

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

JAMES W. GERTIE, individually and on behalf of)
all others similarly situated,)

Plaintiff,)

v.)

KARIS MANAGEMENT COMPANY, INC.)
d/b/a McDonald's,)

Defendant.)

No.)

Amount Claimed: \$2.05)

(plus class damages, injunction,
punitive damages, costs and
attorneys' fees))

JURY TRIAL DEMANDED)

2016CH16090
CALENDAR/ROOM 06
TIME 00:00
Class Action

CLASS ACTION COMPLAINT

Plaintiff James W. Gertie ("Plaintiff"), by his attorneys, Markoff Leinberger LLC, states as follows for his Class Action Complaint against Defendant Karis Management Company, Inc. d/b/a McDonald's ("Defendant").

Nature of the Case

1. This is a consumer class action complaint based upon Defendant's violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et seq.* ("CFA"). Defendant, the operator of several McDonald's restaurants, advertised for sale a food combination designated an "Extra Value Meal" but the combination actually costs more than if each item were bought separately, thus making it no "value" at all, let alone an "extra value." Defendant's uniform conduct occurred over a chain of more than 10 franchised McDonald's restaurants.

Parties

2. Plaintiff is an Illinois citizen who resides in Des Plaines, Cook County Illinois.
3. Defendant is an Illinois corporation with its principal place of business Des Plaines, Cook County, Illinois.

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 CIRCUIT COURT OF COOK
 COUNTY ILLINOIS
 CHANCERY DIV
 CLERK

4. Defendant is engaged in the business of selling food and beverages at retail to consumers.

Common Facts

5. Defendant does business as McDonald's.

6. Defendant operates more than 10 McDonald's restaurants.

7. At all relevant times and at each of its McDonald's restaurants, Defendant offered for sale "2 cheeseburgers" for \$2.50.

8. At all relevant times and at each of its McDonald's restaurants, Defendant offered for sale a medium size order of fries for \$1.99.

9. At all relevant times and at each of its McDonald's restaurants, Defendant offered for sale a medium size soft drink for \$1.00.

10. At all relevant times and at each of Defendant's McDonald's restaurants, the price of two cheeseburgers, a medium fries and a medium soft drink is \$5.49.

11. At all relevant times and at each of its McDonald's restaurants, Defendant offered for sale an "Extra Value Meal" of two cheeseburgers, a medium drink and either medium fries or a side salad ("2 Cheeseburger Meal").

12. McDonald's advertises its "Extra Value Meal" as follows:

Get a tasty meal at a great price with each

EXTRA VALUE MEAL®

You value food just as much as you value a good price. Thanks to our delicious meal bundles, you can have both. A meal with quality ingredients that's easy on the wallet? That's a great deal.

13. At all relevant times and at each of its McDonald's restaurants, Defendants offered for sale the 2 Cheeseburger Meal for \$5.90.

14. Excluding sales tax, Defendant's price for the 2 Cheeseburger Meal was 41¢ higher (nearly 7.5%) than the price for buying its component parts separately.

Class Allegations

15. Plaintiffs brings this action individually and on behalf of the following putative class ("Class"):

All persons who bought a 2 Cheeseburger Extra Value Meal from any of the following McDonald's restaurant locations:

3067 Mannheim Rd
Des Plaines IL 60018

1101 Oakton St
Des Plaines IL 60018

725 W Golf Rd
Des Plaines IL 60018

444 S River Rd
Des Plaines IL 60016

8460 W Dempster St
Niles IL 60714

298 Golf Mill Shopping Center
Niles IL 60714

1032 N Northwest Hwy
Park Ridge IL 60068

1200 S Milwaukee Ave
Wheeling IL 60070

9815 N Milwaukee Ave
Glenview IL 60716

1150 Main St
Antioch IL 60002

1275 N Rte 83
Grayslake IL 60030

1804 E Belvidere Rd
Grayslake IL 60030

774 Rollins Rd
Round Lake Beach IL 60073

31667 Hwy 12
Volo IL 60073

16. The Class is so numerous that joinder of all individual members in one action is impracticable. On information and belief, at least hundreds of people meet the definition of the Class.

17. There are common questions of law or fact affecting Class members, which common questions predominate over any affecting only individual members. These common questions include, but are not limited to

- a. Whether Defendant charged more for a 2 Cheeseburger Meal than its component parts would cost separately;
- b. Whether Defendant misrepresented the 2 Cheeseburger Meal as providing value to Plaintiff and the Class;
- c. Whether Defendant misrepresented the 2 Cheeseburger Meal as providing extra value to Plaintiff and the Class;
- d. Whether Defendant concealed from Plaintiff and the Class that buying a 2 Cheeseburger Meal is more expensive than buying its component parts separately; and
- e. Whether Defendant's pricing constitutes a deceptive and/or unfair practice.

18. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has no interests that conflict with the interests of Class members. Plaintiff has retained counsel experienced in handling consumer class actions. Neither Plaintiff nor his counsel has any interests that might cause them not to pursue this claim vigorously.

19. A class action is an appropriate method for the fair and efficient adjudication of this controversy. The claims of Plaintiff and the Class are identical, as they are all based on the uniform conduct of Defendant, namely the uniform scheme to deceive Class members into believing that they were getting a discount by buying a 2 Cheeseburger Meal, rather than buying its component parts separately. The prosecution of separate actions by individual plaintiffs could create a risk of inconsistent or varying adjudications. Management of the Class claims is likely to present significantly fewer difficulties than those presented in many individual claims. Moreover, on information and belief, the identities of Class members may be ascertained from Defendants' records.

