

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

TRAVELERS UNITED)	
2833 Alabama Ave SE #30736)	
Washington, D.C. 20020,)	
)	
Plaintiff,)	
)	Civil Action No. _____
v.)	
)	
NIEUW GROUP, INC.)	
54 W 39 th Street)	
New York, NY 10018)	
Defendant.		

**COMPLAINT FOR VIOLATIONS OF THE
CONSUMER PROTECTION PROCEDURES ACT**

Travelers United brings this action pursuant to D.C. Code § 28-3905 for injunctive relief and statutory damages against Defendant NIEUW Group, Inc. (“NIEUW Group”) violations of the District’s Consumer Protection Procedures Act (“CPPA”), D.C. Code § 28-3901, et seq. In support of its claims, Travelers United states as follows:

INTRODUCTION

1. This is a price deception case. For about six months, NIEUW Group has used an unlawful trade practice called drip pricing in advertising its menu items whereby NIEUW Group initially hides a portion of a menu items total cost from consumers. NIEUW Group calls this an Initiative 82 fee on the final receipt though no specific name is given

to the fee on the menu.¹ Their menu states “To offset the impact of Initiative 82 on independently owned restaurants, a 5% fee has been added that goes directly to sales and paying all restaurant staff.” People have referred to a fee that reference Initiative 82 as an “Initiative 82 Fee.”² The surcharge is imposed at both of the NIEUW Group restaurants in the District including at Proper 21 F Street at 1319 F Street NW and Proper 21 K Street at 2033 K Street NW. Given their locations, they are both extremely popular with tourists. One key effect of this price deception is that consumers shopping for the price of dinner on Proper 21’s website are misled into believing a dinner at Proper 21 is cheaper than it actually is. Proper 21’s motive in continuing this deceptive practice is pure profit. NIEUW Group, of which both Proper 21s are a part, has likely reaped tens of thousands of dollars over the last year from this deceptive drip pricing. Travelers United brings this action to force NIEUW Group to advertise up-front to consumers the true prices of its menu items. All mandatory fees controlled by the restaurant must be included in the advertised menu price.

2. NIEUW Group is a New York City based company operating two restaurants in the District. Their headquarters are in New York, New York. NIEUW Group owns and manages two restaurants in the District. District restaurants run by NIEUW Group are Proper 21 F Street at 1319 F Street NW and Proper 21 K Street at 2033 K Street NW.
3. NIEUW Group offers its food and drink to District residents and tourists.
4. Each restaurant in the NIEUW Group has a menu with prices available online and at the restaurant. Consumers, particularly tourists who are unfamiliar with restaurants in the

¹ Anna Spiegel, *Initiative 82 service fees are popping up in D.C.*, Axios, Jul 24, 2023, <https://www.axios.com/local/washington-dc/2023/07/24/initiative-82-service-fees-dc>

² Anna Spiegel, *Initiative 82 service fees are popping up in D.C.*, Axios, Jul 24, 2023, <https://www.axios.com/local/washington-dc/2023/07/24/initiative-82-service-fees-dc>

area, are likely to look online at a menu in advance to quickly see if a restaurant is in their budget. Consumers may compare menus online between different restaurants to pick a restaurant based on price. If the restaurant does not list the true price of a menu item on its' menu, the consumer is not given the ability to price compare.

5. NIEUW Group charges an additional mandatory fee it labels on restaurants as “To offset the impact of DC’s initiative 82 on independent restaurants, a 5% fee has been added that goes directly to sales and paying all restaurant staff.” The same language is used at every NIEUW Group restaurant in the District. Other restaurant establishments in the District have imposed similar deceptive fees with a variety of names.³ These function as restaurant resort fees, a total junk fee where the consumer gets nothing other than a deceptive advertised price.
6. Both NIEUW Group restaurants in the District have these drip pricing fees. At every restaurant the advertised price of a menu item is listed without the surcharge. The restaurants could simply just increase prices so that consumers knew the price of an item when ordering, but instead they are hit with a surcharge when presented with the final bill. Consumers often do not know this surcharge existed before seeing the charge on the final bill.
7. The 5% “Initiative 82 Fee” exists to deceive consumers about the actual price of a menu item.
8. This 5% Initiative 82 fee is applied to all menu items at both NIEUW Group restaurants in the District meaning the 5% hidden fee applies not just to food items but to alcoholic

³ Erik Flack, *Many Customers Frustrated Over Extra Fees on Restaurant Bills*, WUSA9, <https://www.wusa9.com/article/news/investigations/what-to-do-about-unexpected-restaurant-fees-dc-attorney-general-warning/65-b8ac01af-2a8f-4ea1-9f2e-479994321378> (accessed Jan. 13, 2024).

beverages as well making this deceptive fee subject to the Alcoholic Beverage Regulation Administration's (ABRA) licensing requirements⁴ for District establishments that serve alcohol.

9. Travelers United institutes this proceeding to stop NIEUW Group from engaging in the unlawful trade practices set forth more fully below in connection with its offer and sale of restaurant food to consumers, including its practice of (1) misleading consumers concerning the amount they must pay for an item on the menu, and (2) advertising menu items without the intent to supply them at advertised prices. Travelers United seeks injunctive relief to prevent Defendant from engaging in these and similar unlawful trade practices, statutory damages to deter Defendant and others similarly situated from engaging in these and similar unlawful trade practices, and the payment of costs and attorney's fees. Travelers United also hopes that the District's Alcoholic Beverage Regulation Administration will follow their requirements for alcoholic beverage licenses in the District by revoking the NIEUW Group's license until they remove all deceptive fees from their menu.

JURISDICTION

10. This Court has jurisdiction over the subject matter of this case pursuant to D.C. Code § 11-921 and D.C. Code § 28-3905.

