in light of representations of fact made in a positive manner;
  - e. Defendants caused Plaintiffs and the New York Class to suffer a probability of confusion and a misunderstanding of legal rights, obligations and/or remedies by and through their conduct;
  - f. Defendants failed to reveal material facts to Plaintiffs and the New York Class with the intent that Plaintiff and the New York Class members rely upon the omission;
  - g. Defendants made material representations and statements of fact to Plaintiffs and the New York Class that resulted in Plaintiffs and the New York Class reasonably believing the represented or suggested state of affairs to be other than what they actually were; and
  - h. Defendants intended that Plaintiffs and the members of the New York Class rely on their misrepresentations and omissions, so that Plaintiff and New York Class members would purchase the food and drink and pay the surcharge.
85. The foregoing deceptive acts and practices were directed at customers.

86. Under all of the circumstances, Defendants' conduct in employing these unfair and deceptive trade practices was malicious, willful, wanton and outrageous such as to shock the conscience of the community and warrant the imposition of punitive damages.

87. Defendants' actions impact the public interest because Plaintiff and members of the New York Class were injured in exactly the same way as thousands of others who purchased food and drink as a result of and pursuant to Defendants' generalized course of deception.

88. Plaintiffs GHEE and SHEN and other Class members seek to enjoin such unlawful, deceptive acts and practices as described above. Each of the Class members will be irreparably harmed unless the unlawful, deceptive actions of Defendants are enjoined in that Defendants will continue to falsely and misleadingly advertise its prices excluding the surcharge and Defendants will continue to falsely and misleadingly trick consumers into paying it by characterizing it as a "tip." Plaintiffs GHEE and SHEN believed Defendants' representation that the food and drink would cost the amount advertised. Plaintiffs believed Defendants' representation that the surcharge was a voluntary "tip." Plaintiffs would not have purchased the food and drink had he known that there was a hidden surcharge. Plaintiffs would not have paid the surcharge had he known that it was not a tip.

89. Plaintiffs GHEE and SHEN were injured in fact and lost money as a result of Defendants' conduct of improperly describing the pricing of food and drink and nature of the surcharge as described herein. Plaintiffs had intended to purchase food and drink at the listed price, but were then charged a hidden surcharge. The price they ultimately paid was consequently more than the value of the food and drink he received.

90. Plaintiffs GHEE and SHEN and New York Class members seek declaratory relief, a judgment enjoining Defendants' from continuing to disseminate their false and misleading

statements and awarding costs of this proceeding and attorneys' fees, as provided by NY GBL § 349, and other relief allowable under NY GBL § 349.

## **COUNT II**

### **DAMAGES FOR VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349 (DECEPTIVE AND UNFAIR TRADE PRACTICES ACT) (Brought on Behalf of the New York Class)**

91. Plaintiffs GHEE and SHEN reallege and incorporates by reference the allegations contained in all preceding paragraphs and further allege as follows:

92. Plaintiffs GHEE and SHEN bring this claim individually and on behalf of the other members of the Class for violations of NY GBL § 349.

93. Any person who has been injured by reason of any violation of NY GBL § 349 may bring an action in her own name to enjoin such unlawful act or practice, an action to recover her actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the Defendants willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

94. By the acts and conduct alleged herein, Defendants committed unfair or deceptive acts and practices by misbranding their food and drink as cheaper than it is.

95. The practices employed by Defendants, whereby Defendants advertised, promoted, and marketed that its food and drink cost some listed price but then charged a higher price including an additional mandatory surcharge, were unfair, deceptive, and misleading to Plaintiffs and other New York Class members and in violation of NY GBL § 349.

96. The practices employed by Defendants, whereby Defendants characterized their hidden mandatory surcharge as a "tip" were unfair, deceptive, and misleading to Plaintiffs and other New York Class members and in violation of NY GBL § 349.

97. The foregoing deceptive acts and practices were directed at consumers.

98. Plaintiffs GHEE and SHEN and the other Class members were injured in fact and lost money as a result of Defendants' deceptive and unfair trade acts. Specifically, Plaintiffs lost money as a result of Defendants' conduct of improperly describing the pricing of food and drink and the nature of the surcharge as described herein. Plaintiffs had intended to purchase food and drink at the listed price, but were then charged a hidden surcharge. The price they ultimately paid was consequently more than the value of the food and drink they received. In order for Plaintiffs and New York Class members to be made whole, they need to receive restitution and disgorgement of all monies obtained by means of Defendants' unlawful conduct, interest, and attorneys' fees and costs, and other relief allowable under NY GBL § 349.

### **COUNT III**

#### **DAMAGES FOR VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 350 (FALSE ADVERTISING UNLAWFUL) (Brought on Behalf of the New York Class)**

99. Plaintiffs GHEE and SHEN reallege and incorporates by reference the allegations contained in all preceding paragraphs and further alleges as follows:

100. Plaintiffs GHEE and SHEN brings this claim individually, as well as on behalf of members of the Nationwide Class or, alternatively, the New York class, for violations of NY GBL § 350.

101. Defendants have been and/or is engaged in the “conduct of ... business, trade or commerce” within the meaning of N.Y. Gen. Bus. Law § 350.

102. New York Gen. Bus. Law § 350 makes unlawful “[f]alse advertising in the conduct of any business, trade or commerce.” False advertising includes “advertising, including labeling, of a commodity ... if such advertising is misleading in a material respect,” taking into



account “the extent to which the advertising fails to reveal facts material in light of ... representations [made] with respect to the commodity ...” N.Y. Gen. Bus. Law § 350-a(1).

103. Defendants caused to be made or disseminated through New York, through advertising, marketing and other publications, statements that were untrue or misleading, and that were known, or which by the exercise of reasonable care should have been known to Defendants, to be untrue and misleading to consumers and New York Class.

104. Defendants’ affirmative misrepresentations and misrepresentations by way of omission, as described in this Complaint, were material and substantially uniform in content, presentation, and impact upon consumers at large. Consumers purchasing the food and drink were and continue to be exposed to Defendants’ material misrepresentations.

105. Defendants have violated N.Y. Gen. Bus. Law § 350 because the misrepresentations and/or omissions regarding prices of food and drink, as set forth above, were material and likely to deceive a reasonable consumer.

106. Plaintiffs GHEE and SHEN and members of the New York Class have suffered an injury, including the loss of money or property, as a result of Defendants’ false and misleading advertising. In purchasing Defendants’ food and drink, Plaintiffs and members of the New York Class relied on the misrepresentations and/or omissions relating to the price of the food and drink. Those representations were false and/or misleading because the food and drink have a hidden surcharge. Had the New York Class known this, they would not have purchased food and drink at Defendants’ restaurants and would not have paid the surcharge.

107. Plaintiffs GHEE and SHEN and members of the New York Class have suffered an injury, including the loss of money or property, as a result of Defendants’ false and misleading advertising. In paying Defendants’ hidden surcharge, Plaintiffs and members of the

New York Class relied on the misrepresentations and/or omissions relating to the nature of the surcharge. Those representations were false and/or misleading because the surcharge is not really a “tip” because it is mandatory. Had the New York Class known this, they would have insisted on not paying the hidden service charge.

108. Pursuant to N.Y. Gen. Bus. Law § 350-e, Plaintiffs GHEE and SHEN and members of the New York Class seek monetary damages (including actual damages and minimum, punitive, or treble and/or statutory damages pursuant to GBL § 350-a(1)), injunctive relief, restitution and disgorgement of all monies obtained by means of Defendants' unlawful conduct, interest, and attorneys' fees and costs.

#### **COUNT IV**

##### **BREACH OF CONTRACT**

**(Brought on Behalf of the Nationwide Class or, Alternatively, the New York Class)**

109. Plaintiffs GHEE and SHEN reallege and incorporate by reference the allegations contained in all preceding paragraphs and further allege as follows:

110. Plaintiffs GHEE and SHEN bring this claim individually, as well as on behalf of members of the Nationwide Class or, alternatively, the New York class, for breach of contract.

111. Plaintiffs' orders from Defendants' menu manifested assent to pay the price listed on the menu, but no more, for the ordered food and drink.

112. After the food and drink were consumed, Defendants breached the contract by charging Plaintiff and the Classes a flat surcharge in excess of the listed prices. This surcharge is added to all orders.

113. Plaintiffs would not have purchased the food and drink had they known of the true price. Plaintiffs were damaged in an amount equal to the difference between the listed price that they agreed to pay and the price plus surcharge that they were forced to pay.

114. As a result of the breach of these warranties, Plaintiff GHEE and the New York Class members are entitled to legal and equitable relief including damages, costs, attorneys' fees, rescission, and/or other relief as deemed appropriate by the Court.

## **COUNT V**

### **DECLATORY RELIEF IS WARRANTED UNDER 28 U.S. CODE § 2201 (Brought on Behalf of the Nationwide Class or, Alternatively, the New York Class)**

115. Plaintiffs GHEE and SHEN reallege and incorporates by reference the allegations contained in all preceding paragraphs and further allege as follows:

116. Plaintiffs GHEE and SHEN bring this claim individually, as well as on behalf of members of the Nationwide Class or, alternatively, the New York class.

117. There is an actual controversy between Plaintiffs, the Class members, and Defendants concerning the propriety of Defendants' labeling and advertising of their food and drink prices and Defendants' labeling of their surcharges, as specified herein.

118. Pursuant to 28 U.S.C. § 2201, this Court may "declare the rights and legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought."

119. Plaintiffs are interested parties who seek a declaration of their rights and legal relations with respect to Defendants with regard to the assessment of Defendants' surcharges in amounts that are greater than the prices specified by Defendants, which Defendants applied to Plaintiffs' bills without providing adequate prior notice of the surcharge.

## **COUNT VI**

### **NEGLIGENT MISREPRESENTATION (Brought on Behalf of the Nationwide Class or, Alternatively, the New York Class)**

120. Plaintiffs GHEE and SHEN reallege and incorporates by reference the allegations contained in all preceding paragraphs and further allege as follows:

121. Plaintiffs GHEE and SHEN bring this claim individually, as well as on behalf of members of the Nationwide Class or, alternatively, the New York class, for negligent misrepresentation.

122. In the alternative, Plaintiffs GHEE and SHEN bring this claim individually as well as on behalf of the New York Class under New York law.

123. Defendants, directly or through its agents and employees, made false representations, concealments, and nondisclosures to Plaintiffs and members of the Class. Defendants have negligently represented that food and drink from their restaurants cost the advertised and listed prices when, in fact, there is a hidden surcharge on all food and drink. Defendants have negligently represented that the surcharge is a tip.

124. In making the representations of fact to Plaintiffs GHEE and SHEN and members of the Classes described herein, Defendants have failed to fulfill their duties to disclose the material facts set forth above. The direct and proximate cause of this failure to disclose was Defendants' negligence and carelessness.

125. Defendants, in making the misrepresentations and omissions, and in doing the acts alleged above, knew or reasonably should have known that the representations were not true. Defendants made and intended the misrepresentation to induce the reliance of Plaintiffs GHEE and SHEN and members of the Classes.

126. Plaintiffs GHEE and SHEN and members of the Classes relied upon these false representations and nondisclosures by Defendants when purchasing food and drink at the Restaurants, which reliance was justified and reasonably foreseeable.

127. As a result of Defendants' wrongful conduct, Plaintiff GHEE and members of the Classes have suffered and continue to suffer economic losses and other general and specific

damages, including but not limited to the surcharge they would not otherwise have paid, and any interest that would have been accrued on those monies, all in an amount to be determined according to proof at time of trial.

## **COUNT VII**

### **UNJUST ENRICHMENT**

**(Brought on Behalf of the Nationwide Class or, Alternatively, the New York Class)  
(Pleaded in the Alternative)**

128. Plaintiffs GHEE and SHEN reallege and incorporates by reference the allegations contained in all preceding paragraphs and further allege as follows:

129. Plaintiffs GHEE and SHEN assert this claim in the alternative in the event that the Court concludes that Plaintiffs lack an adequate remedy at law.

130. Plaintiffs GHEE and SHEN bring this claim individually, as well as on behalf of members of the Nationwide Class. Although there are numerous permutations of the elements of the unjust enrichment cause of action in the various states, there are few real differences. In all states, the focus of an unjust enrichment claim is whether the Defendants was unjustly enriched. At the core of each state's law are two fundamental elements – the Defendants received a benefit from the plaintiff and it would be inequitable for the Defendants to retain that benefit without compensating the plaintiff. The focus of the inquiry is the same in each state. Since there is no material conflict relating to the elements of unjust enrichment between the different jurisdictions from which class members will be drawn, New York law may be applied to the claims of the Nationwide Class.

131. In the alternative, Plaintiffs bring this claim individually as well as on behalf of the New York Class under New York law.

132. At all times relevant hereto, Defendants deceptively advertised and listed prices without including an 18% (at the Times Square location) or 15% (at the Broadway

location) surcharge that Defendants added to all consumers' bills. Defendants deceptively labeled the surcharge a "tip" to induce payment.

133. Plaintiffs GHEE and SHEN and members of the Classes reasonably relied on Defendants' price representations, and in reasonable reliance thereon, purchased food and drink.

134. Plaintiffs GHEE and SHEN and members of the Classes reasonably relied on Defendants' representation of the surcharge as a "tip" and so did not realize they had been charged a surcharge. In reasonable reliance on Defendants' representation, Plaintiff and the Classes paid the amount of the surcharge believing that it was a tip.

135. Plaintiffs GHEE and SHEN and members of the Classes conferred upon Defendants non-gratuitous payments due to Defendants' deceptive labeling, advertising, and marketing. Plaintiffs GHEE and SHEN and members of the Classes would not have purchased food and drink from Defendants if they had known that Defendants would charge a surcharge of 18% in excess of menu prices. Defendants accepted or retained the non-gratuitous benefits conferred by Plaintiffs and members of the Classes, with full knowledge and awareness that, as a result of Defendants' deception, Plaintiffs and members of the Classes were not receiving food and drink at the prices that had been represented by Defendants and reasonable consumers would have expected.

136. Defendants have been unjustly enriched in retaining the revenues derived from purchases of Defendants' food and drink by Plaintiffs GHEE and SHEN and members of the Classes, which retention under these circumstances is unjust and inequitable because Defendants misrepresented the prices of their food and drink and then misrepresented the beneficiaries of the hidden surcharge, which caused injuries to Plaintiffs and members of the

Classes because they were not receiving food and drink at the prices that had been represented by Defendants and reasonable consumers would have expected.

137. Retaining the non-gratuitous benefits conferred upon Defendants by Plaintiffs GHEE and SHEN and members of the Classes under these circumstances made Defendants' retention of the non-gratuitous benefits unjust and inequitable. Thus, Defendants must pay restitution to Plaintiff GHEE and members of the Classes for its unjust enrichment, as ordered by the Court.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of all other similarly situated, seek judgment against Defendants, as follows:

- a. An Order that this action be maintained as a class action and appointing Plaintiffs as representatives of the Nationwide Class and/or the New York Class;
- b. An Order appointing the undersigned attorney as class counsel in this action;
- c. Restitution and disgorgement of all amounts obtained by Defendants as a result of its misconduct, together with interest thereon from the date of payment, to the victims of such violations;
- d. All recoverable compensatory and other damages sustained by Plaintiffs and the Classes;
- e. Actual and/or statutory damages for injuries suffered by Plaintiffs and the Classes and in the maximum amount permitted by applicable law;
- f. An order (i) requiring Defendants to immediately cease its wrongful conduct as set forth in this Complaint; (ii) enjoining Defendants from continuing to misrepresent and conceal material information and conduct business via the unlawful, unfair and deceptive business acts and practices complained of herein;

- (iii) ordering Defendants to engage in a corrective advertising campaign; and (iv) requiring Defendants to reimburse Plaintiffs and all members of the Classes the surcharge they paid;
- g. Statutory pre-judgment and post-judgment interest on any amounts;
- h. Payment of reasonable attorneys' fees and costs; and
- i. Such other relief as the Court may deem just and proper.

**DEMAND FOR TRIAL BY JURY**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs, on behalf of themselves and all others similarly situated, demands a trial by jury on all questions of fact raised by the Complaint.

