

**12-Person Jury**

FILED  
8/16/2022 2:25 PM  
KRIS Y. MARTINEZ  
CIRCUIT CLERK  
COOK COUNTY, IL  
2022CH08000  
Calendar, 11  
19107538

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

JAMES MAHER, individually and on )  
behalf of all others similarly situated, )  
 )  
Plaintiff, )  
v. )  
 )  
DO-RITE TINLEY LLC and )  
LETTUCE ENTERTAIN YOU )  
ENTERPRISES, INC. )  
 )  
Defendants. )

Case No. 2022CH08000

JURY DEMANDED

**CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff James Maher (“Plaintiff”), individually and on behalf of all others similarly situated, by and through his attorneys, states as follows for his Complaint against Defendant Do-Rite Tinley LLC (“Do-Rite”) and Defendant Lettuce Entertain You Enterprises, Inc. (“LEYE”) (collectively referred to as “Defendants”):

**INTRODUCTION**

1. Defendant, Do-Rite, is a restaurant chain that serves donuts, coffee and breakfast food items throughout Illinois and in this judicial circuit.
2. Defendant, LEYE, is a Chicago-based, privately held company that owns over 100 restaurants nationwide, including Do-Rite.
3. Defendants, in an effort to increase their revenue and profit, have implemented a deceptive, unfair, and unlawful scheme to charge Plaintiff and their other customers additional costs without practical notice or with no notice at all. Through undisclosed price increases, generic so-called “Surcharge” and surprise

FILED DATE: 8/16/2022 2:25 PM 2022CH08000

“processing fees,” Defendants have overcharged their customers in excess of their advertised menu prices and applicable taxes.

4. For nearly 2 years, under the veneer of Covid-19 impacts, Defendants have boosted their revenue by 3%-4% across all their locations with these deceptive surcharges and “processing fees.” In many instances customers are not made aware of these surcharges and “processing fees” until after payment.

5. The costs of doing business across all markets have increased as a result of Covid-19. The restaurant industry has particularly been impacted. However, instead of factoring any increased operation costs into their pricing model (as every other industry has been forced to do) and simply adjusting the visible advertised price of their menu items so customers are informed, Defendants regularly and unlawfully add these deceptive surcharges to their customers’ bills without authorization or notification.

6. Plaintiff brings this class action on behalf of a class of consumers who unwittingly paid deceptive surcharges and “processing fees” due to Defendants’ deceptive and unlawful charging practices.

7. Plaintiff brings this class action on behalf of a class of consumers who unwittingly paid deceptive surcharges and “processing fees” due to Defendants’ exploitative and unlawful charging practices.

8. Plaintiff, individually and on behalf of others similarly situated, seeks to recover the monetary benefits Defendants have realized from their unjust and

wrongful conduct. Plaintiff also seeks to enjoin Defendants from continuing to engage in such misconduct.

### **PARTIES**

9. James Maher is a resident and citizen of Cook County, Illinois.

10. Do-Rite is an Illinois limited liability company that is registered to conduct business in Illinois. Do-Rite conducts business in Cook County.

11. LEYE is an Illinois corporation that is registered to conduct business in Illinois. LEYE conducts business in Cook County.

### **JURISDICTION AND VENUE**

12. This Court has jurisdiction over Defendants pursuant to 735 ILCS 5/2-209 because Defendants conduct business in Illinois, are registered to conduct business in Illinois, and committed the statutory violations alleged herein in Illinois.

13. Venue is proper in Cook County because Defendants maintain places of business in Cook County, conduct business in Cook County, and committed the statutory violations alleged herein in Cook County and throughout Illinois.

### **FACTUAL BACKGROUND**

14. On February 20, 2022, Plaintiff purchased food items from Defendants at their store located at 7451 183rd Street, Tinley Park, Illinois.

15. Defendants imposed a 3% surcharge (the "Surcharge") on Plaintiff's food order.

16. Defendants did not disclose that they would impose a 3% Surcharge on Plaintiff's purchase and order at any time prior to purchase.

17. Defendants did not disclose the 3% Surcharge on their drive thru menus.

18. Defendants imposed and collected the 3% Surcharge without Plaintiff's knowledge or consent.

19. Defendants do not provide purchase receipts until after payment is requested and complete, and no signage is present in the drive thru lane(s) to inform drive thru customers that a surcharge would be levied prior to Plaintiff presenting his form of payment. Therefore, because Plaintiff did not know and had no reason to know that Defendants had added the Surcharge to the cost of Plaintiff's food order, Plaintiff lacked knowledge of the facts upon which to protest the payment of the Surcharge at the time of payment.

