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12 **SUPERIOR COURT OF ARIZONA**  
13 **IN MARICOPA COUNTY**

14 STATE OF ARIZONA, *ex rel.* KRISTIN K.  
15 MAYES, Attorney General,

16 Plaintiff,

17 v.

18 FOREGIVENESS AZ, AN ARIZONA  
19 LIMITED LIABILITY COMPANY; ETTA  
20 SCOTTSDALE, A DELAWARE LIMITED  
21 LIABILITY COMPANY AND MAPLE &  
22 ASH SCOTTSDALE, A DELAWARE  
23 LIMITED LIABILITY COMPANY,

24 Defendants.

Case No.:

**COMPLAINT**

25 Plaintiff, State of Arizona *ex rel.* Kristin K. Mayes, the Attorney General (the “State”),  
26 alleges the following for its Civil Complaint (the “Complaint”) against Foregiveness Az, an  
27 Arizona Limited Liability Company; Etta Scottsdale, A Delaware Limited Liability Company;  
28 and Maple & Ash Scottsdale, A Delaware Limited Liability Company, (collectively the  
“Defendants”).

...

...

1 **NATURE OF THE CASE**

2 1. Defendants are all restaurants. Since 2021, Defendants have been adding a 3.5%  
3 charge to customers' bills without proper disclosure. Many customers only find out about this  
4 charge at the time of receiving their bill after already ordering and consuming food and drinks.  
5 On information and belief, some customers never notice the charge at all.

6 **JURISDICTION AND VENUE**

7 2. The State brings this action pursuant to the Arizona Consumer Fraud Act,  
8 Arizona Revised Statutes ("A.R.S.") §§ 44-1521 to -1534 to obtain injunctive relief to  
9 permanently enjoin and prevent the unlawful acts and practices alleged in this Complaint, and  
10 to obtain other relief, including restitution, disgorgement of profits, gains, gross receipts, or  
11 other benefits, civil penalties, and costs and attorneys' fees.

12 3. This Court has subject-matter jurisdiction.

13 4. This Court may issue appropriate orders both prior to and following a  
14 determination of liability pursuant to A.R.S. § 44-1528.

15 5. Defendants caused events to occur in this state out of which the claims which are  
16 the subject of this Complaint arose.

17 6. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17).

18 **PARTIES**

19 7. Plaintiff is the State of Arizona ex rel. Kristin K. Mayes, the Attorney General of  
20 Arizona, who is authorized to bring this action under the Arizona Consumer Fraud Act (the  
21 "ACFA"), A.R.S. §§ 44-1521 to -1534.

22 8. Defendant Foregiveness Az is an Arizona Limited Liability Company; doing  
23 business as "Maple & Ash", with its principal place of business located at 7135 E Camelback  
24 Rd #130, Scottsdale, AZ 85251.

25 9. Defendant Etta Scottsdale is a Delaware Limited Liability Company doing  
26 business as "Etta", with its principal place of business located at 15301 N Scottsdale Rd,  
27 Scottsdale, AZ 85254.

28 10. Defendant Maple & Ash Scottsdale is a Delaware Limited Liability Company

1 with its principal place of business located at 7135 E Camelback Rd #130, Scottsdale, AZ  
2 85251.

3 **ALLEGATIONS**

4 11. Maple & Ash began operating in Arizona in April of 2018.

5 12. Etta began operating in Arizona in April of 2022.

6 13. Maple & Ash, since April of 2021, and Etta, since its inception, have been  
7 charging customers a 3.5% employee benefits charge, effectively making their prices 3.5%  
8 higher than the price advertised on the menu.

9 14. The charge appears on customers' bills as "Emp Benefit."

10 15. On information and belief, most consumers would become aware of the charge  
11 for the first time only after receiving their bill, after they had ordered and consumed food and  
12 drinks.

13 16. Defendants did not disclose the Employee Benefit charge on the physical menu,  
14 anywhere in the restaurant, or on either restaurant's online menu.

15 17. In fact, the only places where the Employee Benefit charge could be found were  
16 on the "About Us" page of the website or on the reservation checkout page of the website.

