

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

GINNY COSTELLO, individually and on
behalf of herself and all others similarly
situated,

Plaintiff

v.

GANNETT CO., INC.

Defendant

Case No. 3:19-CV-212-RGJ

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendant Gannett Co., Inc. (“Gannett”), by counsel, gives notice of its removal to this Court of the action commenced against it in Circuit Court for Jefferson County, Commonwealth of Kentucky, styled *Costello v. Gannett Co., Inc.*, Case No. 19-CI-1188. Removal is proper pursuant to the Class Action Fairness Act of 2005 for the following reasons:

1. On February 22, 2019, Plaintiff Ginny Costello filed the attached Complaint in the Circuit Court for Jefferson County, Kentucky, styled as *Costello v. Gannett Co., Inc.*, Case No. 19-CI-1188. Costello served the Complaint on March 1, 2019 via certified mail on Gannett’s registered agent for service in Kentucky. Attached as **Exhibit A** is a true and correct copy of the Complaint served on Gannett.

2. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b).

3. 28 U.S.C. § 1332(d) provides, in pertinent part, that federal jurisdiction exists over any class action (a) in which the amount in controversy, in the aggregate, exceeds \$5 million, exclusive of interest and costs; (b) the class contains at least 100 members; and

(c) any class member is a citizen of a different state than any defendant. 28 U.S.C. § 1332(d)(1)(B), (d)(2), (d)(5).

4. Costello's complaint was filed as a class action, as defined in 28 U.S.C. § 1332(d)(1)(B). (*See generally* Compl.)

5. The putative class contains at least 100 members. Indeed, Costello seeks relief on behalf of "thousands of subscribers" of Gannett media publications. (Compl. at ¶¶ 1 & 35.)

6. Costello is a citizen of Kentucky. (Compl. ¶ 4.) Gannett is a Delaware corporation, with its principal place of business in Virginia, and the Complaint asserts claims on behalf of a putative class of "thousands of subscribers" across all of Gannett's "local and national media outlets in the Commonwealth of Kentucky and 33 other states." (Compl. ¶¶ 5& 8.) Accordingly, minimal diversity of citizenship exists pursuant to 28 U.S.C. § 1332(d)(2)(A).

7. Costello seeks injunctive relief and compensatory, statutory, and treble damages on allegations that across all 34 states in which Gannett distributes publications Gannett overcharged "thousands" of putative class members for promotional subscriptions. Costello's class definition is completely unlimited in time. Costello asserts claims for breach of contract and violation of the New York Consumer Protection Act.

8. Based on the number of putative class members and the nature of the claims and relief sought, the preponderance of the evidence demonstrates that the amount placed in controversy "more likely than not" exceeds \$5 million, exclusive of interest and costs. *Gafford v. Gen. Elec. Co.*, 997 F.2d 150, 158 (6th Cir. 1993); *accord* 28 U.S.C. § 1332(d)(2); *Smith v. Nationwide Property and Cas. Ins. Co.*, 505 F.3d 401, 404–05 (6th Cir. 2007). The

amount in controversy may be determined based upon a “fair reading of [the] complaint.” *Hayes v. Equitable Energy Res. Co.*, 266 F.3d 560, 573 (6th Cir. 2001). Costello seeks compensatory damages for “thousands” of putative class members, as well as statutory and treble damages under New York’s Consumer Protection Act. Costello also seeks injunctive relief. *Freeland v. Liberty Mut. Fire Ins. Co.*, 632 F.3d 250, 253 (6th Cir. 2011) (where a plaintiff seeks injunctive or declaratory relief, “the amount in controversy is not necessarily the money judgment sought or recovered, but rather than value of the consequences which may result from the litigation.”). And Costello seeks attorneys fees’, which are recoverable under the New York Consumer Protection Act, and thus are considered in determining the amount in controversy for purposes of diversity. *Williamson v. Aetna Life Ins. Co.*, 481 F.3d 369, 376 (6th Cir. 2007) (noting that attorneys’ fees are includable in determining the amount in controversy “where a statute mandates or expressly allows the payment of such fees.”); *Clark v. Nat. Travelers Life Ins. Co.*, 518 F.2d 1167, 1168 (6th Cir. 1975) (“It is settled that the statutory penalty and statutory attorney’s fee can be considered in determining whether the jurisdictional amount is met.”); N.Y. Gen. Bus. L. § 349(h)(expressly permitted award of attorney’s fees to a prevailing plaintiff).

