

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

LISA LADONSKI,
*Individually and on behalf of herself
and all others similarly situated,*

Plaintiff,

v.

PANERA, LLC,

Defendant.

Case No.

CLASS ACTION

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Lisa Ladonski, on behalf of herself and all others similarly situated, complains and alleges upon information and belief based, among other things, upon the investigation made by Plaintiff and through her attorneys as follows:

NATURE OF ACTION

1. This is a proposed class action seeking monetary damages, restitution, and injunctive and declaratory relief from Defendant Panera, LLC, (“Defendant” or “Panera”), arising from its deceptive and untruthful promises to provide FREE, \$1 or flat fee, low-cost delivery on food deliveries ordered through its App and website.

2. Since the beginning of the COVID-19 pandemic, Panera has moved aggressively into the food delivery business, exploiting an opportunity presented by Americans’ reduced willingness to leave their homes. To appeal to consumers in a crowded food delivery marketplace, Panera has prominently marketed a FREE, \$1 or flat fee, low-cost “Delivery Fee” in its mobile application and on its website.

3. Reasonable consumers like Plaintiff understand Panera's prominent "Delivery Fee" promises to represent the total marginal cost they will pay for having Panera food delivered to their homes, over and above what they would pay if they picked up food in-store.

4. Indeed, this is precisely how the term "Delivery Fee" is used across the food delivery industry and how the term is understood by reasonable consumers: a "Delivery Fee" is a promise that such fee is what covers delivery costs.

5. Panera's "Delivery Fee" representations, however, were and are false. Panera *actually* imposes additional, hidden delivery charges on its customers that far exceed the promise of FREE, \$1 or flat fee, low-cost delivery.

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

7. This secret menu price markup was specifically designed to cover the costs of delivering food and profit on that delivery. It was, in short, exclusively a charge for using Panera's delivery service and was, therefore, a delivery charge.

8. Worse, Panera designed its app and website to make it *impossible* for consumers to catch its hidden menu price inflation. The company ensured that food prices were only displayed on the app or website *after* a customer chose delivery or pickup, ensuring delivery customers could not see the price inflation Panera was imposing on delivery orders only.

9. This hidden delivery upcharge makes Panera's flat, low-cost delivery promises false. The true delivery costs are obscured, as described above, and far exceed the prominent flat, low-cost promises.

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

11. Specifically, Panera omits and conceals material facts about the Panera delivery service, never once informing consumers in any disclosure, at any time, that use of the delivery service causes an increase in food prices.

12. Hundreds of thousands of Panera customers like Plaintiff have been assessed hidden delivery charges they did not bargain for.

13. 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.

14. It was only **after** this litigation was filed in this Court that Panera scrambled to change its disclosures to add a disclaimer regarding its secret menu price markup. Panera now states in its “Terms of Service” under the Panera Delivery section that “Menu prices for delivery Services may be higher than at those at physical bakery café locations or those available through the online ordering services for pick-up, and additional delivery and other service fees may apply.” Panera’s recently-added warning, however, is buried in fine print and continues to fail to fairly inform users of its hidden menu price mark-ups on delivery orders.

15. Plaintiff seeks damages and, among other remedies, injunctive relief that fairly allows consumers to decide whether they will pay Panera’s delivery mark-ups.

PARTIES

16. Plaintiff Lisa Ladonski is a citizen of the State of Illinois who resides in Blue Island, Illinois.

17. Defendant, Panera, LLC is incorporated in Delaware and maintains its principal business offices in St. Louis, Missouri.

JURISDICTION AND VENUE

18. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(d)(2), because the matter in controversy exceeds \$5,000,000, exclusive of interest and costs, and is a class action in which at least one member of the class is a citizen of a different State than Defendant. The number of members of the proposed Classes in aggregate exceeds 100 users. 28 U.S.C. § 1332(d)(5)(B).

19. Venue is in this District pursuant to 28 U.S.C. § 1391(b) and (c) because Defendant is deemed to reside in any judicial district in which they are subject to personal jurisdiction and substantial part of the events or omissions giving rise to the claims occurred in this District.

COMMON FACTUAL ALLEGATIONS

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

20. 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

21. 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

22. 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

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.

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

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

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

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

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

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

C. Panera Was Aware American Consumers Prefer FREE or Low-Cost Delivery

27. Upon information and belief, by means of sophisticated consumer tests and research, Panera was aware of consumer confusion regarding the secret menu upcharge on delivery orders. Nonetheless, Panera never informed its consumers of the menu price markup.