17 18. In other words, on information and belief, Defendants did not disclose the  
18 Employee Benefit charge to consumers unless those consumers happened to visit Defendants'  
19 website.

20 19. On information and belief, consumers who walked into the restaurants were not  
21 told about the Employee Benefit charge prior to receiving the bill after ordering and consuming  
22 food and drinks.

23 20. In addition, the reservation check-out page also provided inadequate disclosures.  
24 The text is only visible at the very bottom of the checkout window as seen below.

25 ...

26 ...

27 ...

28 ...



8:30 pm

Select

*etta is a unique neighborhood restaurant that serves delicious, seasonal, wood-fired food in a fun and relaxed dining environment. From crave-worthy pizza and bubbling shrimp, to fresh, crisp salads to family-style shared pig and lobster picnics, etta has something for everyone.*

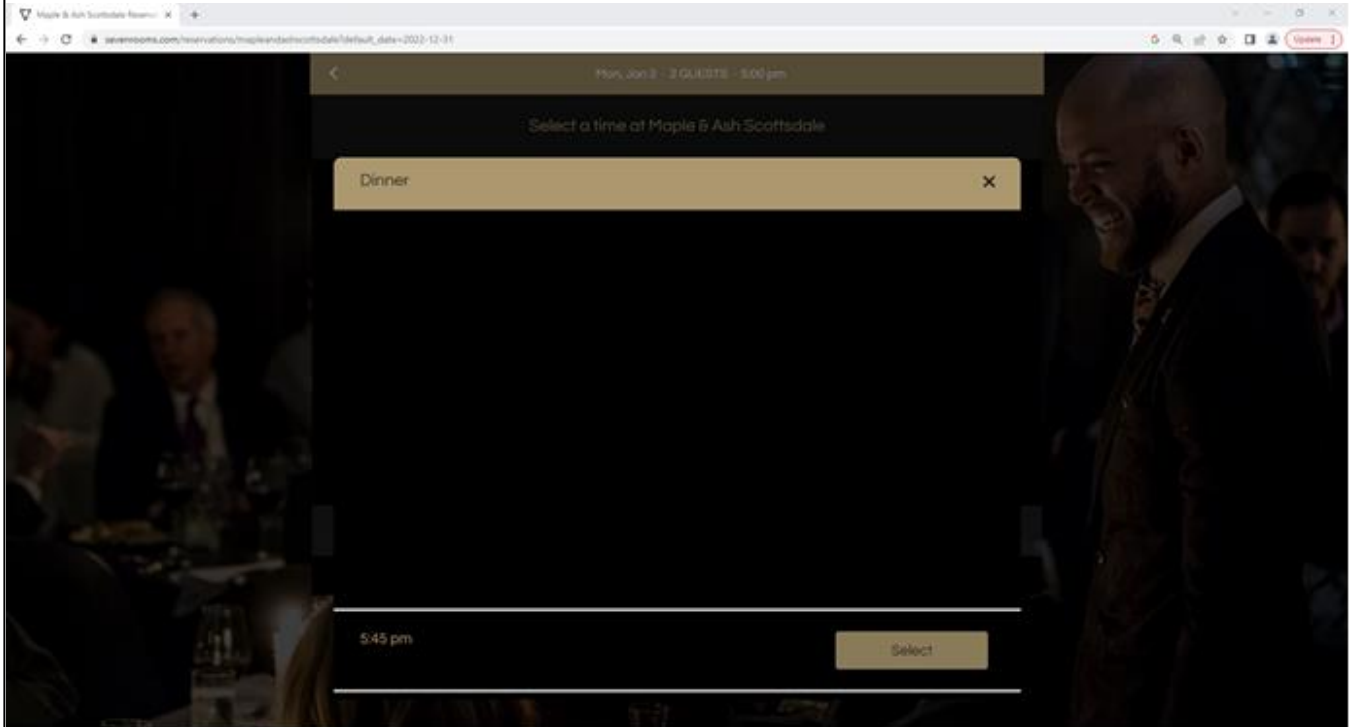
For groups of 6 or more, a credit card is required to secure the reservation. Should your plans change, please let us know 24 hours before your reservation time. For no shows or late cancellations (less than 24 hours prior), you will be subject to fee of \$20 per person that will be applied to the credit card on file. We look forward to serving you!