20. Plaintiff did not become aware of the Surcharge until he received and reviewed his receipt from Defendants, after his purchase. A copy of Plaintiff's receipt is attached hereto as Exhibit 1.

21. Defendants knowingly and willfully collected the Surcharge from Plaintiff without his knowledge or consent.

22. Plaintiff paid the Surcharge due to Defendants' fraud and deceptive business practices and, as a result, this payment was compulsory, involuntary and made because of fraud.

### **CLASS ALLEGATIONS**

23. Plaintiff brings this action individually and on behalf of the following class of others similarly situated, pursuant to 735 ILCS 5/2-801 (the "Class"):

All persons in Illinois from whom Defendants collected a Surcharge without their knowledge or consent during the period of August 16, 2017 to the present.

Excluded from the Class are the following groups: (1) Defendants, along with their agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendants or their parent entities have a controlling interest and their current and former employers, officers, and directors; (2) the Judge to whom this case is assigned and the Judge's immediate family; (3) all persons who timely execute and file a request for exclusion; (4) the legal representatives, successors, or assigns of any such excluded person; (5) counsel for the parties; and (6) any persons who have had their claims against Defendants fully and finally adjudicated on the merits.

24. On information and belief, there are over forty (40) class members, therefore the class is so numerous that individual joinder of all members is impractical, and while the exact number of the class members is unknown at the present time, it is ascertainable by appropriate discovery.

25. Common questions of law and fact exist as to all class members and predominate over any questions that affect only individual class members.

Questions common to the Class include:

- a. Whether Defendants collected a Surcharge from the Class Members;
- b. Whether Defendants informed the Class Members that they would be collecting a Surcharge;

- c. Whether Defendants' imposition of a Surcharge without notice was deceptive;
- d. Whether Defendants' imposition of a Surcharge without notice violated ICFA;
- e. Whether Plaintiff and the putative Class suffered any damages; and
- f. Whether an injunction is an appropriate remedy in this matter.

26. Plaintiff will fairly and adequately protect the interests of all classes in that Plaintiff's claims are typical of the class and Plaintiff does not have any interests which are adverse to the interests of the other class members.

27. Plaintiff has retained competent counsel experienced in handling class actions. Neither Plaintiff nor his counsel have any interests which might cause them not to vigorously prosecute this action.

28. Plaintiff's claims are based on the same facts and legal theories as those of the class members.

29. Class action treatment is appropriate for the fair and efficient adjudication of the controversy described herein because it permits a large number of injured persons to prosecute their common claims in a single forum simultaneously, efficiently, and without duplication of evidence and effort. Class treatment is especially appropriate for the current controversy because it is the only practical means for class members to receive redress given that the individual claims are relatively small in amount.

**COUNT I**  
**Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act**

30. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

31. Plaintiff brings this count individually and on behalf of the Class.

32. The Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1–12 (“ICFA”) protects consumers and businesses alike by prohibiting unfair or deceptive acts or practices. Specifically prohibited are the use of deception, fraud, false pretense, false promise, or misrepresentation, or the concealment, suppression, or omission of any material fact.

33. As described herein, Defendants have engaged in deceptive, fraudulent, and unfair practices, as defined by the ICFA, by imposing the Surcharge at issue without Plaintiff’s and the Class Members’ knowledge or consent, and concealing and failing to disclose the Surcharge.

34. Plaintiff relied on Defendants’ representation that the food order he requested would be at the prices stated on Defendants’ menu. However, as a direct result of Defendants’ concealment and failure to disclose the Surcharge, Plaintiff paid an excess amount of what he intended.

35. Defendants’ misrepresentation and deception went to a material aspect of their service (its price), and was likely to, and did in fact, affect the Class members’ purchasing decision.

36. In addition to being deceptive, Defendants’ Surcharge and surrounding misrepresentations are “unfair” under the ICFA. Defendants’ Surcharge caused

substantial injury to Plaintiff and the Class members, who each incurred the 3% Surcharge. That injury could not reasonably have been avoided by the Class members, given Defendants' failure to disclose the Surcharge until after the point of purchase.

37. Defendant's unfair and deceptive conduct directly and proximately caused Plaintiff and the Class actual monetary damages in the form of the Surcharge.

38. Accordingly, Plaintiff seeks an Order: (i) prohibiting Defendants from imposing similar charges in the future; (ii) requiring Defendants to pay actual and compensatory damages; and (iii) requiring Defendants to pay interest, attorneys' fees, and costs.

