

FILED/ENDORSED

MAR 11 2021

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Deputy Clerk

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**

10
11 RONALD ORTEGA, on behalf of himself and
12 all others similarly situated,

13 Plaintiff,

14 v. :

15 CHICK-FIL-A, INC., and DOES 1- 50,
16 inclusive,

17 Defendant.
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Case No. **34 2021 00296245**

CLASS ACTION COMPLAINT

[DEMAND FOR JURY TRIAL]

BY FAX

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

4 **NATURE OF ACTION**

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

9 2. Since the beginning of the COVID-19 pandemic, Chick-fil-A has moved aggressively into
10 the food delivery business, exploiting an opportunity presented by Americans' reduced willingness to
11 leave their homes. To appeal to consumers in a crowded food delivery marketplace, Chick-fil-A has
12 promised its customers low-price delivery in its mobile application and on its website, usually in the
13 amount of \$3.99.

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

17 4. On delivery orders only, Chick-fil-A secretly marks up food prices for delivery orders by
18 a hefty 25-30%. In other words, the identical order of a 30-count chicken nuggets costs approximately
19 \$5-6 more when ordered for delivery than when ordered via the same mobile app for pickup, or when
20 ordered in-store.

21 5. This hidden delivery upcharge makes Chick-fil-A's promise of low-cost, \$3.99 delivery
22 patently false. The true delivery costs are obscured, as described above, and far exceed its express
23 representation that its "Delivery Fee" is only \$3.99.

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

26 7. Chick-fil-A misrepresents the nature of the delivery charges assessed on the Chick-fil-A
27 mobile application and the website, by issuing in-app and online marketing materials that fail to correct
28 reasonable understandings of its low-cost delivery promises, and that misrepresent the actual costs of the

1 delivery service.

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

5 9. Hundreds of thousands of Chick-fil-A customers like Plaintiff have been assessed hidden
6 delivery charges they did not bargain for.

7 10. Consumers like Plaintiff reasonably understand Chick-fil-A's express "Delivery Fee"
8 representation to disclose the total additional cost they will pay as a result of having their food delivered,
9 as opposed to ordering online and picking up food in person, or ordering and picking up food in person.

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

15 12. Plaintiff seeks damages and, among other remedies, injunctive relief that fairly allows
16 consumers to decide whether they will pay Chick-fil-A's delivery mark-ups.

17 **PARTIES**

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

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

22 **JURISDICTION AND VENUE**

23 15. This Court has jurisdiction over Defendant and the claims set forth below pursuant to
24 Code of Civil Procedure § 410.10 and the California Constitution, Article VI § 10, because this case is a
25 cause not given by statute to the other trial courts.

26 16. Plaintiff is informed and believes that the State of California has personal jurisdiction over
27 the Defendant named in the action because Defendant is a corporation authorized to conduct and does
28 conduct business in this State. Defendant maintains its corporate headquarters in Georgia, but is

1 registered with the California Secretary of State to do sufficient business with sufficient minimum
2 contacts in California, and/or otherwise intentionally avails itself of the California market through the
3 ownership and operation of numerous restaurant locations throughout California, including in the County
4 of Sacramento, which has caused both obligations and liability of Defendant to arise in this County.

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

6 **COMMON FACTUAL ALLEGATIONS**

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

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

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

13 20. The online food delivery industry predominately influences the country's most financially
14 vulnerable populations. A nationwide research study conducted by Zion & Zion reveals that the largest
15 user markets for online delivery food services are the young and the poor.³ During a 90-day timeframe,
16 63% of consumers between the ages of 18 and 29 used a multi-restaurant delivery website or app service,
17 followed by 51% of consumers between the ages of 30 to 44.⁴ The study also demonstrated that the "less
18 income a consumer earns, the more likely the consumer is to take advantage of restaurant delivery
19 services," as those earning less than \$10,000 per year ordered online delivery the most (51.6%).⁵

20 21. Put plainly, the allure for online food delivery services has historically been based upon
21

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

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

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

28 ⁴ *Id.*

⁵ *Id.*

1 pure convenience. A 2019 Gallup study of third-party delivery services companies like GrubHub,
2 DoorDash, and Uber Eats reported 72% of customers order online food delivery because they don't want
3 to leave their house; 50% so that they can continue with their ongoing activities; and 41% to avoid bad
4 weather.⁶

5 22. According to data compiled by Yelp, food delivery orders have *doubled* since the
6 COVID-19 outbreak began.⁷

7 23. The arrival of the unprecedented COVID-19 pandemic escalated the value of online food
8 delivery services from one of pure convenience to that of a comforting necessity for many consumers
9 who are sick, in a high-risk population group for COVID-19, or simply do not feel safe to leave their
10 homes and venture out into the public to purchase food during quarantine.