**We love our staff. To help cover health insurance, benefits and staff wellness we are adding a 3.5% charge for all transactions paid.**

21. On information and belief, many customers do not notice or even see the

1 disclosure at the bottom of the page as seen above.

2 22. Depending on the computer or web browser a consumer uses to make the  
3 reservation, a consumer may only be able to see the disclosures if they attempted to scroll down  
4 past the button that must be clicked to confirm the reservation as seen below.



18  
19 23. Defendants have considerable space between the reservation time and the  
20 confirmation button, Defendants either insert a large picture or leave that space blank.  
21 Defendants then place the Employee Benefit charge under the “Select” button and at the bottom  
22 of the fine print, in an area that is invisible unless consumers attempt to scroll down.

23 24. Further, not every consumer uses a desktop computer to make a reservation.  
24 Rather, consumers may use their mobile phones to make reservations at restaurants.

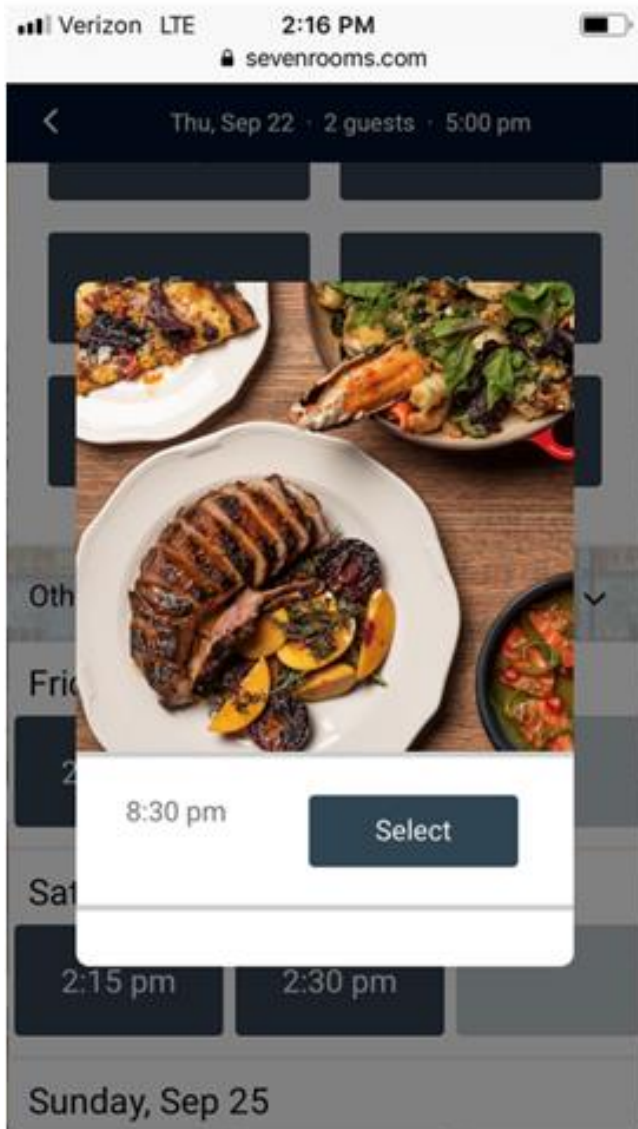
25 25. Consumers using their mobile device to make a reservation at Etta or Maple &  
26 Ash have no ability to see the disclosure about the 3.5% charge without attempting to scroll  
27 down past the button that confirms the reservation in order to find and read the fine print.

28 26. It is not readily apparent to a consumer using their mobile device to make a



1 reservation that there are any fine print disclosures when they get to the checkout page.

2 27. The only thing a consumer sees on the confirmation page without scrolling down  
3 is the button that they would click to confirm their reservation, and the consumer does not see a  
4 scroll bar or anything else that would suggest that the consumer could or should try to scroll  
5 down, as depicted in the following images.