## **COUNT II Fraud**

39. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

40. Plaintiff brings this count individually and on behalf of the Class.

41. Defendants made material misrepresentations regarding the price of their food items, by concealing and failing to disclose that the Surcharge would be imposed on all food and beverage orders.

42. Defendants' concealment and failure to disclose the Surcharge was done for the purpose of inducing reliance that the customers would only pay the disclosed menu prices.

43. Plaintiff and the Class members relied on Defendants' stated menu prices to their detriment. They purchased their food and beverage items while being unaware of the fact that they would be required to pay the Surcharge.

44. Plaintiff and the Class suffered damages as a result of Defendants' concealment.

45. Accordingly, Plaintiff seeks an Order: (i) prohibiting Defendants from imposing similar charges in the future; (ii) requiring Defendants to pay actual and compensatory damages; and (iii) requiring Defendants to pay interest, attorneys' fees, and costs.

**Count III  
Unjust Enrichment**

46. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

47. Plaintiff brings this count individually and on behalf of the Class.

48. Defendants made material misrepresentations regarding the price of their food items when they concealed and failed to disclose that the Surcharge would be imposed on all food and beverage orders.

49. Defendants' concealment and failure to disclose the Surcharge led to an enrichment for the Defendants in the amount of the Surcharge collected from Plaintiff and all members of the Plaintiff class.

50. The total enrichment of Defendants equals the same amount that Defendants unjustifiably took from Plaintiff and all members of the Plaintiff class.

51. If Plaintiff is unable to recover the Surcharges that he and all members of the Plaintiff class paid to Defendants through a remedy provided by law, then Plaintiff and all members of the Plaintiff class are entitled to restitution in the amount equal to Defendants' unjust enrichment.

52. Accordingly, Plaintiff seeks an Order: (i) prohibiting Defendants from imposing similar charges in the future; (ii) requiring Defendants to pay actual and compensatory damages or restitution; and (iii) requiring Defendants to pay interest, attorneys' fees, and costs.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, individually and on behalf of all others similarly situated, respectfully requests that this Court enter an Order:

- A. Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiff as class representative, and appointing his lawyers as class counsel;
- B. Declaring that Defendants' actions, as set out above, constitute fraud and violation of the ICFA;
- C. Awarding damages to Plaintiff and the Class in amounts to be determined at trial;
- D. Awarding restitution to Plaintiff and the Class in amounts to be determined at trial, and disgorging all amounts by which Defendants have been unjustly enriched;
- E. Awarding Plaintiff and the Class their reasonable litigation expenses, attorneys' fees, and costs; and
- F. Awarding injunctive and other equitable relief as necessary to protect the interests of the Class, or as equity requires.

### **JURY DEMAND**

Plaintiff requests a trial by jury of all claims that can be so tried.

Dated: August 16, 2022

Respectfully submitted,

James Maher, individually and on behalf of  
all others similarly situated,

By:     /s/ James X. Bormes      
One of his attorneys

JAMES X. BORMES  
CATHERINE P. SONS  
Law Office of James X. Bormes  
8 S. Michigan Ave, Suite 2600  
Chicago, IL 60603  
(312) 201-0575  
jxbormes@bormeslaw.com  
cpsons@bormeslaw.com

DONALD J. PECHOUS  
PAUL A. CASTIGLIONE  
The Khowaja Law Firm, LLC  
8 South Michigan Avenue 26th Floor  
Chicago, Illinois 60603  
(312) 566-8070  
dpechous@khowajalaw.com  
pcastig@khowajalaw.com

ELIZABETH M. AL-DAJANI  
KARNIG S. KERKONIAN  
KERKONIAN DAJANI, LLP  
1555 Sherman Ave. Suite 344  
Evanston, Illinois 60201  
(312) 416-6180  
ealdajani@kerkoniandajani.com  
kkerkonian@kerkoniandajani.com



Do-Rite - Tinley Park  
7451 183rd Street  
Tinley Park, IL 60477  
(708)840-6036

Server: Kristin T  
Check #125  
Ordered: 2/20/22 9:44 AM

Table 13

Michigan Apple Fritter	\$2.95
Chocolate Cake	\$2.95
Hash browns	\$1.95
Surcharge (3.00%)	\$0.24

Subtotal	\$8.09
Tax	\$0.64
Total	\$8.73

9.48 AM CASH	
Cash Tendered	\$20.00
Change	\$11.27

Suggested Tip:

20%: (Tip \$1.57 Total \$10.30)

15%: (Tip \$1.18 Total \$9.91)

10%: (Tip \$0.78 Total \$9.51)

Tip percentages are based on the total price before discounts and taxes.

A 3% processing fee is added to all guest checks.

This fee may be removed upon request.

