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7 Attorneys for Plaintiff

8
 9 THE UNITED STATES DISTRICT COURT
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 11

12
 13 OMNITY CONSULTING, LLC d/b/a
 HARLEM SHAKE (WEST 124TH STREET),
 14 individually and on behalf of all others
 similarly situated,
 15 Plaintiff,
 16 v.
 17 DOORDASH, INC.,
 18 Defendant.
 19

Case No.:
CLASS ACTION COMPLAINT
 Jury Trial Demanded
 Action Filed: February 16, 2024

20 Plaintiff Omnity Consulting, LLC d/b/a Harlem Shake (West 124th Street) (“Plaintiff”),
 21 through the undersigned attorneys, brings this lawsuit against Defendant DoorDash, Inc.
 22 (“Defendant” or “DoorDash”) as to Plaintiff’s own acts upon personal knowledge, and as to all
 23 other matters upon information and belief.

24 **SUMMARY OF THE CASE**

25 1. Plaintiff alleges that Defendant has violated the Administrative Code of City of
 26 New York, § 20-563.3, New York Local Law No. 52 of 2020, and New York Local Law No. 88 of



1 2020 by charging food service establishments, like Plaintiff, unlawful and excessive third-party
2 food delivery service fees.

3 2. On May 13, 2020, the New York City Council passed emergency legislation
4 placing a cap on the exorbitant delivery fees that third-party delivery companies, such as
5 Defendant, was charging restaurants for their services.

6 3. Effective June 2, 2020, Local Law No. 52 of 2020, Council Int. No. 1908-B of
7 2020 (the “Delivery App. Legislation”) placed a twenty percent (20%) cap on total fees that
8 Defendant could charge restaurants with a specific cap of fifteen percent (15%) on all fees charged
9 for delivery and a five percent (5%) cap for any additional fees including for marketing, credit
10 card processing or any other fees.

11 4. The Delivery App. Legislation was amended pursuant to Local Law No. 88 of
12 2020, Council Int. No. 2054-A of 2020 (the “Amended Delivery App. Legislation”), effective
13 September 14, 2020, to allow for “pass-through” costs, such as credit card fees, to be charged to
14 the restaurant above the fifteen percent (15%) and five percent (5%) fee caps.

15 5. These limits were added to the New York City Administrative Code § 20-563.3 in
16 2021.¹

17 6. Since 2020, Defendant has intentionally and repeatedly charged Plaintiff, and, on
18 information and belief, other members of the putative Class, fees in excess of those permitted under
19 the governing regulations. By virtue of Defendant’s unlawful conduct and practices described
20 herein, Plaintiff and the proposed Class have suffered injury and damages. Plaintiff seeks
21 damages, restitution, declaratory and injunctive relief, and all other remedies this Court deems
22 appropriate.

23 **PARTIES, JURISDICTION AND VENUE**

24 7. Plaintiff is a corporate citizen of New York. It is a New York limited liability
25 company maintaining its principal place of business at 100 West 124th Street, New York, New
26 York 10027. Plaintiff is a restaurant operating under the name Harlem Shake.

27 _____
28 ¹ <https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCAadmin/0-0-0-134606>

1 12. Just like the food they offer, NYC’s food and restaurant industry is not monolithic,
2 but rather comprised of everything from small mom-and-pop establishments to street vendors, to
3 Michelin-starred, fine dining restaurants. Eighty percent of NYC’s restaurants are “small,” with
4 fewer than 20 employees, while only one percent have more than 500 workers.⁴ With such a
5 diverse food landscape within such a small geographic area, it is no wonder that New York City is
6 consistently ranked as one of the culinary capitals of the world, and that New York City’s eateries
7 form the second-largest component of NYC’s tourism industry, after accommodations.⁵

8 13. In addition to being a key contributor to NYC’s economy, the restaurant industry is
9 a vital source of employment. Prior to the COVID-19 pandemic, there were more than 23,600
10 food establishments which contributed to nearly \$27 billion in taxable sales.⁶ In 2019, the industry
11 accounted for one in every 12 private sector positions, supporting around 317,800 jobs.⁷ Clearly,
12 the food and restaurant sector is a pivotal economic contributor and an essential component of
13 NYC’s identity, to New Yorkers and visitors alike.

