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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11

12 NATASHA SCOTT, on behalf of herself and all
13 others similarly situated,

14 Plaintiff,

15 v.

16 PANDA RESTAURANT GROUP, INC., and
17 DOES 1- 50, inclusive,

18 Defendant.
19

Case No.

CLASS ACTION COMPLAINT

[DEMAND FOR JURY TRIAL]

1 Plaintiff NATASHA SCOTT, on behalf of herself 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 her 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 Panda Restaurant Group, Inc. (“Defendant” or “Panda Express”),
7 arising from its deceptive and untruthful promises to provide a flat \$2.95 delivery fee on food deliveries
8 ordered through its App and website.

9 2. Since the beginning of the COVID-19 pandemic, Panda Express has moved aggressively
10 into the food delivery business, exploiting an opportunity presented by Americans’ reduced willingness
11 to leave their homes. To appeal to consumers in a crowded food delivery marketplace, Panda Express
12 has promised its customers low-price delivery in its mobile application and on its website, usually in the
13 amount of \$2.95.

14 3. These representations, however, are false, because that is not the true cost of having food
15 delivered by Panda Express. In fact, Panda Express imposes hidden delivery charges on its customers in
16 addition to the low “delivery charge” represented in its app and on its website.

17 4. On delivery orders only, Panda Express assesses an additional charge on food orders that
18 it calls a “service charge.” This additional charge amounts to 10% more for the same food received by
19 non-delivery customers. Because this fee is exclusively charged to delivery customers, and not to
20 customers who order in-store or who order online and pick up their food in store, the “service fee” is by
21 definition a delivery fee. Panda Express obscures the true nature of the fee by naming it a “service fee.”

22 5. Even more insidiously, Panda Express hides its “service fee” in a deceptive line item
23 called “Taxes and Fees”—further obscuring its hidden delivery charge from consumers during the
24 ordering process.

25 6. This hidden delivery upcharge makes Panda Express’s promise of low-cost, \$2.95
26 delivery patently false. The true delivery costs are obscured, as described above, and far exceed its
27 express representation that its delivery fee is \$2.95.

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1 7. By falsely marketing a quantified, low-cost delivery charge, Panda Express deceives
2 consumers into making online food purchases they otherwise would not make.

3 8. Panda Express misrepresents the nature of the delivery charges assessed on the Panda
4 Express mobile application and the website, by issuing in-app and online marketing materials that fail to
5 correct reasonable understandings of its low-cost delivery promises, and that misrepresent the actual
6 costs of the delivery service.

7 9. Specifically, Panda Express omits and conceals material facts about the Panda Express
8 delivery service, never once informing consumers in any disclosure, at any time, that the so-called
9 “service fee” is assessed exclusively on delivery customers and is therefore by definition a delivery
10 charge.

11 10. Hundreds of thousands of Panda Express customers like Plaintiff have been assessed
12 hidden delivery charges they did not bargain for.

13 11. Consumers like Plaintiff reasonably understand Panda Express’ express “Delivery Fee”
14 representation to disclose the total additional cost they will pay as a result of having their food delivered,
15 as opposed to ordering online and picking up food in person or ordering and picking up food in person.

16 12. By unfairly obscuring its true delivery costs, Panda Express deceives consumers and gains
17 an unfair upper hand on competitors that fairly disclose their true delivery charges. For example, Panda
18 Express competitors Del Taco and El Pollo Loco both offer delivery services through their app and
19 website. But unlike Panda Express, Del Taco and El Pollo Loco fairly and prominently represent their
20 true delivery charges.

21 13. Plaintiff seeks damages and, among other remedies, injunctive relief that fairly allows
22 consumers to decide whether they will pay Panda Express’s delivery mark-ups.

23 **PARTIES**

24 14. Plaintiff Natasha Scott is a citizen of the State of Michigan who resides in Wyandotte,
25 Michigan.

26 15. Defendant, Panda Restaurant Group, Inc., is incorporated in California and maintains its
27 principal business offices in Rosemead, California.

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1 **JURISDICTION AND VENUE**

2 16. This Court has original jurisdiction of this Action pursuant to the Class Action Fairness
3 Act, 28 U.S.C. §§ 1332(d)(2) and (6). The matter in controversy, exclusive of interest and costs, exceeds
4 the sum or value of \$5,000,000, and at least some members of the proposed Classes have a different
5 citizenship from Defendant.