27 28. The only way consumers making online reservations using their phones might  
28 know about the charge is if they happened to attempt to scroll down at the right spot in the

1 reservation process or notice a small disclosure buried in the fine print of their confirmation  
2 email.

3 29. On information and belief, even consumers who made reservations online likely  
4 only became aware of the 3.5% charge for the first time upon receiving their bill, after ordering  
5 and consuming food and drinks.

6 30. After becoming aware of the State's investigation, Defendants started disclosing  
7 the Employee Benefit charge on the menu in August of 2022.

8 31. Given that the Employee Benefit charge is a fixed percentage, Defendants could  
9 have incorporated this percentage into their menu prices.

10 32. Instead, Defendants created a separate charge that appeared mandatory and  
11 allowed Defendants to advertise lower menu prices while knowing they would charge higher  
12 prices on the final bill.

13 33. Defendants then concealed, suppressed, or omitted material information about  
14 that charge on the menu, over the phone, and on their websites.

15 34. Defendants have charged thousands of consumers this improperly disclosed  
16 charge and collected thousands of dollars in additional revenues in the process.

17 **FIRST CLAIM FOR RELIEF**

18 **VIOLATIONS OF THE ARIZONA CONSUMER FRAUD ACT, A.R.S. §§ 44-1521 to -**  
19 **1534**

20 (Against All Defendants)

21 35. The State realleges all prior allegations of this Complaint as fully set forth herein.

22 36. The conduct described in the preceding paragraphs of this Complaint constitutes  
23 deception, deceptive or unfair acts or practices, fraud, false pretenses, false promises,  
24 misrepresentations, or concealment, suppression or omission of material facts with intent that  
25 others rely on such concealment, suppression or omission, in connection with the sale or  
26 advertisement of merchandise in violation of A.R.S. §§ 44-1521 to -1534, including, but not  
27 limited to:

28 a. Defendants engaged in deceptive and unfair acts and practices, fraud, false

1 pretenses, and false promises, by misrepresenting their menu prices as 3.5% lower than the  
2 actual prices Defendants knew they would charge.

3 b. Defendants engaged in deceptive and unfair acts and practices by  
4 concealing, suppressing, or omitting the material fact that customers would be charged an  
5 additional 3.5% on their bill, and did so with intent that others rely on such concealments,  
6 suppressions, or omissions.

7 37. While engaging in the acts and practices alleged in this Complaint, Defendants  
8 knew or should have known that that their conduct was of the nature prohibited by A.R.S. § 44-  
9 1522, subjecting themselves to enforcement and penalties as provided in A.R.S. § 44-1531(A).

10 38. With respect to the concealments, suppressions, or omissions of material fact  
11 described above, Defendants did so with intent that others rely on such concealments,  
12 suppressions, or omissions.

13 39. With respect to the unfair acts and practices described above, these acts and  
14 practices caused or were likely to cause substantial injuries to consumers that were not  
15 reasonably avoidable by consumers and were not outweighed by countervailing benefits to  
16 consumers or to competition.

### 17 **PRAYER FOR RELIEF**

18 WHEREFORE, the State respectfully requests that the Court:

19 40. Pursuant to A.R.S. § 44-1528(A)(1), issue a permanent injunction in accordance  
20 with Ariz. R. Civ. P. 65(d)(1), enjoining and restraining (a) Defendants, (b) their officers,  
21 agents, servants, employees, attorneys, and (c) all persons in active concert or participation with  
22 anyone described in part (a) or (b) of this paragraph, directly or indirectly, from engaging in  
23 deceptive, misleading, or unfair acts or practices, or concealments, suppressions, or omissions,  
24 that violate the CFA, A.R.S. § 44-1522(A), including specific injunctive relief barring  
25 Defendants from engaging in the unlawful acts and practices set forth above;

26 41. Pursuant to A.R.S. § 44-1528(A)(2), order Defendants to restore to all persons in  
27 interest any monies or property, real or personal, which may have been acquired by any means  
28 or any practice in this article declared to be unlawful;