9. Accordingly, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d).

10. 28 U.S.C. §§ 1441(a) and 1453(b) together operate to provide that any class action over which this Court would have original jurisdiction may be removed to this Court by any defendant.

11. Removal to this Court is proper under 28 U.S.C. § 1441(a), as this Court is the United States District Court embracing Jefferson County, Kentucky where the state court action is pending.

12. Gannett is filing a removal notice with the Clerk of the Circuit Court of Jefferson County, Kentucky and will serve notice of same upon counsel of record for Costello. (*See Exhibit B.*)

13. Pursuant to 28 U.S.C. § 1446(a), a copy of the summons and Complaint served upon Gannett are attached, and these are the only process, pleadings, and orders served upon Gannett to date.

Respectfully Submitted,

By: /s/ Michael T. Leigh
Jon Fleischaker
Michael Abate
Michael T. Leigh
Kaplan Johnson Abate & Bird LLP
710 West Main Street, Suite 400
Louisville, Kentucky 40202
Tel: (502) 416-1630
Email: jfleischaker@kaplanjohnsonlaw.com
mabate@kaplanjohnsonlaw.com
mleigh@kaplanjohnsonlaw.com

Counsel for Gannett Co., Inc.

Certificate of Service

I hereby certify that on March 21, 2019 a copy of the foregoing Notice of Removal and attachments was electronically filed using the CM/ECF system and served by United States First Class Mail, postage prepaid, on the following:

David O'Brien Suetholz
Devon N.R. Oser
Branstetter, Stranch & Jennings, PLLC
515 Park Avenue
Louisville, Kentucky 40208

J. Gerard Stranch, IV
Benjamin A. Gastel
Branstetter, Stranch & Jennings, PLLC
223 Rose L. Parks Avenue, Suite 200
Nashville, Tennessee 37203

Irwin B. Levin
Richard E. Shevitz
Lynn A. Toops
Lisa M. La Fornara
Cohen & Malad, LLP
One Indiana Square, Suite 1400
Indianapolis, Indiana 46204

Counsel for Plaintiff

/s/ Michael T. Leigh
Counsel for Gannett Co., Inc.

JS 44 (Rev. 02/19)

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

Ginny Costello

(b) County of Residence of First Listed Plaintiff Jefferson Co., KY
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

David O'Brien Suetholz, Branstetter Stranch & Jennings PLLC
515 Park Ave, Louisville, KY 502-636-4333

DEFENDANTS

Gannett Co., Inc.

County of Residence of First Listed Defendant Delaware
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Michael T. Leigh, Kaplan Johnson Abate & Bird LLP
710 W. Main St, Louisville, KY 40202 502-416-1630

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		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Acts <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

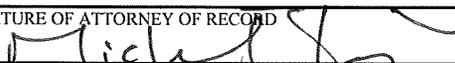
- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332, 1441, 1446, and 1453

Brief description of cause:
Contract and state consumer protection act claims

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 03/21/2019 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY: RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Exhibit A



**Service of Process
Transmittal**

03/01/2019

CT Log Number 535013135

TO: Barbara W. Wall
Gannett Co., Inc.
7950 Jones Branch Drive
Mc Lean, VA 22107-0001

RE: Process Served in Kentucky

FOR: Gannett Co., Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: GINNY COSTELLO, individually and on behalf of herself and all others similarly situated, Pltf. vs. Gannett Co., Inc. Dft.