28. Panera was aware that consumers would make more purchases if Panera offered a low delivery fee and raised menu prices on delivery orders only, in order to cover delivery costs and profit on the delivery service.

⁵ 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.

29. So that is precisely what Defendant did during the early days of the Covid-19 pandemic: it offered a low, flat fee “Delivery Fee,” sometimes, and *raised* its menu prices by 5-7% on delivery orders only.

30. Having learned that consumers prefer FREE or low-cost delivery costs, Panera made an intentional decision to absorb delivery charges into hidden menu upcharges.

31. Instead of fairly and transparently disclosing this change to its customers—who were already under tremendous stress from the pandemic—Panera chose to operate in the shadows. It continued to make a clear promise that the total, marginal cost of having food delivered versus picking it up in store was represented by a new FREE, \$1 or low-cost, flat fee Delivery Fee.

32. But because it secretly inflated menu prices on delivery orders only, and never informed customers of this policy, it misrepresented the true cost of delivery.

33. Panera intentionally deceived its customers regarding the true cost of its delivery service, hiding its delivery charges in menu price markups it never disclosed to its customers.

D. Panera Prominently Promises FREE, \$1 or Low-cost, Flat Fee Delivery on its App and Website

34. Panera began prominently featuring flat, low-cost delivery promises on its mobile application and on its website.

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

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

37. Specifically, for supposed FREE delivery orders, that penultimate screen states:

Subtotal: [representing the cost of the food selected]

Delivery Fee: FREE

Taxes: [representing sales tax]

TOTAL: [adding up the above]

38. Specifically, for supposed \$1 flat fee delivery orders, that penultimate screen states:

Subtotal: [representing the cost of the food selected]

Delivery Fee: \$1

Taxes: [representing sales tax]

TOTAL: [adding up the above]

39. 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 FREE or flat, low-cost delivery, but at the same time Panera actively concealed the menu price inflation applied to delivery orders only.

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

40. Panera's disclosures were false and misleading.

41. 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.

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

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

44. For these reasons, Plaintiff did not and could not discover the secret price inflation with reasonable effort. Plaintiff in fact did not discover the price inflation until consultation with Counsel.

45. This secret markup—which Panera only applied to delivery orders—is a hidden delivery fee. This alone renders false Panera's promise of FREE or 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.

46. This secret markup was specifically designed to cover the costs of delivering food

and profit on that delivery. It was, in short, exclusively a charge for using Panera’s delivery service and was, therefore, a delivery charge.

47. In short, the “delivery fee” is not actually FREE, \$1 or a flat, low-cost 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.

48. 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.

F. Other Restaurant Industry Actors and Panera Competitors Disclose Delivery Fees and the Difference Between Delivery and Pickup Menu Prices, If Any, Fairly and Expressly and It is Anticompetitive and Unfair When Panera Fails to Do So

49. 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.

50. 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:

51. 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.

52. 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:

53. 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.

54. 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. Panera never did so.

55. As another example, Chipotle says prominently on its delivery ordering screen: **“Higher menu prices and additional service fees apply for delivery.”**

56. Such disclosures exist precisely because users cannot readily determine when small markups are smuggled into the prices of menu items to cover the cost of delivery services.

57. Where food delivery menu prices are higher than in-store pickup prices, other restaurant chains routinely make those menu price differences transparent for their customers. For example, the pizza chain Domino’s features different menu prices for pickup and delivery orders. Unlike Panera, Domino’s expressly states the differential in side-by-side comparisons:

MIX & MATCH DEAL

CHOOSE ANY 2 OR MORE

CARRYOUT **DELIVERY**

\$5.99 **OR** **\$6.99**
each *each*

Delivery orders are also subject to the local store's delivery charge

You must ask for this offer while available. Offer is available only at participating stores. Prices, delivery area, and charges may vary by store. Delivery orders are subject to each local store's delivery charge. 2-item minimum. Bread Bowl Pasta and Handmade Pan Pizza will cost extra. In addition, your local store may charge extra for some menu items available with this offer and some crust types, toppings, and sauces. Visit www.dominos.com to see your local store's online menu and the checkout page when placing an online order for order-specific pricing.