14 **B. History of Food Delivery**

15 14. According to a 2016 Business Insider article, the food delivery marketplace was a
16 “massive unfulfilled market opportunity...which will incentivize continued competition and,
17 potentially, an influx of new entrants.”⁸ In 2016, seven percent of sales at U.S. restaurants
18 occurred through food delivery.⁹ Seeing the potential for profit in this industry, venture capital
19 firms invested huge sums of money in food delivery companies. Over \$1 billion was invested in
20 2014 in food and grocery delivery, and a further half a billion dollars was invested in Q1 of 2015
21 in this sector.¹⁰ DoorDash reportedly raised nearly \$2.5 billion in venture capital funding before its

22 _____
23 ⁴ DiNapoli, “The restaurant industry in New York City: Tracking the recovery,” September 2020,
p.1.

24 ⁵*Id.*

25 ⁶*Id.*

26 ⁷*Id.*

27 ⁸*Id.*

28 ⁹*Id.*

¹⁰ Martin Mignot, “The Billion Dollar Food Delivery Wars” July 11, 2015,

1 initial public offering.¹¹

2 15. The industry has only grown with time. In North America alone, the online food
3 delivery market reached \$29.8 billion in 2022.¹² This number is expected to grow to \$64.8 billion
4 by 2028.¹³ Globally, this market reached \$126.91 billion in 2021 and is expected to grow to
5 \$192.16 billion by 2025.¹⁴ Moreover, the number of users has grown dramatically from 36.4
6 million in the U.S. in 2019 to 53.9 million in 2023.¹⁵

7 16. The influx of venture capital money into food delivery companies helped these
8 companies grow and attract new customers. A 2017 Morgan Stanley report predicted that by 2020,
9 40 percent of total restaurant sales could occur through online delivery.¹⁶ Online restaurant orders
10 grew 23 percent annually from 2013 to 2017.¹⁷ In 2018, UBS predicted that by 2030 the global
11 online food-ordering marketplace could grow to \$365 billion, up from \$35 billion in 2018.¹⁸ A
12 2019 survey conducted by the National Restaurant Association found that 60 percent of consumers
13 ordering takeout used a third-party delivery service.¹⁹ A 2021 survey by Statista Global Consumer
14 Survey found 37% of food orders from restaurants used food delivery services.²⁰

15
16 <https://techcrunch.com/2015/07/11/the-billion-dollar-food-delivery-wars/>

17 ¹¹ Danny Crichton, “The VC and founder winners of DoorDash’s IPO” TechCrunch, November
18 13, 2020, <https://techcrunch.com/2020/11/13/the-vc-and-founder-winners-of-doordashes-ipo/>

19 ¹² North America Online Food Delivery Market: Industry Trends, Share, Size, Growth,
20 Opportunity and Forecast 2023-2028, IMARC Group (Sept. 2023)

21 ¹³ *Id.*

22 ¹⁴ <https://www.appmysite.com/blog/online-food-ordering-statistics/>

23 ¹⁵ *Id.*

24 ¹⁶ “Alexa, What’s for Dinner Tonight?” Morgan Stanley, June 26, 2017,
25 <https://www.morganstanley.com/ideas/online-food-delivery-market-expands>

26 ¹⁷ The NPD Group “Feeding the growing appetite for restaurant apps,
27 <https://www.npd.com/wps/portal/npd/us/news/infographics/2018/feeding-the-growing-appetite-for-restaurant-apps/>.

28 ¹⁸ USB Investment Bank “Is The Kitchen Dead?” June 18, 2018,
<https://www.ubs.com/global/en/investment-bank/in-focus/2018/dead-kitchen.html>

¹⁹ Hudson Riehle and Melissa Wilson “Harnessing Technology to Drive Off-Premises Sales,”
2019, *National Restaurant Association*,
https://www.restaurant.org/Downloads/PDFs/Research/research_offpremises_201910.