⁴ Government of the District of Columbia. District of Columbia Official Code Title 25; Alcoholic Beverage Regulation Administration and District of Columbia Municipal Regulations Title 23; Alcoholic Beverages (Revised August 2022), <https://abca.dc.gov/sites/default/files/dc/sites/abra/publication/attachments/ABRA%20Code%20Book%20-%20Updated%208-22.pdf>

11. This Court has personal jurisdiction over the Defendant pursuant to D.C. Code § 13-423(a).

PARTIES

12. Plaintiff is a nonprofit public interest organization for the purpose of promoting interests and rights of consumers empowered to sue and be sued. The mission of Travelers United is to improve and enhance for consumers all modes of travel. We advocate to make sure that consumers are able to travel safely and that they are not taken advantage of at their destination. Travelers United has been instrumental in advocating against hidden fees both federally and locally in the District. Travelers United has met with many members of the DC Council and their staff regarding numerous consumer protection issues in the District. Travelers United has met with the consumer protection division of the Office of the Attorney General in the District to discuss the issue. Nationally Travelers United has worked and met with members of Congress, the National Association of Attorneys General, other consumer advocacy groups and the Federal Trade Commission educating, alerting and advocating against deceptive fees. Travelers United, based in Washington, D.C. and Virginia, has members who reside in Washington, D.C.

13. Defendant NIEUW Group is a hospitality company that owns and manages two restaurants in the District. The NIEUW Group, Inc. is headquartered in New York City at 54 W 39th Street, New York, NY 10018.

14. Proper 21 F Street is a restaurant operated by the NIEUW Group. Proper 21 is located at 1319 F Street NW, Washington, DC 20004.

NIEUW GROUP DECEPTIVE ADVERTISING PRACTICES

15. This action was commenced after just over a half a year of NIEUW Group charging an Initiative 82 fee. Currently there has been an increased interest in the elimination of “junk fees” on pricing from everything from ticket sales to hotel rooms to menu items.⁵⁶⁷ Travelers United has sued MGM Resorts, Hyatt, Hilton, Sonesta and Accor hotels for their use of drip pricing in advertising hotel rooms.⁸ Restaurant fees, like the “Initiative 82 fee” are similar to hotel resort fees – guests get absolutely nothing other than a deceptive advertised price.⁹ In 2023 Travelers United sued Clyde’s Restaurant Group for charging a deceptive “2023 surcharge” on their menu.¹⁰ In 2024 Travelers United sued Knead Hospitality + Design restaurant group for their use of an “Initiative 82 fee.”¹¹
16. At issue in this case is the growing and continued practice of restaurants advertising one price on their menu but then hitting the guest with a surcharge on the final bill. For instance, NIEUW Group’s practice is to initially advertise lower rate for a menu item that

⁵ Diane Bartz, Jeff Mason and Douglas Gillison, *Biden Administration Takes Aim at Junk Fees Across the Economy*, Reuters, Oct. 11, 2023, <https://www.reuters.com/world/us/biden-administration-takes-aim-junk-fees-with-new-proposed-rule-guidance-2023-10-11/>

⁶ Chelsey Cox and Emma Kinery, *White House Announces New Efforts To Crack Down on ‘Tens of Billions’ in Junk Fees*, CNBC, Oct. 11, 2023, <https://www.cnbc.com/2023/10/11/white-house-announces-crack-downs-on-tens-of-billions-in-junk-fees.html>

⁷ Christopher Elliott, *Hotels Are Returning Fire in the ‘Junk Fee’ War. Don’t be a Casualty*, USA Today, Aug. 4, 2023, <https://www.usatoday.com/story/travel/columnist/2023/08/04/junk-fees-hotels-fight-them/70514452007/>

⁸ Elaine Glusac, *‘Spending Money to Get Nothing’: The Latest on Resort Fees*, N.Y. Times, Oct. 11, 2023, <https://www.nytimes.com/2023/10/11/travel/resort-fees.html>

⁹ Eric Flack and Ruth Morton, *Restaurant Surcharges Skyrocket in DC as Some Owners Now Charge 20% - and That’s Not Including Tip*, WUSA9, Sept. 14, 2023, <https://www.wusa9.com/article/news/investigations/initiative-82-restaurant-surcharges-fees-employment-policies-institute-brasserie-liberte-chef-geoff-kenyan-muduffie/65-1147724c-d59c-49f6-9c82-67e21ca6822b>

¹⁰ Jessica Sidman, *Lawsuit Against Clyde’s Alleging Deceptive Menu Fees Has Been Dropped*, The Washingtonian, January 5, 2024, <https://www.washingtonian.com/2024/01/05/lawsuit-against-clydes-alleging-deceptive-menu-fees-has-been-dropped/>

¹¹ Amanda Michelle Gomez, *‘Inherently Deceptive’: Inside The Effort to Stop D.C. Restaurants From Charging Random Menu Fees*, DCist, January 23, 2024, <https://dcist.com/story/24/01/23/dc-restaurant-fees-service-charges-lawsuits-travelers-united/>

does not include the surcharge, but then to include the surcharge in the final charges when the customer gets a bill. The practice means guests think the prices are 5% less than they actually are.