Dated: March 20, 2017

Respectfully submitted,

**LEE LITIGATION GROUP, PLLC**

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By: /s/ C.K. Lee  
C.K. Lee



# EXHIBIT A



# MARKET briefing

Tracking and Interpreting Restaurant Trends

August 2014

Nutrition Information	2
Trend Barometer	2
Diner Loyalty in the Digital Age	4

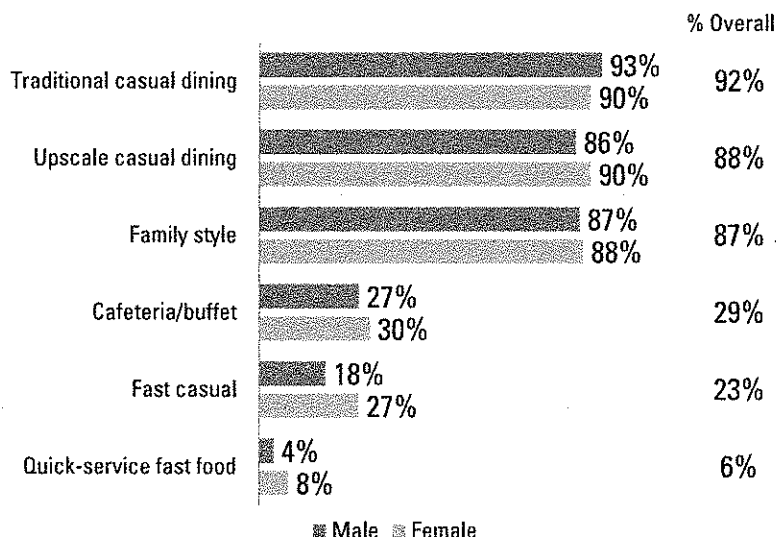
## The Tipping Point: How Gratuities Are Changing

As service models have changed—with FSRs installing menu ordering tablets at tables or experimenting with express lunch service, and LSRs adding full-service-style amenities like table runners and bar service—consumers may not be drawing such a clear line as they once did between full-service restaurants (where tipping is usually expected) and limited-service restaurants (where there is no such expectation).

We asked consumers where they feel they are “supposed to” tip for a dine-in meal. Fully 92% said one should tip at a traditional casual-dining restaurant; almost as many identified upscale casual-dining restaurants and family-style eateries as places where tips are expected. For all three sub-sectors of full service, the proportion of consumers saying tipping was an expected practice was up from 2011, when we last asked the question. (Three years ago, 85% said customers should tip in upscale casual-dining restaurants; 84% said the same for traditional casual dining and 80% for family-style restaurants.) The proportion of consumers saying that diners should tip at cafeterias and buffets is also up slightly from three years ago (29% vs. 27% in 2011) but the number identifying fast-casual or higher-end fast-food restaurants as tipworthy remains the same (23%).

Women are more likely to say customers should tip in upscale casual-dining restaurants and cafeterias or buffets, while men are more likely to say the same about traditional casual-dining establishments. Gender discrepancies are more pronounced for limited-service subsectors, with women far more likely to believe diners should tip in fast-casual eateries (27% of women vs. 18% of men) or even in quick-service restaurants (8% of women vs. 4% of men).

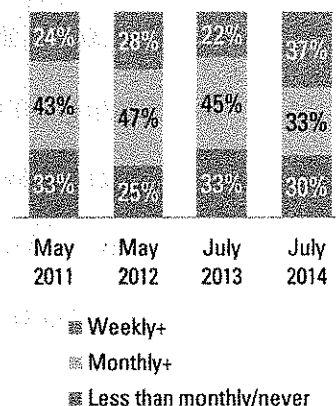
### At what types of restaurants do you feel you are supposed to tip?



## PREPARED FOODS TREND BAROMETER

Restaurants used to assume their competition was other restaurants, but retailers' improved prepared-foods departments are offering more in the way of new, fresh, exciting foods. Their recent efforts seem to be paying off; consumers report using prepared ready-to-eat or ready-to-heat foods more frequently than in past years, with 37% now saying they pick up an item weekly or more often (compared to 22% last year). Three out of 10 consumers say they rarely or never purchase foodservice items from supermarkets, down from one-third a year ago.

### How often do you purchase ready-to-eat foods from a supermarket/retail store?



Editor's note: Look for up-to-date metrics that shed light on key industry trends in each month's MarketBriefing. For comparison, you can find past Trend Barometer metrics online at: [www.technomic.com/MB](http://www.technomic.com/MB)

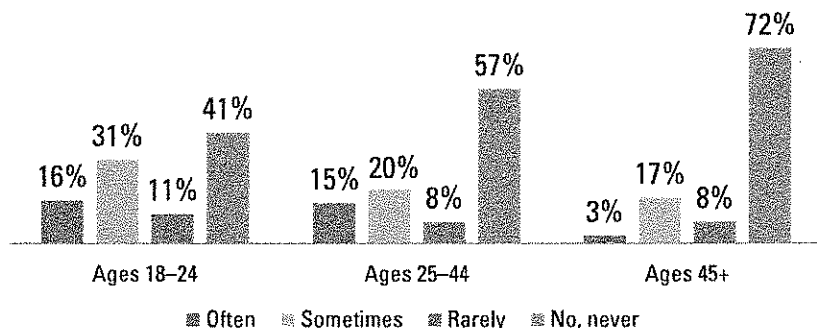
# MARKET briefing

TECHNOMIC

August 2014

Tipping expectations in FSRs have sometimes gotten part of the blame for consumers' gradual move away from full service and toward more patronage of limited-service restaurants. Overall, 37% of consumers admit that they do, on occasion, gravitate to a limited-service restaurant to avoid a tip—either often (9%), sometimes (20%) or rarely (8%). However, tip avoidance as a motive for choosing an LSR is concentrated among younger adults; among those age 45 and up, only two out of 10 say they often or sometimes choose an LSR over an FSR to avoid having to tip, but many under-25, almost half, say the same.

## Do you ever choose an LSR instead of an FSR at least in part because you don't have to tip?



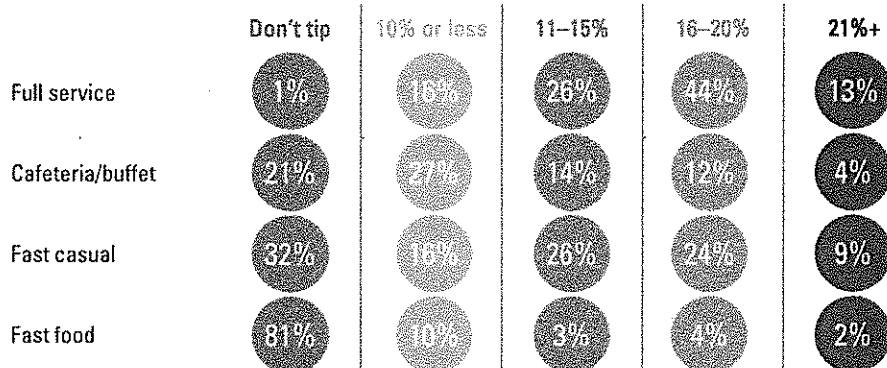
Base: 500

Note: Percentages may not add to 100% due to rounding

## THE PERCENTAGES: TIPS BY RESTAURANT TYPE

Whether or not they feel a tip is expected of them, 99% of consumers say they do tip their server for a full-service restaurant meal, and 57% tip more than 15%. Almost eight out of 10 also tip at least part of the time when dining at a cafeteria or buffet (where diners pick up their own food but staff members refill drinks and bus tables)—though their tips in these establishments are typically smaller than at full-service restaurants, with almost half of tips 10% or less. Two-thirds of respondents also report tipping at fast-casual restaurants; there, tips are most likely to be in the 10%-15% range. Tipping remains rare in fast-food restaurants, but two out of 10 respondents say they have tipped in such places.

## How much do you tip when you dine in at each type of restaurant?



Base: 496 (full service), 459 (cafeteria/buffet), 480 (higher-end fast food) and 487 (fast food) customers who dine in at each type of restaurant

## HOW TIPPING BEHAVIORS HAVE CHANGED

Close to a quarter of consumers report having increased their tipping level at full-service eateries in the past two years. Of the minority of consumers who tip at fast-food restaurants, three out of 10 say they have either increased their tipping level or begun tipping for the first time. Among tippers at fast-casual restaurants, 22% say they have either stepped up the amount or started tipping since 2012. Diners are least likely to have changed their practices at cafeterias and buffets.

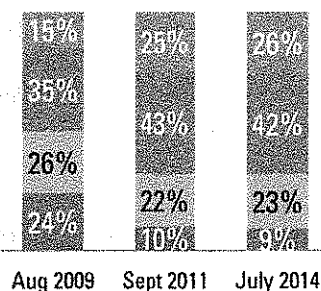
## NUTRITION INFORMATION TREND BAROMETER

The proliferation of nutrition information on restaurant menus and menu boards has been meant to help consumers make better, more informed food choices when dining out, but so far, evidence about whether diners are either noticing or heeding the information provided has been very mixed.

In our survey, 64% of those polled said they have noted nutrition information on menus or menu boards; of these diners, 68% said the information typically has at least some influence on what they order.

Three years ago, 69% of respondents reported having noticed calories or other nutrition information on menus or menu boards; the proportion of this group who said they took this information into consideration when ordering was the same as today. However, both the number of consumers who had noticed nutrition information and the proportion acting on the information are higher than they were five years ago, in 2009.

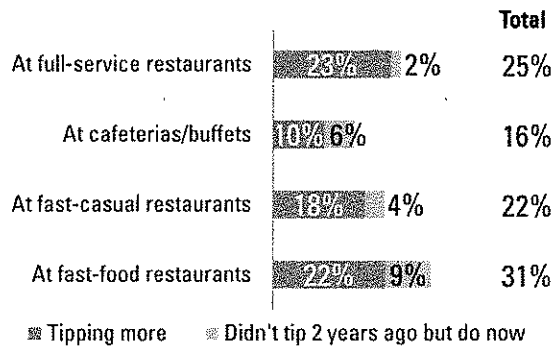
## How much has nutrition data on the menu/menu board affected what you order?



Base: 241 (2009), 343 (2011) and 321 (2014) consumers who have noticed nutrition data on menus/menu boards



## Are you tipping more now than you did two years ago?



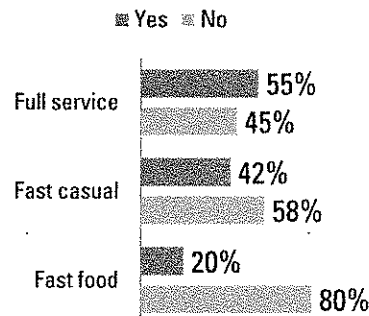
Base: 490 (full service), 262 (cafeteria/buffet), 326 (higher-end fast food) and 92 (fast food) customers who tip when dining in that type of restaurant

## TIPPING FOR TAKEOUT AND DELIVERY

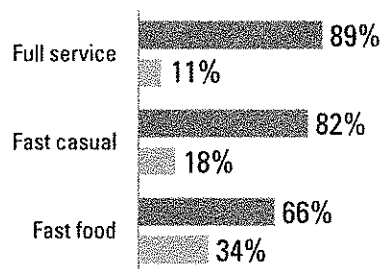
Besides choosing a limited-service spot rather than a full-service restaurant, another way patrons can avoid a tip is by ordering a takeaway meal rather than dining in. Yet the majority who order takeout from full-service restaurants report that they may leave a gratuity when picking up their meal. Four out of 10 would add a tip when paying for takeout food at a fast-casual restaurant, and two out of 10 would do so at a fast-food restaurant.

A delivery meal is another matter, since it could be argued that the delivery runner exerts just as much effort to reach the customer's home or office as a waiter or waitress would to serve a dine-in meal. Of consumers who order meals to be delivered from full-service restaurants, nine out of 10 tip the delivery person. For delivery from a fast-casual restaurant, more than eight out of 10 would add a tip to the bill, and two-thirds would do the same for fast-food delivery.

## Do you tip when you order...



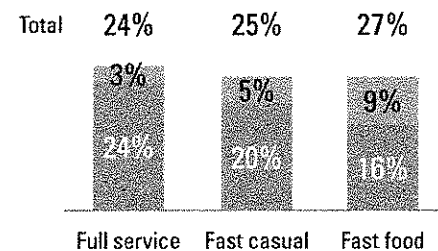
Base: 436 (full service), 448 (higher-end fast food) and 474 (fast food) customers who order takeout



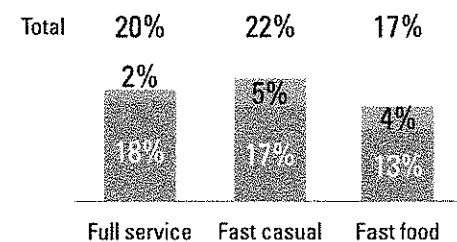
Base: 374 (full service), 371 (higher-end fast food) and 385 (fast food) customers who order delivery

## Are you tipping more now than you did two years ago for...

■ Tipping more ■ Didn't tip 2 years ago but do now



Base: 240 (full service), 188 (higher-end fast food) and 94 (fast food) customers who tip for takeout



Base: 332 (full service), 304 (higher-end fast food) and 256 (fast food) customers who tip for delivery

The graphic (previous page) also shows that a good proportion of carryout and delivery customers say they have increased their tips or begun tipping for the first time. The numbers are higher for takeout, where tips have not traditionally been expected, with about a quarter of takeout customers saying they are tipping more or have begun tipping. But for delivery orders as well, about two out of 10 patrons have boosted their tipping rate or taken up the practice of tipping.

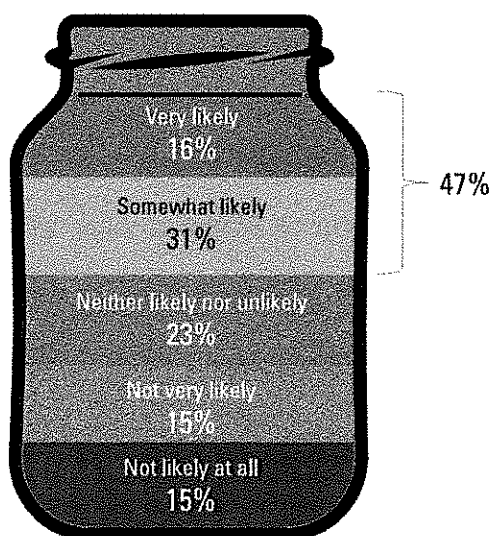
### WHY SOME DINERS HAVE BOOSTED THEIR TIPS

A poll showing that a good proportion of consumers have increased tips or begun tipping in certain types of restaurants raises an obvious follow-up question: why? When we asked these consumers the reasons for their behavior, the most common answer given was that they had become more aware of how well or poorly restaurant staff are paid (44%). Beyond a focus on the restaurant industry in particular, 22% said working people in general have it harder than they once did. In addition to feeling more sensitive to the needs of workers, 15% of respondents said they have more money to spend now than two years ago and choose to spend some of it on tips.

### THE COUNTER JAR: CONVENIENCE OR IRRITANT?

The easiest way for limited-service restaurants to collect tips from generous customers is via a collection jar or box on the counter. Almost half of consumers report that they are somewhat or very likely to leave money in the tip jar.

If a counter-service restaurant has a tip jar on the counter, how likely are you to deposit a tip?



Base: 500

But is the tip jar really a convenience for customers—or a turnoff? Consumers who don't habitually plink coins into the tip jar say they don't believe they should have to tip where there is no table service; that tips are necessary only in full service, where the gratuity represents a big part of the server's compensation; or that they shouldn't feel pressured to pay extra to fast-food restaurant employees who are merely fulfilling the job requirements.