²⁰ <https://www.appmysite.com/blog/online-food-ordering-statistics/>

1 17. Within the food delivery marketplace, companies have adopted different business
2 models that aim to either help restaurants increase their sales, or process and make deliveries.
3 Some as a software and marketing services that aggregate restaurants and create listings from
4 which consumers can place orders. Typically, restaurants partnering with these manage their own
5 fleet of couriers.²¹ These software-based businesses market to restaurants by arguing they generate
6 incremental orders, therefore increasing a restaurant’s profitability,²² and by replacing a
7 restaurant’s antiquated phone-ordering system with a more efficient web and mobile platform that
8 is integrated with their kitchen workflow.²³

9 18. DoorDash offers marketing and software options, but also manages the delivery of
10 the food from the restaurant to the customer. Through hiring independent contractors, DoorDash
11 maintains a fleet of couriers typically paid a per-trip payment to deliver the food. In addition to
12 offering software and marketing services, DoorDash handles the logistics of delivering the food,
13 which includes the hiring and paying of couriers and shift planning.²⁴ DoorDash, like other
14 delivery services, offers to solve the “last-mile” problem for many (but not all locations), the last
15 mile of transportation of a product being the most complicated and costliest part of getting a
16 product to a consumer.²⁵

17 19. NYC is no exception to the food delivery phenomenon. Overall, food delivery is a
18 popular way for New Yorkers to dine. According to a 2017 Department of Transportation report,
19 55 percent of New Yorkers ordered take out a few times per month.²⁶ City residents spend around

20 _____
21 ²¹ Martin Mignot, “The Billion Dollar Food Delivery Wars” July 11, 2015,
<https://techcrunch.com/2015/07/11/the-billion-dollar-food-delivery-wars/>; and Conversations
22 between Council Staff and Grubhub

23 ²² Pnina Feldman, Andrew E. Frazelle, and Robert Swinney, “Managing Relationships Between
Restaurants and Food Delivery Platforms: Conflict, Contracts, and Coordination,” July 30, 2021,
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3258739

24 ²³ Martin Mignot, “The Billion Dollar Food Delivery Wars” July 11, 2015,
<https://techcrunch.com/2015/07/11/the-billion-dollar-food-delivery-wars/>

25 ²⁴ *Id.*

26 ²⁵ Do J. Lee, “Delivering Justice: Food Delivery Cyclists in New York City” Dissertation
submitted to the Graduate Faculty in Psychology, City University of New York, September 2018,
27 https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=3854&context=gc_etds

28 ²⁶ “CITYWIDE MOBILITY SURVEY,” DEPARTMENT OF TRANSPORTATION, August

1 \$773.70 per year on food delivery, which is more money than residents of any other U.S. city.²⁷
 2 The frequency with which New Yorkers order takeout is a consequence of the culture and
 3 cityscape of New York. As previously mentioned, there are over 23,000 eateries in NYC, the most
 4 of any city in the country.²⁸ The comparatively small percentage of New Yorkers that own cars in
 5 comparison to other American cities may also be a cause of City residents' high use of delivery
 6 services in NYC. According to the 2019 U.S. Census, in the tristate area,²⁹ 31 percent of
 7 households do not own a car.³⁰ The NYC Economic Development Corporation estimates that 55
 8 percent of households in NYC do not own a car.³¹ Other major cities have much higher rates of car
 9 ownership: only 12 percent of households do not own cars in San Francisco, 12.5 percent in
 10 Chicago, 7.6% in Los Angeles.³²

11 **C. The Impact of the Pandemic**

12 20. During the COVID-19 pandemic, when lockdowns were in place across the
 13 country, many consumers turned to take-out due to restricted dine-in options. Over 65 percent of
 14 consumers in the United States are more likely to purchase takeout from a restaurant now than
 15 before the pandemic, and over 50 percent of consumers say that takeout and delivery are essential
 16
 17
 18

19 _____
 20 2017, <http://www.nyc.gov/html/dot/downloads/pdf/nycdot-citywide-mobility-survey-report-2017.pdf>

21 ²⁷ RACHEL CHIU, "Send back the bad food delivery bill" Daily News, August 11, 2021,
 22 <https://www.nydailynews.com/opinion/ny-oped-send-back-the-bad-food-delivery-bill-20210811-ubucnk4hpfac7gr64v4d3rlqzy-story.html>

