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CLERK OF THE SUPERIOR COURT

By  Deputy

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

AARON ASELTINE, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

PANERA, LLC, and DOES 1- 50, inclusive,

Defendant.

Case No. **RG21098794**

CLASS ACTION COMPLAINT

[DEMAND FOR JURY TRIAL]

CLASS ACTION COMPLAINT

FILE BY
FAX

1 Plaintiff Aaron Aseltine, on behalf of himself and all others similarly situated, complains and
2 alleges upon information and belief based, among other things, upon the investigation made by Plaintiff
3 and through his attorneys as follows:

4 **NATURE OF ACTION**

5 1. Expressly disclaiming damages under Consumers Legal Remedies Act (CLRA),
6 California Civil Code § 1750, *et seq.*, this is a proposed class action seeking monetary damages,
7 restitution, and injunctive and declaratory relief from Defendant Panera, LLC, (“Defendant” or
8 “Panera”), arising from its deceptive and untruthful promises to provide a flat delivery charge (normally,
9 \$6) on food deliveries ordered through its App and website.

10 2. Since the beginning of the COVID-19 pandemic, Panera has moved aggressively into the
11 food delivery business, exploiting an opportunity presented by Americans’ reduced willingness to leave
12 their homes. To appeal to consumers in a crowded food delivery marketplace, Panera has prominently
13 marketed flat, low-cost delivery in its mobile application and on its website.

14 3. These representations, however, are false. Panera actually imposes additional, hidden
15 delivery charges on its customers.

16 4. Specifically, Panera secretly marks up food prices for delivery orders only by 5%-7%. In
17 other words, the identical sandwich costs approximately \$1 more when ordered for delivery than when
18 ordered via the same mobile app for pickup, or when ordered in-store.

19 5. This hidden delivery upcharge makes Panera’s flat, low-cost delivery promises patently
20 false. The true delivery costs are obscured, as described above, and far exceed the prominent flat, low-
21 cost promises.

22 6. By falsely marketing flat, low-cost delivery, Panera deceives consumers into making
23 website or mobile app food purchases they otherwise would not make.

24 7. Panera misrepresents the nature of the delivery charges assessed on the Panera mobile
25 application and the website, by issuing in-app and online marketing materials that fail to correct
26 reasonable understandings of the flat, low-cost delivery promises, and that misrepresent the actual costs
27 of the delivery service.

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sufficient business with sufficient minimum contacts in California, and/or otherwise intentionally avails itself of the California market through the ownership and operation of numerous restaurant locations throughout California, including in the County of Alameda, which has caused both obligations and liability of Defendant to arise in this County.

17. The amount in controversy exceeds the jurisdictional minimum of this Court.

COMMON FACTUAL ALLEGATIONS

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

18. The online food delivery industry predominately influences the country's most financially vulnerable populations. A nationwide research study conducted by Zion & Zion reveals that the largest user markets for online delivery food services are the young and the poor.¹ During a 90-day timeframe, 63% of consumers between the ages of 18 and 29 used a multi-restaurant delivery website or app service, followed by 51% of consumers between the ages of 30 to 44.² The study also demonstrated that the "less income a consumer earns, the more likely the consumer is to take advantage of restaurant delivery services," as those earning less than \$10,000 per year ordered online delivery the most (51.6%).³

19. Put plainly, the allure for online food delivery services has historically been based upon pure convenience. A 2019 Gallup study of third-party delivery services companies like GrubHub, DoorDash, and Uber Eats reported 72% of customers order online food delivery because they don't want to leave their house; 50% so that they can continue with their ongoing activities; and 41% to avoid bad weather.⁴

20. The arrival of the unprecedented COVID-19 pandemic escalated the value of online food delivery services from one of pure convenience to that of a comforting necessity for many consumers

¹ See Aric Zion and Thomas Hollman, Zion & Zion Research Study, *Usage and Demographics of Food Delivery Apps*, accessible at <https://www.zionandzion.com/research/food-delivery-apps-usage-and-demographics-winners-losers-and-laggards/>, last accessed January 19, 2021.

² *Id.*

³ *Id.*

⁴ See Sean Kashanchi, Gallup, *Third-Party Delivery Will Grow; Is Your Restaurant Ready?*, May 6, 2019, accessible at <https://www.gallup.com/workplace/248069/third-party-delivery-grow-restaurant-ready.aspx>, last accessed January 19, 2021.