ORDER NOW

58. Panera, on the other hand, designed its app and website to hide its menu price differentials.

59. Panera's deception is unfair and hinders the competition between merchants required for a free and fair marketplace.

60. Panera's deceptive disclosures, described above, unfairly gives Panera a leg up on other merchants offering food delivery in the marketplace. Companies like Del Taco, PF Chang, Chipotle, El Pollo Loco and Dominos all use different means to fairly and transparently inform and warn consumers that menu prices for delivery orders are higher and are in addition to represented delivery fees.

61. Panera is one of a very few merchants who chose a different path, in order to gain an unfair competitive advantage over honest merchants.

Defendant's Practice Is Unethical and Violated Established Ethical Standards

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

63. 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

64. 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.*

65. 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.*

66. By failing to disclose to consumers that the cost of delivery is more than \$0 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

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

and did not affirm the core values of honesty, fairness and transparency.

67. 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.”

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

G. Plaintiff Ladonski’s Experience

69. Plaintiff Ladonski used the Panera app to make a purchase of food on September 8, 2021, in the total amount of \$16.23.

70. When using the app, and prior to placing her order, the Panera app stated that the Delivery Fee was \$0.00.

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

72. Upon information and belief, had Plaintiff ordered the same food and picked it up, there should have been a difference in price of \$1.

73. Upon information and belief, this hidden markup is assessed only on delivery orders like the one made by Plaintiff and would not have been assessed to Plaintiff had she picked up her order in person from the Panera location.

74. Plaintiff would not have made the purchase if she had known the Panera delivery fee was not in fact \$0.00.

75. If she had known the true delivery fee, she would have chosen another method for receiving food from Panera or ordered food from another provider.

CLASS ALLEGATIONS

76. Pursuant to Rule 23, Plaintiff brings this action on behalf of herself and a Class of similarly situated persons defined as follows:

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

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

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

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

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

- a. Whether during the class period, Defendant unfairly, unethically, unlawfully, and/or deceptively represented FREE, \$1 or a flat fee, low-cost delivery fee delivery charge on food deliveries ordered through the Panera website and mobile application;
- b. Whether Defendant's alleged misconduct misled, had the tendency to mislead

consumers;

- c. Whether Defendant engaged in unfair, unlawful, and/or fraudulent business practices under the laws asserted;
- d. Whether Defendant's alleged conduct constitutes violations of the laws asserted;
- e. Whether Defendant's omissions and/or misrepresentations were material;
- f. Whether Plaintiff and members of the Class were harmed by Defendant's omissions and/or misrepresentations;
- g. Whether Plaintiff and the Class are entitled to actual, 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.

81. **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.

82. **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 herself 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.

83. 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.

84. 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.

85. 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.

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

87. 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 The Illinois Consumer Fraud
And Deceptive Business Practices Act
815 ILCS, 505/1, *et seq*
(On Behalf of Plaintiff and the Class)**

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

89. This Count is brought on behalf of the Illinois Subclass (for purposes of this Count, the “Class”).

90. Defendant, Plaintiff, and the Class members are “persons” within the meaning of 815 ILCS 505/1(c).

91. Plaintiff and the Class members are “consumers” within the meaning of 815 ILCS 505/1(e).

92. Defendant was and is engaged in “trade” or “commerce” within the meaning of 815 ILCS 505/1(f).

93. The Illinois Consumer Fraud and Deceptive Business Practices Act (“Illinois CFA”) prohibits “unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . in the conduct of trade or commerce . . . whether any person has in fact been misled, deceived or damaged thereby.” 815 ILCS 505/2.

94. Panera’s deceptive conduct related to material omissions and/or material misrepresentations that it provides FREE, \$1 or a flat fee, low-cost delivery fee on food deliveries ordered through its website and mobile app violates the Illinois CFA.

95. A business act or practice is “unfair” under the Illinois CFA if it offends an

established public policy or is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers, and that unfairness is determined by weighing the reasons, justifications, and motives of the practice against the gravity of the harm to the alleged victims.

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

97. By knowingly and intentionally misrepresenting, omitting, concealing, and failing to disclose material facts regarding its true cost of delivery on food deliveries ordered through its website and mobile app, Defendant engaged in one or more unfair or deceptive business practices prohibited by the Illinois CFA.