DOCUMENT(S) SERVED: Summons, Complaint

COURT/AGENCY: Jefferson County Circuit Court, KY
Case # 19CI001188

NATURE OF ACTION: Class Action - Breach of contract, Customers' subscription agreements with Gannett prohibit Gannett from increasing their monthly charges until after the promotional period ends (See documents for additional information)

ON WHOM PROCESS WAS SERVED: C T Corporation System, Frankfort, KY

DATE AND HOUR OF SERVICE: By Certified Mail on 03/01/2019 postmarked: "Not Post Marked"

JURISDICTION SERVED : Kentucky

APPEARANCE OR ANSWER DUE: Within 20 days following the day this paper is delivered to you

ATTORNEY(S) / SENDER(S): David OBrien Suetholz
Branstetter, Stranch & Jennings, PLLC
515 Park Avenue
Louisville, KY 40208
502-636-4333

ACTION ITEMS: SOP Papers with Transmittal, via UPS Next Day Air , 1ZX212780136223178
Image SOP
Email Notification, Jennifer Ehlert jehlert@gannett.com
Email Notification, Mark Faris mfaris@gannett.com
Email Notification, Courtney French cofrench@gannett.com
Email Notification, Miranda Blyakchori mblyakchori@gannett.com

SIGNED: C T Corporation System
ADDRESS: 306 W. Main Street
Suite 512
Frankfort, KY 40601
TELEPHONE: 609-538-1818

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

MAR 05 2019

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BRANSTETTER, STRANCH & JENNINGS, PLLC
515 PARK AVENUE
LOUISVILLE, KENTUCKY 40208

TO: CT Corporation System
 306 W. Main Street, Ste. 512
 Frankfort, KY 40601



AOC-E-105 Sum Code: CI
Rev. 9-14



Commonwealth of Kentucky
Court of Justice Courts.ky.gov

Case #: 19-CI-001188
Court: CIRCUIT
County: JEFFERSON Circuit

CR 4.02; Cr Official Form 1

CIVIL SUMMONS

Plaintiff, COSTELLO, GINNY VS. GANNETT CO., INC., Defendant

**TO: CT CORPORATION SYSTEM
306 W. MAIN STREET, SUITE 512
FRANKFORT, KY 40601**

Memo: Related party is GANNETT CO., INC.

The Commonwealth of Kentucky to Defendant:
GANNETT CO., INC.

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

Jefferson Circuit Clerk
Date: 2/22/2019

Proof of Service

This Summons was:

Served by delivering a true copy and the Complaint (or other initiating document)

To: _____

Not Served because: _____

Date: _____, 20____

Served By

Title

Summons ID: @00000900518
CIRCUIT: 19-CI-001188 Return to Filer for Service
COSTELLO, GINNY VS. GANNETT CO., INC.



**COMMONWEALTH OF KENTUCKY
JEFFERSON CIRCUIT COURT**

CASE NO. _____

DIV. _____

Electronically Filed

GINNY COSTELLO, individually and on behalf of herself and all others similarly situated,

Plaintiff,

v.

GANNETT CO., INC.,

Defendant.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

**SERVE: C T CORPORATION SYSTEM
306 W. MAIN STREET
SUITE 512
FRANKFORT, KY 40601**

Plaintiff Ginny Costello, by counsel, on behalf of herself and all others similarly situated, alleges as follows:

NATURE OF THE CASE

1. This is a breach of contract class action on behalf of thousands of subscribers of Gannett Co., Inc. ("Gannett") media publications, who were overcharged by Gannett for promotional subscriptions. Gannett markets to new customers by promising them promotional subscriptions at reduced rates for a certain period of time. In breach of its promises to promotional subscribers, Gannett increases the monthly rate it charges these customers before their promotional period ends.

2. When new customers purchase Gannett promotional subscriptions, Gannett promises to charge them a fixed monthly subscription rate at a reduced price for a designated period of time, ranging from three to twelve months. Gannett promises promotional subscribers that the promotional rate will be effective for the entirety of their promotional subscription period and will not increase until after the promotional period expires.

3. Gannett breaches these promises and unlawfully maximizes its profits by increasing its promotional subscribers' monthly rates before their promotional period concludes. This case seeks the return of this money to the promotional subscribers.

PARTIES

4. Plaintiff Ginny Costello ("Plaintiff" or "Ms. Costello") is a citizen of Kentucky who purchased a promotional subscription from Gannett.

5. Defendant, Gannett Co., Inc., is a nationwide media company with its headquarters and principal place of business in McLean, Virginia. Gannett is engaged in the business of providing print and online newspaper subscriptions to customers, including Ms. Costello and members of the Class in the Commonwealth of Kentucky and other states throughout the country. Gannett owns and operates print and online media outlets, and provides promotional subscriptions to those media outlets throughout the country.