1 who are sick, in a high-risk population group for COVID-19, or simply do not feel safe to leave their
2 homes and venture out into the public to purchase food during quarantine.

3 21. In the wake of the food delivery surge, Consumer Reports highlighted the need for fee
4 transparency for consumers who use these apps and services.⁵ A research team investigated food delivery
5 companies and the report measured their compliance with new rules regarding fees enacted in seven US
6 cities aimed at protecting consumers and businesses during the pandemic. It found that these companies
7 continued to not comply with the new ordinances and continued to “employ design practices that
8 obfuscate fees.” They concluded that “[c]onsumers deserve to have informed choices to understand what
9 they are being charged for *and* how their dollars spent impacts the restaurants they support and patronize
10 in their communities.”

11 **B. Panera’s App and Website Fails to Bind Users to Any Terms of Service**

12 22. When a consumer downloads the Panera app, or uses the Panera website, he or she can
13 choose to place an order without creating an account.

14 23. If one chooses to create an account, one enters in a name and contact information.

15 24. While the account creation screen contains a small hyperlink to view Panera’s Terms of
16 Service, users are not required to affirmatively consent to such terms, such as by clicking or checking a
17 box.

18 **C. Panera Prominently Promises Flat Fee Delivery on its App and Website**

19 25. Beginning in early 2020, Panera began prominently featuring flat, low-cost delivery
20 promises on its mobile application and on its website.

21 26. Such representations often are made on the home screen of the app or website.

22 27. These flat, low-cost representations are then reiterated on the penultimate screen shown to
23 consumers before finalizing a food purchase.

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27 ⁵ See Consumer Reports, *Collecting Receipts: Food Delivery Apps & Fee Transparency*,
28 September 29, 2020, accessible at https://digital-lab-wp.consumerreports.org/wp-content/uploads/2020/09/Food-delivery_-Report.pdf, last accessed January 19, 2021.

28. Specifically, for supposed \$6 flat fee delivery orders, that penultimate screen states:

Subtotal: [representing the cost of the food selected]

Delivery Fee: [normally, \$6]

Taxes: [representing sales tax]

TOTAL: [adding up the above]

29. In the end, there was no way for Plaintiff or other users of the Panera mobile application or website to avoid seeing Panera's promises of flat, low-cost delivery.

D. Panera Omits and Conceals Material Facts About the Costs of the Panera Delivery Service

30. But those disclosures were false and misleading.

31. First, Panera furtively marked up the cost of food reflected in the "Subtotal"—adding 5-10% to the cost of food ordered for delivery. Panera did not and does not make similar mark-ups for identical food items ordered via the same app or website, where such items are ordered for pickup instead of delivery, or for food items ordered in-store.

32. Panera omitted this material fact from its app and website disclosures, never informing users of this secret markup.

33. This secret markup—which Panera only applied to delivery orders—is a hidden delivery fee. This alone renders false Panera's promise of flat, low-cost delivery, which is made repeatedly in the app and the website, and then in the "Delivery Fee" line-item on the order screen.

34. In short, the "delivery fee" is not actually "\$6," or the flat fee amount as advertised. The actual "delivery fee"—the extra charge for having food delivered as opposed to picking it up—is the listed "Delivery Fee" *plus* the hidden food markup applied exclusively to delivery orders.

35. Panera therefore does not inform consumers the true costs of its delivery service and it misrepresents its delivery charges as the advertised flat fee amount when in fact those costs are actually much higher.

E. Other Restaurant Industry Actors and Panera Competitors Disclose Delivery Fees Fairly and Expressly

36. By unfairly obscuring its true delivery costs, Panera deceives consumers and gains an unfair upper hand on competitors that fairly disclose their true delivery charges. For example, Panera

competitors Del Taco and El Pollo Loco both offer delivery services through their app and website. But unlike Panera, Del Taco and El Pollo Loco fairly and prominently represent their true delivery charges.