20. Section 2 of the CFA, 815 ILCS 505/2, provides as follows:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false present, 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, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act", approved August 5, 1965, in the conduct

of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby. In construing this section consideration shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Section 5(a) of the Federal Trade Commission Act.

21. Section 2 of the Uniform Deceptive Trade Practice Act, 815 ILCS 510/2, provides as follows:

(a) A person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, the person:

* * *

(5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have...;

(9) advertises goods or services with intent not to sell them as advertised...;

(12) engages in any other conduct which similarly creates a likelihood of confusion or misunderstanding.

Count I
Consumer Fraud

22. Plaintiff incorporates paragraphs 1-21 herein.

23. On the following dates and at the following locations, Plaintiff bought a 2 Cheeseburger Meal from Defendant for \$5.90:

| <u>Date</u> | <u>Location</u> |
|-------------------|--|
| October 14, 2016 | 3067 Mannheim Rd, Des Plaines IL 60018 |
| November 2, 2016 | 725 W Golf Rd, Des Plaines IL 60018 |
| November 8, 2016 | 1101 Oakton St, Des Plaines IL 60016 |
| November 12, 2016 | 8460 W Dempster St, Niles IL 60714 |
| November 13, 2016 | 8460 W Dempster St, Niles IL 60714 |

24. On the dates and at the locations identified in paragraph 23 above, the price of two cheeseburgers, medium fries and a medium soft drink at Defendant's restaurants was \$5.49.

25. On each of the dates identified in paragraph 23 above, Defendant represented to Plaintiff, on its menu boards, that the 2 Cheeseburger Meal was a "value."

26. On each of the dates identified in paragraph 23 above, Plaintiff read at least one of Defendant's menu boards.

27. On each of the dates identified in paragraph 23 above, Defendant's designation of the 2 Cheeseburger Meal as an "Extra Value Meal" induced Plaintiff to buy a 2 Cheeseburger Meal from Defendant because he understood it to provide him "value" in the way of savings over buying its component parts separately.

28. Defendant falsely represented that the 2 Cheeseburger Meal was a "value."

29. Defendant's 2 Cheeseburger Meal was not a "value" because it was higher-priced than buying each of its component parts separately.

30. Defendant falsely represented that the 2 Cheeseburger Meal was an "extra value."

31. Defendant's 2 Cheeseburger Meal was not an "extra value" because it was higher-priced than buying each of its component parts separately.

32. By representing the 2 Cheeseburger Meal as an "Extra Value Meal," Defendant intended to induce Plaintiff and Class members to buy a 2 Cheeseburger Meal rather than buying its component parts separately.

33. Defendant did not advise Plaintiff or Class members that buying a 2 Cheeseburger Meal was more expensive than buying its component parts separately.

34. By concealing from Plaintiff and Class members that buying a 2 Cheeseburger Meal costs more than buying its component parts separately, Defendant intended to induce

Plaintiff and Class members to buy a 2 Cheeseburger Meal rather than buying its component parts separately.

35. Plaintiff and Class members have been damaged as a result of Defendant's unfair and deceptive acts, including having overpaid at least \$0.41 plus tax for a 2 Cheeseburger Meal.

36. Defendant acted intentionally and deliberately, with the intention of deceiving Plaintiff and the Class.

37. Defendant has maliciously, recklessly and with wanton disregard of Plaintiff's and Class members' property rights concocted and maintained their scheme to deceive Plaintiff and Class members and take their money.

38. Section 10a of the CFA, 815 ILCS 505/10a, provides that victims of consumer fraud may recover injunctive relief, actual damages, consequential damages, punitive damages, attorneys' fees and costs.

WHEREFORE, Plaintiff, individually and on behalf of the Class, requests that this Court enter judgment in his favor and against Defendant and award:

- A. An injunction prohibiting Defendant from pricing the 2 Cheeseburger Meal equal to or more than its components parts would be priced separately;
- B. Actual damages;
- C. Punitive damages;
- D. Attorneys' fees;
- E. Costs; and
- F. Such further relief as this Court deems just and proper.

COUNT II
UNJUST ENRICHMENT
(alternative to Count I)

39. Plaintiff incorporates paragraphs 22-37 herein.

40. Defendant was enriched by inflating the price of the 2 Cheeseburger Meal.

41. Plaintiff and Class members were impoverished by paying inflated prices to Defendant.

42. Defendant's enrichment and Plaintiff's and Class members' impoverishment are directly related, because Defendant got the benefit of collecting payment for inflated prices, allowing it to profit, and Plaintiff and Class members retained less money than they were legally entitled to retain.

43. Defendant was unjustified in imposing and collecting payment for inflated prices because it was premised on fraudulent representations and undisclosed price discrepancies.

44. Plaintiff and Class members are without an adequate remedy at law.

45. Defendant voluntarily accepted the benefit of imposing and collecting fraudulently-inflated payments and would be unjustly enriched if allowed to retain those payments, which would violate fundamental principles of justice.

46. Despite knowing that its fraudulent price inflation was illegal, Defendant has not returned the inflated payments to Plaintiff and Class members.

47. Plaintiff is entitled to his costs related to the prosecution of this litigation.

WHEREFORE, Plaintiff, individually and on behalf of the Class, requests that this Court enter judgment in his favor and against Defendant and award:

- A. Actual damages;
- B. Disgorgement of all overcharges by Defendant;
- C. Prejudgment interest;
- D. Costs; and
- E. Such further relief as this Court deems just and proper.

Plaintiff Demands A Trial By Jury.

JAMES W. GERTIE, Plaintiff,

By:



Paul F. Markoff, One of Plaintiff's Attorneys

Dated: December 13, 2016

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