JURISDICTION AND VENUE

6. This Court has jurisdiction in this action because at all times relevant herein Gannett was and continues to regularly conduct business in the Commonwealth of Kentucky.

7. Venue is proper in this Court because the events giving rise to this lawsuit occurred in Jefferson County.

STATEMENT OF FACTS

A. Customers' subscription agreements with Gannett prohibit Gannett from increasing their monthly charges until after the promotional period ends.

8. Gannett owns and operates local and national media outlets in the Commonwealth of Kentucky and 33 other states.

9. As part of its marketing scheme, Gannett offers promotional subscriptions to new customers at reduced rates for both home delivery and online access to Gannett publications.

10. For each Gannett promotional subscription, customers must purchase their subscription directly from Gannett and are billed by Gannett. Promotional subscription billing and payment information are handled through emails using a "@gannett.com" email address and promotional subscribers receive assistance through a "chat.gannett.com" webpage.

11. All Gannett promotional subscribers, both online and print, are subject to the same uniform terms and conditions, which provide:

Your subscription will continue and we will charge you at the then regular rate, less any applicable credits, unless you cancel, which you can do at any time. After the promotional period ends, your rate may increase. This promotional offer is available only to new subscribers (have not subscribed in the past 30 days). . . . You authorize us to automatically charge the credit card account you indicate.

12. Pursuant to these terms, Gannett cannot increase its promotional subscribers' monthly rates until "[a]fter the promotional period ends."

13. Gannett also advertises its promotional subscriptions by promising to bill a fixed rate per month for a designated period of time.

Keeping It Local
99¢ PER MONTH

<p>Monday - Sunday Print Delivery Including Unlimited Digital Access</p>  <p>\$2.99 per Week For the First 3 Months* Billed at \$13.00 per month Save 59%</p> <p>Join Now</p> 	<p>Sunday Print Delivery Including Unlimited Digital Access</p>  <p>99¢ per Week For the First 3 Months* Billed at \$4.30 per month Save 76%</p> <p>Join Now</p> 	<p>Digital Access</p>  <p>99¢ per Month For the First 3 Months* Limited-Time Offer Save 90%</p> <p>Join Now</p> 
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*Offer available to new customers only. All savings based off the regular rate.

14. Nothing in the terms of Gannett’s subscription agreements or advertising materials gives Gannett the authority to increase its promotional subscribers’ monthly rates before the promotional period ends. To the contrary, all of these materials promise that Gannett will not—and cannot—increase its promotional subscribers’ monthly rates until *after* the promotional period ends.

15. Nevertheless, in violation of those terms, Gannett regularly raises its promotional subscribers’ monthly rates before their promotional period expires.

16. In the process of purchasing subscriptions, customers also must agree to Gannett’s Terms of Service. These Terms of Service are substantively uniform across all of Gannett’s papers, and include a choice of law provision, which specifies: “This agreement will be governed

by and construed in accordance with the laws of the State of New York, without giving effect to any principles of conflicts of law.”

B. Despite its promise to subscribers, Gannett regularly raises its promotional subscribers’ monthly rates before their promotional period ends.

17. In November 2017, Ms. Costello purchased a one-year Gannett promotional subscription for her son as a housewarming gift. Pursuant to this promotion, Ms. Costello agreed to pay Gannett \$11.48, including tax, each month for twelve months. In exchange, Gannett would deliver the local paper to her son’s residence until the one-year promotional period ended in November 2018.

18. In July 2018, however, Ms. Costello noticed that Gannett had charged her nearly double her promised promotional amount. In fact, instead of charging the \$11.48 monthly rate to which Ms. Costello and Gannett had agreed, Gannett charged Ms. Costello’s credit card \$21.19, nearly double the promised amount.

05/04	GAN*1107COURIERJRNCR	808-426-0491	TN	\$11.48
06/05	GAN*1107COURIERJRNCR	808-426-0491	TN	\$11.48
07/03	GAN*1107COURIERJRNCR	808-426-0491	TN	\$21.19

19. Shortly after noticing the increased charge, Ms. Costello repeatedly contacted Gannett’s billing representatives to obtain a refund. She spoke to two individual representatives who admitted that the increase was erroneous. These representatives promised Ms. Costello that their supervisors would follow up with her to resolve the issue but she was never contacted.