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

16 25. The era of COVID-19 undoubtedly caused a significant revenue boom for third party
17 delivery services. SEC filings indicate that the top four U.S. food-delivery apps (DoorDash, Uber Eats,
18 GrubHub, and Postmates) collectively experienced a *\$3 billion increase* in revenue in just two quarters,
19 April through September, following the enactment of shelter-in-place restrictions throughout the
20
21
22

23 ⁶ See Sean Kashanchi, Gallup, *Third-Party Delivery Will Grow; Is Your Restaurant Ready?*, May 6,
24 2019, accessible at <https://www.gallup.com/workplace/248069/third-party-delivery-grow-restaurant-ready.aspx>, last accessed January 19, 2021.

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

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

⁹ *Id.*

1 nation.¹⁰

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

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

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

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

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

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

21 **C. Chick-fil-A Prominently and Plainly Represents a Flat \$3.99 “Delivery Fee” on its App and**
22 **Website.**

23 31. Beginning in early 2020, Chick-fil-A began prominently featuring low-cost delivery
24

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

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

1 promises on its mobile application and on its website.

2 32. Such representations often are made on the home screen of the app or website, and were
3 always made on the check-out screen of the app and website, prior to the finalization of an order. On that
4 screen, Chick-fil-A promised a flat “Delivery Fee,” usually in the amount of \$3.99.

5 33. Specifically, for supposed “\$3.99 Delivery Fee” orders, the order finalization screen
6 states:

7 Subtotal: [representing the cost of the food selected]

8 Tax: [representing sales tax]

9 Delivery Fee: \$3.99

10 Tip:

11 Total: [adding up the above]

12 34. In short, there was no way for Plaintiff or other users of the Chick-fil-A mobile
13 application or website to *avoid* seeing Chick-fil-A’s promises of a flat fee, \$3.99 delivery charge.

14 **D. Chick-fil-A Omits and Conceals Material Facts About the Costs of the Chick-fil-A Delivery**
15 **Service.**

16 35. But those disclosures were false and misleading, and the delivery charge was not, in fact,
17 \$3.99.

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

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

24 38. This secret markup—which Chick-fil-A *only* applies to delivery orders—is a hidden
25 delivery fee. This alone renders false Chick-fil-A’s promise of a flat, low-cost delivery fee of \$3.99,
26 which is made repeatedly in the app and the website, and then again in the “Delivery Fee” line item on
27 the order screen.
28

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

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

6 **E. Other Restaurant Industry Actors Disclose Delivery Fees Fairly and Expressly.**

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

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

14 Subtotal:

15 Tax:

16 Delivery Charge:

17 Tip:

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

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

23 Subtotal:

24 Delivery Charge:

25 Tax:

26 45. All line-item amounts are **identical** for delivery and pick-up orders, except for the plainly
27 and fairly disclosed delivery charge—allowing consumers to understand the true cost of the delivery
28

1 service.

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

8 **F. Plaintiff’s Experience**

9 47. Plaintiff used the Chick-fil-A app to make a purchase of food on January 29, 2021, in the
10 total amount of \$28.51.

11 48. When using the app, and prior to placing his order, the Chick-fil-A app stated that the
12 Delivery Fee was \$3.99.

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

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

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

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

21 **CLASS ALLEGATIONS**

22 53. 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 Chick-fil-A mobile app or website, and were assessed
27 higher delivery charges than represented.

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

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

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

- 12 a. Whether during the class period, Defendant deceptively represented Delivery Fees
13 on food deliveries ordered through the Chick-fil-A website and mobile app;
- 14 b. Whether Defendant's alleged misconduct misled or had the tendency to mislead
15 consumers;
- 16 c. Whether Defendant engaged in unfair, unlawful, and/or fraudulent business
17 practices under the laws asserted;
- 18 d. Whether Defendant's alleged conduct constitutes violations of the laws asserted;
- 19 e. Whether Plaintiff and members of the Class were harmed by Defendant's
20 misrepresentations;
- 21 f. Whether Plaintiff and the Class have been damaged, and if so, the proper measure
22 of damages; and
- 23 g. Whether an injunction is necessary to prevent Defendant from continuing to
24 deceptively represent low-price, flat delivery fees on food deliveries ordered
25 through the Chick-fil-A website and mobile app.