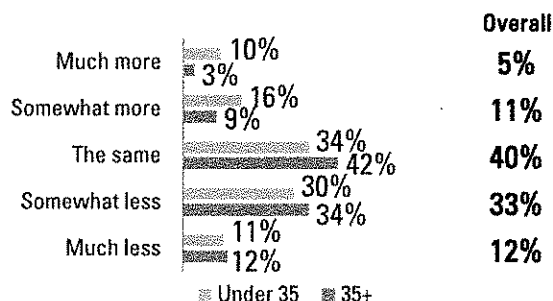
### TABLETS AT THE TABLE: THE FUTURE OF FULL-SERVICE TIPPING

Tipping customs may be changing in full-service restaurants, too, thanks to the rapid inroads being made by a new technology: tabletop iPads or other tablets used by customers to browse the menu, place their order and even settle their bill. In restaurants that have installed tabletop tablets—including Applebee's, Chili's and Buffalo Wild Wings units—servers are still on hand to refill drinks, fulfill customer requests and bus tables. With the server's role being both transformed and reduced, how will tipping evolve?

While 40% of consumers overall say they would pay the same tip in a tablet-equipped restaurant that they would have paid if the server had taken the order and brought the check, 45% would reduce their tip—either a little (33%) or a lot (12%). Younger consumers, however, are different; while 41% would reduce their tip if they ordered and paid by tabletop tablet, and 34% would keep it the same, 26% say they would actually increase their tip. One possible explanation: one-third of Americans got their first job in the foodservice industry, and younger consumers may have more vivid and recent memories of their experiences (or those of their friends) living on restaurant wages.



If you used a tabletop tablet in a restaurant, would you tip the server...



Base: 500

**Bottom line:** Diners are trying to balance their own need for value with a growing appreciation of restaurant employees' workloads and financial needs. Some are voluntarily increasing tips or adding a tip to their check where they never would have before. Operators shouldn't believe that the modest uptick in tipping lowers their responsibility to pay their workers well. Quite the opposite; it suggests growing public attention to restaurant employees.

### BUSINESS-BUILDING IMPLICATIONS:

- The math of tipping can be complicated, so many guests appreciate seeing a bill (whether at the point of purchase, online or via a mobile payment app) that includes suggested tip amounts. If you offer multiple options (such as the choice of 15% or 20% for a full-service restaurant, or the opportunity to select 10% or 15% at a cafeteria/buffet), customers are less likely to feel pressured to default to the amount suggested.
- At a time when dining deals, coupons and Groupons are abundant, it's important to gently remind customers that a tip should be calculated off of the un-subsidized price of a meal, and not the discounted price. One way to accomplish this may be to automatically print a note to this effect on all checks. This is a topic that no server should have to broach directly with the customer.
- Limited-service operators who are thinking of placing a tip jar on the counter should proceed with caution; a jar can garner a little cash for staff members, but it can also cause a backlash from consumers irritated about being "nickel and dimed" when they make a purchase. Some LSRs, including units of Jersey Mike's Subs, offer automatic tip suggestions at the bottom of receipts. And Starbucks' new enhancements to its iPhone app include a feature allowing customers to digitally tip their barista via mobile phone.

## Diner Loyalty in the Digital Age

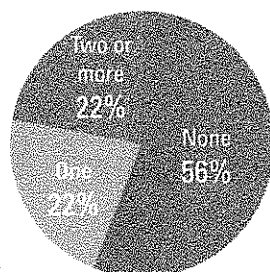
The digital revolution is leading to tremendous changes in the restaurant industry, and one of the hottest areas of innovation is loyalty programs. Consumers—especially younger generations—demand technology-enabled speed and convenience in everything they do, including ordering and paying for restaurant meals. Beyond that, they have a hunger to belong. They want to align themselves with brands that reflect their lifestyles and values—and they want to be rewarded for doing so.

Today, 44% of consumers participate in loyalty/rewards programs at limited-service restaurants; half of them report affiliation with one such program, while the other half are registered in programs with multiple brands. The most frequently mentioned brands are Domino's Pizza, Dunkin' Donuts, Panera, Starbucks and Subway.

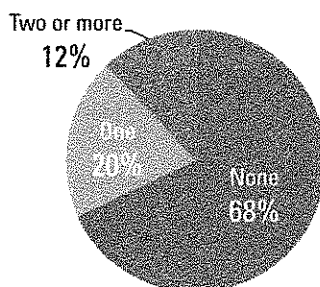
In addition, one-third of diners have signed up for a loyalty program with at least one full-service restaurant. These respondents were most likely to have signed up at Applebee's, Chili's, Olive Garden and/or TGI Friday's.

How many loyalty programs do you participate in...

At limited-service restaurants?



At full-service restaurants?



Base: 500

# MARKET briefing

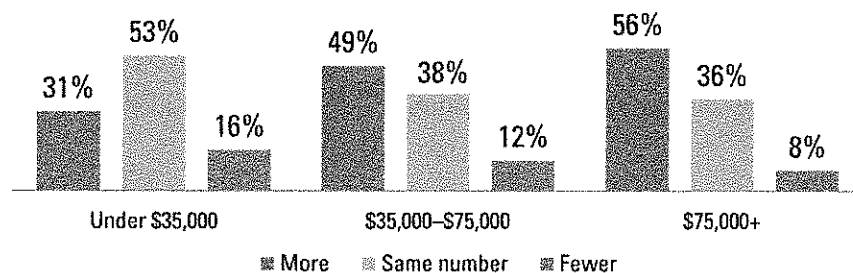
TECHNOMIC

August 2014

Not quite half of consumers (47%) report that they participate in more restaurant rewards programs than they did two years ago, while just 12% have cut back. However, affluent consumers are far more likely than others to say they've signed up for more loyalty programs over the past two years, in line with their heavier usage of restaurants in general.

## Compared to two years ago, do you participate in more or fewer restaurant loyalty programs?

By annual household income



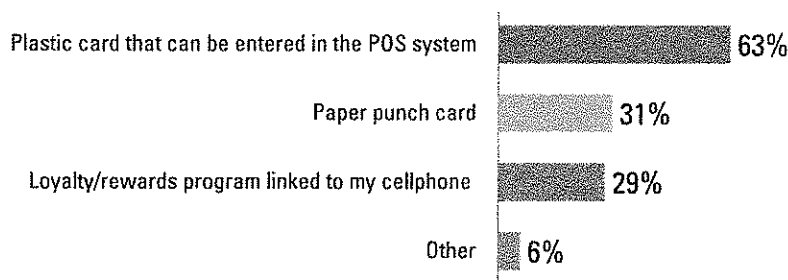
Base: 264 consumers who participate in at least one restaurant loyalty/rewards program

## LOYALTY PROGRAMS: THE MECHANICS

Even in 2014, only three out of 10 loyalty-program participants are linked to one or more restaurant rewards programs via their smartphone. More than six out of 10 have a plastic loyalty card or cards that can be swiped at the point of purchase. Three out of 10 carry at least one old-fashioned paper punch card that offers a free or discounted item after a certain number of purchases. Other respondents volunteered that they are registered with a rewards program with a keychain fob, via their phone number (which can be entered at point of purchase) or through an online ordering system that recognizes them. Obviously, many consumers are involved in various restaurant rewards programs via multiple methods.

## What types of restaurant loyalty/rewards programs do you participate in?

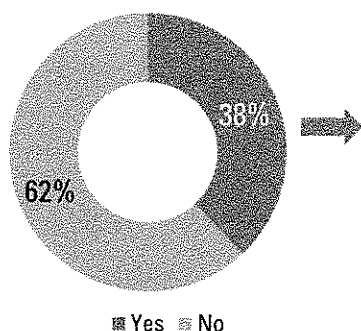
Please select all that apply.



Base: 264 consumers who participate in at least one restaurant loyalty/rewards program

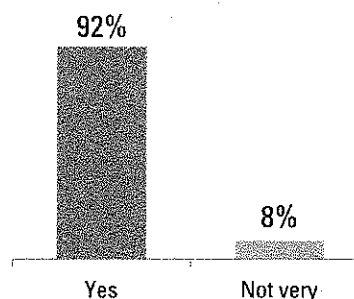
One of the major enhancements to loyalty programs we've seen in the past two years is the proliferation of rewards linked to payment methods—such as via a smartphone app linked to the user's credit or debit card, or a plastic loyalty card that's also a declining-value card usable for purchases in that restaurant. Not quite four out of 10 consumers report that they are participants in at least one payment-linked program. These linked loyalty programs are likely the wave of the future, given that fully 92% of those who participate say that the payment link makes the rewards program more useful to them.

## Do you participate in any loyalty/rewards programs linked to a payment option?



Base: 264 consumers who participate in at least one restaurant loyalty/rewards program

## Does this link make the program more useful to you?



Base: 101 consumers who participate in a restaurant loyalty/rewards program linked to a payment option



# MARKET briefing

**TECHNOMIC**

August 2014

## DO LOYALTY PROGRAMS REALLY LEAD TO LOYALTY?

Eight out of 10 participants in restaurant rewards programs affirm that they're more likely to frequent a restaurant where they're recognized as a loyal patron. And regardless of whether they currently participate in any loyalty programs, nine out of 10 consumers say they'd be likely to sign up for a new program inaugurated by a restaurant that was already a favorite of theirs. Of these enthusiasts, 94% say that after joining the new rewards club, they would likely patronize that restaurant even more often going forward.

**Are you more likely to visit a restaurant where you participate in a loyalty program?**



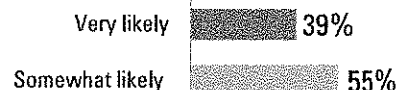
Base: 264 consumers who participate in at least one restaurant loyalty/rewards program

**If a favorite restaurant that didn't have a loyalty program added one, how likely would you be to sign up?**



Base: 500

**After signing up, how likely would you be to visit the restaurant more often?**



Base: 452 consumers who would be at least somewhat likely to sign up for a loyalty program if a favorite restaurant started one

## THE DOWNSIDE OF REWARDS PROGRAMS

While these results show that diner enthusiasm for rewards programs is widespread, it's far from universal. Two-thirds of consumers say they'd likely turn down the chance to join a restaurant loyalty program if there were a joining fee, and almost half would take a pass if they felt the rewards weren't worth the hassle of signing up. Others say they might bypass a loyalty program because of concerns that their data might be hacked (43%), shared with other businesses (37%) or acquired by a government agency (33%). Some fret about too many emails (33%) or too many apps on their smartphone (27%).

**Bottom line:** Loyalty programs are an increasingly powerful tool for restaurants to build frequency and check size. What's more, consumers are coming to expect that the restaurants they patronize offer a rewards system. Restaurants that delay implementation of a loyalty program are leaving money on the table.

## BUSINESS-BUILDING IMPLICATIONS

- While global chains are leaders in loyalty programs, it's easier than ever for emerging chains, multiconcept operators and independent restaurants to establish or update loyalty programs (and other aspects of customer relationship management) with help from a provider like Givex, Punch or Paydiant. Restaurateurs looking for a rewards-program partner can check out this year's National Restaurant Association Show exhibitors at: <http://nrashow.restaurant.org/NRA2014/Public/Exhibitors.aspx?Index=All>
- Companies that already have a modern loyalty program should re-evaluate it periodically to make sure they are keeping up with changing technology and evolving consumer demands. For instance, Panera's new Panera 2.0 initiative now gives patrons the option to store customized orders digitally through the MyPanera loyalty program.
- Your best customers want to feel that they're special and part of the action. Reward loyalty members with frequent coupons and special deals, exclusive chances to sample and comment on new menu items, and other members-only perks. For example, Mama Fu's Asian House debuted a limited-time Black Market Menu of special dishes available only to members of its Funatics Club rewards program; the chain plans to release a new seasonal Black Market Menu for insiders every April and October.

*Editor's note:* Except where otherwise noted, source of data is a periodic overnight survey of 500 consumers representative of the U.S. population, conducted via the Internet by Technomic, Inc. in July 2014. Margin of error  $\pm 4.4\%$ .

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To find out about more American Express services to help you grow your business, go to [www.americanexpress.com/restaurant](http://www.americanexpress.com/restaurant).





# EXHIBIT B

Form <b>8027</b> Department of the Treasury Internal Revenue Service	<b>Employer's Annual Information Return of Tip Income and Allocated Tips</b> ▶ See the separate instructions. ▶ Information about Form 8027 and its separate instructions is available at <a href="http://www.irs.gov/form8027">www.irs.gov/form8027</a> .	OMB No. 1545-0714 <div style="font-size: 2em; font-weight: bold;">2016</div>
Check if: Amended Return <input type="checkbox"/> Final Return <input type="checkbox"/>	Name of establishment	Employer identification number
	Number and street (see instructions)	Type of establishment (check only one box) <input type="checkbox"/> 1 Evening meals only <input type="checkbox"/> 2 Evening and other meals <input type="checkbox"/> 3 Meals other than evening meals <input type="checkbox"/> 4 Alcoholic beverages
	City or town, state, and ZIP code	
Employer's name (name as shown on Form 941)		Establishment number (see instructions)
Number and street (P.O. box, if applicable)		Apt. or suite no.
City, state, and ZIP code (if a foreign address, see instructions)		

Does this establishment accept credit cards, debit cards, or other charges? ☐ Yes (lines 1 and 2 **must** be completed) ☐ No

1 Total charged tips for calendar year 2016 . . . . .	1		
2 Total charge receipts showing charged tips (see instructions) . . . . .	2		
3 Total amount of service charges of less than 10% paid as wages to employees . . . . .	3		
4a Total tips reported by indirectly tipped employees . . . . .	4a		
b Total tips reported by directly tipped employees . . . . .	4b		
<b>Note:</b> Complete the <b>Employer's Optional Worksheet for Tipped Employees</b> in the instructions to determine potential unreported tips of your employees.			
c Total tips reported (add lines 4a and 4b) . . . . .	4c		
5 Gross receipts from food and beverages (not less than line 2—see instructions) . . . . .	5		
6 Multiply line 5 by 8% (0.08) or the lower rate shown here ▶ _____ granted by the IRS. If you use a lower rate, attach a copy of the IRS determination letter to this return . . . . .	6		
<b>Note:</b> If you have allocated tips using other than the calendar year (semimonthly, biweekly, quarterly, etc.), mark an "X" on line 6 and enter the amount of allocated tips from your records on line 7.			
7 Allocation of tips. If line 6 is more than line 4c, enter the excess here . . . . . ▶ This amount must be allocated as tips to tipped employees working in this establishment. Check the box below that shows the method used for the allocation. Show the portion, if any, allocated to each employee in box 8 of the employee's Form W-2.	7		
a Allocation based on hours-worked method (see instructions for restriction) . . . . . <input type="checkbox"/> <b>Note:</b> If you marked the checkbox on line 7a, enter the average number of employee hours worked per business day during the payroll period. (see instructions)			
b Allocation based on gross receipts method . . . . . <input type="checkbox"/>			
c Allocation based on good-faith agreement . . . . . <input type="checkbox"/>			
8 Enter the total number of directly tipped employees at this establishment during 2016 ▶ _____			

Under penalties of perjury, I declare that I have examined this return, including accompanying documents, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature ▶ _____	Title ▶ _____	Date ▶ _____
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For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 49989U **Form 8027** (2016)



#### Topic 761 - Tips – Withholding and Reporting

Employees who receive cash tips of \$20 or more in a calendar month while working for you, are required to report to you the total amount of tips they receive. The employees must give you written reports by the tenth of the following month. Employees who receive tips of less than \$20 in a calendar month are not required to report their tips to you but must report these amounts as income on their tax returns and pay taxes, if any.

Cash tips include tips received directly from customers, tips from other employees under any tip-sharing arrangement, and charged tips (e.g., credit and debit card charges) that you distribute to the employee. Both directly and indirectly tipped employees must report tips received to their employer.

Service charges added to a bill or fixed by the employer that the customer must pay, when paid to an employee, will not constitute a tip but rather constitute non-tip wages. These non-tip wages are subject to social security tax, Medicare tax and federal income tax withholding. In addition, the employer cannot use these non-tip wages when computing the credit available to employers under section 45B of the Internal Revenue Code, because these amounts are not tips. Common examples of service charges (sometimes called auto-gratuities) in service industries are:

- Large Party Charge (restaurant),
- Bottle Service Charge (restaurant and night-club),
- Room Service Charge (hotel and resort),
- Contracted Luggage Assistance Charge (hotel and resort), and
- Mandated Delivery Charge (pizza or other retail deliveries).