20. Ms. Costello also emailed Gannett’s billing department on July 16, 2018 seeking a refund. On July 20, 2018, she received a non-responsive reply from Gannett requesting additional information. She promptly provided the requested information but Gannett never followed up.

21. Ms. Costello then called Gannett again, at which time a representative confessed that the company was so far behind that it had stopped responding to complaints submitted via email.

22. Despite her efforts to recover the improper increase on her promotional subscription, Gannett did not reimburse her or credit her account. She thus cancelled the Gannett promotional subscription she had purchased.

23. Gannett has improperly raised the monthly subscription rate for numerous other promotional subscribers across the country by charging them rates that exceed the promotional subscription rates before the expiration of their promotional periods, in breach of its promotional subscription agreements.

24. Numerous other promotional subscribers throughout the country have complained on the Better Business Bureau's website that Gannett has increased their monthly subscription rate before the applicable promotional period expired, and these customers have not been able to obtain refunds. For example, in January 2016, a promotional subscriber from South Carolina posted a complaint stating: "I signed up for a special of \$12.00 which was charged to my account and within a week there was another charge that I had not authorized so I cancelled the subscription."

25. Another South Carolina subscriber posted in December 2017, complaining:

I signed up . . . for a special price of \$4.20 a month. . . [but] they had actually charged me \$16.80 for the month of November and \$12.00 for the month of December! This is much more than the \$4.20 a month that I agreed to pay. I called their customer service and they did cancel the subscription on December 28, 2017 but refused to refund me the amount that I was overcharged.

26. On October 10, 2016, a promotional subscriber in Tennessee posted a similar complaint, stating:

In February I signed up for a web special of \$26 for a year but so far have been charged \$50.61 most recent credit card charge on 10-4-16. Each time they said . . . my problem is being expedited and would be corrected soon but I hear nothing from them and my credit card continues to be billed.

27. On February 19, 2018, a subscriber in Vermont posted:

They offered me 12 months at \$11.00 per month. In October we started to receive bills greater than the amount owed. . . . I questioned the representatives at every call about trying to resolve this issue.

28. Gannett subscribers in other states, including California, Florida, Michigan, New York, South Dakota, and Wisconsin, have also posted on the Better Business Bureau's website complaining that Gannett increased their monthly rates before their promotional period expired and subsequently refused to refund them for the overcharged amount.

29. As shown above, Ms. Costello's experience with Gannett is not unique. To the contrary, Gannett routinely violates its subscription agreements with its promotional customers by increasing their monthly payments before their promotional period ends.

30. Gannett has unlawfully benefited from its practice of impermissibly increasing its promotional subscribers' monthly rates in violation of their subscription agreements.

CLASS ACTION ALLEGATIONS

31. Plaintiff brings this action on behalf of herself and as a class action on behalf of the following proposed Class ("the Class"):

All Gannett promotional subscribers who have been charged in excess of their promotional rate before their promotional period expired.

32. Excluded from the Class are Gannett and its affiliates, parents, subsidiaries, employees, officers, agents, and directors, as well as members of their immediate families; the

legal representatives, heirs, successors, or assigns of any such excluded party; and any judicial officer presiding over this matter and the members of their immediate families and judicial staff.

33. Subject to additional information obtained through further investigation and discovery, Plaintiff reserves the right to modify or amend the definition of the proposed Class before this Court determines whether certification is appropriate.

34. This case is properly maintainable as a class action under Kentucky Rules of Civil Procedure 23.02(b) and (c), and all requirements therein are met for the reasons set forth in the following paragraphs.

35. The members of the Class are so numerous that separate joinder of each member is impracticable. Upon information and belief, and subject to class discovery, the Class consists of thousands of subscribers, the identity of whom are within the exclusive knowledge, custody, or control of Gannett and can be ascertained through Gannett's records.