6 17. The Central District of California has personal jurisdiction over Defendant because
7 Defendant is a corporation authorized to conduct, and does conduct, business in the State of California,
8 including by maintaining its corporate headquarters within this District. Defendant is registered to do
9 business in California and intentionally avails itself of the California market through the ownership and
10 operation of numerous store locations throughout California, including within this District, which has
11 caused both obligations and liability of Defendant to arise in this District.

12 18. Venue is proper under 18 U.S.C. § 1391 because a substantial part of the events or
13 omissions giving rise to the claim occurred in this District.

14 **COMMON FACTUAL ALLEGATIONS**

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

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

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

21 21. The online food delivery industry predominately influences the country's most financially
22 vulnerable populations. A nationwide research study conducted by Zion & Zion reveals that the largest
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24
25 ¹ See Frost & Sullivan, *\$9.6 Billion in Investments Spurring Aggressive Expansion of Food*
26 *Delivery Companies*, October 25, 2019, accessible at [https://ww2.frost.com/news/press-releases/9-6-](https://ww2.frost.com/news/press-releases/9-6-billion-in-investments-spurring-aggressive-expansion-of-food-delivery-companies/)
27 [billion-in-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
28 19, 2021.

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

1 user markets for online delivery food services are the young and the poor.³ During a 90-day timeframe,
2 63% of consumers between the ages of 18 and 29 used a multi-restaurant delivery website or app service,
3 followed by 51% of consumers between the ages of 30 to 44.⁴ The study also demonstrated that the “less
4 income a consumer earns, the more likely the consumer is to take advantage of restaurant delivery
5 services,” as those earning less than \$10,000 per year ordered online delivery the most (51.6%).⁵

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

11 23. According to data compiled by Yelp, food delivery orders have *doubled* since the
12 COVID-19 outbreak began.⁷

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

17 25. In its 2019 Economic Report conducted by research firm Technomic, DoorDash reported
18 that 86% of customers agreed that DoorDash played an important role in helping them access food
19 during the pandemic and 77% of consumers increased their use of third-party delivery services during
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22
23 ³ See Aric Zion and Thomas Hollman, Zion & Zion Research Study, *Usage and Demographics of Food Delivery Apps*, accessible at <https://www.zionandzion.com/research/food-delivery-apps-usage-and-demographics-winners-losers-and-laggards/>, last accessed January 19, 2021.

24 ⁴ *Id.*

25 ⁵ *Id.*

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

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

1 this time.⁸ Indeed, amidst the uncertainty of the novel virus, 68% of consumers now view ordering food
2 online for delivery as the safer option.⁹

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

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

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

20 **B. Panda Express’s App and Website Fails to Bind Users to Any Terms of Service**

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

24 ⁹ *Id.*

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

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

1 29. When a consumer downloads the Panda Express app, or uses the Panda Express website,
2 she may create an account in order to place an order for delivery or pickup.

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

4 **C. Panda Express Prominently and Plainly Represents a Flat \$2.95 “Delivery Fee” on its App**
5 **and Website**

6 31. Beginning in early 2020, Panda Express began prominently featuring low-cost delivery
7 promises on its mobile application and on its website.

8 32. Such representations often are made on the home screen of the app or website, and were
9 always made on the check out screen of the app and website, prior to the finalization of an order. On that
10 screen, Panda Express promised a flat “Delivery Fee,” usually in the amount of \$2.95.

11 33. Specifically, for supposed “\$2.95 Delivery Fee” orders, the order finalization screen
12 states:

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

14 Delivery Fee: \$2.95

15 Tip: [a prepopulated amount, suggested by the app or website]

16 Taxes & Fees: [representing sales taxes and additional fees]

17 ORDER TOTAL: [adding up the above]

18 34. In short, there was no way for Plaintiff or other users of the Panda Express mobile
19 application or website to *avoid* seeing Panda Express’s promises of a flat fee, \$2.95 delivery charge.

20 **D. Panda Express Omits and Conceals Material Facts About the Costs of the Panda Express**
21 **Delivery Service**

22 35. But those disclosures were false and misleading, and the delivery charge was not, in fact,
23 \$2.95.

