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

FARAH GOHARI as the Named Class Representative Plaintiff, and all others similarly situated, Plaintiff, v. McDONALD'S CORPORATION, LOTT #1, INC., McDonald's franchise at O'Hare Airport, Terminal 1, Concourse C, and LOTT #1, INC., McDonald's franchise at O'Hare Airport, Terminal 1, Concourse B, Defendants.	)	Case No. 2016 CH 08261 Hon. Cecilia A. Horan

AMENDED NOTICE OF MOTION

PLEASE TAKE NOTICE that on Monday, June 5, 2023 at 9:00 a.m. or as soon thereafter as we may be heard, we shall appear before the Honorable Judge Cecilia A. Horan, via Zoom, **Meeting ID**: 956 5899 1093 **Password**: 129359, or any judge then presiding, and shall then and there present **Defendant McDonald's Corporation's Motion for Reconsideration**, a copy of which is hereby served upon you.

Dated: May 22, 2023

Respectfully submitted,

McDONALD'S CORPORATION

By: */s/ David J. Doyle*
One of its Attorneys

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on May 22, 2023, he caused a copy of the foregoing AMENDED NOTICE OF MOTION to be served via electronic mail and U.S. mail, postage pre-paid, upon the following individuals:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ David J. Doyle
David J. Doyle

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

FARAH GOHARI as the Named Class Representative Plaintiff, and all others similarly situated,	)	
Plaintiff,	)	Case No. 2016 CH 08261
v.	)	
McDONALD'S CORPORATION, LOTT #1, INC., McDonald's franchise at O'Hare Airport, Terminal 1, Concourse C, and LOTT #1, INC., McDonald's franchise at O'Hare Airport, Terminal 1, Concourse B,	)	Hon. Cecilia A. Horan
Defendants.	)	

DEFENDANT LOTT #1, INC.'S MOTION FOR RECONSIDERATION

NOW COMES, Defendant, Lott #1, Inc. ("Lott"), on behalf of its McDonald's Franchise at O'Hare Airport, Terminal 1, Concourse C, and on behalf of its McDonald's Franchise at O'Hare Airport, Terminal 1, Concourse B, by and through its attorneys, TRAUB LIEBERMAN STRAUS & SHREWSBERRY LLP, hereby adopts and joins the arguments asserted by McDonald's Corporation in **Defendant McDonald's Corporation's Motion for Reconsideration**, and incorporates said documents by reference.

WHEREFORE, Defendant Lott #1, Inc., by and through its attorneys, TRAUB LIEBERMAN STRAUS & SHREWSBERRY LLP, respectfully requests this Honorable Court reconsider its April 20, 2023 ruling and grant Defendants' motions for summary judgment.

May 22, 2023

Respectfully Submitted,

LOTT #1, INC.

By: /s/ Jessica K. Burtnett
One of its attorneys

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

FARAH GOHARI as the Named Class Representative Plaintiff, and all others similarly situated,	)	
Plaintiff,	)	Case No. 2016 CH 08261
v.	)	
McDONALD'S CORPORATION, LOTT #1, INC., McDonald's franchise at O'Hare Airport, Terminal 1, Concourse C, and LOTT #1, INC., McDonald's franchise at O'Hare Airport, Terminal 1, Concourse B,	)	Hon. Cecilia A. Horan
Defendants.	)	

DEFENDANT McDONALD'S CORPORATION'S
MOTION FOR RECONSIDERATION

Defendant McDonald's Corporation ("McDonald's"), by its undersigned counsel and pursuant to 735 ILCS 5/2-1203, respectfully moves this Court to reconsider its April 20, 2023 ruling denying McDonald's summary judgment motion. In support of this Motion, McDonald's states as follows:

INTRODUCTION

On April 20, 2023, at the conclusion of oral argument, this Court denied McDonald's motion for summary judgment from the bench, ruling that issues of fact exist as to whether Plaintiff was "actually deceived" for purposes of her Illinois Consumer Fraud Act ("ICFA") claim when she saw an inaccurate meal price on the digital menu board of a McDonald's restaurant. In so ruling, the Court misapplied Illinois law in two critical respects.

First, although the Court recognized that the issue of actual deception must be evaluated under a reasonable consumer test, the Court based its ruling largely on Plaintiff's testimony that

she "felt stressed out and under pressure" at the time of her purchase. (*See* 4/20/23 Hearing Transcript, Exhibit A, at 36). The parties did not offer the Court briefing on this particular aspect of Plaintiff's testimony before the Court made its ruling. Extensive research, however, reveals that the Court's reliance on Plaintiff's subjective feelings was inappropriate. The reasonable consumer test focuses on the ***information*** available to the consumer, assumes the consumer was capable of processing that information, and instructs that if the information would have dispelled the consumer's supposed deception, the consumer was not "actually deceived." That is precisely the case here. There are no exceptions under the ICFA for plaintiffs who felt hurried or rushed.