36. There are numerous questions of law and fact common to the Class relating to Gannett's billing practices challenged herein, and those common questions predominate over any questions affecting only individual class members. This is particularly true because the terms of the Gannett subscriber agreement are uniform throughout the class and are all governed by New York law. The common questions of law and fact include, but are not limited to:

- a. whether Gannett breached its subscription agreements by increasing its promotional subscribers' monthly rates before their promotional period ended;
- b. whether Gannett's conduct was unfair, false, misleading, and/or deceptive;
- c. whether Ms. Costello and other Class members sustained damages as a result of Gannett's practice of increasing promotional subscribers' monthly rates before the end of their promotional period; and
- d. the relief to which Ms. Costello and the Class are entitled for these billing practices.

37. Ms. Costello's claims are typical of the claims of the other Class members, as she, like all members of the Class, has been damaged by Gannett's misconduct in that Gannett has unfairly and impermissibly increased her monthly subscription charges before the end of her promotional period. Thus both Ms. Costello's claims and the Class claims are based on the same legal theories and arise out of a common thread of wrongful business practices by Gannett, resulting in injury to all Class members.

38. Ms. Costello is an adequate representative of the Class in that she purchased a promotional subscription to a Gannett newspaper and has suffered damages as a result of Gannett's practice of improperly increasing promotional subscribers' monthly rates. Plaintiff is committed to the vigorous prosecution of this action on behalf of herself and all others similarly situated, and has no interests adverse to the Class.

39. Plaintiff has retained competent counsel experienced in the prosecution of class actions, and anticipates no difficulty in the management of this litigation as a class action. Plaintiff and her chosen attorneys are familiar with the subject matter of this lawsuit and have full knowledge of the allegations contained in this Complaint.

40. The questions of law and fact common to the Class as set forth above predominate over any questions affecting only individual Class members, particularly because the focus of the litigation will be on the conduct of Gannett and its noncompliance with its uniform terms, all of which are governed by New York law.

41. A class action is superior to other available methods and highly desirable for the fair and efficient adjudication of this controversy. Since the amount of each individual Class member's claim is very small relative to the complexity of the litigation and since Gannett's financial resources are enormous, no Class member could afford to seek legal redress

individually for the claims alleged herein. Therefore, absent a class action, the Class members will continue to suffer losses and Gannett's misconduct will proceed without remedy. In addition, even if Class members themselves could afford such individual litigation, the court system could not. Given the legal and factual issues involved, individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows claims to be heard which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale and comprehensive supervision by a single court.

42. It appears that no other persons who fall within the Class definition set forth above are pursuing similar litigation, such that individual Class members do not wish to control the prosecution of separate actions.

FIRST CLAIM FOR RELIEF
(Breach of Contract)

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

44. Plaintiff and Class members entered into binding and enforceable contracts with Gannett when they purchased their promotional subscriptions to Gannett's newspapers.

45. The contracts between Plaintiff and Class members and Gannett were supported by consideration such as Plaintiff and Class members' payment of monthly subscription charges.

46. The subscription terms and Terms of Service that govern subscribers' agreements with Gannett are standardized documents that are substantively identical.

47. Under the terms of its subscription agreements, Gannett promises to charge its promotional subscribers the specified promotional rate for the entire promotional period. Gannett promises that it will not increase these subscribers' subscription rates until "[a]fter the promotional period ends."

48. Nevertheless, Gannett routinely breaks this promise by charging promotional subscribers throughout the country increased rates before their promotional period ends.

49. Plaintiff and Class members have performed all, or substantially all, of the obligations imposed on them by Gannett's subscription terms.

50. Gannett uniformly fails to implement its promotional rates and instead charges increased rates in violation of its subscription agreements.

51. Gannett thus breached its contracts with Plaintiff and other Class members by charging and collecting higher monthly subscription payments than it was authorized to collect pursuant to the terms of its subscription agreements.

52. Plaintiff and Class members have sustained damages as a result of Gannett's breach of the subscription agreements.

SECOND CLAIM FOR RELIEF
(New York General Business Law, N.Y. Gen. Bus. Law § 349 *et seq.*)

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

54. Gannett's practice of increasing promotional subscribers' monthly subscriptions before the promotional period ends violates New York General Business Law § 349 ("GBL § 349").

55. GBL § 349 prohibits deceptive acts or practices in the conduct of any business, trade, or commerce, or in the furnishing of any service.

56. In the conduct of its business, trade, and commerce, and in furnishing services, Gannett's actions were directed at consumers.