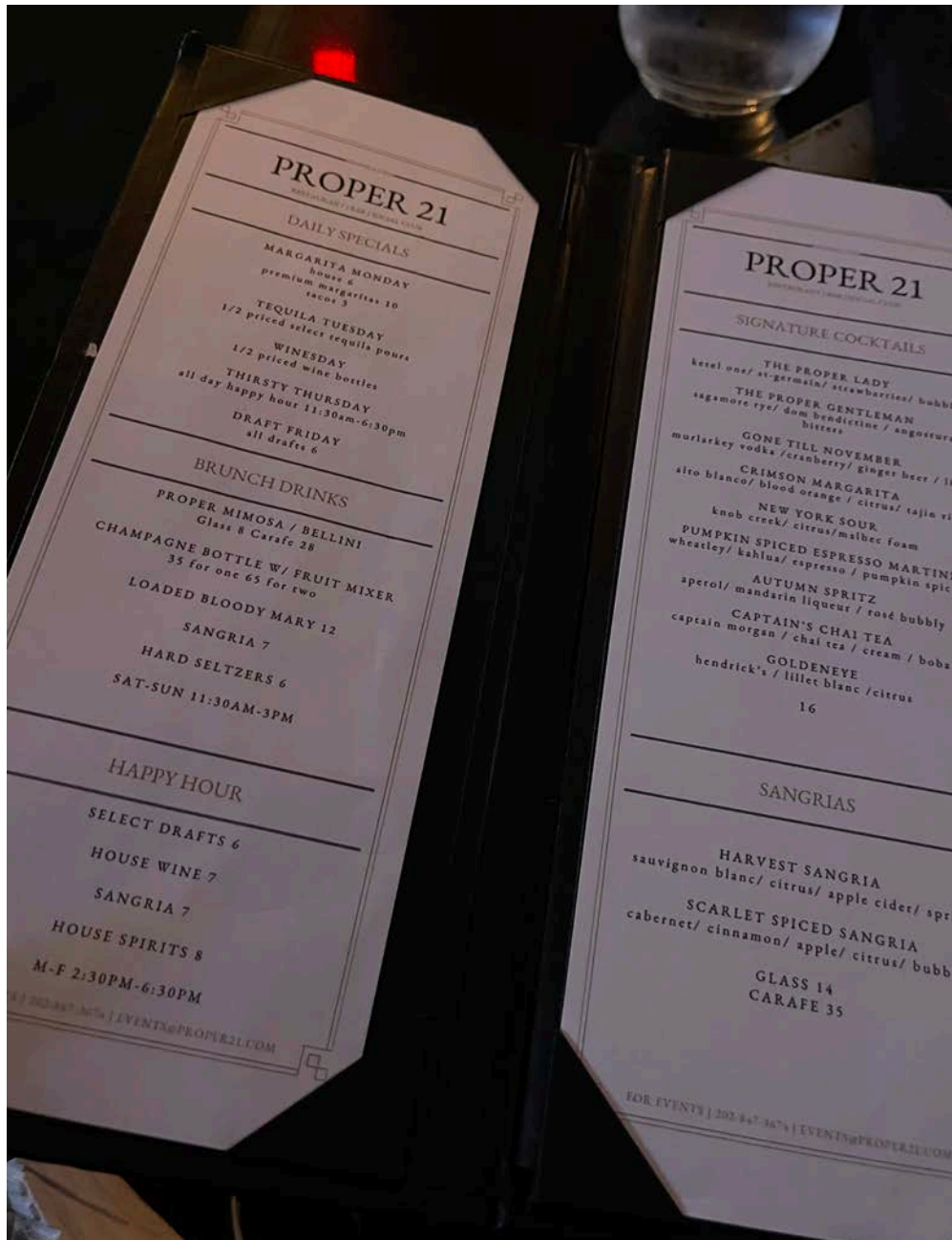
17. The NIEUW Group’s practice of initially advertising only part of a price and then later revealing other charges as the consumer completes the buying process is an example of drip pricing. The White House’s Council of Economic Advisors wrote a blog post titled *How Junk Fees Distort Competition* on March 21, 2023. The post states that drip pricing occurs “where additional costs are ‘dripped in’ as the consumer goes through the shopping process. This means consumers see an initial upfront price but face a higher true price at the end of the purchase process due to (non-government-imposed) fees.”¹² The White House explains that “ultimately, the existence of these additional fees serves to obfuscate the true price for a consumer... The use of drip pricing (and the imposition of additional search costs) makes it more difficult for consumers to compare prices across platforms.”¹³
18. NIEUW Group operates two full-service restaurants in the District and each restaurant charges consumers the same deceptive 5% “Initiative 82 Fee.” The two restaurants charging this fee are: Proper 21 F Street and Proper 21 K Street.
19. Because NIEUW Group charges the same deceptive fee at both of their DC restaurants, this shows that this fee exists to deceive consumers, not to actually provide any additional service or experience to the guest. The fee is not relative to any sort of service or restaurant experience, it’s related to price deception.

¹² *How Junk Fees Distort Competition*, The White House, Mar. 21, 2023, <https://www.whitehouse.gov/cea/written-materials/2023/03/21/how-junk-fees-distort-competition/>

¹³ *How Junk Fees Distort Competition*, The White House, Mar. 21, 2023, <https://www.whitehouse.gov/cea/written-materials/2023/03/21/how-junk-fees-distort-competition/>

20. These deceptive restaurant fees are not just a violation of the District’s Consumer Protection Procedures Act (CPPA). These deceptive fees are also a violation of the District of Columbia Municipal Regulations Title 23 Alcoholic Beverages where §25-766 Prohibited statements in advertisements clearly states “Advertisements and written notices or other documents that are displayed or provided to the public that contain false or misleading statements with respect to any material fact shall be prohibited.”¹⁴ Any establishment in the District charging a deceptive surcharge on alcoholic beverages is in violation of the District’s Alcoholic Beverage Regulation Administration’s (ABRA) general provisions for alcohol licenses in the District. Any restaurant or bar charging deceptive surcharges like the “Initiative 82 Fee” charged at NIEUW Group restaurants should lose their license to serve alcohol according to ABRA.

¹⁴ Government of the District of Columbia. District of Columbia Official Code Title 25; Alcoholic Beverage Regulation Administration and District of Columbia Municipal Regulations Title 23; Alcoholic Beverages (Revised August 2022), <https://abca.dc.gov/sites/default/files/dc/sites/abra/publication/attachments/ABRA%20Code%20Book%20-%20Updated%208-22.pdf>



The “Initiative 82 Fee” is not even displayed on the Proper 21 F Street alcoholic beverages menu in violation of the District Alcohol Beverage Regulation Administration’s requirements for how alcoholic beverages must be advertised.