#### Recordkeeping

Employees can use Form 4070A, *Employee's Daily Record of Tips*, to keep a daily record of their tips, and Form 4070, *Employee's Report of Tips to Employer*, to report their tips to you. Both forms are available in [Publication 1244](#) (PDF). *Employee's Daily Record of Tips and Report to Employer*. You may also provide other means for your employees to report tips to you, for example, a system for electronic tip reporting by employees.

#### Withholding Taxes

When you receive the tip report from your employee, use it to figure the amount of social security, Medicare and income taxes to withhold for the pay period on both wages and reported tips. You are responsible for paying the employer's portion of the social security and Medicare taxes.

Additional Medicare Tax applies to an individual's Medicare wages that exceed a threshold amount based on the taxpayer's filing status. Employers are responsible for withholding the 0.9% Additional Medicare Tax on an individual's wages paid in excess of \$200,000 in a calendar year, without regard to filing status. An employer is required to begin withholding Additional Medicare Tax in the pay period in which it pays wages in excess of \$200,000 to an employee and continue to withhold it each pay period until the end of the calendar year. There is no employer match for Additional Medicare Tax. For more information, see [Questions and Answers for the Additional Medicare Tax](#).

You collect the employee's portion of these taxes from the wages you pay your employee, or from funds the employee gives you. If you don't have enough money from the employee's wages and funds your employee gives you, withhold taxes in the following order:

1. Social security and Medicare taxes on the employee's wages,
2. Federal income taxes on the employee's wages,
3. State and local taxes imposed on the employee's wages,
4. Social security and Medicare taxes on the employee's reported tips, and
5. Federal income taxes on the employee's reported tips.

For purposes of these ordering rules, the rules for withholding an employee's share of Medicare tax on tips also apply to withholding Additional Medicare Tax on tips.

Withhold any remaining unpaid federal income taxes from the employee's next paycheck, up to the close of the calendar year. However, if you cannot collect all of the employee's social security and Medicare taxes on tips by the 10th day of the month following the month in which your employee reported the tips, you do not have to collect the taxes. Show the uncollected amount as an adjustment on your employment tax return (e.g., [Form 941](#) (PDF), *Employer's QUARTERLY Federal Tax Return*). Also, be sure to report the uncollected social security and Medicare taxes in the appropriate box on the employee's [Form W-2](#) (PDF), *Wage and Tax Statement*, but do not show any uncollected Additional Medicare Tax on Form W-2. You may want to inform your tipped employees that if all the federal income taxes and Additional Medicare Tax on their wages and tips will not be collected by the end of the year, they may need to make estimated tax payments. If an employee does not pay enough tax throughout the year, either through withholding or by making estimated tax payments, the employees may be subject to a penalty for underpayment of estimated taxes. Refer your employees to [Publication 505, Tax Withholding and Estimated Tax](#), for additional information.

When preparing an employee's Form W-2, include wages, tips, and other compensation in the box labeled "Wages, tips, other compensation." Include Medicare wages and tips, and social security tips in their respective boxes. When figuring the employer's liability for federal unemployment tax, add the reported tips to the employee's wages.

#### Allocated Tips

If you operate a large food or beverage establishment, you must file [Form 8027](#) (PDF), *Employer's Annual Information Return of Tip Income and Allocated Tips*, for each calendar year, and may be required to allocate tips to your employees. You operate a large food or beverage establishment if tipping is customary, you provide food or beverages for consumption on the premises, and you normally employ more than ten people who work more than 80 hours on a typical business day. If you have more than one large food or beverage establishment, you must file a separate Form 8027 for each establishment. Form 8027 is due on the last day of February of the next year (or March 31 if you are filing electronically). If you meet the criteria for filing Form 8027 but do not file, the law provides for penalties for each failure to timely file a correct information return, including failure to file electronically, if required.

If the total tips reported by all employees at your large food or beverage establishment are less than 8 percent of your gross receipts (or a lower rate approved by the IRS), you must allocate the difference among the employees who received tips. You may base the allocation on each employee's share of gross receipts or share of total hours worked, or on a written agreement between you and your employees. You are required to report the amount allocated on Form W-2 in the box labeled "Allocated Tips" for each employee to whom you allocated tips. Penalties may be imposed for both failing to file and failing to furnish a correct Form W-2 for each form on which you fail to include this required information. Do not withhold income, social security or Medicare taxes on allocated tips, since your employee did not report these amounts to you.

Whether or not you are required to allocate tips, your employees must continue to report all tips to you, and you must use the amounts they report to figure payroll taxes.

#### **Tip Rate Determination and Education Program**

Employers may participate in the Tip Rate Determination and Education Program. The program primarily consists of voluntary tip compliance agreements developed to improve tip income reporting by helping taxpayers to understand and meet their tip reporting responsibilities. These voluntary tip compliance agreements offer many benefits for the employer and the employee. Two of the agreements are the Tip Rate Determination Agreement (TRDA) and the Tip Reporting Alternative Commitment (TRAC). An agreement, the Gaming Industry Tip Compliance Agreement (GITCA), is available for the Gaming (casino) industry. For more information about GITCA, TRDA, or TRAC agreements, search for Market Segment Understandings (MSU) by using keyword "MSU tips" on [IRS.gov](http://IRS.gov).

#### **Additional Information**

For more information on employer responsibilities, refer to [Publication 15, \(Circular E\), Employer's Tax Guide](#). For more information on employee responsibilities, refer to [Publication 531, Reporting Tip Income](#), and [Reporting Tip Income - The Jill and Jason Show](#). [Revenue Ruling 2012-18, 2012-26 I.R.B. 1032](#) provides guidance for employers and employees in a question and answer format regarding social security and Medicare taxes imposed on tips, including information on the difference between tips and service charges, the reporting of the employer share of social security and Medicare taxes under section 3121(q), and the section 45B credit.

[More Tax Topic Categories](#)

*Page Last Reviewed or Updated: October 10, 2016*

# EXHIBIT C



# EXHIBIT D



## APPETIZERS + BAR SNACKS

- **SHRIMP**  
BBQ spice and sriracha chile lime sauce.  
(690 cal) 14.99
- **CHICKEN WONTON TACOS**  
Spicy chicken-stuffed wonton shells,  
saw and cilantro. (180 cal) 13.89
- **DOUBLE CRUNCH BONE-IN WINGS**  
Choice of honey BBQ, spicy sweet  
Asian chili, classic or hot buffalo or  
chipotle peanut sauce. (1080-1140 cal)  
17.49
- **STEM QUESADILLA**  
Hard-cut USDA Choice top sirloin,  
salsa verde and pico. (1000 cal) 17.29  
Available with chipotle-lime chicken.  $\Delta$   
(970 cal) 16.29
- **MOZZARELLA STICKS** (920 cal) 12.99
- **SWEET POTATO FRITES + DIPS**  
Sriracha chile-lime, BBQ bacon  
ranch and maple-flavored cream  
cheese sauce. (1140 cal) 9.89
- **SALAD**  
House with bacon (210-430 cal) 5.99  
Small Caesar (230 cal) 5.99
- **SOUP**  
Chicken Tortilla (200 cal) 7.39  
French Onion (270 cal) 7.39  
Minestrone (190 cal) 7.39  
Southwest Steak + Black Bean (180 cal)  
7.39

### Select Apps and Bar Snacks available for "Build Your Sampler"

Warning:  $\Delta$  indicates that the sodium (salt) content of this item is higher than the total daily recommended limit (2300 mg). High sodium intake can increase blood pressure and risk of heart disease and stroke.

BLUE MOON<sup>®</sup> is a registered trademark of MillerCoors LLC.

## MIX + MATCH SELECT APPS + BAR SNACKS

3 for \$27.29 (\$40-2899 cal)  $\Delta$

ADDITIONAL ITEMS

\$9.10 EACH\* (180-960 cal)  $\Delta$

## BUILD YOUR SAMPLER

SAMPLER PORTIONS ARE SMALLER SO YOU CAN  
PICK EVEN MORE BOLD FLAVORS

\*Maximum of 5 items per sampler order.



WE'LL TAKE IT  
TO THE CURB

### NEW YORK

50TH & BROADWAY  
New York  
212/262-2400

TIMES SQUARE  
New York  
212/391-7414

Applebee's  
**CARSIDE  
TO GO**<sup>SM</sup>

Get online, use the app  
or call in an order.

\*Curbside not available at these locations

To see additional locations visit us at [applebees.com](http://applebees.com).

AMTMNCS\_NY016

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APPLEBEE'S.COM





## APPETIZERS & BAR SNACKS

- **SHRIMP**  
BBQ spice & sriracha chile lime  
sauce. (680 cal) 14.99
- **GRILLED CHICKEN WONTON TACOS**  
Spicy chicken-stuffed wonton  
shells, slaw & cilantro. (490 cal)  
13.79
- **DOUBLE CRUNCH BONE-IN WINGS**  
Choice of honey BBQ, spicy sweet  
Asian chile, classic & hot buffalo or  
Thai peanut sauce. (1060-1150 cal)  
17.99
- **NEW STEAK QUESADILLA**  
Hand-cut top sirloin, salsa verde,  
pico. (1040 cal) 16.99
- **MOZZARELLA STICKS** (920 cal) 12.99
- **SWEET POTATO FRIES & DIPS**  
Sriracha chile lime, BBQ bacon  
ranch & maple-flavored cream  
cheese sauce. (1070 cal) 9.79
- **THE CLASSIC COMBO**  
Appetizer sampler featuring  
mozzarella sticks, spinach &  
artichoke dip, chicken quesadilla,  
crispy wings. (2630-2710 cal)  
26.49
- **SNIP**  
Chicken, Tortilla (220 cal) 7.29  
French Onion (330 cal) 7.29  
Tomato Basil (180 cal) 7.29  
NEW Southwest Steak & Black Bean  
(180 cal) 7.29
- **NEW SALSA VERDE BEEF MACIOS**  
Spicy queso blanco, cheddar, sour  
cream, pico, fresh jalapeños. (1800 cal)  
17.99
- **BONELESS WINGS**  
Choice of honey BBQ, spicy sweet  
Asian chile, classic & hot buffalo  
sauce. (1060-1160 cal) 17.99
- **SPINACH & ARTICHOKE DIP** (560 cal) 12.49
- **BREW PUB PRETZELS & BEER CHEESE DIP**  
Blue corn White Cheddar craft beer  
cheese dip & Honey Dijon. (1030 cal)  
12.79
- **HOUSEMADE SWEET & SPICY PICKLES** (110 cal)  
5.09
- **CHIPS & SALSA**  
Salsa verde & chipotle lime salsa.  
(500 cal) 8.09
- **NEW CHEESEBURGER EGG ROLLS**  
Ground beef, cheddar, onion, pickles,  
signature sauce. (1000 cal) 15.09
- **SALAD**  
House with bacon (210-430 cal) 5.99  
Small Caesar (240 cal) 5.99

Warning: **▲** indicates that the sodium (salt) content of this item is higher than the total daily recommended amount (2300 mg). High sodium intake can increase blood pressure and risk of heart disease and stroke.

• Select Apps and Bar Snacks available for "Build Your Sampler"

BLUE MOON® is a registered trademark of Miller-Coors LLC

## BUILD YOUR SAMPLER

**MIX & MATCH**  
ANY APPS OR BAR SNACKS

3 FOR \$27.19 (330-780 cal) **▲**

ADDITIONAL ITEMS  
\$8.99 EACH \* (180-540 cal) **▲**

**SAMPLER PORTIONS ARE SMALLER SO YOU CAN  
PICK EVEN MORE BOLD FLAVORS**

\*Maximum of 5 items per sampler or order

**WE'LL TAKE IT  
TO THE CURB**



**NEW YORK**  
**50TH & BROADWAY\***  
New York  
212/262-2400

**TIMES SQUARE\***  
New York  
212/391-7414

**CARSIDE  
TO GO<sup>SM</sup>**

Get online, use the app  
or call in an order.

To see additional locations visit us at [applebees.com](http://applebees.com).  
\*Carside not available at these locations  
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AMTHNCS, JAMB-HCMF

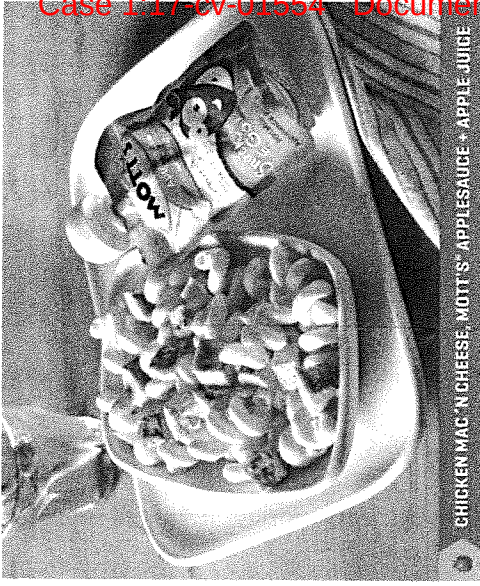
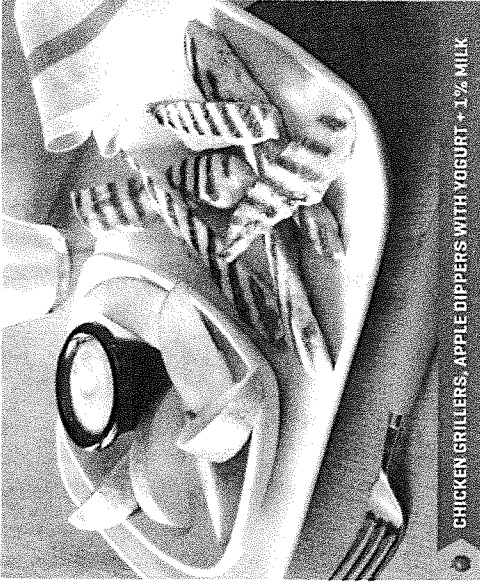




# Applebee's HUNGRY KIDS MENU

— FOR GUESTS 12 AND UNDER —

HOW  
HUNGRY  
ARE YOU?

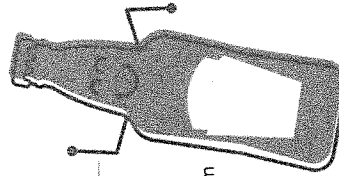


## HUNGRY \$8.99

MEAL + SIDE + DRINK  $\Delta$  (310-1220 cal)

- Chicken Tenders (310 cal)
- Chicken Grillers (190 cal)
- Macaroni & Cheese (310 cal)
- Mini Cheeseburger (370 cal) or Hamburger (340 cal)
- Grilled Cheese Sandwich (640 cal)

Warning:  $\Delta$  indicates that the sodium (salt) content of this item is higher than the total daily recommended limit (2300 mg). High sodium intake can increase blood pressure and risk of heart disease and stroke.



What do you see around the restaurant? Pick something and tell your friend! See how long it takes them to guess what you found!

**ISPY**  
SOMETHING RED!

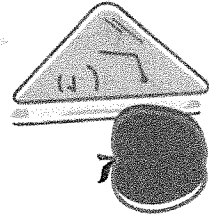
The Kids LiveWell logo is a service mark of the National Restaurant Association. For more information, go to [healthydiningfinder.com/kidslivewell/applebees](http://healthydiningfinder.com/kidslivewell/applebees).



## SUPER HUNGRY \$9.99

MEAL + SIDE + DRINK  $\Delta$  (260-1270 cal)

- Chicken Mac 'n' Cheese (620 cal)
- Two Mini Cheeseburgers (680 cal) or Hamburgers (610 cal)
- Fried Shrimp (230 cal)
- 4 oz. USDA Choice Top Sirloin (140 cal)
- Turkey Burger (390 cal)
- Corn Dog (200 cal)



[applebees.com](http://applebees.com)  
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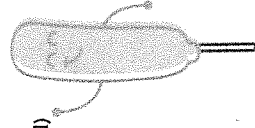
This menu item is part of the Kids LiveWell program and has been verified by the National Restaurant Association and Healthy Dining to meet specific nutritional criteria established by leading health organizations' scientific guidelines.