24 36. That is because Panda Express applies a “Service Fee” exclusively to delivery orders,
25 hides that “Service Fee” from users behind a hyperlink, and misrepresents what the “Service Fee” is
26 actually for: a hidden delivery charge.

27 37. On ordering screen, and for the first time in the ordering process, Panda Express presents
28 a line item called “Taxes and Fees.” The ordering screen does not explain what “Taxes and Fees” are

1 comprised of.

2 38. Only if a user clicks on “Taxes and Fees” do two further line items appear: “Tax” and
3 “Service Fee.” “Tax” adds the locally applicable sales tax rate. “Service Fee” adds a further charge of
4 10% of the total food cost. This “Service Fee” is exclusively applied by Panda Express to delivery orders
5 and is therefore by definition an additional hidden delivery charge.

6 39. In fact, Panda Express does not apply this “Service Fee” to orders made on its app and
7 website when those orders are for in-store pickup.

8 40. In short, the disclosed “Delivery Fee” is not actually \$2.95. The *actual* “delivery fee”—
9 the extra charge for having food delivered as opposed to picking it up—is the listed “Delivery Fee” *plus*
10 the hidden “Service Charge” markup applied exclusively to delivery orders.

11 41. If that were not enough, Panda Express misrepresents the true nature of the “Service Fee.”

12 42. If a user clicks a further link next to “Service Fee,” a disclosure appears stating that the
13 fee “Helps maintain and improve your digital experience.”

14 43. This disclaimer is false. The “Service Fee” is not for “digital experience,” it is a hidden
15 delivery fee. This is necessarily true because the “Service Fee” is only assessed on delivery orders. It is
16 not assessed on orders placed through the mobile app or website that are for pickup—even though the
17 same so-called “digital experience” is used by a consumer for such an order.

18 44. Panda Express does not inform consumers the true costs of its delivery service and it
19 misrepresents its Delivery Fee as \$2.95, when in fact those costs are actually much higher.

20 **E. Other Restaurant Industry Actors and Panda Express Competitors Disclose Delivery Fees**
21 **Fairly and Expressly**

22 45. By unfairly obscuring its true delivery costs, Panda Express deceives consumers and gains
23 an unfair upper hand on competitors that fairly disclose their true delivery charges. For example, Panda
24 Express competitors Del Taco and El Pollo Loco both offer delivery services through their app and
25 website. But unlike Panda Express, Del Taco and El Pollo Loco fairly and prominently represent their
26 true delivery charges.

27 46. For example, Del Taco does not mark-up food charges for delivery orders through its app,
28

1 nor does it add an additional “service charge” to delivery orders. Instead, for delivery orders its ordering
2 screen presents the following:

3 Subtotal:

4 Tax:

5 Delivery Charge:

6 Tip:

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

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

13 Subtotal:

14 Delivery Charge:

15 Tax:

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

19 **F. Plaintiff’s Experience**

20 50. Plaintiff used the Panda Express website to make a purchase of food on May 1, 2021, in
21 the total amount of \$36.94.

22 51. Prior to placing her order, the Panda Express website stated that the Delivery Fee was
23 \$2.95.

24 52. However, Plaintiff’s purchase included a hidden “Service Fee” that in fact represented an
25 additional delivery fee. Panda Express charged Plaintiff a \$2.90 service fee on her order.

26 53. Upon information and belief, this same service fee is assessed only on delivery orders like
27 the one made by Plaintiff and would not have been assessed to Plaintiff had she picked up her order in
28 person from the Panda Express location.

1 54. Plaintiff would not have made the purchase if she had known the Panda Express delivery
2 fee was not in fact \$2.95.

3 55. If she had known the true delivery fee, she would have chosen another method for
4 receiving food from Panda Express or ordered food from another provider.

5 **CLASS ALLEGATIONS**

6 56. Plaintiff brings this action on behalf of herself and a Class of similarly situated persons
7 defined as follows:

8 All consumers outside of California who, within the applicable statute of limitations
9 preceding the filing of this action to the date of class certification, ordered food delivery
10 through the Panda Express mobile app or website, and were assessed higher delivery
charges than represented.