Second, the Court's ruling did not properly consider the role that a customer receipt plays in evaluating ICFA claims like Plaintiff's. Illinois courts faced with discrepancies between advertised food pricing and register food pricing uniformly have held that the existence of an accurate receipt from which a consumer could detect the pricing discrepancy negates the plaintiff's ICFA claim. In fact, ***all*** of these cases were decided in the defendants' favor at the ***dismissal*** stage, including a new Northern District of Illinois opinion authored by Judge Sara Ellis in March of this year. Plaintiff has offered this Court no reason why her ICFA claim should not suffer the same fate as the statutory fraud claims in these cases, and no such reason exists. Respectfully, the Court should reconsider its April 20 ruling and grant summary judgment in McDonald's favor.

ARGUMENT

I. Legal Standard

Motions to reconsider are appropriate under Section 2-1203 of the Illinois Code of Civil Procedure to bring to the Court's attention newly discovered evidence, changes in the law, or errors in the Court's previous application of existing law. *Hachem v. Chicago Title Ins. Co.*, 2015 IL App (1st) 143188, ¶ 21. Here, McDonald's seeks reconsideration based on: (1) the Court's

previous application of the reasonable consumer test in ICFA cases; and (2) a new ICFA opinion that was issued after the parties submitted their summary judgment briefs—*Kahn v. Walmart, Inc.*, 2023 WL 2599858 (N.D. Ill. Mar. 21, 2023).

II. Plaintiff's ICFA Claim Fails as a Matter of Law Under a Proper Application of the Reasonable Consumer Test

A. In Applying the Reasonable Consumer Test, Courts Should Focus Exclusively on the Information Available to the Consumer and Ignore the Consumer's Subjective Feelings

The "ICFA's test for the deceptiveness of a representation is keyed to a reasonable consumer, and deceptiveness is evaluated specifically in light of 'all the information available to the consumer.'" *Fuchs v. Menard, Inc.*, 2017 WL 4339821, at *5 (S.D. Ill. Sept. 29, 2017) (citations omitted). Accordingly, when the consumer is provided information that dispels the purported confusion under which she claims to have been laboring, her claim fails as a matter of law. *See id.* (explaining that ICFA claim involving dimensions of lumber failed because "[c]onsumers in the Plaintiffs' position have direct access to all the information they need as to dimensional size: the lumber's width and height are right there for the measuring") (*citing Galanis v. Starbuck's Corp.*, 2016 WL 6037962 (N.D. Ill. Oct. 14, 2016) (rejecting ICFA claim that iced drinks improperly contained less than 24 fluid ounces where it was clear that 24-ounce cup would not hold 24 ounces of liquid once ice was added)).

There is no question that, here, Plaintiff Gohari had all the information she needed at the point of sale to know there was a discrepancy between the posted price and the register price of the Steak & Egg McMuffin meal she purchased. McDonald's will not recount all of that information in this Motion, as it is discussed at length in Defendants' summary judgment submissions. But, briefly, the following undisputed facts informed Plaintiff—and would have made clear to any reasonable consumer—that the menu and register prices did not match: (1)

Plaintiff complained about the price of all three of her orders (which were comprised of the Steak & Egg McMuffin meal and just one other item); (2) restaurant workers repeatedly told Plaintiff that the menu prices were wrong; (3) Plaintiff demanded that McDonald's honor the posted price instead of charging her the register price; and (4) as discussed below, Plaintiff received a receipt that accurately set forth the prices she was charged for both of her items.

After carefully reviewing Plaintiff's hearing testimony, the Court concluded that Plaintiff felt rushed. According to the Court, other customers in line were talking to Plaintiff, she felt "flummoxed," "stressed out," and "under pressure," and "[t]here wasn't any discussion about how that fact would play into the reasonable consumer test." (*See* 4/20/23 Hearing Transcript, Exhibit A, at 36). Lacking guidance on this issue, the Court concluded that "there is a question of fact about whether or not [Plaintiff] could have figured out the price given that stress and pressure that she was under." (*Id.*) But by focusing on the Plaintiff's subjective feelings, rather than looking solely at the information at her disposal, the Court misapplied the reasonable consumer test.

Research has not uncovered a single ICFA case in which a court considered the subjective feelings of the plaintiff in analyzing whether the plaintiff was deceived. This makes perfect sense because reasonable consumer tests are commonly understood to be objective in nature. *See, e.g.*, *In re Limberopoulos*, 2004 WL 5208005, at *2 (N.D. Ill. Mar. 16, 2004) (stating that the "test for materiality [under the ICFA] is an objective one: whether a reasonable person could be expected to rely on the information"). Whether a plaintiff has a viable ICFA claim should not turn on how observant she was, how she was feeling that day, or whether she took the time to digest the information available to her. Indeed, if the "pressure" of waiting in line at a quick service restaurant were sufficient to create a fact issue on the issue of actual deception, then another ICFA

case involving allegedly deceptive pricing at a McDonald's restaurant—*Killeen v. McDonald's Corp.*, 317 F. Supp. 3d 1012 (N.D. Ill. 2018)—would have been decided differently.

