

DIVANE PITTMAN  
 c/o Brown, Goldstein & Levy LLP  
 120 E. Baltimore Street, Suite 2500  
 Baltimore, Maryland 21202

*On her own behalf and on behalf of  
 all others similarly situated,*

Plaintiff,

v.

BUFFALO WILD WINGS  
 INTERNATIONAL, INC.  
 5500 Wayzata Blvd, Suite 1600  
 Minneapolis, Minnesota 55416

Serve: Resident Agent  
 CSC-Lawyers  
 Incorporating Service Company  
 7 St. Paul Street  
 Baltimore, Maryland 21202,

and

INSPIRE BRANDS, INC.  
 3 Glenlake Parkway, NE  
 Atlanta, Georgia 30328,

Defendants.

IN THE  
 CIRCUIT COURT  
 FOR MONTGOMERY COUNTY  
 Case No. C-15-cv-22-002594

**CLASS ACTION COMPLAINT**

\* \* \* \* \*

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

Plaintiff Divane Pittman, on behalf of herself and all others similarly situated, by and through her undersigned attorneys, sues Defendants Buffalo Wild Wings International, Inc. (“Buffalo Wild Wings”) and Inspire Brands, Inc. (“Inspire Brands”) and alleges upon information and belief based, among other things, upon the investigation made by Plaintiff and through her attorneys as follows:

## **PARTIES**

1. Plaintiff Divane Pittman is a citizen of the State of Maryland who lives in Lanham, Maryland and resided there at all times relevant to this Complaint.
2. Defendant Buffalo Wild Wings is incorporated in Ohio and maintains its principal business offices in Atlanta, Georgia. Buffalo Wild Wings regularly conducts business in the State of Maryland including in Montgomery County.
3. Defendant Inspire Brands has its headquarters in Sandy Springs, Georgia. Inspire Brands is the parent company of Buffalo Wild Wings. On information and belief, Inspire Brands sets or approves all material policies and practices of Buffalo Wild Wings, including the policies relating to the “Takeout Service Fee” described herein. It is jointly and severally liable for all acts and omissions by Buffalo Wild Wings alleged in this complaint.

## **JURISDICTION & VENUE**

4. This Court has jurisdiction over this matter pursuant to Md. Code, Cts. & Jud. Proc. §§ 1-501.
5. This Court has personal jurisdiction over Defendants pursuant to Md. Code, Cts. & Jud. Proc. § 6-103(b) because they did transact business at the relevant times alleged in this Complaint, or continue to transact business, in Maryland.
6. Venue in this Court is proper pursuant to Md. Code, Cts. & Jud. Proc. § 6-201(a)-(b) because Defendants Buffalo Wild Wings and Inspire Brands carry on a regular business in Montgomery County and Defendant Inspire Brands may be sued in a county in which any one of the defendants could be sued.

### **NATURE OF ACTION**

7. This is a proposed class action seeking monetary damages, restitution, and injunctive and declaratory relief from Defendant Buffalo Wild Wings and its parent company, Inspire Brands, arising from their deceptive and untruthful menu prices offered to consumers on takeout orders.

8. To appeal to consumers in a crowded food marketplace, Buffalo Wild Wings has promised its customers food items at appealing menu prices on its website, app, and in-store. Those prices are false for consumers who place carryout orders. In fact, all carryout orders incur an additional \$0.99 “Takeout Service Fee.”

9. Throughout its stores, and like all restaurants, Buffalo Wild Wings provides prominent price displays for each of its products. Reasonable consumers like Plaintiff understand those are the true and complete prices for the food items, exclusive of government-imposed taxes and discounts for which a customer may be eligible.

10. Buffalo Wild Wings’ menu price representations are false, as the listed prices are not the true cost of food at Buffalo Wild Wings. In fact, *after* consumers select menu items based on listed prices and customize those menu items with dips, sides, and other specifications, and after the ordering process is substantially complete, Buffalo Wild Wings surreptitiously imposes a so called “Takeout Service Fee” amounting to \$0.99. This late addition of a so-called Takeout Service Fee on receipts substantially changes the menu prices for takeout food items and disguises the true cost of those items.

11. Worse, the so-called “Takeout Service Fee” is never reasonably disclosed to consumers until it shows up as a line item on their receipts *after the purchase is complete*.

12. Worse, the so-called “Takeout Service Fee” is itself a misnomer and a deception. The additional fee is not for any additional “service” related to the purchase of Buffalo Wild Wings food—it is part of the cost of food itself.

13. Remarkably, Buffalo Wild Wings itself admits as much. In fine print on its website or app that it never provided to in-store purchasers and never affirmatively provided to website or app users, Buffalo Wild Wings concedes that the additional fee is not for the provision of a “service” at all, stating: “This service fee *helps us operate our takeout business*” (emphasis added). The “operation of a business” is, of course, a basic component of *any* price offered by a business. In sum, Buffalo Wild Wings admits the “Takeout Service Fee” is simply part of the cost of its food.

14. For Buffalo Wild Wings to surreptitiously inflate food prices with a later-added “Takeout Service Fee” is false and deceptive. Buffalo Wild Wings is imposing a stealth price hike in the form of late-added fee, rather than charging a list price that reflects the actual cost to consumers of the food it sells.

15. No other similar chain imposes a similar deception on its customers. Buffalo Wild Wings’ double-edged deception—first, touting menu prices that are false; second, surreptitiously adding a “takeout service fee” on takeout customers—gives it an unfair advantage over honest sellers in the marketplace. The double-edged deception makes it impossible for consumers to comparison shop meaningfully and hinders the operation of a free and fair marketplace.

16. When Buffalo Wild Wings, for example, offers “10 Traditional Wings” for \$14.49 on its app/website or on its restaurant menus, it misrepresents and omits the truth: that “\$14.49” chicken wings order *actually* costs \$15.48 when carried out. This misrepresentation makes it impossible for consumers to comparison shop.

17. Because the so-called “Takeout Service Fee” is added as a matter of course to *all* takeout orders, the “service fee” is by definition part of the cost of the food offered. Buffalo Wild Wings obscures the true cost of its food by adding a so-called “Takeout Service Fee” that is simply part of the cost of its food.

18. By falsely marketing food at menu prices that are lower than the true cost of its food to consumers, without displaying its Takeout Service Fee prior to sale, Buffalo Wild Wings deceives consumers into making food purchases they otherwise would not make.

19. Buffalo Wild Wings misrepresents, omits and conceals material facts about the true cost of Buffalo Wild Wings food, never once informing consumers in any disclosure, at any time, that the so-called “Takeout Service Fee” in fact materially changes the menu prices of the offered food.

20. Hundreds of thousands of Buffalo Wild Wings customers like Plaintiff have been charged more for food than the prices listed on Buffalo Wild Wings menus—prices they did not bargain for.

21. Consumers like Plaintiff reasonably understand Buffalo Wild Wings’ express menu price representations to represent the true cost of ordered food, regardless of whether the customer dines in the restaurant or carries out the food. It is not.

22. By unfairly obscuring its true food costs, Buffalo Wild Wings deceives consumers and gains an unfair upper hand on competitors that fairly disclose their true food costs on menus.

23. Plaintiff seeks damages and, among other remedies, injunctive relief that fairly allows consumers to decide whether they will pay Buffalo Wild Wings’ takeout food prices.

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