37. For example, Del Taco does not mark-up food charges for delivery orders through its app, nor does it add an additional “service charge” to delivery orders. Instead, for delivery orders its ordering screen presents the following:

Subtotal:

Tax:

Delivery Charge:

Tip:

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

39. Similarly, Panera competitor El Pollo Loco does not mark-up food charges for delivery orders through its app, nor does it add an additional “service charge” to delivery orders. Instead, for delivery orders its ordering screen presents the following:

Subtotal:

Delivery Charge:

Tax:

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

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

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Defendant's Practice Is Unethical and Violated Established Ethical Standards

42. Defendant's practices, as alleged herein, violated generally-accepted ethical principles of business conduct.

43. The basis for the allegation that it was unethical to engage in the above practices comes, in part, from established ethical principles recognized by the American Marketing Association.

AMA Statement of Ethics

44. The American Marketing Association ("AMA") "commits itself to promoting the highest standard of professional ethical norms and values. . . ." ⁶ As such, it has published its "Statement of Ethics." *Id.* AMA states that "marketers are expected to embrace the highest professional ethical norms and the ethical values implied by our responsibility toward multiple stakeholders (e.g., customers...)." *Id.* Thus, the Statement of Ethics contains "Ethical Norms," which "are established standards of conduct that are expected and maintained by society and/or professional organizations." *Id.*

45. The AMA's Ethical Norms state that marketers must "consciously avoid [] harmful actions and omissions," "striv[e] for good faith and fair dealing," "avoid [] deception in . . . pricing, communication, and delivery of distribution," and affirm "core values" of honesty, . . . fairness [and] transparency." *Id.*

46. By failing to disclose to consumers that the cost of delivery is more than \$6 or the flat fee amount as advertised and/or by failing to disclose that Panera marks up its food prices based on if a food item is ordered in person or for pick up verses via their delivery service, and/or by misrepresenting the true cost to have Panera food delivered, Defendant violated these Ethical Norms because, among other reasons, it did not strive (nor achieve) good faith and fair dealing and did not affirm the core values of honesty, fairness and transparency.

47. The AMA has also published "Ethical Values," which "represent the collective conception of what communities find desirable, important and morally proper." *Id.* These Ethical Values include honesty and "[h]onoring our explicit and implicit commitments and promises."

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⁶ **Exhibit B**, American Marketing Association Code of Conduct / AMA Statement of Ethics.

1 48. By charging consumers more than the advertised price to have Panera food delivered,
2 Defendant violated the aforementioned Ethical Values, because, among other reasons, it did not honor its
3 explicit and implicit commitments and promises.

4 **F. Plaintiff's Experience**

5 49. Plaintiff used the Panera app to make a purchase of food on January 25, 2021, in the total
6 amount of \$22.12.

7 50. When using the app, and prior to placing his order, the Panera app stated that the Delivery
8 Fee was \$6.

9 51. However, the cost of the food ordered by Plaintiff bore a hidden delivery fee markup in
10 the form of food prices inflated by 5%-7%.

11 52. Upon information and belief, had Plaintiff ordered the same food and picked it up, there
12 should have been a difference in price of \$6. Instead, Plaintiff paid more than \$6 to have the same Panera
13 food delivered to him.

14 53. Upon information and belief, this hidden markup is assessed only on delivery orders like
15 the one made by Plaintiff and would not have been assessed to Plaintiff had he picked up his order in
16 person from the Panera location.

17 54. Plaintiff would not have made the purchase if he had known the Panera delivery fee was
18 not in fact \$6.

19 55. If he had known the true delivery fee, he would have chosen another method for receiving
20 food from Panera or ordered food from another provider.

21 **CLASS ALLEGATIONS**

22 56. Pursuant to California Code of Civil Procedure § 382, Plaintiff brings this action on behalf
23 of himself and a Class of similarly situated persons defined as follows:

24 All consumers in California who, within the applicable statute of limitations
25 preceding the filing of this action to the date of class certification, ordered food
26 delivery through the Panera mobile app or website, and were assessed higher
27 delivery charges than represented.

28 57. Excluded from the Class are Defendant, any entities in which they have a controlling
interest, any of their parents, subsidiaries, affiliates, officers, directors, employees and members of such

1 persons' immediate families, and the presiding judge(s) in this case, and their staff.

2 58. Plaintiff reserves the right to expand, limit, modify, or amend this class definition,
3 including the addition of one or more subclasses, in connection with his motion for class certification, or
4 at any other time, based upon, *inter alia*, changing circumstances and/or new facts obtained during
5 discovery.