21. These deceptive restaurant fees, not part of the advertised price on a menu, have popped up all over the United States in the past year. *The Guardian*, a paper based in The United Kingdom, recently ran an article titled “Covert and Confusing ‘Service Charges’ Anger

US Diners: They're not tips – and sometimes, they're only revealed on itemized receipts, which patrons call dishonest.” The article goes on to say “service fees have emerged as a confusing new facet of restaurant etiquette. Despite the name, a service fee is not the same as a tip and does not necessarily go to servers. Instead, the fee ends up in the hands of a restaurant owner, who will spend it however they see fit.”¹⁵

22. *The Guardian* article also points to a Google Spreadsheet originally created for Los Angeles but now sheets exist for Los Angeles, Chicago, San Diego and The District. Anyone with a Google account can log in and add the newest restaurant fee in their city. The “TransparentFee DMV Database [PUBLIC]”¹⁶ lists 180 restaurants charging some sort of fee in the District. *The Washingtonian* also reported recently on this trend of tracking restaurant fees across DC. On January 11, 2024 Jessica Sidman of *The Washingtonian* published an article titled “These Helpful Restaurant Tools are Tracking Every Restaurant Fee Across DC. A Reddit-crowdsourced spreadsheet and Chrome extension are bringing more transparency to menu fees.”¹⁷

23. The angst against deceptive restaurant fees is currently a hot topic on reddit.com’s Washington, D.C.-focused subreddit (r/washingtondc). Reddit is a popular online forum where people discuss topics of interest. A subreddit is a topic specific forum on the website reddit.com. Deceptive restaurant fees have been a reoccurring topic for the past ten months. A Reddit user posted an article in April 2023 about how “service fees are

¹⁵ Alaina Demopoulos, *Covert and Confusing ‘Service Charges’ Anger US Diners*, *The Guardian*, Aug. 7, 2023, <https://www.theguardian.com/food/2023/aug/07/restaurant-service-charges-us-los-angeles>

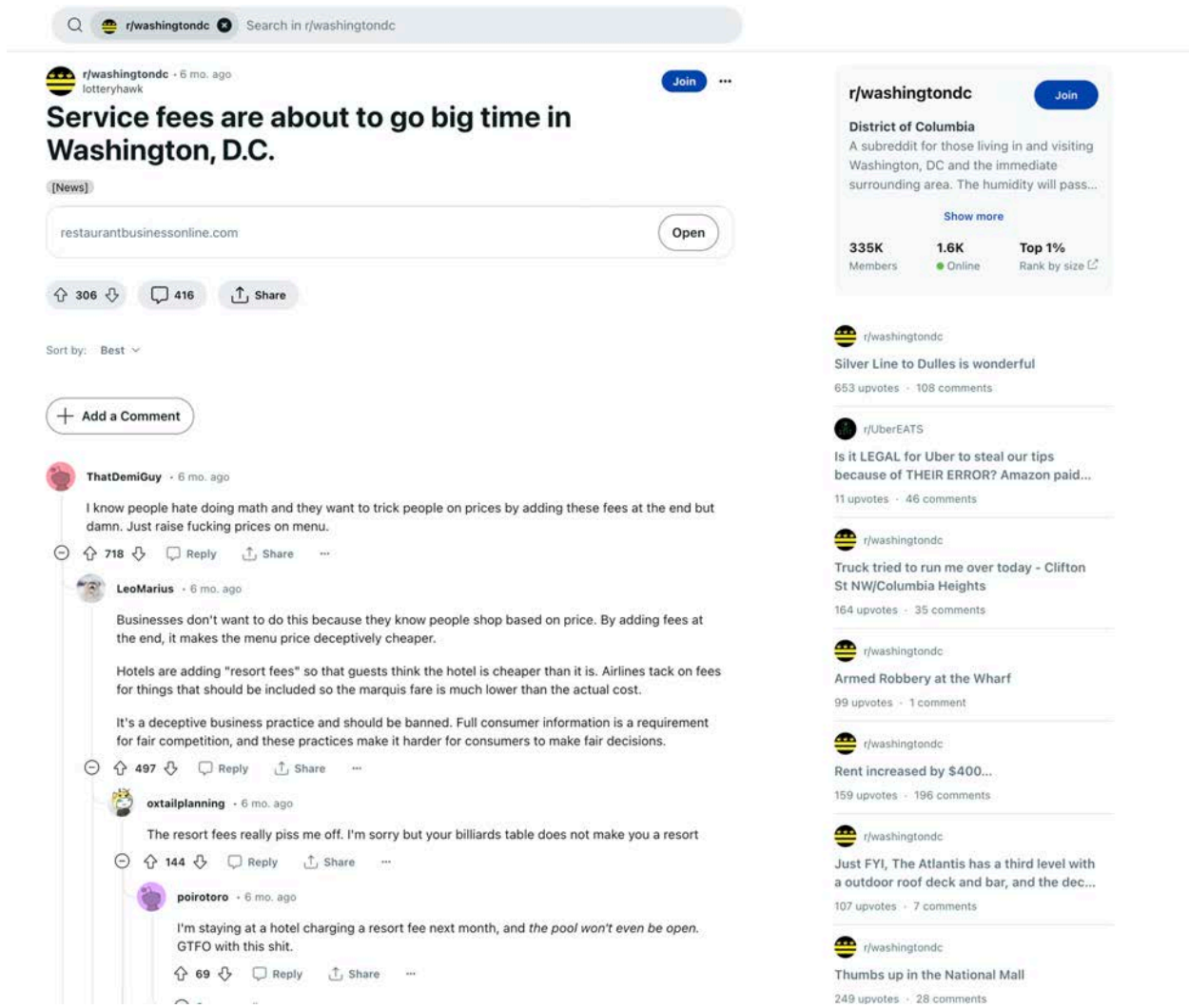
¹⁶ TransparentFee DMV Database [PUBLIC], https://docs.google.com/spreadsheets/d/1EEkbqQO_yJuMLjwTjg8S2JvFWqj2Z9bAv11z-IvhuGE/edit#gid=623535310