In *Killeen*, the fact that the plaintiff had sufficient information at the point of sale to realize that the aggregate *a la carte* prices of her items was cheaper than their meal price was fatal to her ICFA claim. Whether she felt rushed, or had paused to do the math, was irrelevant. As the court explained: "plaintiff may not have wished to take the time to compare prices, but there is no question that doing so would have dispelled the deception on which her claims are based." *Killeen*, 317 F. Supp. 3d at 1013.

Similarly, Plaintiff Gohari may have felt rushed by the other customers at line at the O'Hare restaurant she visited, or by the fact that her husband had low blood sugar and was in a hurry to get his meal, but these facts are irrelevant. Whether she was "actually deceived" for purposes of an ICFA claim is dictated solely by the ***information*** available to her. Any other interpretation of the reasonable consumer test would allow a clever plaintiff to avoid summary judgment simply by claiming she was subject to external pressures that made her feel hurried, ill, embarrassed, or otherwise unable to process the information available to her. And, here, the information available to Plaintiff made clear that there was a difference between the posted price and the register price of the breakfast meal she purchased.

Moreover, despite Plaintiff's testimony that she felt pressure to return to her gate and placate her husband by bringing him his meal, the undisputed facts show that she had plenty of time to evaluate the pricing information before her. Plaintiff testified that the entire process of obtaining food from McDonald's took thirty minutes and that she waited in line for approximately 15 minutes. (*See* 1/17/2020 Hearing Tr., Exhibit B, at 57:9-18; 65:7-13). This means that Plaintiff spent approximately 15 minutes at the counter placing her orders, speaking with restaurant

personnel about why the total of those orders was higher than she had expected, asking if the restaurant would honor its menu board pricing, paying for her food, receiving her receipt, and taking pictures of the digital menu board. There was ample of time for Plaintiff to digest all the information she was provided about the pricing discrepancy that is the subject of her complaint.

In short, ICFA case law looks at the information provided to a plaintiff and evaluates whether the plaintiff was actually deceived by objectively analyzing the quality of that information. Where there was information available to the consumer that—if the plaintiff took the time to consider it—would have dispelled a statement's tendency to deceive, the consumer cannot prove actual deception. That is the case here. And regardless of how rushed, flustered, or upset Plaintiff may have felt, her subjective feelings cannot salvage her ICFA claim.

B. Plaintiff's Customer Receipt Defeats Her ICFA Claim as a Matter of Law

The Court's summary judgment ruling did not address the fact that Plaintiff received a customer receipt during her visit that, by her own admission, allowed her to immediately discern the discrepancy between the menu board price and the register price of the Steak & Egg McMuffin meal she purchased. (*See* 1/17/2020 Hearing Tr., Exhibit B, at 62:6-16). Indeed, Plaintiff testified that she reviewed her receipt within minutes of her purchase and immediately realized that the Steak & Egg McMuffin meal was mispriced. (*Id.* at 62:6-16, 64:6-12). Under controlling Illinois case law, this fact defeats her ICFA claim.

"Illinois law is clear that where other information is available to dispel [a tendency to mislead], there is no possibility for deception." *Killeen v. McDonald's Corp.*, 317 F. Supp. 3d 1012, 1013 (N.D. Ill. 2018). Whether the consumer actually ***knew*** of a pricing discrepancy at the time of the sale is not dispositive. The key question is whether she had sufficient information from which she ***could have known*** about the discrepancy. Thus, in *Killeen*, where a McDonald's

customer thought she was getting the lowest possible price for her food items by ordering them in an Extra Value Meal only to learn sometime later that she could have saved eleven cents by buying them *a la carte*, the customer's ICFA claim was dismissed with prejudice because the restaurant's meal and *a la carte* pricing allowed her to discern the cheapest way to buy her items.

One obvious way for a customer to notice a discrepancy between advertised prices and register prices is to review her receipt. In its motion papers, McDonald's cited *Tudor v. Jewel Food Stores, Inc.*, in which the First District affirmed the dismissal of an ICFA claim against a grocery store that charged a customer more for items at the register than the prices posted on store shelves because the plaintiff received "a receipt enabling her to determine whether the scanned prices accurately reflected the advertised and shelf prices." 288 Ill.App.3d 207, 210 (1st Dist. 1997). In a case decided less than two months ago—***after*** the parties finished briefing their summary judgment motions—a federal judge agreed with this reasoning and dismissed an ICFA claim against Walmart involving a discrepancy between shelf pricing and register pricing.