23 ²⁸ Darcy Schild, "The 25 best US cities for foodies," Insider, October 7, 2019,
 24 <https://www.insider.com/best-cities-in-the-us-for-foodies-2019-10>

25 ²⁹ The Census includes NYC with Newark and Jersey City

26 ³⁰ Bailey Peterson, "Car Ownership Statistics (2021 Report)" ValuePenguin,
 27 <https://www.valuepenguin.com/auto-insurance/car-ownership-statistics>

28 ³¹ NYCEDC, "New Yorkers and Their Cars," April 5, 2018, <https://edc.nyc/article/new-yorkers-and-their-cars>

³² Bailey Peterson, "Car Ownership Statistics (2021 Report)" Value Penguin,
<https://www.valuepenguin.com/auto-insurance/car-ownership-statistics>

1 to the way they now live.³³ According to analysts from Morgan Stanley, the increase in use of
2 food delivery that was projected to take years occurred in a few months.³⁴

3 21. Third-party platforms profited from the surge in consumer use of their platforms
4 during the pandemic. The major food delivery platforms doubled their combined revenue during
5 the pandemic, making a profit of \$5.5 billion in April to September 2020, compared to \$2.5 billion
6 during the same months the previous year.³⁵ Food delivery companies generated \$50.6 billion in
7 sales in 2020, more than double the \$22.7 billion in sales generated in 2019.³⁶ A study found that
8 of the \$28 billion increase in sales that occurred between 2019 and 2020, over \$19 billion (69
9 percent) of this increase was due to the pandemic.³⁷ The report concludes, “Sales would have
10 grown by 38% in the absence of the pandemic, significantly less than the 122% [growth] that was
11 actually observed.”³⁸

12 22. The increase in consumer usage of third-party food delivery platforms during the
13 pandemic was also caused by an increase in restaurants joining delivery platforms. Because
14 restaurants across the country were only open for take-out and delivery, many restaurants not
15 previously on delivery platforms joined the platforms for the first time. The de Blasio
16 administration issued a COVID-19 related guidance sheet for business owners on March 16, 2020,
17 advising restaurants and food services to join food delivery platforms.³⁹ Accordingly, the

18 _____
19 ³³ “National Restaurant Association Releases 2021 State of the Restaurant Industry Report,”
20 January 26, 2021, <https://restaurant.org/news/pressroom/press-releases/2021-state-of-the-restaurant-industry-report>

21 ³⁴ “COVID-19 Era Serves Up Big Changes for U.S. Restaurants,” Morgan Stanley,
22 <https://www.morganstanley.com/ideas/coronavirus-restaurant-trends>

23 ³⁵ Levi Sumagaysay “The pandemic has more than doubled food-delivery apps’ business. Now
24 what?” *MarketWatch*, November 27, 2020, <https://www.marketwatch.com/story/the-pandemic-has-more-than-doubled-americans-use-of-food-delivery-apps-but-that-doesnt-mean-the-companies-are-making-money-11606340169>.

25 ³⁶ Elliot Shin Oblander and Daniel Minh McCarthy, “How has COVID-19 Impacted Customer
26 Relationship Dynamics at Restaurant Food Delivery Businesses?” April 26, 2021,
27 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3836262

28 ³⁷ *Id.*

³⁸ *Id.*

³⁹ Flatiron District “Guidance for business owners – Updated March 16, 2020: Tips for addressing
changes in customer behavior due to the Novel (New) Coronavirus (COVID19),”

1 platforms were able to expand their footprint in NYC by increasing the number of restaurants on
 2 their platforms. During an interview with MarketWatch, Grubhub CEO Matt Maloney
 3 acknowledged that the pandemic caused the platform to receive “10 to 15 times our usual new
 4 restaurant leads. This interest has led to four to five times newer restaurant go-lives compared to
 5 our previous record-breaking day.”⁴⁰ Maloney meanwhile acknowledged that restaurants could not
 6 survive on deliveries alone during the pandemic.⁴¹ According to Maloney, “The industry isn’t
 7 large enough for all restaurants to survive just on delivery, but they can survive for a matter of
 8 weeks potentially. It’s definitely not a long-term solution to bridge across restaurants.”⁴²