## GET A SIDE

add an additional side for \$ .99

- Mott's® Applesauce (40 cal)  $\Delta$
- Mozzarella Sticks (350 cal)
- Apple Dippers with Yogurt (90 cal)
- Vanilla Yogurt with Strawberries (100 cal)
- House or Caesar Salad (210-440 cal)
- Steamed Broccoli (30 cal)  $\Delta$
- Garlic Mashed Potatoes (130 cal)
- Fries (430 cal)



## WASH IT DOWN

Free drink refills.

- Apple Juice (90 cal)  $\Delta$
- Orange Tangerine Juice (100 cal)
- Milk or Chocolate Milk (110-150 cal)

## FEELIN' SWEET

- OREO® Cookie Shake (820 cal)  
Chocolate (800 cal) | Strawberry (730 cal) | Vanilla (670 cal) \$4.79
- OREO® Cookie Sundae (440 cal)  
Chocolate (430 cal) | Strawberry (360 cal) \$4.79

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2,000 calories a day is used for general nutrition advice but calorie needs vary. Additional nutrition information available upon request.

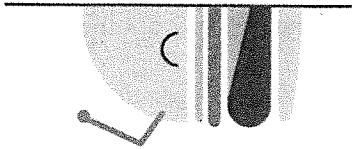


# SUPER-DUPER FUN PAGE

SEEK YOU ON THE COMPLETE SET OF THE FUN ACTIVITIES BELOW!

## ★ COMPLETE THE ★ CHARACTER

Finish drawing the other half of the hamburger. Then color it!



## ★ 20 ★

## QUESTIONS

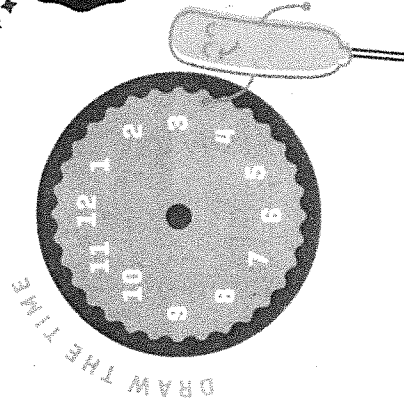
Think of a person, place, or thing. Then the other players ask you up to 20 yes or no questions to try to figure out what you're thinking of. Try to figure out the other player's answer in as few questions as possible!

## ★ THE ★

## COLORING ZONE

HOW MANY  
STARS  
Can You Find?

THERE ARE 27 STARS TOTAL



## ★ CATEGORIES ★

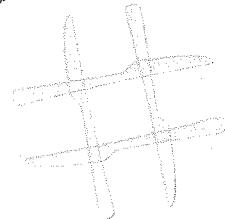
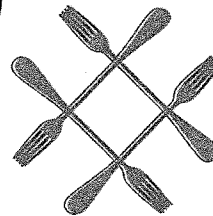
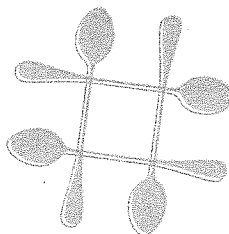
Go around in a circle with your group and name as many things in that category as possible. Whoever can't think of one is "out."

SCHOOL  
YEETOWN

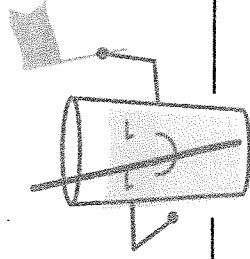
SPORTS  
ANIMALS

## ★ TIC-TAC-TOE ★

2 out of 3  
WINS!



Ideas to draw:  
• Your favorite food  
• Your favorite animal  
• People at the table





**CREATE YOUR OWN COMBINATION**

**\$24.99<sup>†</sup>**  
FOR A LIMITED TIME ONLY!

CHICKEN + FRIED SHRIMP  
shown with steamed broccoli +  
garlic mashed potatoes

**CHOOSE TWO**

6OZ. HAND-CUT USDA CHOICE TOP SIRLOIN* <sup>▲</sup> (230 cal)	HALF RACK DOUBLE-GLAZED BABY BACK RIBS <sup>▲</sup> (430 cal)
TILAPIA (510 cal)	FRIED SHRIMP <sup>▲</sup> (620 cal)
CEDAR GRILLED SALMON <sup>▲</sup> (340 cal)	OR GRILLED SHRIMP SKEWER (162 cal)
GRILLED CHICKEN BREAST <sup>▲</sup> (190 cal)	

**PLUS ANY TWO CLASSIC SIDES**

GARLIC MASHED POTATOES (270 cal)	BAKED POTATO (390 cal)
STEAMED BROCCOLI (90 cal)	CRISPY CHEDDAR BACON POTATOES (380 cal)
CLASSIC FRIES (440 cal)	GARLICKY GREEN BEANS (180 cal)

**OR SELECT FROM OUR SIGNATURE SIDES** (for only 1.99 more each)

FIRE-GRILLED VEGGIES (160 cal)	MAPLE PECAN MASHED SWEET POTATOES (400 cal)
4-CHEESE MAC + CHEESE (510 cal)	SWEET POTATO FRIES (340 cal)

**Applebee's**  
GRILL + BAR

AMETM12-11/16



**\$3**

**NOW FEATURING**

**THE CLASSIC COMBO**

Appetizer sampler featuring two 10-mile sticks, spinach & artichoke dip, chicken quesadilla, boneless wings. (2650-2710 cal) **26.49**



**HAND-CUT BONE-IN PORK CHOP** 

Grilled to perfection over American Oak—served with your choice of two sides (see menu for details) (370 cal) **23.99**



**Warning:**  Indicates that the sodium (salt) content of this item is higher than the total daily recommended limit (2,300 mg). High sodium intake can increase blood pressure and risk of heart disease and stroke.

NOTICE ITEMS MARKED WITH AN \* MAY BE COOKED TO ORDER. CONSUMING RAW OR UNDERCOOKED MEATS, POULTRY, SEAFOOD, SHELLFISH OR EGGS MAY INCREASE YOUR RISK OF FOODBORNE ILLNESS, ESPECIALLY IF YOU HAVE CERTAIN MEDICAL CONDITIONS.

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**Applebee's**  
GRILL + BAR

AMETMN2-11








# 2 FOR \$37







FLAVOR • VALUE • VARIETY

**2 FULL-SIZE ENTRÉES + 1 APPETIZER TO SHARE**

**① START WITH 2 SIDE SALADS OR 1 APPETIZER TO SHARE**

				
TWO SIDE SALADS HOUSE OR CAESAR	SPINACH + ARTICHOKE DIP Δ	CRUNCHY ONION RINGS	BONELESS WINGS Δ	MOZZARELLA STICKS

**② CHOOSE ANY TWO OF THESE FULL-SIZE ENTRÉES**

	
THREE-CHEESE CHICKEN CAVATAPPI Δ	NEW BUTCHER'S MEAT* + POTATOES
	
NEW SIRLOIN* STIR-FRY Δ	NEW 6 oz. USDA CHOICE TOP SIRLOIN* Δ CHOICE OF 2 SIDES*
	
BOURBON STREET CHICKEN + SHRIMP	DOUBLE CRUNCH SHRIMP Δ

**Warning:** Δ indicates that the sodium (salt) content of this item is higher than the total daily recommended limit (2,300 mg). High sodium intake can increase blood pressure and risk of heart disease and stroke.

See inside menu for descriptions of items. 2,000 calories a day is used for general nutrition advice, but calorie needs vary. Calorie amounts for all "2 for \$37" items are listed previously in menu, next to individual items.

**NOTICE:** ITEMS MARKED WITH AN \* MAY BE COOKED TO ORDER. CONSUMPTION OF UNDERCOOKED MEATS, POULTRY, SEAFOOD, SHELLFISH OR EGGS MAY INCREASE RISK OF FOODBORNE ILLNESS, ESPECIALLY IF YOU HAVE CERTAIN MEDICAL CONDITIONS.

Additional Charges for Signature Sides may apply.

## Applebee's

GRILL + BAR






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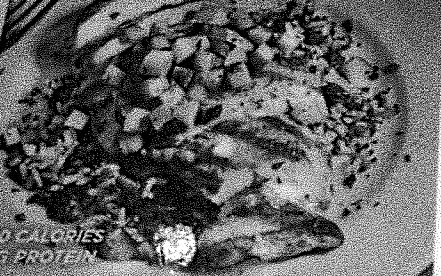

**2 FOR \$30**  
FLAVOR · VALUE · VARIETY

**2 FULL-SIZE ENTRÉES + 1 APPETIZER TO SHARE**

**① START WITH 2 SIDE SALADS OR 1 APPETIZER TO SHARE**

				
<b>TWO SIDE SALADS</b> HOUSE OR CÉSAR	<b>SPINACH + ARTICHOKE DIP</b> Δ	<b>CRUNCHY ONION RINGS</b>	<b>BONELESS WINGS</b> Δ	<b>MOZZARELLA STICKS</b>

**② CHOOSE ANY TWO OF THESE FULL-SIZE ENTRÉES**

	
<b>BLACKENED TILAPIA</b>	<b>ORIENTAL CHICKEN SALAD</b>
	
<b>580 CALORIES 42G PROTEIN</b>	
<b>CEDAR GRILLED LEMON CHICKEN</b> Δ	<b>CHICKEN TENDERS</b> Δ

**THE AMERICAN STANDARD** Δ  
**ALL-IN BURGER**®

See inside menu for descriptions of items. 2,000 calories a day is used for general nutrition advice, but calorie needs vary. Calorie amounts for all 2-for-\$30 items are listed previously in menu, next to individual items.

**Applebee's**  
GRILL + B



**USDA CHOICE STEAK**  
OVER AMERICAN OAK


**USDA CHOICE SIRLOIN\* STIR-FRY**  
Hand-cut USDA Choice top sirloin, sautéed vegetables, teriyaki sauce, white rice. (750 cal) 17.99

**USDA CHOICE STEAK\* + GARLIC MASHED POTATOES**  
Hand-cut USDA Choice top sirloin, tomato, mushroom, stout gravy, garlic mashers, crispy onions. (720 cal) 19.99

**USDA CHOICE STEAK QUESADILLA**  
Hand-cut USDA Choice top sirloin, salsa verde, pico. (1000 cal) 17.29

**USDA CHOICE SOUTHWEST STEAK\* + BLACK BEAN SOUP**  
(180 cal) 7.39

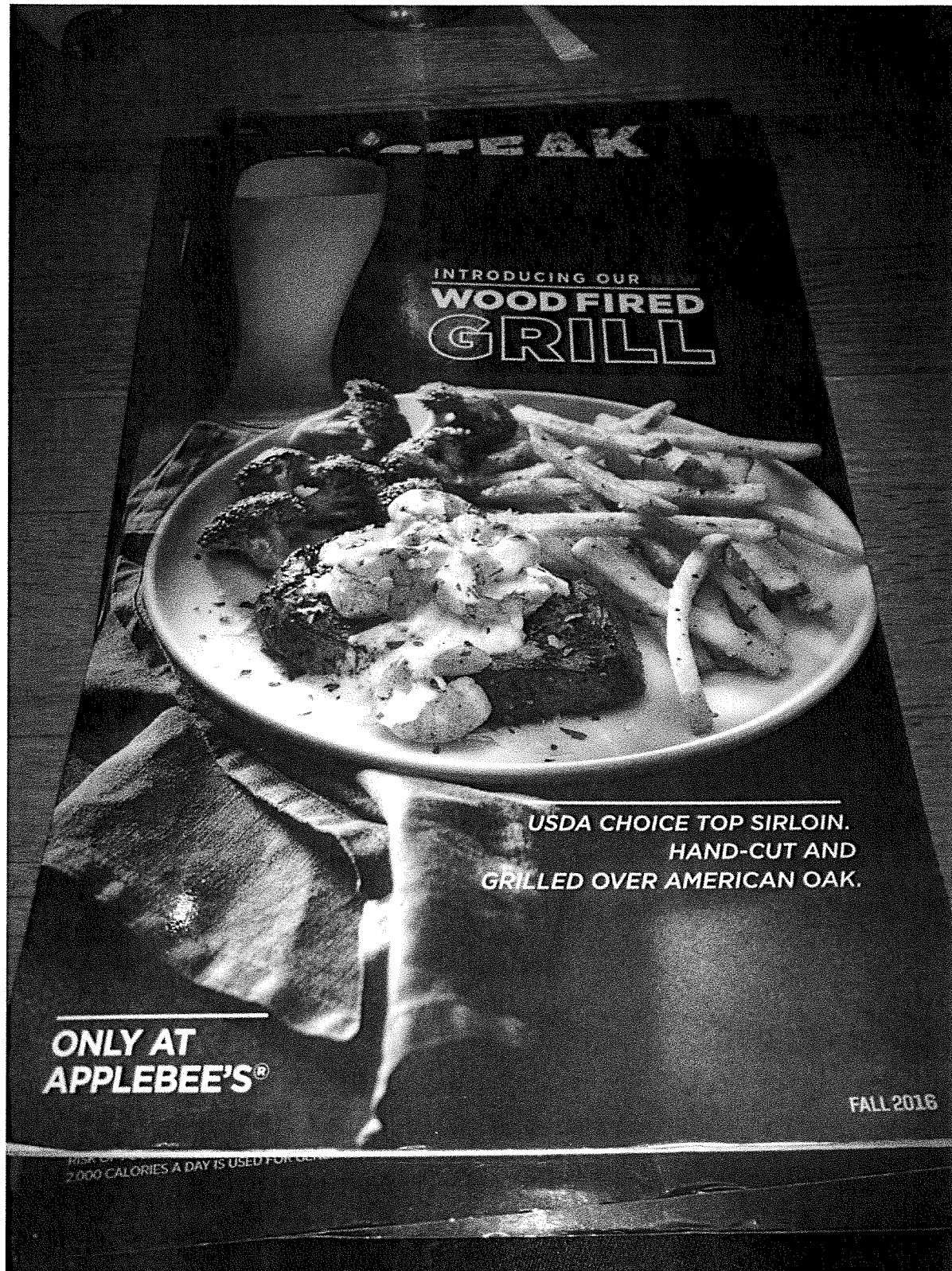
**USDA CHOICE TOP SIRLOIN STEAK CAESAR SALAD**  
(750 cal) 21.59

**Warning:**  indicates that the sodium (salt) content of this item is higher than the total daily recommended limit (2,300 mg). High sodium intake can increase blood pressure and risk of heart disease and stroke.

**Applebee's**  
GRILL + BAR

NOTICE: ITEMS MARKED WITH AN \* MAY BE COOKED TO ORDER. COOKING UNDERCOOKED MEATS, POULTRY, SEAFOOD, SHELLFISH OR EGGS MAY INCREASE RISK OF FOODBORNE ILLNESS, ESPECIALLY IF YOU HAVE CERTAIN MEDICAL CONDITIONS. 2,000 CALORIES A DAY IS USED FOR GENERAL NUTRITION ADVICE. BUT INDIVIDUAL NEEDS MAY VARY.

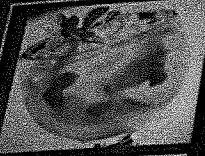






IT'S **SANGRIA SEASON**

**SANGRIAS,  
TRY ONE  
TODAY!**



**PEACH MINT**

Bella Sera Moscato,  
DeKuyper  
Peachtree Schnapps,  
muddled  
peach & mint,  
pineapple juice.



**WHITE PEACH**

Sutter Home White  
Zinfandel, DeKuyper  
Peachtree Schnapps,  
pineapple juice  
and  
fresh fruit.



**RED APPLE**

Sutter Home  
Cabernet,  
DeKuyper Red  
Apple, cranberry  
and pineapple  
juice with  
fresh fruit.



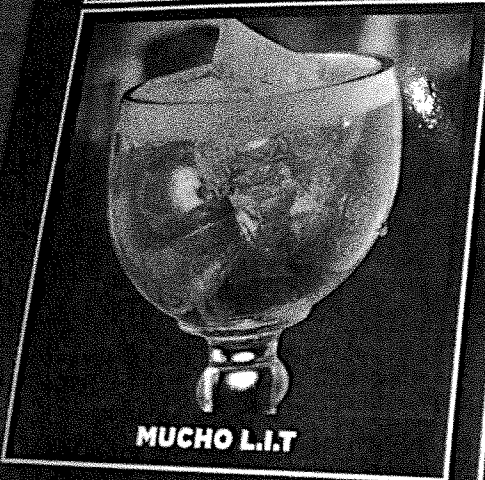
**BERRY**

Sutter Home  
Cabernet,  
DeKuyper  
Razzmatazz  
cranberry  
and  
fresh squeezed  
juices.