¹⁷ Jessica Sidman, *These Helpful Tools Are Tracking Every Restaurant Fee Across DC*, *The Washingtonian*, Janu. 11, 2024, <https://www.washingtonian.com/2024/01/11/these-helpful-tools-are-tracking-every-restaurant-fee-across-dc/>

about to go big time in Washington, D.C.”¹⁸ and the top comment, upvoted 718 times, is “I know people hate doing math and they want to trick people on prices by adding these fees at the end but damn. Just raise fucking prices on menu.” The second comment, upvoted 497 times, says “Businesses don’t want to do this because they know people shop based on price. By adding fees at the end, it makes the menu price deceptively cheaper. Hotels are adding “resort fees” so that guests think the hotel is cheaper than it is. Airlines take on fees for things that should be included so the marquis fare is much lower than the actual cost. It’s a deceptive business practice and should be banned. Full consumer information is a requirement for fair competition, and these practices make it harder for consumers to make fair decisions.”¹⁹ Consumers in the District strongly oppose being charged deceptive restaurant fees.

¹⁸ Peter Romeo, *Service Fees Aare About To Go Big Time in Washington, D.C.*, Restaurant Business, Apr. 26, 2023, <https://www.restaurantbusinessonline.com/workforce/service-fees-are-about-go-big-time-washington-dc>

¹⁹ https://www.reddit.com/r/washingtondc/comments/131p13k/service_fees_are_about_to_go_big_time_in/



The deception of District restaurant fees is a common topic on DC Reddit

24. An “Initiative 82 Fee” is ambiguous and uses misleading language that fails to fully convey to a diner how the fee will be used. A fee based on the passage of an initiative in DC does not disclose how the fee will be used.²⁰ An “Initiative 82 Fee” is in violation of the March 2023 District Office of the Attorney General guidance on restaurant fees and

²⁰ *Consumer Alert: DC Restaurants Are Barred from Charging Deceptive Fees*, Office of the Attorney General for the District of Columbia, Mar. 7, 2023, <https://oag.dc.gov/release/consumer-alert-dc-restaurants-are-barred-charging>

in violation of the Supplemental Business Advisory on Restaurant Fee Disclosure Requirements in the District of Columbia from August 9, 2023.²¹

25. By charging consumers a surcharge in addition to the advertised price on the menu, NIEUW Group makes thousands of additional dollars in revenue without appearing to increase the price that it advertises. NIEUW Group's unlawful trade practice has affected District consumers, as NIEUW Group has charged surcharge pricing to tens of thousands of District consumers over the years charging those consumers well in excess of a tens of thousands of dollars.
26. NIEUW Group can use these deceptive fees to specifically mislead tourists²² and those unaware that these deceptive fees have exponentially grown in DC over the past year. People, particularly tourists, may think this fee is a mandatory tax.
27. NIEUW Group exercises control over the surcharge its restaurants charge. They are charging the same 5% deceptive fee at both NIEUW Group restaurants in the District. This is an extremely successful restaurant group. This restaurant group sets an example for others in the area. If they think can get away with deceptive, illegal restaurant resort fees, others will think they can as well. No business, no matter how powerful the lobbying group behind it, should be able to violate the District's Consumer Protection Procedures Act (CPPA).

²¹ *Supplemental Business Advisory on Restaurant Fee Disclosure Requirements in the District of Columbia*, Office of the Attorney General for the District of Columbia, Aug. 9, 2023, <https://oag.dc.gov/sites/default/files/2023-08/OAG%20Supplemental%20Guidance.pdf>

²² Amanda Michelle Gomez, *One year In, Here's How Initiative 82 Is Affecting DC Restaurant Workers*, DCist, Dec 12, 2023, <https://dcist.com/story/23/12/12/initiative-82-one-year-later-dc-restaurant-worker-wages-service-charges/>

28. NIEUW Group does well for itself. This is not a mom and pop operation. There is no excuse for the Proper 21, or any other NIEUW Group restaurant, to hide a 5% fee instead of simply raising their menu prices and being honest with consumers.

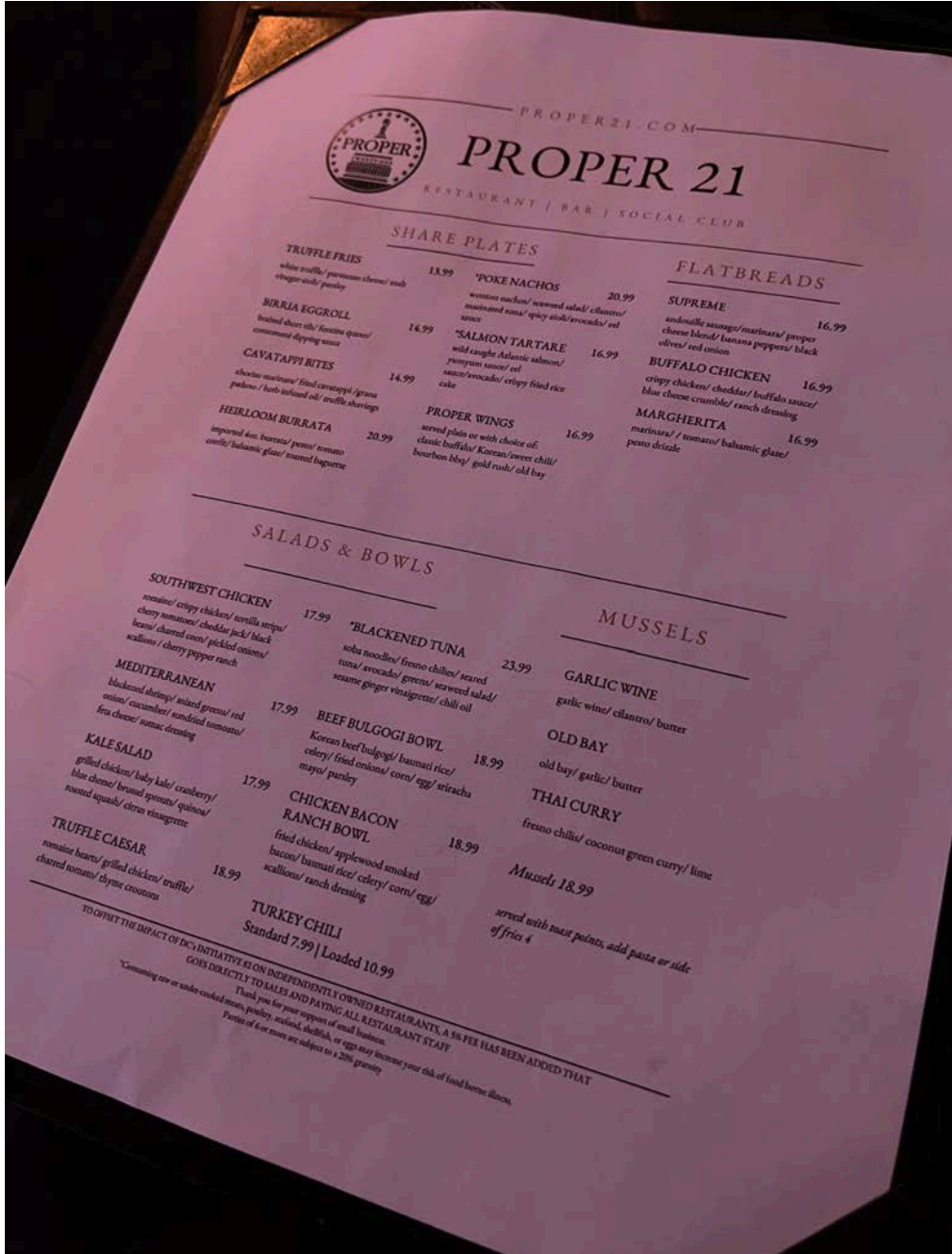
29. Two members of Travelers United ate at Proper 21 F Street on February 10, 2024 at 5:00pm. They ordered one poke nachos for \$20.99 and one proper burger for \$18.99.