57. In the conduct of its business, trade, and commerce, and in furnishing services, Gannett engaged in deceptive, unfair, and unlawful trade acts or practices, in violation of N.Y. Gen. Bus. Law § 349(a), including but not limited to the following:

- a. Gannett misrepresented material facts, pertaining to the sale and/or furnishing of newspaper subscription services, to its customers by representing and advertising that it would only charge the contracted promotional rate for the entirety of the promotional period; and
- b. Gannett omitted, suppressed, and concealed the material fact that it would charge its subscribers increased monthly rates.

58. Gannett systematically engaged in these deceptive, misleading, and unlawful acts and practices, to the detriment of Plaintiff and Class members.

59. Gannett willfully engaged in such acts and practices, and knew or showed reckless disregard for whether its conduct violated GBL § 349.

60. As a direct and proximate result of Gannett's deceptive trade practices, Plaintiff and Class members suffered injury and damages, including the payment of increased subscription charges and the loss of the benefit of their respective bargains with Gannett.

61. The above unfair and deceptive practices and acts by Gannett were immoral, unethical, oppressive, and unscrupulous under GBL § 349. These acts caused injury to subscribers that these consumers could not reasonably foresee and that outweighed any benefits to consumers or to competition.

62. Further, Gannett's conduct was injurious to Plaintiff and Class members in that they were charged increased monthly rates that Gannett had promised would not occur.

63. Gannett's actions in engaging in the above-named unfair practices and deceptive acts were negligent, knowing and willful, and/or wanton and reckless with respect to the rights of Plaintiff and Class members.

64. As a result of Gannett's violations of the GBL § 349, Plaintiff and Class members have paid and will continue to pay excessive monthly subscription charges. Therefore, they have suffered and will continue to suffer actual damages.

65. Accordingly, Plaintiff and Class members are entitled to relief under N.Y. Gen. Bus. Law § 349(h), including, but not limited to, actual damages, treble damages, statutory damages, injunctive relief, and/or attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the proposed Class, respectfully requests:

- A. An order certifying that this action may be maintained as a class action, that Plaintiff be appointed Class Representative and Plaintiff's counsel be appointed Class Counsel;
- B. An award of actual damages to the Plaintiff and Class for Gannett's breach of contract;
- C. An award of statutory damages, pre-judgment interest, costs, attorneys' fees, expenses, and post-judgment interest as permitted by law;
- D. The entry of judgment against Gannett declaring its policies and practices of increasing promotional subscribers' monthly charges before their promotional period ends to be wrongful, unfair, and unconscionable;

E. The entry of judgment against Gannett and in favor of the Plaintiff and Class in the amount of the relief requested herein; and

F. All other relief as the Court deems just and proper.

JURY DEMAND

Plaintiff, by counsel, demands a jury trial for all matters so triable.

DATED:

Respectfully submitted,

/s/ David O'Brien Suetholz

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Attorneys for Plaintiff

COMMONWEALTH OF KENTUCKY
JEFFERSON CIRCUIT COURT

GINNY COSTELLO, individually and on
behalf of herself and all others similarly
situated,

Case No. 19-CI-1188

Plaintiff

v.

GANNETT CO., INC.

Defendant

**NOTICE TO STATE COURT OF REMOVAL
TO UNITED STATES DISTRICT COURT**

PLEASE TAKE NOTICE that on March 21, 2019, Defendant Gannett Co., Inc. filed a Notice of Removal of this case from the Circuit Court of Jefferson County, Kentucky to the United States District Court for the Western District of Kentucky. A copy of the Notice of Removal is attached hereto, and a copy of this Notice and the Notice of Removal will be provided to the Plaintiff in this action through her counsel.

PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. § 1446, the filing of this Notice removes this action to the United States District Court for the Western District of Kentucky, and this Court may “proceed no further unless and until the case is remanded.” 28 U.S.C. § 1446(d).

Respectfully Submitted,

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Counsel for Gannett Co., Inc.

Certificate of Service

I hereby certify that on March 21, 2019 a copy of the foregoing Notice to State Court of Removal to United States District Court and attachments was electronically filed using the court's e-filing system and served by United States First Class Mail, postage prepaid, on the following:

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action: Gannett Increases Promotional Subscription Rates Before Deadline](#)