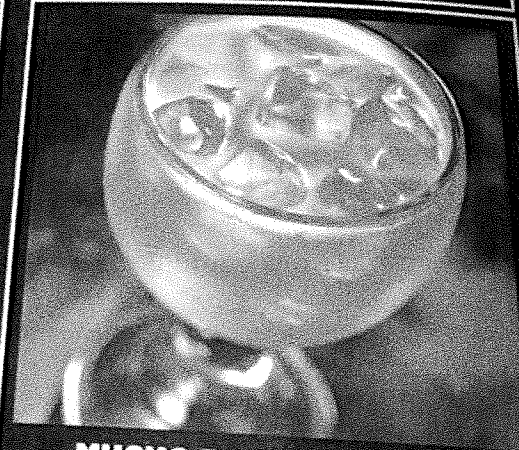


**KIWI MELON**

Sutter Home  
White Zinfandel,  
melon liqueur,  
kiwi, pineapple juice  
and a splash of  
lemon-lime soda.



**MUCHO L.I.T**



**MUCHO BAHAMA MAMA**

AMETMN2




## APPETIZERS + BAR SNACKS

### THE CLASSIC COMBO

Appetizer sampler featuring mozzarella sticks, spinach & artichoke dip, chicken quesadilla, boneless wings. (2650-2710 cal) 26.69

### NEW STEAK QUESADILLA

Hand-cut USDA Choice top sirloin, salsa verde, and pico. (1000 cal) 17.29  
Chicken Quesadilla  (970 cal) 16.29

### SWEET POTATO FRIES + DIPS

Sriracha chile lime, BBQ bacon ranch and maple-flavored cream cheese sauce. (1160 cal) 9.89

### SPINACH + ARTICHOKE DIP (960 cal) 12.59

### GRILLED CHICKEN WONTON TACOS

Spicy chicken-stuffed wonton shells, slaw and cilantro. (480 cal) 13.89

### BONELESS WINGS

Choice of honey BBQ, spicy sweet Asian chile, classic or hot buffalo sauce. (1090-1160 cal) 17.69

### SALSA VERDE BEEF NACHOS

Spicy queso blanco, cheddar, sour cream, pico, fresh jalapeños. (1810 cal) 17.69

### CHIPS + SALSA

Salsa verde and chipotle lime salsa. (500 cal) 8.99

### MOZZARELLA STICKS (920 cal) 12.99

### DOUBLE CRUNCH BONE-IN WINGS

Choice of honey BBQ, spicy sweet Asian chile, classic and hot buffalo sauce. (1070-1150 cal) 17.69

### CRUNCHY ONION RINGS

Served with a side of our honey BBQ sauce for dipping (770 cal) 9.69

### CHEESEBURGER SLIDERS (1110 cal) 15.99

Add bacon  2.00

### SOUP

Chicken Tortilla (200 cal) 7.39

Tomato Basil (190 cal) 7.39

French Onion (370 cal) 7.39

### NEW Southwest Steak + Black Bean (180 cal) 7.39

Chili (320 cal) 7.39

### SALAD

House Salad (210-430 cal) 5.99

Small Caesar Salad (230 cal) 5.99

**WANT MORE  
THAN ONE APP?**

**FLIP THE PAGE AND  
PICK 3 FOR \$27.29 (540-2890 cal)**

*from select apps & bar snacks*

2,000 calories a day is used as a guideline. Actual calorie needs vary.  
Additional nutrition information available upon request.



## BUILD YOUR SAMPLER

CHOOSE FROM OUR HANDPICKED APPS + BAR SNACKS  
 Build your sampler with 3 apps + 1 bar snack for \$27.99 (1800-430 cal) / Additional sampler plates \$6.99 each



### APPETIZERS + BAR SNACKS

- NEW STEAK QUESADILLA (630 CAL)
- GRILLED CHICKEN WONTON TACOS (370 CAL)
- SPINACH + ARTICHOKE DIP ▲ (980 CAL)
- BONELESS WINGS ▲ (840-700 CAL)
- CHICKEN QUESADILLA (610 CAL)
- MOZZARELLA STICKS (480 CAL)
- CHIPS + SALSA ▲ (500 CAL)
- SOUP OR SALAD (180-430 CAL)

See previous page for  
available soups & salads.

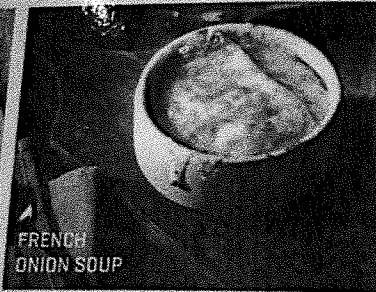
### PERFECT YOUR PLATE

ADD ON + EAT UP

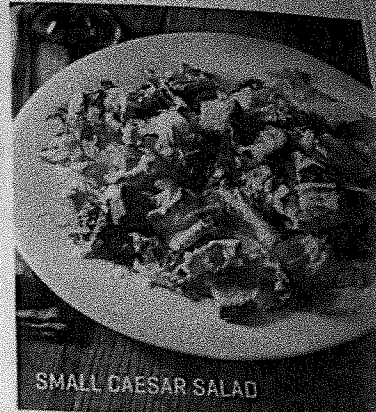
HOUSE SALAD (210-430 cal)  
 OR SMALL CAESAR SALAD (230 cal) 5.99  
 TOP OFF YOUR POTATOES (adds 70-230 cal) only 1.99 more



**new**  
SOUTHWEST STEAK +  
BLACK BEAN SOUP



FRENCH  
ONION SOUP



SMALL CAESAR SALAD

**NEW SOUTHWEST STEAK +  
BLACK BEAN** (180 cal) 7.39

**FRENCH ONION** (370 cal) 7.39

**CHICKEN TORTILLA** (200 cal) 7.39

**TOMATO BASIL** (190 cal) 7.39

**CHILI** (320 cal) 7.39

**Warning:** ▲ Indicates that the sodium (salt) content of this item is higher than the total daily recommended limit (2,300 mg). High sodium intake can increase blood pressure and risk of heart disease and stroke.

NOTICE: ITEMS MARKED WITH AN \* MAY BE COOKED TO ORDER. CONSUMING RAW OR UNDERCOOKED MEATS, POULTRY, SEAFOOD, SHELLFISH OR EGGS MAY INCREASE YOUR RISK OF FOODBORNE ILLNESS, ESPECIALLY IF YOU HAVE CERTAIN MEDICAL CONDITIONS.

AMETMNZ



INTRODUCING THE ALL-NEW

# WOOD FIRED GRILL

Featuring USDA Choice top sirloin, hand-cut by trained meat cutters and grilled to perfection over American oak.

How  
BUTCHER'S RESERVE  
12 OZ. USDA CHOICE  
TOP SIRLOIN  
gone today? come back tomorrow

## CREATE YOUR GRILL MASTERPIECE

### 1. CHOOSE A GRILL ITEM

**NEW HAND-CUT USDA CHOICE STEAKS**

**BUTCHER'S RESERVE 12 OZ. USDA CHOICE TOP SIRLOIN\*** (380 cal) 29.99 *Limited availability daily - ask server for details*

**8 OZ. USDA CHOICE TOP SIRLOIN\*** (280 cal) 26.69

**6 OZ. USDA CHOICE TOP SIRLOIN\*** (230 cal) 19.19

**NEW ALSO FROM THE WOOD FIRED GRILL**

**HAND-CUT BONE-IN PORK CHOP\*** (370 cal) 23.99

**CEDAR GRILLED SALMON\*** (340 cal) 19.69

**GRILLED CHICKEN BREAST\*** (190 cal) 19.99

**DOUBLE-GLAZED BABY BACK RIBS\*** (1060-1100 cal) 29.39 *half rack* (530-550 cal) 20.29

### 2. CHOOSE 2 SIDES

**CLASSIC**

**NEW GARLICKY GREEN BEANS** (190 cal)

**STEAMED BROCCOLI** (90 cal)

**NEW CRISPY CHEDDAR BACON POTATOES** (580 cal)

**CLASSIC FRIES** (430 cal)

**CLASSIC MEXI** (199 cal) **OR WHITE RICE** (225 cal)

**GARLIC MASHED POTATOES** (260 cal)

**BAKED POTATO** (390 cal) *available every day*  
top off your potatoes (add 70-230) 39

**SIGNATURE** *(only 2.99 more each)*

**NEW FIRE-GRILLED VEGGIES** (160 cal)

**4-CHEESE MAC + CHEESE** (510 cal)

**NEW MAPLE PECAN MASHED SWEET POTATOES** (400 cal)

**NEW GARLIC FRIES** (600 cal) **OR SWEET POTATO FRIES** (400 cal)

## CHEF SELECTIONS

*All hand-crafted special fries come with your choice of two sides, with the exception of the Bourbon Street Steak*

**SHRIMP 'N PARMESAN SIRLOIN\*** (580 cal) 28.99  
Hand-cut 8 oz. USDA Choice top sirloin and sautéed shrimp with a lemon butter parmesan sauce.

**NEW BONE-IN PORK CHOP WITH HONEY APPLE CHUTNEY\*** (560 cal) 23.99  
Cajun-seasoned hand-cut pork chop, apple chutney, maple butter.

**BOURBON STREET STEAK\*** (700 cal) 27.49  
Two hand-cut 4 oz. USDA Choice top sirloins and sautéed onion & mushroom. Served sizzling with crispy red potatoes.

**BONE-IN PORK CHOP WITH HONEY APPLE CHUTNEY**

**MENU LEGEND:** \* → Hand-cut

2,000 calories a day is used for general nutrition advice, but calorie needs vary.



## CHICKEN

*Our chicken is farm-raised in the USA with no added hormones.<sup>†</sup>*

### **BOURBON STREET CHICKEN + SHRIMP**

Cajun-seasoned chicken, blackened shrimp and sautéed onion & mushroom. Served sizzling with crispy red potatoes. (640 cal) 24.99

### **FIESTA LIME CHICKEN\* Δ**

Grilled chicken, Mexi-ranch dressing, cheddar, tortilla strips, rice and pico. (1140 cal) 22.29

### **CHICKEN TENDERS PLATTER Δ**

Fries, slaw & honey Dijon. (1460 cal) 19.99

Smaller portion with fries Δ (1150 cal) 17.99

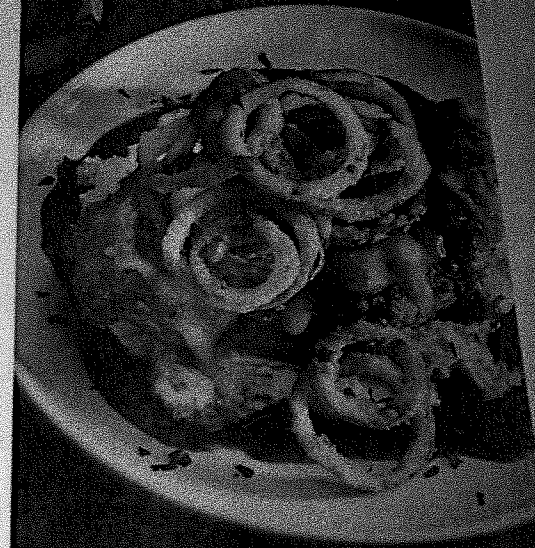
### **CEDAR GRILLED LEMON CHICKEN Δ**

Granny Smith apple relish, rice, cranberries, honey-glazed pecans and quinoa. 18.79  
**580 CALORIES / 42 g PROTEIN**

### **CRISPY BREWHOUSE CHICKEN Δ**

Stout gravy, garlic mashed potatoes, cheddar and crispy onions. (1080 cal) 19.99

### **CRISPY BREWHOUSE CHICKEN**



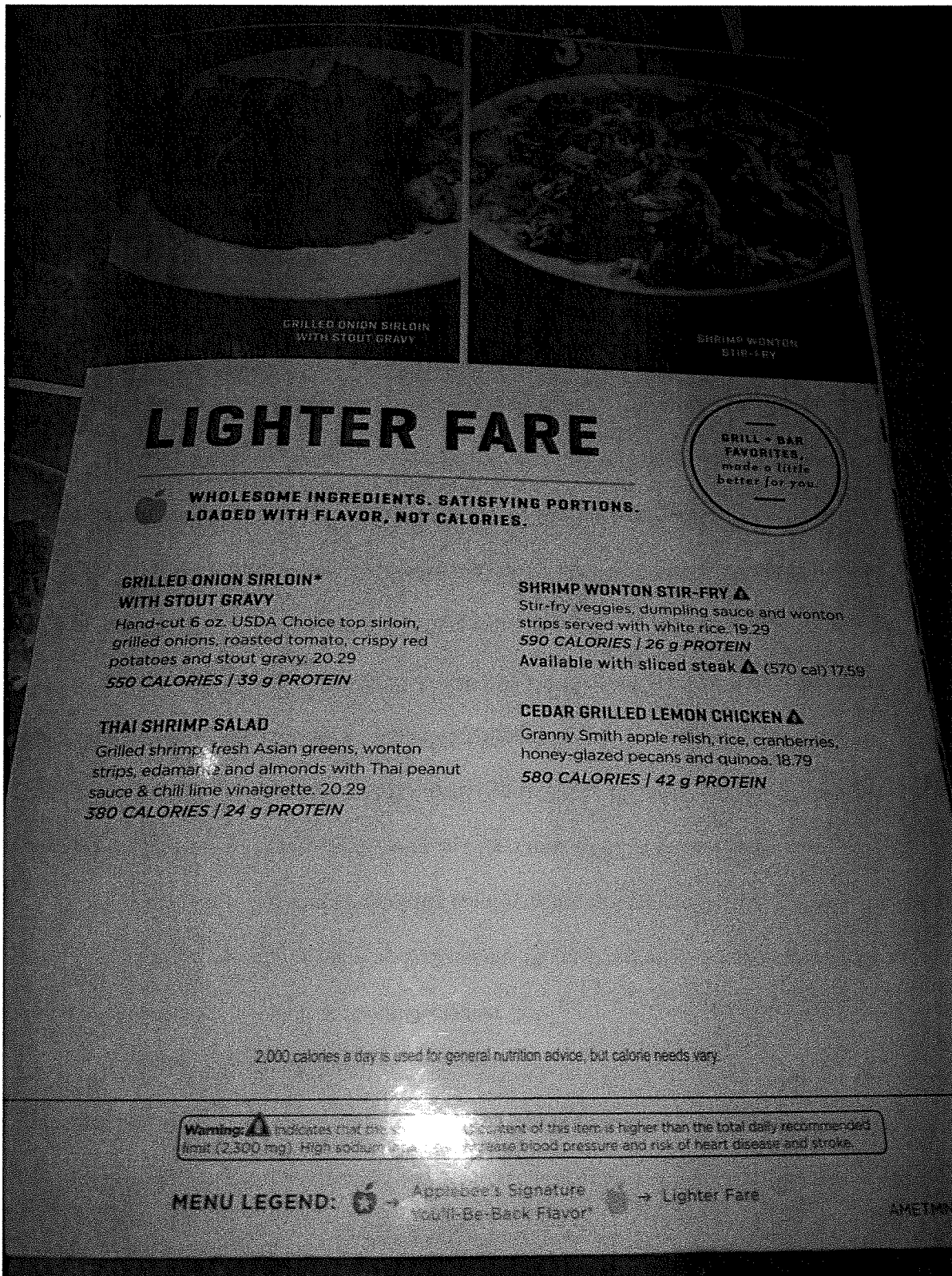
<sup>†</sup>Use of hormones is prohibited by law.