9 23. The financial success of these companies is also apparent from their corporate
 10 strategies during this period. Uber acquired the delivery service Postmates in November 2020,
 11 further consolidating the food delivery marketplace.⁴³ In December 2020, DoorDash made its
 12 public market debut and the DoorDash stock rose 86 percent during its initial public offering
 13 (IPO), one of the biggest IPOs of 2020.⁴⁴

14 **D. New York City Takes Action to Protect Restaurants**

15 24. On January 21, 2020, the first U.S. case of the COVID-19 virus was confirmed by
 16 the Center of Disease Control and Prevention.⁴⁵

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 18
 19 <https://www.flatirondistrict.nyc/uploaded/files/COVID-19/COVID-19%20Guidance%20for%20Business%20Owners%20-%203-16-2020.pdf>

20 ⁴⁰ *Id.*

21 ⁴¹ Elisabeth Buchwald, “Restaurants can’t survive on delivery alone, says Grubhub CEO Matt
 22 Maloney,” March 23, 2020, MarketWatch, <https://www.marketwatch.com/story/restaurants-wont-be-able-to-survive-ondelivery-only-says-grubhub-ceo-matt-maloney-2020-03-21>

23 ⁴² *Id.*

24 ⁴³ “Mike Isaac, Erin Griffith and Adam Satariano, “Uber Buys Postmates for \$2.65 Billion,” *The*
 25 *New York Times*, Updated November 13, 2020, <https://www.nytimes.com/2020/07/05/technology/uber-postmates-deal.html#:~:text=SAN%20FRANCISCO%20%E2%80%94%20Uber%20has%20agreed,stock%20deal%20on%20Monday%20morning>

26 ⁴⁴ Erin Griffith, “DoorDash Soars in First Day of Trading,” *The New York Times*, Updated March
 27 19, 2021, <https://www.nytimes.com/2020/12/09/technology/doordash-ipo-stock.html>

28 ⁴⁵ <https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html>

1 25. On January 30, 2020, the World Health Organization declared the COVID-19
2 virus a “public health emergency of international concern.”⁴⁶

3 26. On March 7, 2020, New York Governor Cuomo issued Executive Order
4 Number 202 declaring a state of emergency for the entire State of New York.⁴⁷ On March 16,
5 2020, Governor Cuomo issued Executive Order Number 202.3 prohibiting restaurants and bars
6 in the State of New York from serving food or beverages on- premises due to the spread of
7 COVID-19.⁴⁸

8 27. On March 22, 2020, Governor Cuomo’s executive order “New York State on
9 PAUSE” required all non-essential businesses to close in-office personnel functions to help stop
10 the infection rate of the COVID-19 virus.⁴⁹

11 28. On May 13, 2020, the New York City Council passed emergency legislation
12 placing a cap on the delivery fees that third-party delivery companies, such as Defendant,
13 could charge restaurants for their services.

14 29. Effective June 2, 2020, the Delivery App. Legislation prohibited third-party food
15 delivery services from charging restaurants a fee of more than fifteen percent (15%) of the
16 purchase price of each order, exclusive of taxes, for providing delivery services, and a fee of
17 more than five percent (5%) per order for all other types of charges.

18 30. DoorDash has violated these limits since they were first instituted by New York.

19 **E. Plaintiff Harlem Shake**

20 31. Plaintiff operates a restaurant in NYC. Beginning in 2019, DoorDash entered into
21 an agreement to provide delivery service providers to Plaintiff.

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23

24 ⁴⁶ <https://www.cnn.com/2020/01/30/health/coronavirus-who-public-health-emergency-international-concern-declaration/index.html>

25 ⁴⁷ <https://www.governor.ny.gov/news/no-202-declaring-disaster-emergency-state-new-york>

26 ⁴⁸ <https://www.governor.ny.gov/news/no-2023-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

27 ⁴⁹ <https://www.governor.ny.gov/news/governor-cuomo-issues-guidance-essential-services-under-new-york-state-pause-executive-order>

28

1 32. DoorDash charges fees for participation in DoorDash’s delivery service program.
 2 Plaintiff’s agreement with DoorDash is attached as **Exhibit A**.