98. Defendant's practices, as described herein, constitute unfair and deceptive business practices in violation of the Illinois CFA because, among other things, they are likely to deceive reasonable consumers, who expect that the cost to have Panera food delivered is fully disclosed and reflected in the represented delivery fee. On the media on which Defendant communicated to consumers as they were ordering food for delivery, Defendant concealed the material fact that the cost to have Panera food delivered exceeds the represented flat fee amount and that it maintained a different, less expensive food price list for food ordered for in person dining or for in person pick up.

99. Panera committed unfair and fraudulent business acts and practices in violation of the Illinois CFA, by affirmatively and knowingly misrepresenting on its website and mobile app that it provides flat fee, low-cost delivery charge for food orders, when, in reality, it hides delivery charges through hidden food markup applied exclusively to delivery orders.

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

101. The harm to Plaintiff and the Class outweighs the utility of Defendant's practices.

There were reasonably available alternatives to further Defendant's legitimate business interests, other than the misleading and deceptive conduct described herein.

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

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

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

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

106. As a direct and proximate result of Panera's unfair and deceptive practices, Plaintiff and Class members suffered and will continue to suffer actual damages. Defendant's fraudulent 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.

107. Plaintiff and the Class members seek an order enjoining Defendant's unfair and deceptive acts or practices in violation of the Illinois CFA and awarding actual damages, costs, attorneys' fees, and any other just and proper relief available under the Illinois CFA.

SECOND CLAIM FOR RELIEF

Breach of Contract **(On behalf of Plaintiff and the Class)**

112. Plaintiff repeats and re-alleges the above allegations as if fully set forth herein.

113. Plaintiff and Panera have contracted for food delivery services, as embodied in the representations made in the Panera app and website.

114. No contract provision authorizes Panera be able to imposes hidden delivery charges

on its customers in addition to the “delivery charge” represented in its app and on its website.

115. Panera breached the terms of its contract with consumers by charging an additional 10% more for “delivery” than the contracted-for “delivery charge.”

116. Plaintiff and members of the Class have performed all, or substantially all, of the obligations imposed on them under the contract.

117. Plaintiff and members of the Class have sustained damages as a result of Panera’s breach of the contract and breach of the implied covenant of good faith and fair dealing.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of herself 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: February 22, 2023

Respectfully submitted,

SHAMIS & GENTILE, P.A.

/s/ Andrew J. Shamis

Andrew J. Shamis, Esq.
Illinois Bar No. 6337427
ashamis@shamisgentile.com
Edwin E. Elliott, Esq.*
Florida Bar No. 1024900
edwine@shamisgentile.com
14 NE 1st Ave., Suite 705
Miami, FL 33132

EDELSBERG LAW, P.A.

Scott Edelsberg, Esq.*
Florida Bar No. 100537
scott@edelsberglaw.com
20900 NE 30th Avenue
Aventura, FL 33180

KALIEL GOLD PLLC

Jeffrey D. Kaliel (CA Bar No. 238293)*
jkaliel@kalielgold.com
1100 15th Street NW, 4th Floor
Washington, D.C. 20005
Tel: (202) 350-4783

Sophia Goren Gold (CA Bar No. 307971)*
sgold@kalielgold.com
950 Gilman Street, Suite 200
Berkeley, California 94710
Tel: (202) 350-4783

**Pro Hac Vice to be filed*

Counsel for Plaintiff and the Proposed Class

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
(b) County of Residence of First Listed Plaintiff
(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
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
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excludes Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise
TORTS: PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Medical Malpractice; PERSONAL INJURY: 365 Personal Injury - Product Liability, 367 Health Care/Pharmaceutical Personal Injury Product Liability, 368 Asbestos Personal Injury Product Liability; PERSONAL PROPERTY: 370 Other Fraud, 371 Truth in Lending, 380 Other Personal Property Damage, 385 Property Damage Product Liability
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC 881, 690 Other
LABOR: 710 Fair Labor Standards Act, 720 Labor/Management Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Employee Retirement Income Security Act
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157
INTELLECTUAL PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 835 Patent - Abbreviated New Drug Application, 840 Trademark, 880 Defend Trade Secrets Act of 2016
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g))
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party 26 USC 7609
OTHER STATUTES: 375 False Claims Act, 376 Qui Tam (31 USC 3729(a)), 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit (15 USC 1681 or 1692), 485 Telephone Consumer Protection Act, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes

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):
Brief description of cause:

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

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.