6 59. **Numerosity:** At this time, Plaintiff does not know the exact size of the Class; however,
7 due to the nature of the trade and commerce involved, Plaintiff believes that the Class members are well
8 into the hundreds, and thus are so numerous that joinder of all members is impractical. The number and
9 identities of Class members is administratively feasible and can be determined through appropriate
10 discovery in the possession of the Defendant.

11 60. **Commonality and Predominance:** There are questions of law or fact common to the
12 Class, such that there is a well-defined community of interest among the members of the Class. These
13 questions predominate over questions that may affect only individual members of the Class because
14 Panera has acted on grounds generally applicable to the Class. Such common legal or factual questions
15 include, but are not limited to, the following:

- 16 a. Whether during the class period, Defendant unfairly, unethically, unlawfully, and/or
17 deceptively represented a flat fee delivery charge on food deliveries ordered through the
18 Panera website and mobile application;
- 19 b. Whether Defendant's alleged misconduct misled, had the tendency to mislead consumers;
- 20 c. Whether Defendant engaged in unfair, unlawful, and/or fraudulent business practices
21 under the laws asserted;
- 22 d. Whether Defendant's alleged conduct constitutes violations of the laws asserted;
- 23 e. Whether Defendant's omissions and/or misrepresentations were material;
- 24 f. Whether Plaintiff and members of the Class were harmed by Defendant's omissions
25 and/or misrepresentations;
- 26 g. Though expressly disclaiming damages under Consumers Legal Remedies Act (CLRA),
27 California Civil Code § 1750, *et seq.*, whether Plaintiff and the Class are entitled to actual,
28 compensatory, and/or nominal damages, and the proper measure thereof;

h. Whether an injunction is necessary to prevent Defendant from continuing to deceptively represent flat fee, low-cost delivery on food deliveries ordered through the Panera website and mobile app.

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

62. **Adequacy of Representation:** Plaintiff is more than an adequate representative of the Class in that Plaintiff placed a Panera order for delivery and has suffered damages as a result of Panera's unfair, unethical, unlawful, fraudulent, and/or deceptive conduct. In addition:

- a) Plaintiff is committed to the vigorous prosecution of this action on behalf of himself and all others similarly situated and has retained competent counsel experienced in the prosecution of consumer class actions;
- b) Plaintiff will fairly and adequately represent the interests of the Class and does not have any interests adverse to those of the Class.
- c) Plaintiff anticipates no difficulty in the management of this litigation as a class action; and
- d) Plaintiff's legal counsel has the financial and legal resources to meet the substantial costs and legal issues associated with this type of litigation.

63. It is impracticable to bring members of the Class's individual claims before the Court. Class treatment permits a large number of similarly situated persons or entities to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of evidence, effort, expense, or the possibility of inconsistent or contradictory judgments that numerous individual actions would engender. The benefits of the class mechanism, including providing injured

persons or entities with a method for obtaining redress on claims that might not be practicable to pursue individually, substantially outweigh any difficulties that may arise in the management of this class action.

64. Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive and equitable relief with respect to the Class as a whole. Plaintiff remains interested in ordering food for delivery through Panera's website and mobile app; there is no way for them to know when or if Defendant will cease deceptively misrepresenting the cost of delivery.

65. Specifically, Defendant should be ordered to cease from representing their delivery service as flat, low-cost and to disclose the true nature of their mark-ups.

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

67. A class action is the superior method for fair and efficient adjudication of the controversy. The likelihood that individual members of the Class will prosecute separate actions is remote due to the extensive time and considerable expense necessary to conduct such litigation, especially when compared to the relatively modest amount of monetary, injunctive, and equitable relief at issue for each individual Class member.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violation of California's Unfair Competition Law ("UCL") Cal. Bus. & Prof. Code § 17200, *et seq.*

68. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

69. California Business & Professions Code § 17200 prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice."

70. Panera's deceptive conduct related to material omissions and/or material misrepresentations that it provides a flat fee, low cost delivery charge on food deliveries ordered through its website and mobile app violates each of the statute's "unfair," "unlawful," and "fraudulent" prongs.

71. The UCL imposes strict liability. Plaintiff need not prove that Panera intentionally or negligently engaged in unlawful, unfair, or fraudulent business practices—but only that such practices occurred.