AMETMN2

NOTICE: ITEMS MARKED WITH AN \* MAY BE COOKED TO ORDER. CONSUMING RAW OR UNDERCOOKED MEATS, POULTRY, SEAFOOD, SHELLFISH OR EGGS MAY INCREASE YOUR RISK OF FOODBORNE ILLNESS, ESPECIALLY IF YOU HAVE CERTAIN MEDICAL CONDITIONS.

Food Allergies? If you have a food allergy, please speak to the owner, manager, chef or your server. Applebee's cannot ensure menu items do not contain ingredients that might cause an allergic reaction, or impact other dietary restrictions. In addition, some menu items may contain alcohol. Allergen information is available upon request.












## PASTA, SEAFOOD AND MORE


**4-CHEESE MAC + CHEESE WITH HONEY PEPPER CHICKEN TENDERS**   
Honey pepper sauce and bacon. (1580 cal) 20.29

**NEW SIRLOIN\* STIR-FRY**   
Hand-cut USDA Choice top sirloin, stir-fry veggies, dumpling sauce and wonton strips served with white rice. (750 cal) 17.59

**DOUBLE CRUNCH SHRIMP**   
Breaded shrimp, cocktail sauce, slaw and fries. (1230 cal) 23.29


**CEDAR GRILLED SALMON**  (340 cal) 19.69  
Choose 2 sides (90-510 cal)



**NEW BUTCHER'S MEAT\* + POTATOES**  
Hand-cut USDA Choice top sirloin, tomato, mushroom, stout gravy, garlic mashers, and crispy onions. (720 cal) 19.99

**THREE-CHEESE CHICKEN CAVATAPPI**   
Grilled chicken, cavatappi pasta, bruschetta tomato with a Parmesan cream sauce. (1170 cal) 20.29

**BLACKENED TILAPIA**  
Grilled Cajun-seasoned tilapia, steamed broccoli and red potatoes. (510 cal) 20.99

NOTICE: ITEMS MARKED WITH AN \* MAY BE COOKED TO ORDER. CONSUMING RAW OR UNDERCOOKED MEATS, POULTRY, SEAFOOD, SHELLFISH OR EGGS MAY INCREASE YOUR RISK OF FOODBORNE ILLNESS, ESPECIALLY IF YOU HAVE CERTAIN MEDICAL CONDITIONS.  
Food Allergies? If you have a food allergy, please speak to the owner, manager, chef or your server. Applebee's cannot ensure menu items do not contain ingredients that might cause an allergic reaction, or impact other dietary restrictions. In addition, some menu items may contain alcohol. A allergen information is available upon request.

**Warning:**  indicates that the sodium (salt) content of this item is higher than the total daily recommended limit (2,300 mg). High sodium intake can increase blood pressure and heart disease and stroke.

**MENU LEGEND:**  Applebee's Signature You'll-Be-Back Flavor\*  Lighter Fare



## SALADS

### THAI SHRIMP SALAD

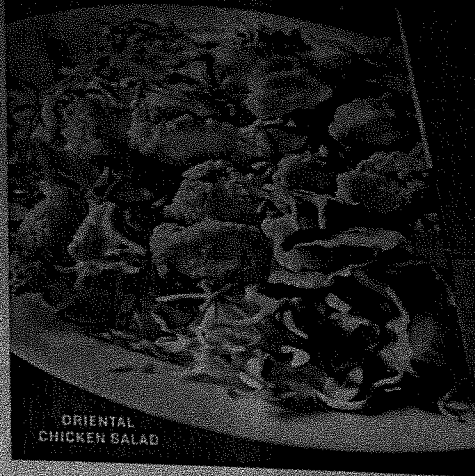
Crisped shrimp, fresh Asian greens, wonton strips, edamame and almonds with Thai peanut sauce & lime vinaigrette. 20.29  
280 CALORIES / 24 g PROTEIN

### ORIENTAL CHICKEN SALAD

Fried chicken tenders, fresh Asian greens, rice noodles and almonds with an Oriental vinaigrette. (1420 cal) 20.29  
Oriental grilled chicken salad  $\Delta$  (1290 cal) 20.29

### GRILLED CHICKEN CAESAR SALAD

(800 cal) 20.29  
Available with steak (750 cal) 21.59



ORIENTAL CHICKEN SALAD

## SANDWICHES

All Sandwiches are served with classic fries, (add 430 cal), or for an additional charge of 2.99 upgrade to sweet potato (add 400 cal) fries or crunchy onion rings (add 530).

### CLUBHOUSE GRILLE $\Delta$

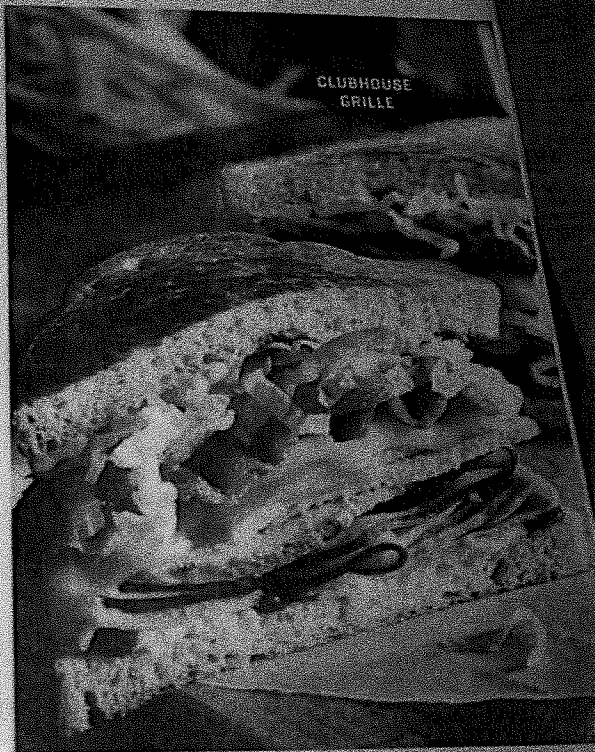
Turkey, ham, bacon, cheddar & Jack, honey BBQ, lettuce, tomato, mayo, potato bread. (1120 cal) 17.29

### TRIPLE HOG DARE YA\* $\Delta$

Pulled pork, ham, bacon, cheddar, crispy onions and our signature grill sauce served on Ciabatta. (1010 cal) 17.69

### CHICKEN FAJITA ROLLUP $\Delta$

Chipotle chicken, cheddar, pico and lettuce served with a Mexi-ranch dipping sauce. (1090 cal) 16.79



CLUBHOUSE GRILLE

2,000 calories a day is used for general nutrition advice, but calorie needs vary.



**ALL-IN BURGERS®**  
WE'RE GOING ALL-IN ON HAND-CRAFTED FLAVOR.

All burgers include classic fries (add 4.30 cal) or for an additional charge of 2.99 upgrade to sweet potato (add 400 cal) fries or crunchy onion rings (add 5.90).

**ALL-DAY BRUNCH BURGER** ▲  
SEARED IN: bacon & onion  
PILED ON: fried egg,\* crispy hashbrowns,  
American cheese and ketchup (1190 cal) 18.79

**THE AMERICAN STANDARD** ▲  
SEARED IN: pickles, bacon & onion  
PILED ON: American cheese, signature sauce  
(1030 cal) 17.99

**TRIPLE BACON** ▲  
SEARED IN: bacon  
PILED ON: bacon, cheddar, and BBQ  
bacon ranch (1190 cal) 18.59

**CHEESEBURGER SLIDERS** ▲ (1110 cal) 15.99  
Add bacon ▲ 2.00

**NEIGHBORHOOD BURGERS**

**CLASSIC**  
Lettuce, tomato, onion and pickles (780 cal) 10.99  
Add cheese ▲ (80-160 cal) 1.59  
Add bacon ▲ (100 cal) 2.00

**QUESADILLA** ▲  
Mex-ranch sauce, bacon, pico and lettuce  
in a cheddar quesadilla (1410 cal) 19.29

All burgers are cooked to a minimum of 160°F.  
Vegan burgers are cooked to a minimum 160°F.  
Signature a Turkey or Veggie Burger on any Neighborhood Burger.

Warning ▲ indicates that the sodium (cal) content of this item is higher than the total  
calorie content (cal) (2,500 mg) high sodium intake has been shown to increase  
the risk of heart disease and stroke.

**NO LEGEND:** ○ All-day Brunch Burger ▲ Signature ▲ You & Back Flavor ▲ Lighter Fare

**CHEESEBURGER SLIDERS**



RECLAIM YOUR LUNCH WITH

# LUNCH COMBOS

CHOOSE ANY 2 TO CREATE YOUR COMBO

4-CHEESE MAC AND CHEESE WITH HONEY PEPPER CHICKEN TENDERS  
CLUBHOUSE GRILLE

CLASSIC + CLASSICA	CLASSIC + SIGNATURE A	SIGNATURE + SIGNATURE A
11.99	12.99	13.99

CLASSIC	SIGNATURE
<b>SOUPS</b> TOMATO BASIL (190 cal) NEW SOUTHWEST STEAK + BLACK BEAN (180 cal)	<b>SOUPS</b> CHICKEN TORTILLA (200 cal) FRENCH ONION (370 cal) CHILI (320 cal)
<b>SALADS</b> HOUSE (210-430 cal) CAESAR (230 cal)	<b>SALADS</b> THAI SHRIMP (190 cal) GRILLED CHICKEN CAESAR (320 cal) ORIENTAL CHICKEN (460 cal)
<b>SANDWICHES + ENTRÉES</b> CHICKEN FAJITA ROLLUP A (710 cal) HONEY PEPPER CHICKEN TENDERS (940 cal) THREE-CHEESE CHICKEN CAVATAPPI (550 cal)	<b>SANDWICHES + ENTRÉES</b> CLUBHOUSE GRILLE (570 cal) 4-CHEESE MAC + CHEESE WITH HONEY PEPPER CHICKEN TENDERS (640 cal)

QUENCHER LEMONADES	FLAVORED LEMONADES
blackberry (160 cal) strawberry (170 cal)	mango (170 cal) pomegranate (170 cal) raspberry (170 cal) kiwi (170 cal)
<b>QUENCHER ICED TEA</b> peach (160 cal) blackberry honey (90 cal)	

**Warning:** A indicates that the sodium (salt) content of this item is higher than the total daily recommended limit (2,300 mg). High sodium intake can increase blood pressure and risk of heart disease and stroke.

2,300 calories a day is used as a general nutrition advice, but calorie needs vary.

**Food Allergen:** If you have a food allergy, please speak to the owner, manager, or chef about the ingredients in our menu items. Some menu items contain allergens that may cause an allergic reaction, or upset. Often dietary restrictions are common, but please note that some items may contain allergens. Allergens are not listed on this menu. All Lunch Combos are 1/2 price portions that include an appetizer and a main course. Substitutions or additions may result in additional charge. Please ask your server for details. We accept Visa, Mastercard, Discover, and American Express. No service charge. Open fire in designated areas. Smoking is not allowed in all areas of the restaurant.

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# NOW SERVING BREAKFAST

DAILY • 7:00 AM - 12 NOON



ENJOY COFFEE FOR \$1.00

## DESSERTS

CHURRO S'MORES (580 cal) • 8.29

APPLE CHIMI CHEESECAKE  
(950 cal) • 9.69

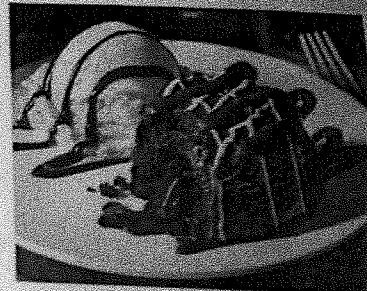
CHOCOLATE CHIP COOKIE  
SUNDAE (1490 cal) • 9.69

TRIPLE CHOCOLATE  
MELTDOWN® (980 cal) • 9.59

BLUE RIBBON BROWNIE (1670 cal) • 9.69

HOT FUDGE SUNDAE SHOOTER  
(470 cal) • 6.99

CRACKER JACK® BANANA  
CHEESECAKE (930 cal) • 9.69



CRACKER JACK® is a registered trademark of Frito-Lay North America, Inc. and is used with permission.

2,000 calories a day is used for general nutrition advice, but calorie needs vary.  
Calorie amounts for all other "21+ \$20" items are listed previously in menu, next to individual ice cream.

NOTICE: ITEMS MARKED WITH AN \* MAY BE COOKED TO ORDER. CONSUMING RAW OR UNDERCOOKED MEATS, POULTRY, SEAFOOD, SHELLFISH OR EGGS MAY INCREASE YOUR RISK OF FOODBORNE ILLNESS, ESPECIALLY IF YOU HAVE CERTAIN MEDICAL CONDITIONS. See inside menu for descriptions of items. No substitutions. Price does not include beverage, dessert, tax, or gratuity. Additional Charges for Signature Sides may apply.

AMETHING

# EXHIBIT E



ts. The only thing  
giving one is only



APPLEBEE'S  
NEIGHBORHOOD GRILL & BAR  
42nd street  
New York City, New York  
212-391-7414

VERONICA H TB#25  
DATE: 10-19-16 TIME: 07:19 PM GUESTS: 1  
Check #: 9517-123 04

SOURCE: TED  
CARD TYPE: VISA  
CARD NUMBER: \*\*\*\*\*9658  
APPROVAL CODE: 021019  
Merchant ID: 090111  
Trans type: SALE

\*\*\*\*\*

ENTER FOR A CHANCE  
TO WIN \$100 CASH  
WEEKLY  
\$1,000 CASH MONTHLY

Go To: [www.TalkToApplebees.com](http://www.TalkToApplebees.com)  
within 3 days  
and tell us about your visit

NO PURCHASE NECESSARY TO ENTER OR WIN.

Open to legal residents  
of the 50 US & DC, 18 or older.  
Sweeps begins 2/29/16 & ends 12/31/16.  
See Official Rules at  
[www.TalkToApplebees.com](http://www.TalkToApplebees.com) for  
details including how to enter  
without taking a survey.  
Void where prohibited.

Surveys can also be completed  
via phone at 800-535-1932.

\*\*\*\*\*  
\* Serial Number: 109517696 \*  
\*\*\*\*\*

Tip: 3.13

Total: 22.05

Cardmember agrees to pay total in  
accordance with agreement governing  
use of such card.

\*\* Guest Copy #1

# EXHIBIT F

APPLEBEE'S  
NEIGHBORHOOD GRILL & BAR  
42nd street  
New York City, New York  
212-391-7414

TRENT K. TB#20  
DATE: 11-08-16 TIME: 06:28 PM GUESTS: 1  
Check #:9517-1249513

SOURCE: TED  
CARD TYPE: VISA  
CARD NUMBER: \*\*\*\*9658  
APPROVAL CODE: 391632  
Merchant ID: 090111  
Trans Type: SALE

\*\*\*\*\*

ENTER FOR A CHANCE  
TO WIN \$100 CASH  
WEEKLY AND  
\$1,000 CASH MONTHLY

Go To: [www.TalkToApplebees.com](http://www.TalkToApplebees.com)  
within 3 days  
and tell us about your visit

NO PURCHASE NECESSARY TO ENTER OR WIN.

Open to legal residents  
of the 50 US & DC, 18 or older.  
Sweeps begins 2/29/16 & ends 12/31/16.  
See Official Rules at  
[www.TalkToApplebees.com](http://www.TalkToApplebees.com) for  
details including how to enter  
without taking a survey.  
Void where prohibited.

Surveys can also be completed  
via phone at 800-535-4932.

\*\*\*\*\*  
\* Serial Number: 119517390 \*  
\*\*\*\*\*

Tip: 2.27

Total: 15.98

Cardmember agrees to pay total in  
accordance with agreement governing  
use of such card.

\*\* Guest Copy \*\*

APPLEBEE'S  
NEIGHBORHOOD GRILL & BAR  
42nd street  
New York City, New York  
212-391-7414

TRENT K TB#20  
DATE: 11-08-16 TIME: 06:22 PM GUESTS: 1  
Check #: 9517-1249519

1	SPIN DIP	12.59
1	WATER	0.00

\*\*\*\*\*

ENTER FOR A CHANCE  
TO WIN \$100 CASH  
WEEKLY AND  
\$1,000 CASH MONTHLY

Go To: [www.TalkToApplebees.com](http://www.TalkToApplebees.com)  
within 3 days  
and tell us about your visit

NO PURCHASE NECESSARY TO ENTER OR WIN.