3 33. Plaintiff utilized DoorDash’s delivery service program beginning in 2019 and
 4 continues to be a subscriber.

5 34. In or around June 2023, Plaintiff’s staff detected charges in DoorDash’s reports of
 6 its charges that exceeded the fee cap established by the Delivery App. Legislation.

7 35. DoorDash received a demand to explain the excessive fees, which DoorDash
 8 admitted had been charged. On June 28, 2023 a representative of DoorDash provided Plaintiff
 9 with the following information, stating that DoorDash had improperly taken \$13,932.01 in
 10 commissions:

Business Id	Store Id	Store Name	Business Line	Subtotal	Commission Rate	Commission Charge	Correct Commission	Correct Commission	Extra Commission	Amount Owed To Mx (\$)
48490	177273	Harlem Shake (V Classic - CAV		9420.5	10	\$942.84	5	\$471.03	5	\$471.82
48490	177273	Harlem Shake (V DoorDash for Bu		2628	10	\$261.02	5	\$131.40	5	\$129.62
48490	177273	Harlem Shake (V Marketplace : Clc		134321.71	10	\$13,382.44	5	\$6,716.09	5	\$6,666.35
48490	177273	Harlem Shake (V Marketplace : Plc		59.46	10	\$5.96	5	\$2.97	5	\$2.99
48490	177273	Harlem Shake (V Marketplace : Su		125631.96	10	\$12,522.62	5	\$6,281.60	5	\$6,241.02
48490	177273	Harlem Shake (V Subscription - C/		8389	10	\$839.66	5	\$419.45	5	\$420.21
										\$13,932.01

15 36. At the same time, DoorDash insisted that Harlem Shake execute a release and
 16 settlement of any and all claims related to DoorDash’s “miscalculated fees” for the period of
 17 “November 1, 2019 to May 12, 2023,” for the sum of \$7,259.19.

18 37. DoorDash thereafter provided a partial accounting of the charges DoorDash had
 19 made on Plaintiff’s DoorDash account. To date, DoorDash has failed to provide any full
 20 accounting, but has admitted that it charged fees in excess of the fee cap.

21 38. Based on the investigation of counsel and on information and belief, DoorDash has
 22 charged fees to the Class that are in excess of the fee cap, and this practice is widespread and
 23 pervasive.

24 **CLASS ACTION ALLEGATIONS**

25 39. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules
 26 of Civil Procedure on behalf of the following “Class”:

27 All food service establishments located within the five New York
 28 City boroughs that contracted with Defendant for delivery services

1 were charged more for such delivery services than allowed under
2 Administrative Code of NYC of New York, § 20-563.3.

3 40. The following are expressly excluded from the Class: (1) Defendant and its
4 subsidiaries and affiliates; (2) all food service establishments who make a timely election to be
5 excluded from the proposed Class; (3) governmental entities; (4) the Court to which this case is
6 assigned and its staff; and (5) all food service establishments that have a contract with DoorDash
7 that contains an arbitration provision banning class actions.

8 41. This action can be maintained as a class action because there is a well-defined
9 community of interest in the litigation, and the proposed Class is easily ascertainable.

10 42. It is estimated that the Class numbers in the thousands and joinder of all Class
11 members is impracticable.

12 43. This action involves common questions of law and fact applicable to each Class
13 member that predominate over questions that affect only individual Class members. Thus, proof
14 of a common set of facts will establish the right of each Class member to recover. Questions of
15 law and fact common to each Class member include:

- 16 a. Whether Defendant charged Plaintiffs fees in excess of the fee cap
17 of 15% for total orders and/or fees in excess of the 5% cap for other
18 charges.
- 19 b. Whether Plaintiff and the Class are entitled to equitable and/or
20 injunctive relief; and
- 21 c. Whether Defendant's unlawful, unfair, and/or deceptive practices
22 harmed Plaintiff and the Class.
- 23 d. The amount of overcharged fees due and payable to Plaintiff and
24 the Class to compensate them.