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

5 73. Defendant’s practices as described herein are (a) immoral, unethical, oppressive, and/or
6 unscrupulous and violate established public policy as recognized by, *inter alia*, the American Marketing
7 Association; and (b) cause injury to consumers which outweigh any purported benefits or utility.

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

10 75. Defendant’s practices, as described herein, constitute “fraudulent” business practices in
11 violation of the UCL because, among other things, they are likely to deceive reasonable consumers, who
12 expect that cost to have Panera food delivered is fully disclosed and reflected in the represented delivery
13 fee. On the media on which Defendant communicated to consumer as they were ordering food for
14 delivery, Defendant concealed the material fact that the cost to have Panera food delivered exceeds the
15 represented flat fee amount and that it maintained a different, less expensive food price list for food
16 ordered for in person dining or for in person pick up.

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

19 77. Among other statutes, laws, and/or regulations, Defendant’s acts and practices violate the
20 following statutes, laws, and/or regulations:

21 (a) Violating Cal. Civ. Code § 1750, *et seq.*;

22 (b) Engaging in conduct in which the gravity of harm to Plaintiff and the Class outweighs the
23 utility of the Defendant’s conduct; and/or

24 (c) Engaging in acts and/or practices and/or omissions that are immoral, unethical,
25 oppressive, and/or unscrupulous and causes injury to consumers which outweigh its
26 benefits.

27 78. Panera committed unfair and fraudulent business acts and practices in violation of Cal.
28 Bus. & Prof. Code § 17200, *et seq.*, by affirmatively and knowingly misrepresenting on its website and

1 mobile app that it provides flat fee, low-cost delivery charge for food orders, when, in reality, it hides
2 delivery charges through hidden food markup applied exclusively to delivery orders.

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

6 80. The harm to Plaintiff and the Class outweighs the utility of Defendant's practices. There
7 were reasonably available alternatives to further Defendant's legitimate business interests, other than the
8 misleading and deceptive conduct described herein.

9 81. Defendant's conduct also constitutes an "unlawful" act under the UCL because, as
10 detailed in Plaintiff's Second Cause of Action below, it also constitutes a violation of sections
11 1770(a)(5), (a)(9), (a)(14), (a)(16), and/or (a)(19) of the California Consumer Legal Remedies Act
12 ("CLRA"), Cal. Civ. Code § 1750, *et seq., infra*, in that Panera deceptively represents that it provides a
13 flat fee, low cost delivery charge for food orders made on its website or mobile app; in reality, however,
14 this marketing message is false because Panera's use of the delivery service causes an increase in food
15 prices.

16 82. Panera's business practices have misled Plaintiff and the proposed Class and will continue
17 to mislead them in the future.

18 83. Plaintiff relied on Defendant's misrepresentations about the falsely advertised cost of
19 delivery in choosing to utilize the Panera food delivery service in ordering food from Defendant's
20 website or mobile app.

21 84. By falsely marketing flat, low-cost delivery, Panera deceived Plaintiff and Class members
22 into making online / mobile app food purchases they otherwise would not make.

23 85. Had Plaintiff known the truth of the delivery service fee, *i.e.*, that Panera's hidden food
24 markups were in all reality "delivery fees," he would have chosen another method for receiving food
25 from Panera or ordered food from another provider.

26 86. As a direct and proximate result of Panera's unfair, fraudulent, and/or unlawful practices,
27 Plaintiff and Class members suffered and will continue to suffer actual damages. Defendant's fraudulent
28 conduct is ongoing and present a continuing threat to Class members that they will be deceived into

ordering food for delivery under the false belief that delivery is the flat fee amount as advertised.

87. As a result of its unfair, fraudulent, and unlawful conduct, Panera has been unjustly enriched and should be required to disgorge its unjust profits and make restitution to Plaintiff and Class members pursuant to Cal. Bus. & Prof. Code § 17203 and 17204.

SECOND CAUSE OF ACTION
Violation of California's Consumer Legal Remedies Act ("CLRA")
Cal. Civ. Code § 1750, *et seq.*

88. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

89. This cause of action is brought pursuant to the Consumers Legal Remedies Act (CLRA), California Civil Code § 1750, *et seq.*

90. Plaintiff has filed concurrently with Plaintiff's Complaint Plaintiff's declaration of venue required by Civil Code Section 1780(d), which is attached hereto as **Exhibit A**.