In *Kahn v. Walmart, Inc.*, 2023 WL 2599858 (N.D. Ill. Mar. 21, 2023), a Walmart customer bought fifteen items on a shopping trip. For six of those items, he was charged more at the check-out counter than the prices posted on store shelves. *Id.* at *1. In his class action complaint, the customer alleged that he "read and relied upon Defendant's false and misleading Shelf Pricing," that he believed "he was paying the price reflected on the Shelf Pricing," and that he "would not have purchased the Overcharged Goods but for the advertised Shelf Pricing." (*See* Kahn Complaint, Exhibit C, ¶¶ 26-27). The complaint made no mention of a customer receipt, or when or how quickly the plaintiff read it, but the complaint showed photographs of the receipt from the plaintiff's shopping trip to detail the pricing discrepancy for each item. (*Id.*¶ 24).

These photos doomed the plaintiff's ICFA claim. As the court explained in dismissing that claim with prejudice: "Walmart provided Kahn with a receipt, reflecting the incorrectly scanned prices. Kahn could, and indeed did, use this receipt to compare the prices Walmart charged him with the advertised shelf pricing. This comparison revealed the discrepancy and dispelled any potential deception." *Kahn*, 2023 WL 2599858, at *3. Significantly, the plaintiff's receipt was the sole basis for the court's ruling that he was not deceived. *Id.*

Like Kahn, Plaintiff Gohari received a receipt that accurately set forth the prices she was charged at the register, and that receipt enabled her immediately to discern the pricing discrepancy at issue. Indeed, her claim is far weaker than Kahn's for obvious reasons. Kahn bought fifteen items, six of which were mispriced, and he presumably could not see the shelf prices of those items while standing in the check-out line. In contrast, Plaintiff Gohari bought just two items, and she could see the menu price for the Steak & Egg McMuffin meal the entire 30 minutes she spent waiting in line and placing her orders. Even crediting Plaintiff's testimony that she did not review her receipt and realize what had happened until a few minutes after she received her food, the ***timing*** of her realization does not matter. In *Tudor*, *Kahn*, and *Killeen*—all cases resolved on motions to dismiss—providing the customer with a receipt (or, in the case of *Killeen*, giving the customer the ability to compare prices on the digital menu board) rendered the plaintiff's ICFA claim defective as a matter of law.

There is no meaningful way for Plaintiff to distinguish this case from *Tudor*, *Kahn*, and *Killeen*. Moreover, these cases are entirely consistent with the Illinois Supreme Court's pronouncement that a receipt evidences that there was "no deception by the retailer." *See McIntosh v. Walgreens Boots Alliance, Inc.*, 2019 IL 123626, ¶ 36 (also explaining that "[w]here the nature

and amount of a charge is fully disclosed, the plaintiff cannot successfully assert that he or she was operating under a mistake of fact with regard to the charge").

Finally, even if the Court maintains that it was proper to consider Plaintiff's mental state of being "flummoxed" or upset during her restaurant visit (and, respectfully, McDonald's submits that it was not), Plaintiff testified that she was ***still upset*** when she reviewed her receipt at the gate, yet she immediately discerned the mispricing upon reviewing it. Indeed, even when she composed a written complaint to McDonald's about her purchasing experience while waiting for her flight ***an hour after she read her receipt***, Plaintiff still was "very, very mad and sad and humiliated." (*See* 1/17/2020 Hearing Tr., Exhibit B, at 77:7-78:17; 82:20-83:3). Thus, being angry did not prevent Plaintiff from realizing the pricing discrepancy that is at the heart of her ICFA claim when she looked at her receipt. And as *Kahn* and the other cases McDonald's cites in this Motion make clear, the fact that Plaintiff did not look at her receipt while she was at the restaurant does not salvage her ICFA claim. She had information at her fingertips that plainly dispelled any deception caused by the inaccurate menu board price. She just chose not to look at it.

In the end, Plaintiff knew that prices on the digital menu board were incorrect. She was told this several times during her visit. She also knew that she was not being charged the posted prices because she lobbied restaurant workers to honor the posted prices and got upset when they would not do so. But even if one disregards this evidence entirely, the simple fact that she received a customer receipt that she admitted, under oath, allowed her to quickly see the pricing discrepancy that is the subject of her complaint renders her unable to proceed on her ICFA claim. Accordingly, McDonald's is entitled to summary judgment.

WHEREFORE, for the reasons stated above, McDonald's respectfully requests that the Court reconsider its April 20, 2023 ruling and grant McDonald's summary judgment on Plaintiff's Illinois Consumer Fraud Act claim.

Dated: May 22, 2022

Respectfully submitted,

McDONALD'S CORPORATION

By: */s/ David J. Doyle*
One of its Attorneys

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