25 44. Plaintiff's claims are typical of the claims of the Class because Plaintiff bought the
26 Products during the Class Period. Defendant's unlawful, unfair, and/or fraudulent actions concern
27 the same business practice described herein irrespective of where they occurred or were
28 experienced. Plaintiff and the Class sustained similar injuries arising out of Defendant's conduct
in violation of New York law. The injuries of each member of the Class were caused directly by
Defendant's wrongful conduct. In addition, the factual underpinning of Defendant's misconduct

1 is common to all Class members and represents a common thread of misconduct resulting in injury
2 to all members of the Class. Plaintiff's claims arise from the same practices and course of conduct
3 that give rise to the claims of the Class members and are based on the same legal theories.

4 45. Plaintiff will fairly and adequately protect the interests of the Class. Neither
5 Plaintiff nor Plaintiff's counsel have any interests that conflict with or are antagonistic to the
6 interests of the Class members. Plaintiff has retained highly competent and experienced class
7 action attorneys to represent her interests and those of the members of the Class. Plaintiff and
8 Plaintiff's counsel have the necessary financial resources to litigate this class action adequately
9 and vigorously, and Plaintiff and counsel are aware of their fiduciary responsibilities to the Class
10 members and will diligently discharge those duties by vigorously seeking the maximum possible
11 recovery for the Class.

12 46. There is no plain, speedy, or adequate remedy other than by maintenance of this
13 class action. The prosecution of individual remedies by members of the Class will tend to
14 establish inconsistent standards of conduct for Defendant and result in the impairment of Class
15 members' rights and the disposition of their interests through actions to which they were not
16 parties. Class action treatment will permit a large number of similarly situated persons to
17 prosecute their common claims in a single forum simultaneously, efficiently, and without the
18 unnecessary duplication of effort and expense that numerous individual actions would engender.
19 Further, as the damages suffered by individual members of the Class may be relatively small, the
20 expense and burden of individual litigation would make it difficult or impossible for individual
21 members of the Class to redress the wrongs done to them, while an important public interest will
22 be served by addressing the matter as a class action. Class treatment of common questions of law
23 and fact would also be superior to multiple individual actions or piecemeal litigation in that class
24 treatment will conserve the resources of the Court and the litigants and will promote consistency
25 and efficiency of adjudication.

1 **COUNT II**

2 **Violation of the New York General Business Law § 349**

3 55. Plaintiff incorporates by reference each allegation set forth above.

4 56. Defendant has violated New York consumer protection statute in that Defendant
5 has engaged in acts or practices that are deceptive or misleading in a material way and Plaintiff
6 and the Class have been injured by reason thereof.

7 57. These deceptive acts are misleading to “a reasonable consumer.” Plaintiff and the
8 Class are reasonable consumers in that they are persons/entities that this New York statute is
9 designed to protect.

10 **COUNT III**

11 **Unjust Enrichment**

12 57. Plaintiff incorporates by reference each allegation set forth above.

13 58. As a result of Defendant’s fraudulent and misleading actions described herein,
14 Defendant has been enriched at the expense of Plaintiff and the Class.

15 59. It would be against equity and good conscience to permit Defendant to retain the
16 ill-gotten benefits it received from Plaintiff and the Class in light of the fact that Defendant did not
17 abide by New York law. Thus, it would be unjust and inequitable for Defendant to retain any
18 monies over and above what was permitted under New York law.

19 60. As a direct and proximate result of Defendant’s actions, Plaintiff and the Class
20 have suffered damages in an amount to be proven at trial.

21 **JURY DEMAND**

22 Plaintiff hereby demands a trial by jury of her claims.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, prays
25 for judgment against Defendant as follows:

26 A. For an order certifying this case as a class action and appointing Plaintiff and
27 its counsel to represent the Class;

1 B. For an order awarding as appropriate, damages, restitution, and/or
2 disgorgement to Plaintiff and the Class;

3 C. For an order requiring Defendant to immediately cease and desist from the
4 conduct complained of herein, and ordering Defendant to engage in corrective action;

5 D. For an order awarding attorneys' fees and costs;

6 E. For an order awarding pre-and post-judgment interest; and

7 H. For an order providing such further relief as this Court deems proper.

8 Dated: February 16, 2024

Respectfully submitted,

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/s/ Jenelle Welling
Jenelle Welling
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