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

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

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

- 24 a. Whether during the class period, Defendant deceptively represented Delivery Fees
25 on food deliveries ordered through the Panda Express website and mobile app;
26 b. Whether Defendant's alleged misconduct misled or had the tendency to mislead
27 consumers;

- 1 c. Whether Defendant engaged in unfair, unlawful, and/or fraudulent business
- 2 practices under the laws asserted;
- 3 d. Whether Defendant's alleged conduct constitutes violations of the laws asserted;
- 4 e. Whether Plaintiff and members of the Class were harmed by Defendant's
- 5 misrepresentations;
- 6 f. Whether Plaintiff and the Class have been damaged, and if so, the proper measure
- 7 of damages; and
- 8 g. Whether an injunction is necessary to prevent Defendant from continuing to
- 9 deceptively represent the amount of the delivery fee on food deliveries ordered
- 10 through the Panda Express website and mobile app.

11 60. **Typicality:** Like Plaintiff, many other consumers ordered food for delivery from Panda
12 Express's website or mobile app, believing delivery to be the flat fee represented based on Defendant's
13 representations. Plaintiff's claims are typical of the claims of the Class because Plaintiff and each Class
14 member was injured by Defendant's false representations about the true nature of the delivery fee.
15 Plaintiff and the Class have suffered the same or similar injury as a result of Defendant's false, deceptive
16 and misleading representations. Plaintiff's claims and the claims of members of the Class emanate from
17 the same legal theory, Plaintiff's claims are typical of the claims of the Class, and, therefore, class
18 treatment is appropriate.

19 61. **Adequacy of Representation:** Plaintiff is committed to pursuing this action and has
20 retained counsel competent and experienced in prosecuting and resolving consumer class actions.
21 Plaintiff will fairly and adequately represent the interests of the Class and does not have any interests
22 adverse to those of the Class.

23 62. **The Proposed Class and Satisfies the Rule 23(b)(2) Prerequisites for Injunctive**
24 **Relief.** Defendant has acted or refused to act on grounds generally applicable to the Class, thereby
25 making appropriate final injunctive and equitable relief with respect to the Class as a whole. Plaintiff
26 remains interested in ordering food for delivery through Panda Express's website and mobile app; there
27 is no way for her to know when or if Defendant will cease deceptively misrepresenting the cost of
28 delivery.

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

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

65. **The Proposed Class Satisfies the Rule 23(b)(3) Prerequisites for Damages.** The common questions of law and fact enumerated above predominate over questions affecting only individual members of the Class, and a class action is the superior method for fair and efficient adjudication of the controversy. The likelihood that individual members of the Class will prosecute separate actions is remote due to the extensive time and considerable expense necessary to conduct such litigation, especially when compared to the relatively modest amount of monetary, injunctive, and equitable relief at issue for each individual Class member.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF
Violation of California’s Unfair Competition Law (“UCL”)
Cal. Bus. & Prof. Code § 17200, et seq.

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

67. California Business & Professions Code § 17200 prohibits acts of “unfair competition,” including any “unlawful, unfair or fraudulent business act or practice.” Panda Express’s conduct related to deceptively representing that it provides a flat Delivery Fee of \$2.95 on food deliveries ordered through its website and mobile app violates each of the statute’s “unfair,” “unlawful,” and “fraudulent” prongs.

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

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

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

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

5 72. Panda Express committed unfair and fraudulent business acts and practices in violation of
6 Cal. Bus. & Prof. Code § 17200, *et seq.*, by affirmatively and knowingly misrepresenting on its website
7 and mobile app that it provides a flat \$2.95 Delivery Fee for food orders, when, in reality, it hides
8 delivery charges through the assessment of an elusive “service fee” exclusively charged to delivery
9 customers.

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

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

16 75. Defendant’s conduct also constitutes an “unlawful” act under the UCL because, as
17 detailed in Plaintiff’s Second Claim for Relief below, it also constitutes a violation of sections 1770(a)(5)
18 and (a)(9) of the California Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1750, *et seq.*,
19 *infra*, in that Panda Express deceptively represents that it provides a flat fee for delivery for food orders
20 made on its website or mobile app; in reality, however, this marketing message is false because Panda
21 Express’s so-called “service fee” is assessed exclusively on delivery customers and is therefore by
22 definition a delivery charge.

23 76. Panda Express’s business practices have misled Plaintiff and the proposed Class and will
24 continue to mislead them in the future.