Open to legal residents  
of the 50 US & DC, 18 or older.  
Sweeps begins 2/23/16 & ends 12/31/16.  
See Official Rules at  
[www.TalkToApplebees.com](http://www.TalkToApplebees.com) for  
details including how to enter  
without taking a survey.  
Void where prohibited.

Surveys can also be completed  
via phone at 800-535-4932.

\*\*\*\*\*  
\* Serial Number: 119517390 \*  
\*\*\*\*\*

Check TOTAL: 12.59  
TAX: 1.12

Total Due: 13.71  
Tip 18%: 2.27  
PLEASE PAY: 15.98

\*\*\*\*\*

Come Visit Us for Breakfast  
\$1 Unlimited Colombian Coffee  
EVERYDAY 7AM - NOON

\*\*\*\*\*

Join us for Happy Hour!  
Mon. - THURS 11AM - 8PM (BAR ONLY)  
FRI- 11AM-6PM  
\$5 PINTS (DOMESTIC)  
HALF PRICE APPS, AND MORE DRINK SPECIAL

# EXHIBIT G



APPLEBEE'S  
NEIGHBORHOOD GRILL & BAR  
205 West 50th  
New York, NY 10019  
212-262-2400

DANE R TB#61  
DATE: 02-19-17 TIME: 02:10 PM GUESTS: 1  
Check #: 9801-1161515  
SOURCE: TED  
CARD TYPE: VISA  
CARD NUMBER: \*\*\*\* \* 5036  
APPROVAL CODE: 162235  
Merchant ID: 090111222  
Trans Type: SALE

\*\*\*\*\*

ENTER FOR A CHANCE  
TO WIN \$100 CASH  
WEEKLY AND  
\$1,000 CASH MONTHLY

Go to: [www.talktoapplebees.com](http://www.talktoapplebees.com)  
within 3 days  
and tell us about your visit

NO PURCHASE NECESSARY TO ENTER OR WIN.

Open to legal residents  
of the 50 US & DC, 18 or older.  
See Official Rules at  
[www.talktoapplebees.com](http://www.talktoapplebees.com)  
for details including how to enter  
without taking a survey.  
Void where prohibited.

\*\*\*\*\*  
\* Survey Code: 9801021915155 \*  
\*\*\*\*\*

Tip: 2.60

Total: 21.42

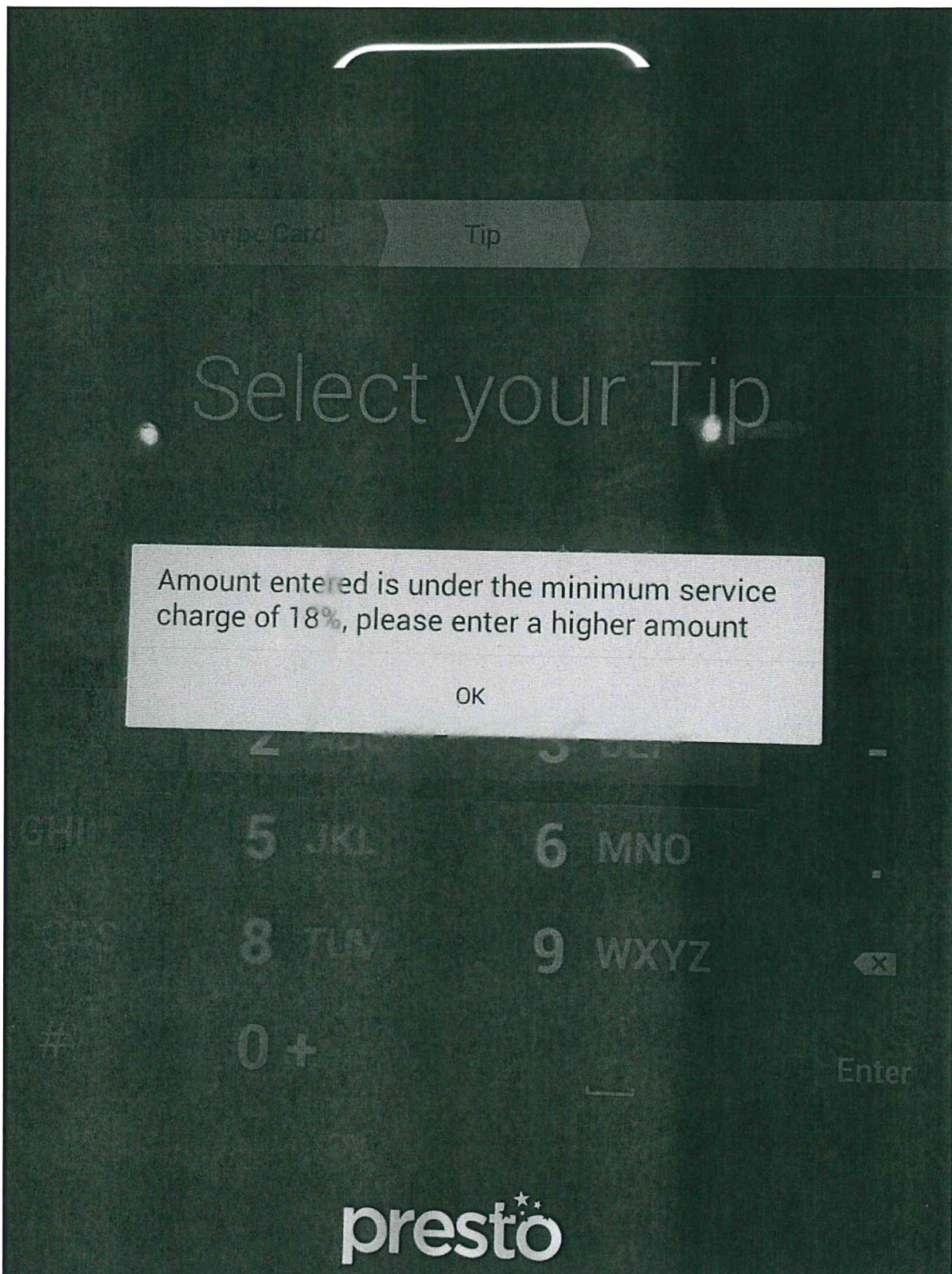
Cardholder agrees to pay total in  
accordance with agreement governing  
use of such card.

Gratuity Examples  
18 % Tip = \$3.11  
20 % Tip = \$3.46

\*\* Guest Copy \*\*

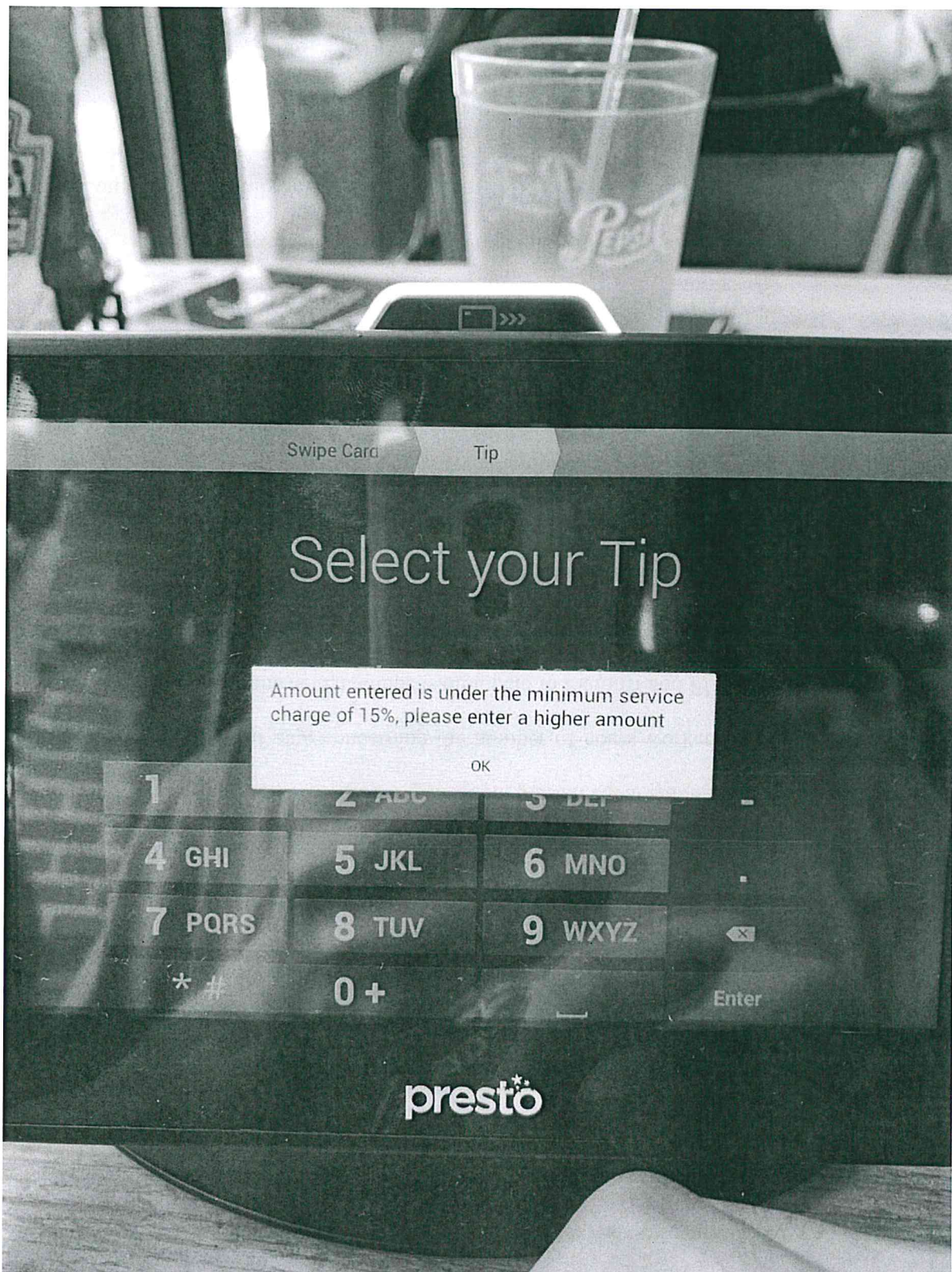
# EXHIBIT H



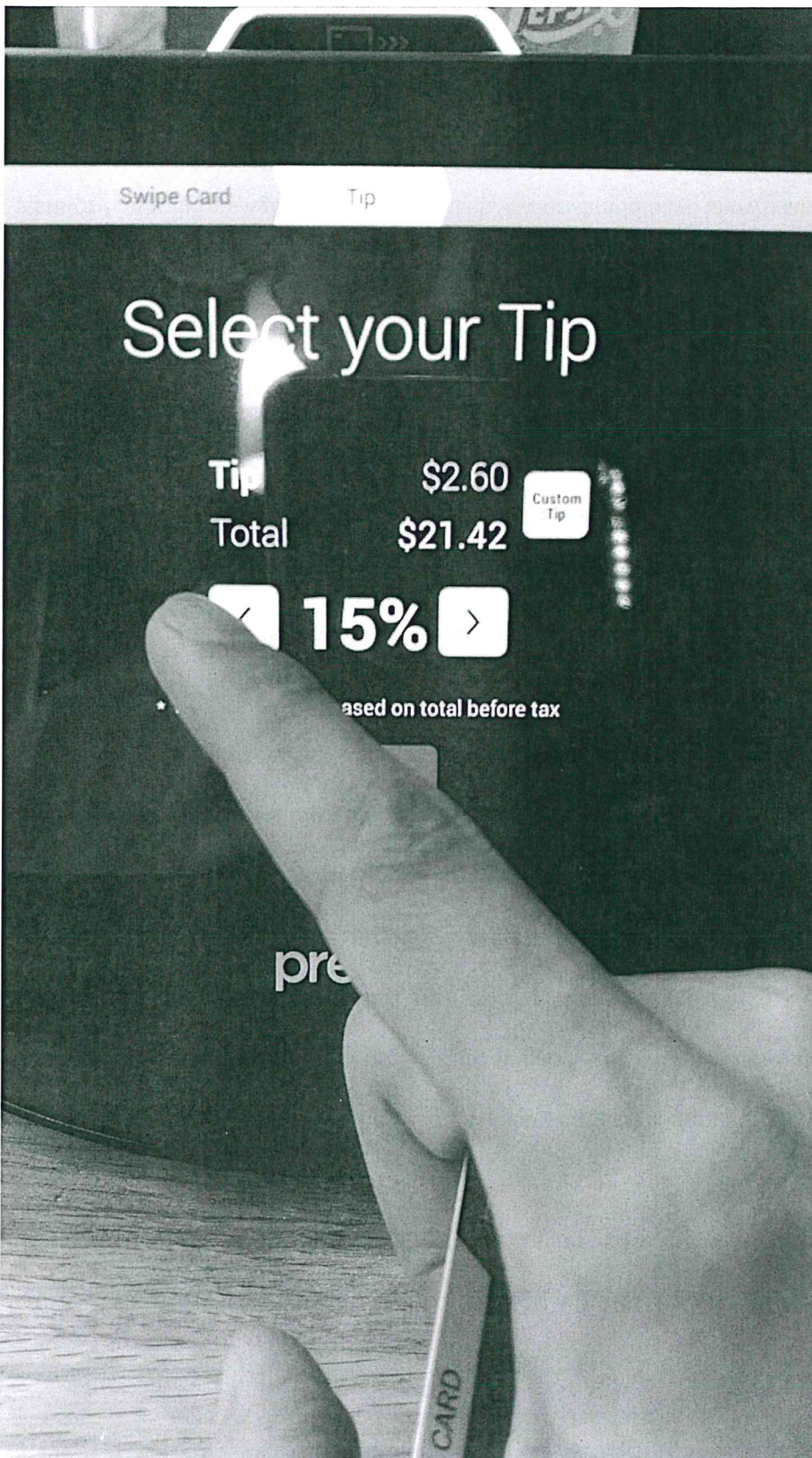


# EXHIBIT I









Signature of Clerk or Deputy Clerk

*Signature of Clerk or Deputy Clerk*



AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

KENDALL GHEE and YANG SHEN, on behalf of  
themselves and all others similarly situated

Plaintiff(s)

V.

APPLE-METRO, INC., a New York corporation, et al.

Defendant(s)

Civil Action No.

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* BROADWAY APPLE, LLC d/b/a APPLEBEE'S NEIGHBORHOOD GRILL & BAR  
ATTN: President  
550 Mamaroneck Ave  
Harrison, NY 10528

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

C.K. Lee, Esq., Lee Litigation Group, PLLC  
30 East 39th Street, Second Floor  
New York, NY 10016  
Tel.: (212) 465-1188

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DOUGLAS C. PALMER  
CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

JS 44 (Rev. 07/16)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

KENDALL GHEE and YANG SHEN, on behalf of themselves and all others similarly situated

**DEFENDANTS**

APPLE-METRO, INC., a New York corporation, et al.

(b) County of Residence of First Listed Plaintiff Kings County

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Westchester County

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

C.K. Lee, Esq., Lee Litigation Group, PLLC

30 East 39th Street, Second Floor, New York, NY 10016

Tel.: (212) 465-1188

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
 28 U.S.C. § 1332(d) - New York General Business Law 349

Brief description of cause:  
 Deceptive and Unfair Trade Practices

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE



**CERTIFICATION OF ARBITRATION ELIGIBILITY**

Local Arbitration Rule 83.10 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

I, C.K. Lee, counsel for Plaintiffs, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- ☒ monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- ☒ the complaint seeks injunctive relief,
- ☐ the matter is otherwise ineligible for the following reason

**DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1**

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

**RELATED CASE STATEMENT (Section VIII on the Front of this Form)**

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that "A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

**NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)**

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County? No
- 2.) If you answered "no" above:
- a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? No
- b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County?

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

**BAR ADMISSION**

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

☒ Yes ☐ No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

☐ Yes (If yes, please explain) ☒ No

I certify the accuracy of all information provided above.

Signature: \_\_\_\_\_