91. Plaintiff and each member of the proposed Class are "consumers" as defined by California Civil Code § 1761(d).

92. Defendant's sale of food products to consumers for delivery ordered through its website and mobile app were "transactions" within the meaning of California Civil Code § 1761(e).

93. Defendant's mobile app and/or online delivery service utilized by Plaintiff and the Class is a "service" within the meaning of California Civil Code § 1761(b).

94. The food products purchased by Plaintiff and the Class are "goods" within the meaning of California Civil Code § 1761(a).

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

- a. "Representing that goods or services have . . . characteristics . . . that they do not have" (a)(5);
- b. "Advertising goods or services with intent not to sell them as advertised" (a)(9); and/or
- c. "Representing that a transaction confers or involves rights, remedies, or obligations that it does not have or involve" (a)(14);

1 d. "Representing that the subject of a transaction has been supplied in accordance with a
2 previous representation when it has not" (a)(16);

3 e. Inserting an unconscionable provision in the contract (a)(19); and/or

4 f. For other such violations of the CLRA that discovery will uncover.

5 96. Specifically, Panera violates each of these provisions by advertising to customers that use
6 of its delivery service is a flat fee, but this is false because Defendant imposes hidden delivery charges to
7 consumers through secretly marking up food items applied exclusively for delivery orders.

8 97. Furthermore, Defendant's practices violate (a)(19) as well because they are
9 unconscionable in that they violate established ethical standards.

10 98. At no time does Panera disclose the true nature of its delivery fee to consumers; instead, it
11 repeatedly conceals and misrepresents this material information at several steps of the transaction
12 process.

13 99. Under the CLRA, a plaintiff may without prior notification file a complaint alleging
14 violations of the CLRA that seeks injunctive relief only. Then, if the Defendant does not remedy the
15 CLRA violations within 30 days of notification, Plaintiff may amend Plaintiff's CLRA causes of action
16 without leave of court to add claims for damages.

17 100. Plaintiff, individually and as a member of the Class, has no adequate remedy at law for the
18 future unlawful acts, methods, or practices as set forth above.

19 101. Pursuant to § 1782(a) of the CLRA, Plaintiff's counsel notified Defendant in writing by
20 certified mail of the particular violations of §1770 of the CLRA and demanded that it rectify the
21 problems associated with the actions detailed above and give notice to all affected consumers of
22 Defendant's intent to act.

23 102. If Defendant fails to respond to Plaintiff's letter or agree to rectify the problems associated
24 with the actions detailed above and give notice to all affected consumers within 30 days of the date of
25 written notice, as proscribed by §1782, Plaintiff will move to amend Plaintiff's Complaint to pursue
26 claims for actual and statutory damages, as appropriate against Defendant.

27 103. By reason of the foregoing, Defendant's unlawful methods, acts, or practices as described
28 herein have caused damage to Plaintiff and the Class Members, entitling them to injunctive relief.

104. As to this cause of action, at this time, Plaintiff seeks only injunctive relief.

THIRD CAUSE OF ACTION
Violation of California's False Advertising Law ("FAL")
Cal. Bus. & Prof. Code §§ 17500, *et seq.*

105. Plaintiff re-alleges and incorporates the preceding allegations by reference as if fully set forth herein.

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

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

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of himself and the Class seeks judgment in an amount to be

determined at trial, as follows:

- (a) For an order enjoining Defendant from continuing the unlawful practices set forth above;
- (b) For declaratory and injunctive relief as set forth above;
- (c) For an order requiring Defendant to disgorge and make restitution of all monies it acquired by means of the unlawful practices set forth above;
- (d) For compensatory damages according to proof;
- (e) For punitive damages according to proof;
- (f) For reasonable attorneys' fees and costs of suit;
- (g) For pre-judgment interest; and
- (h) Awarding such other and further relief as this Court deems just, proper and equitable.

JURY DEMAND

Plaintiff hereby demands a jury trial on all claims so triable.

Dated: May 3, 2021

KALIEL GOLD PLLC

By: 

Jeffrey D. Kalien
Sophia Goren Gold

Attorneys for Plaintiff and the Proposed Class