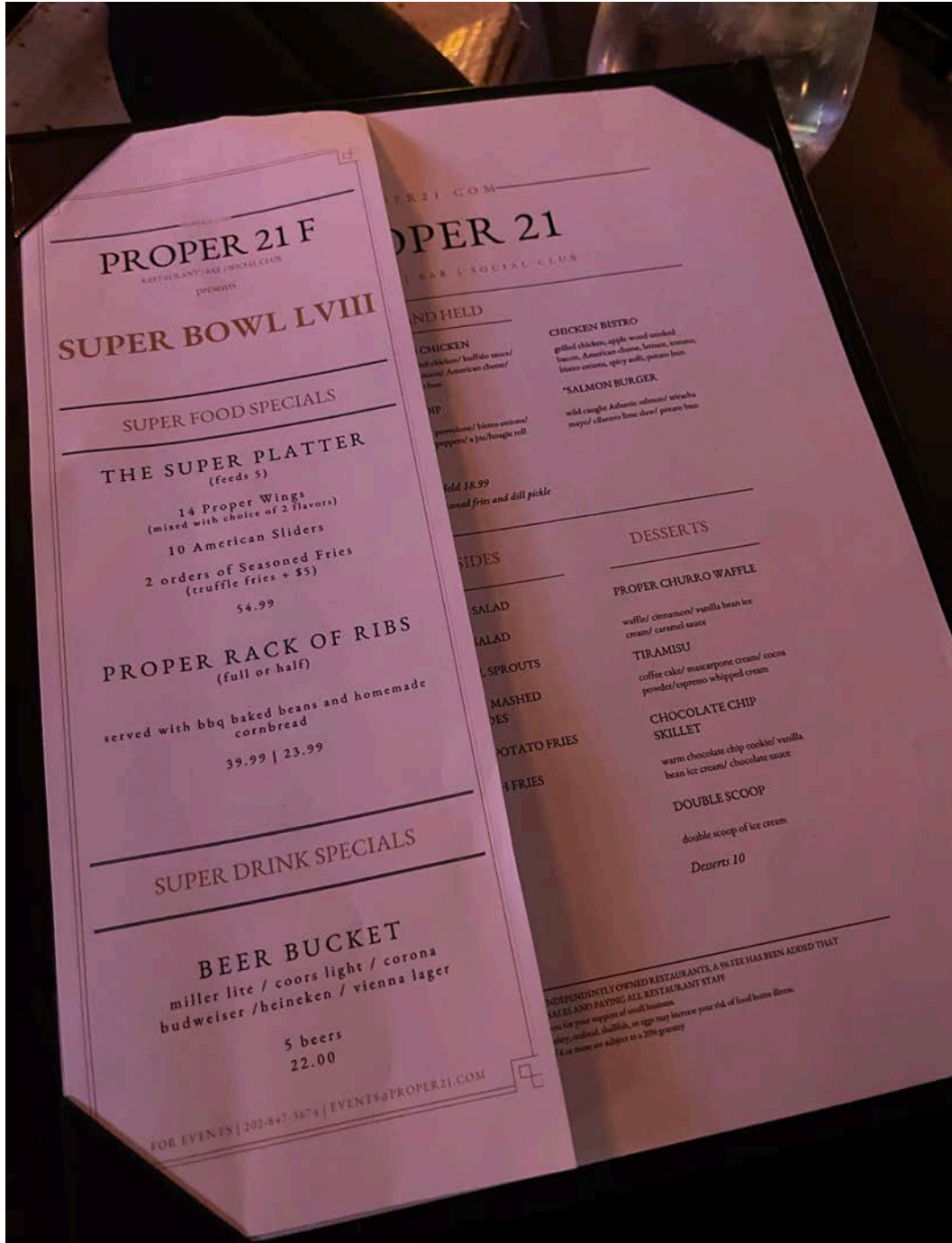
The delicious purchased menu items at Proper 21 F Street

30. The members of Travelers United were charged the deceptive “Initiative 82 fee” of 5% which ended up being \$2. This brought their meal to \$41.98 (before tax + tip). The meal would have been only \$39.98 (before tax + tip) if it was based on the actual advertised menu prices.