26 **57. Typicality:** Like Plaintiff, many other consumers ordered food for delivery from Chick-
27 fil-A's website or mobile app, believing delivery to be the flat fee represented based on Defendant's
28 representations. Plaintiff's claims are typical of the claims of the Class because Plaintiff and each Class

1 member was injured by Defendant's false representations about the true nature of the delivery fee.
2 Plaintiff and the Class have suffered the same or similar injury as a result of Defendant's false, deceptive
3 and misleading representations. Plaintiff's claims and the claims of members of the Class emanate from
4 the same legal theory, Plaintiff's claims are typical of the claims of the Class, and, therefore, class
5 treatment is appropriate.

6 **58. Adequacy of Representation:** Plaintiff is committed to pursuing this action and has
7 retained counsel competent and experienced in prosecuting and resolving consumer class actions.
8 Plaintiff will fairly and adequately represent the interests of the Class and does not have any interests
9 adverse to those of the Class.

10 **59. The Proposed Class and Satisfies the Prerequisites for Injunctive Relief.** Defendant
11 has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final
12 injunctive and equitable relief with respect to the Class as a whole. Plaintiff remains interested in
13 ordering food for delivery through Chick-fil-A's website and mobile app; there is no way for him to
14 know when or if Defendant will cease deceptively misrepresenting the cost of delivery.

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

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

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

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1 **CAUSES OF ACTION**

2 **FIRST CLAIM FOR RELIEF**

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

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

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

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

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

19 67. A business act or practice is "fraudulent" under the UCL if it is likely to deceive members
20 of the public.

21 68. A business act or practice is "unlawful" under the UCL if it violates any other law or
22 regulation.

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

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

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

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

13 73. Chick-fil-A's business practices have misled Plaintiff and the proposed Class and will
14 continue to mislead them in the future.

15 74. Plaintiff relied on Defendant's misrepresentations about the falsely advertised cost of
16 delivery in choosing to utilize the Chick-fil-A food delivery service in ordering food from Defendant's
17 website or mobile app.

18 75. By falsely marketing the true costs of food delivery, Chick-fil-A deceived Plaintiff and
19 Class members into making online food purchases they otherwise would not make.

20 76. Had Plaintiff known the truth of the delivery service fee, *i.e.*, that Chick-fil-A's hidden
21 food markups were in all reality "delivery fees," he would have chosen another method for receiving
22 food from Chick-fil-A or ordered food from another provider.

23 77. As a direct and proximate result of Chick-fil-A's unfair, fraudulent, and unlawful
24 practices, Plaintiff and Class members suffered and will continue to suffer actual damages. Defendant's
25 fraudulent conduct is ongoing and present a continuing threat to Class members that they will be
26 deceived into ordering food for delivery under the false belief that delivery was \$3.99.

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

4 **SECOND CLAIM FOR RELIEF**
5 **Violation of California's Consumer Legal Remedies Act ("CLRA")**
6 **Cal. Civ. Code § 1750, *et seq.***

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

9 80. This cause of action is brought pursuant to the Consumers Legal Remedies Act (CLRA),
10 California Civil Code § 1750, *et seq.* Plaintiff and each member of the proposed Class are "consumers"
11 as defined by California Civil Code § 1761(d). Defendant's sale of food products to consumers for
12 delivery ordered through its website and mobile app were "transactions" within the meaning of
13 California Civil Code § 1761(e). Defendant's online delivery service utilized by Plaintiff and the Class is
14 a "service" within the meaning of California Civil Code § 1761(b). The food products purchased by
15 Plaintiff and the Class are "goods" within the meaning of California Civil Code § 1761(a).

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

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

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

25 83. At no time does Chick-fil-A disclose the true nature of its delivery fee to consumers;
26 instead, it repeatedly conceals and misrepresents this material information at several steps of the
27 transaction process.

28 ///

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

9 **THIRD CLAIM FOR RELIEF**
10 **Violation of California's False Advertising Law ("FAL")**
11 **Cal. Bus. & Prof. Code §§ 17500, *et seq.***

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

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

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

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

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

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

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

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiff on behalf of himself and the Class seeks judgment in an amount to be
8 determined at trial, as follows:

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

18 **JURY DEMAND**

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

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21 Dated: March 10, 2021

KALIEL GOLD PLLC

22
23 By: 

Jeffrey D. Kaliel
Sophia G. Gold

Attorneys for Plaintiff and the Proposed Class