25 77. Plaintiff relied on Defendant’s misrepresentations about the falsely advertised cost of
26 delivery in choosing to utilize the Panda Express food delivery service in ordering food from Defendant’s
27 website or mobile app.

28 78. By falsely marketing the true costs of food delivery, Panda Express deceived Plaintiff and

1 Class members into making online food purchases they otherwise would not make.

2 79. Had Plaintiff known the truth of the delivery service fee, *i.e.*, that Panda Express’s
3 “Service Fees” were in all reality “delivery fees,” she would have chosen another method for receiving
4 food from Panda Express or ordered food from another provider.

5 80. As a direct and proximate result of Panda Express’s unfair, fraudulent, and unlawful
6 practices, Plaintiff and Class members suffered and will continue to suffer actual damages. Defendant’s
7 fraudulent conduct is ongoing and present a continuing threat to Class members that they will be
8 deceived into ordering food for delivery under the false belief that delivery was \$2.95.

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

12 **SECOND CLAIM FOR RELIEF**
13 **Violation of California’s Consumer Legal Remedies Act (“CLRA”)**
14 **Cal. Civ. Code § 1750, *et seq.***

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

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

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

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

1 85. Specifically, Panda Express advertises to customers that use of its delivery service is a flat
2 fee of \$2.95, but this is false because Defendant imposes hidden delivery charges to consumers by
3 covertly applying a “Service Fee” exclusively to delivery orders and misrepresenting that it is actually a
4 delivery charge.

5 86. At no time does Panda Express disclose the true nature of its delivery fee to consumers;
6 instead, it repeatedly conceals and misrepresents this material information at several steps of the
7 transaction process.

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

16 **THIRD CLAIM FOR RELIEF**
17 **Violation of Michigan Consumer Protection Act (“MCPA”)**
18 **M.C.L. §§ 445.903, *et seq.***

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

20 89. This cause of action is brought pursuant to Michigan’s Consumer Protection Act, M.C.L.
21 §§ 445.903, *et seq.* Defendant’s sale of food products to consumers for delivery ordered through its
22 website and mobile app were “transactions” within the meaning of the MCPA.

23 90. Defendant violated and continues to violate the MCPA by engaging in the following
24 practices proscribed by the MCPA in transactions with Plaintiff and the Class which were intended to
25 result in, and did result in, the sale of Panda Express food orders for delivery:

- 26 a. “Representing that goods or services . . . have . . . characteristics . . . that they do
27 not have” (1)(c);
28 b. “Advertising or representing . . . services with intent not to dispose of those . . .

1 services as advertised or represented” (1)(g); and

2 c. “Failing to reveal a material fact, the omission of which tends to mislead or
3 deceive the consumer, and which fact could not reasonably be known by the
4 consumer” (1)(s).

5 91. Specifically, Panda Express advertises to customers that use of its delivery service is a flat
6 fee of \$2.95, but this is false because Defendant imposes hidden delivery charges to consumers by
7 covertly applying a “Service Fee” exclusively to delivery orders and misrepresenting that it is actually a
8 delivery charge.

9 92. Plaintiff reasonably relied on Defendant’s material misrepresentations about the falsely
10 advertised cost of delivery in choosing to utilize the Panda Express food delivery service in ordering food
11 from Defendant’s website or mobile app. Had Plaintiff known the truth of the delivery service fee, *i.e.*,
12 that Panda Express’s “Service Fees” were in all reality “delivery fees,” she would have chosen another
13 method for receiving food from Panda Express or ordered food from another provider.

14 93. At no time does Panda Express disclose the true nature of its delivery fee to consumers;
15 instead, it repeatedly conceals and misrepresents this material information at several steps of the
16 transaction process.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiff on behalf of herself and the Class seeks judgment in an amount to be
19 determined at trial, as follows:

- 20 (a) For an order enjoining Defendant from continuing the unlawful practices set forth above;
- 21 (b) For declaratory and injunctive relief as set forth above;
- 22 (c) For an order requiring Defendant to disgorge and make restitution of all monies it
23 acquired by means of the unlawful practices set forth above;
- 24 (d) For compensatory damages according to proof;
- 25 (e) For punitive damages according to proof;
- 26 (f) For reasonable attorneys’ fees and costs of suit;
- 27 (g) For pre-judgment interest; and
- 28 (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: July 1, 2021

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