31. The menu that was presented to the two diners is below. Note that the “Initiative 82 Fee” is only listed on the food menu despite it being applicable to both food and alcoholic beverages.

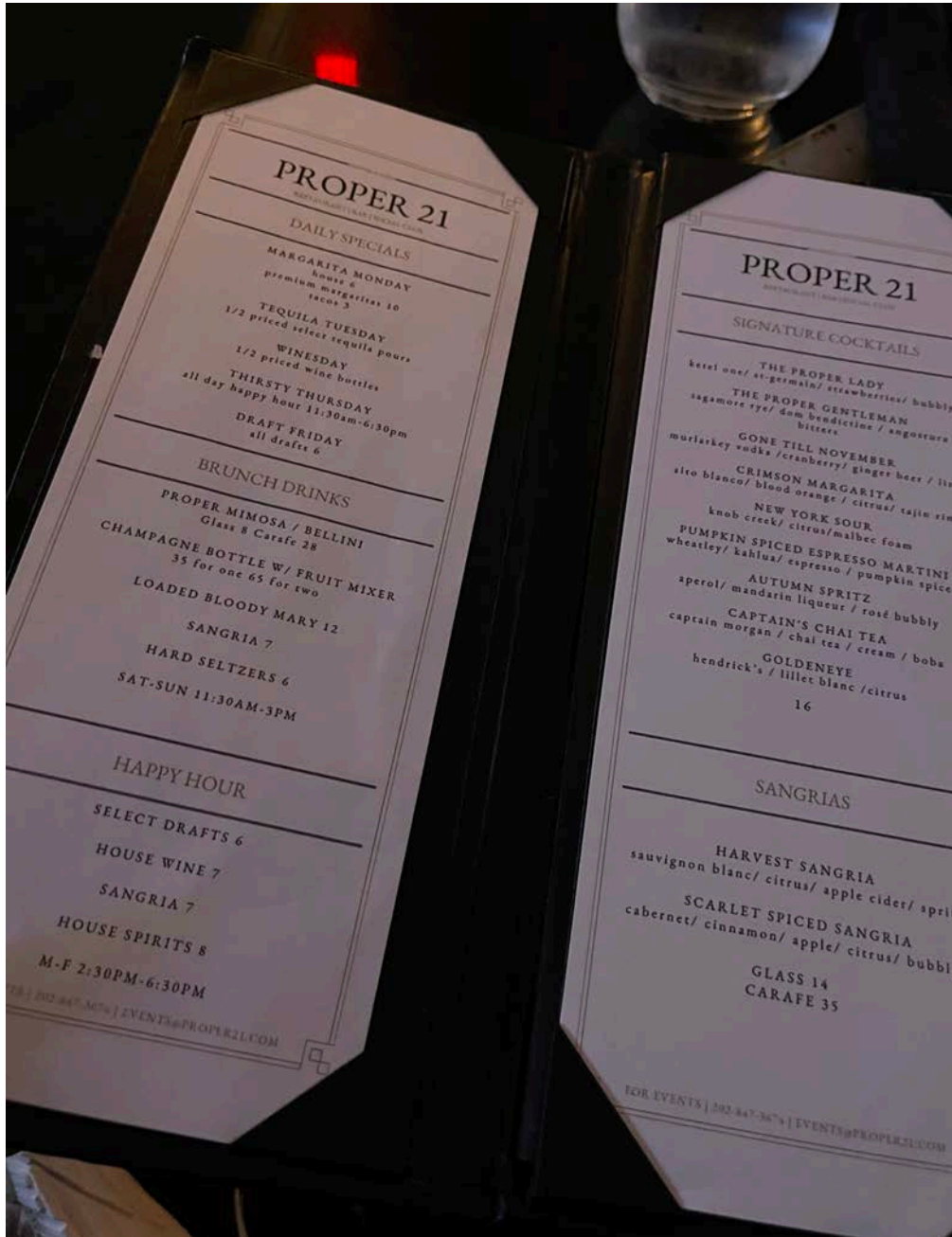


Left side of the Proper 21 F Street menu

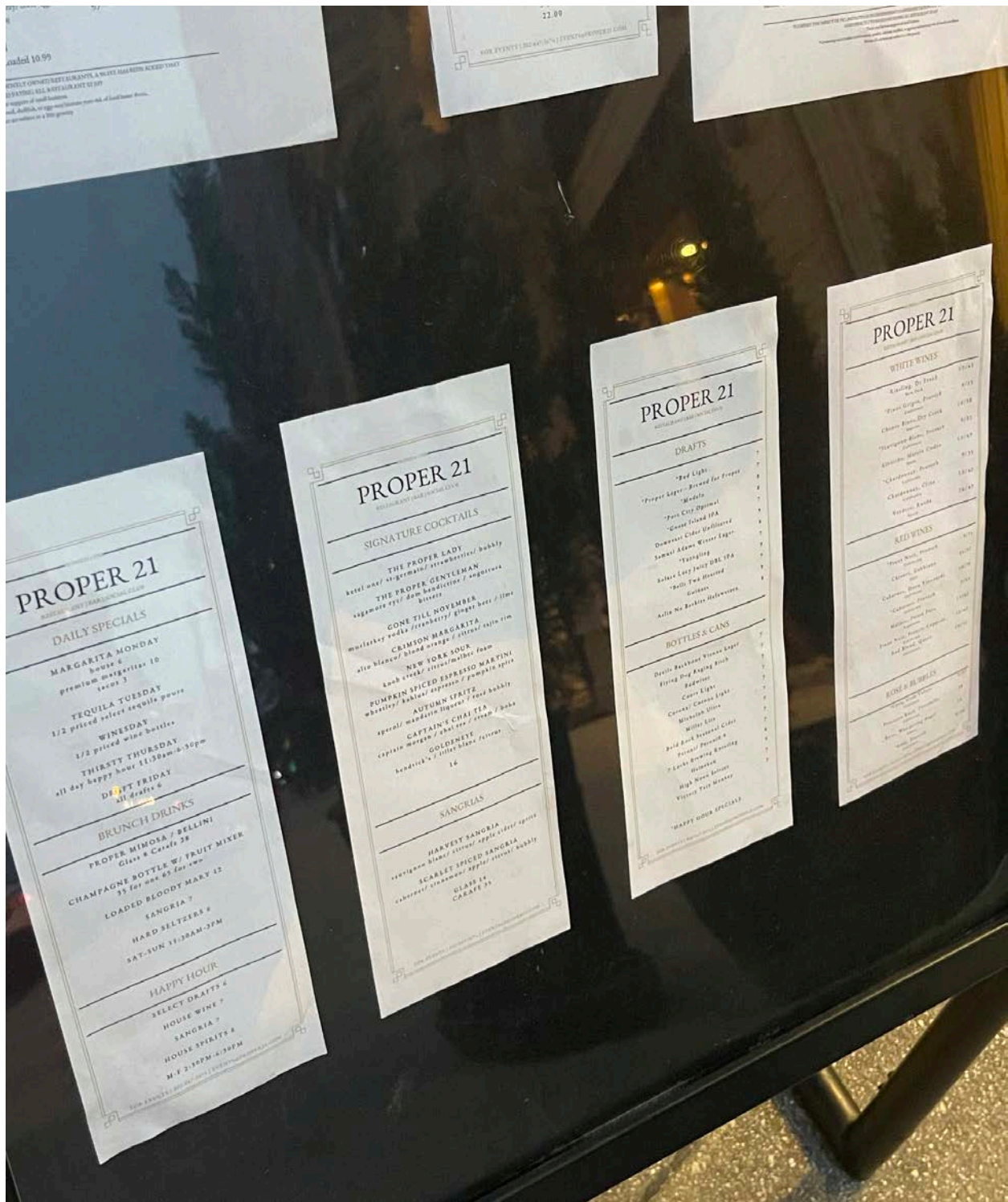


Right side of the Proper 21 F Street menu

32. The beverages menu that was presented to the two diners is below. Note that the deceptive 5% “Initiative 82 Fee” is not listed on either side of the alcoholic beverages menu.



The beverages menu



The specials menu, the cocktails menu, the drafts menu and the wines menu do not note the surcharge

33. Their final bill was \$41.98 before government-imposed taxes and tip.



Count One

Violations of the Consumer Protection Procedures Act

1. The allegations in paragraphs 1 through 33 are re-alleged as if fully set forth here.
2. The CPPA is a remedial statute that is to be broadly construed. It establishes an enforceable right to truthful information from merchants about consumer goods and

services that are or would be purchased, leased, or received in the District of Columbia §28-3901(c).

3. Travelers United has standing to bring this Count under §28-3905(k)(1)(D)(i) “Subject to sub-paragraph (ii) of this subparagraph, a public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action under subparagraph (A) of this paragraph for relief from such use by such person of such practice.” Travelers United is a public interest organization, with members in the District, that has done significant advocacy work against deceptive fees across the travel industry, both locally in DC and on the federal level. Deceptive restaurant fees are a trade practice in violation of a law of the District.
4. Restaurant purchases, and the surcharges that come along with restaurant purchases, are consumer goods transactions. They exist for personal, household, or family purposes and a security interest secures the obligation.
5. NIEUW Group, Inc, in the ordinary course of business, offers to lease or supply consumer goods and services, and, therefore, is a merchant §28-3901(a)(3).
6. The CPPA prohibits unlawful trade practices in connection with the offer, sale, and supply of consumer goods and services §28-3904.
7. NIEUW Group advertisement of prices for their menu items that do not include 5% of the price is a misrepresentation of material fact that has a tendency to mislead customers. It is an unlawful trade practice that violates the CPPA, D.C. Code §28-3904(e).

8. Defendant's advertising of menu prices in Proper 21 F Street and Proper 21 K Street that do not include the "Initiative 82 Fee" constitutes an advertisement or offer without the intent to sell the food and drink items as advertised, which is an unlawful trade practice that violates the CPPA, D.C. Code 14 § 28-3904(h).

PRAYER FOR RELIEF

WHEREFORE, the Travelers United respectfully requests this Court enter a judgment in its favor and grant relief against Defendant, as follows:

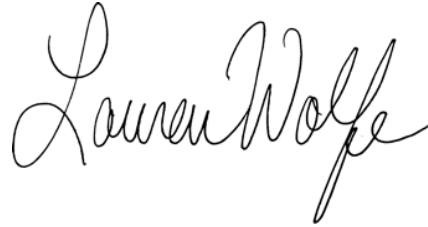
- (a) Permanently enjoin and restrain Defendant, pursuant to D.C. Code § 28-3905(k)(2)(D), from engaging in conduct determined to be in violation of the CPPA;
- (b) Permanently enjoin Defendant from advertising menu items that do not include a mandatory surcharge in advertised for food items at its restaurants;
- (c) Order the Defendant to pay statutory damages to Travelers United pursuant to D.C. Code § 28-3905(k)(2)(A), for each and every violation of the CPPA proven at trial;
- (d) Order the Defendant to pay punitive damages in an amount to be determined at trial, pursuant to D.C. Code § 28-3905(k)(2)(C);
- (e) Award Travelers United the costs and reasonable attorney's fees for its investigation and this action, pursuant to D.C. Code § 28-3905(k)(2)(B); and
- (f) Grant such further relief as the Court deems just and proper.

Jury Demand

Travelers United demands a trial by jury.

Respectfully submitted,

Dated: March 4, 2024

A handwritten signature in black ink that reads "Lauren Wolfe". The signature is written in a cursive, flowing style with a large initial 'L' and a long, sweeping tail on the 'e'.

LAUREN WOLFE (D.C. Bar # 1048660)
Counsel, Travelers United

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Washington, D.C. 20020

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