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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 BARBARA TREVINO, individually and
12 on behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 SMASHBURGER IP HOLDER LLC,
16 SMASHBURGER FRANCHISING
17 LLC, and JOLLIBEE FOODS
CORPORATION (USA),

18 Defendants.
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No. 2:19-cv-02794

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Barbara Trevino (“Plaintiff”), by and through her undersigned counsel, brings
2 this Class Action Complaint on behalf of herself and all others similarly situated against
3 Defendants Smashburger IP Holder LLC, Smashburger Franchising LLC, and Jollibee Foods
4 Corporation (USA) (collectively, “Smashburger”), and alleges as follows based on personal
5 knowledge of facts pertaining to her and on information and belief as to all other matters:

6 **NATURE OF THE CASE**

7 1. This is a class action lawsuit arising from Smashburger’s false, deceptive and
8 misleading advertising of its “Triple Double” burgers.

9 2. Smashburger prominently markets to Plaintiff and other consumers that the
10 Triple Double contains “double the beef” of Smashburger’s regular-sized “Classic Smash”
11 burger, when in fact it does not. Contrary to Smashburger’s “double the beef”
12 representations, the Triple Double contains the same amount of beef (5.0 ounces) as the
13 Classic Smash. Specifically, the Triple Double is comprised of two 2.5-ounce beef patties,
14 while the Classic Smash is comprised of one 5.0-ounce beef patty.

15 3. The deceptive nature of Smashburger’s “double the beef” representations is
16 designed to induce consumers into purchasing the Triple Double by communicating a
17 substantive message to consumers: that the Triple Double contains twice the amount of beef
18 as the Classic Smash. However, Smashburger’s representations are completely illusory,
19 because Smashburger’s Triple Double contains the same amount of beef as the Classic
20 Smash.

21 4. Smashburger’s representations are false, misleading, and reasonably likely to
22 deceive the consuming public who, like Plaintiff here, rely on the truth of Smashburger’s
23 representations to make purchasing decisions.

24 5. In purchasing one or more Triple Double burgers from Smashburger, Plaintiff
25 saw, read, and relied on Smashburger’s misleading and deceptive “double the beef”
26 advertisements. Plaintiff would not have made her purchases but for Smashburger’s false,
27 deceptive, and misleading representations.

28 6. As alleged herein, Smashburger’s conduct constitutes a violation of California’s

1 Consumers Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.* (the “CLRA”), Unfair
2 Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.* (the “UCL”), and False Advertising
3 Law, Cal. Bus. & Prof. Code § 17500, *et seq.* (the “FAL”).

4 7. In addition, Smashburger’s conduct violates the Federal Trade Commission Act
5 (“FTCA”), which prohibits “unfair or deceptive acts or practices in or affecting commerce”
6 (15 U.S.C. § 45(a)(1)) and false advertisements (15 U.S.C. § 52(a)).

7 8. Plaintiff brings this action individually and on behalf of all others similarly
8 situated consumers who have purchased one or more of Smashburger’s Triple Double that
9 were deceptively represented as containing “double the beef”. Plaintiff seeks restitution and
10 other equitable remedies, including declaratory relief and an injunction under the CLRA,
11 FAL, and UCL. Plaintiff also seeks reasonable attorneys’ fees pursuant to California Code of
12 Civil Procedure § 1021.5.

13 **PARTIES**

14 9. Plaintiff Barbara Trevino is a resident of Glendale, California.

15 10. After viewing Smashburger’s misleading and deceptive “double the beef”
16 advertisements, and in reliance on those representations, Plaintiff purchased one or more
17 Triple Doubles from Smashburger.

18 11. Defendants Smashburger IP Holder LLC and Smashburger Franchising LLC
19 are both Delaware limited liability companies, each having a principal place of business at
20 3900 East Mexico Avenue, Suite 1200, Denver, Colorado. Defendants Smashburger IP
21 Holder LLC and Smashburger Franchising LLC operate a chain of fast-casual restaurants
22 specializing in hamburger and cheeseburger sandwiches and other products and services.

23 12. Defendant Jollibee Foods Corporation (USA) is the parent company of
24 Smashburger IP Holder LLC and Smashburger Franchising LLC. Jollibee Foods Corporation
25 is a multinational company that owns multiple restaurant chains.

26 **JURISDICTION AND VENUE**

27 13. This Court has subject matter jurisdiction over this action under the Class
28 Action Fairness Act, 28 U.S.C. § 1332(d)(2). The amount in controversy exceeds \$5 million

1 exclusive of interest and costs. Plaintiff and Defendants are citizens of different states. There
2 are more than 100 putative Class Members.

3 14. This Court has personal jurisdiction over Smashburger IP Holder LLC and
4 Smashburger Franchising LLC because both are limited liability companies authorized to
5 conduct and regularly conducts business in the State of California.

6 15. This Court has personal jurisdiction over Jollibee Foods Corporation because
7 it is registered to do business and regularly conducts business in the State of California.

8 16. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Defendants
9 regularly transact substantial business in this District. In addition, a substantial part of the
10 events giving rise to Plaintiff's causes of action arose in this District.

11 **FACTUAL ALLEGATIONS**

12 17. Smashburger is an American fast-casual hamburger restaurant chain founded
13 in 2007 in Denver, Colorado. Boasting the operation of over 380 locations across 38 states
14 and 9 counties, Smashburger touts itself as “the quickest fast-casual concept ever to hit the
15 200-restaurant milestone.”¹

16 18. On July 11, 2017, Smashburger announced *via* a press release (the “Press
17 Release”) that it was launching a new burger product to add to its nationwide menu--the
18 Triple Double. Smashburger’s Press Release stated, among other things, that the “Triple
19 Double will feature two of Smashburger's famous fresh never frozen beef patties” The
20 Press Release also quoted Smashburger’s Co-Founder & Chief Executive Officer, Tom Ryan
21 as stating: “We’re giving people more of what they love. ***Double the juicy, caramelized***
22 ***beef***, made-to-order and seared to perfection. And triple the cheesy goodness.” (emphasis
23 added).

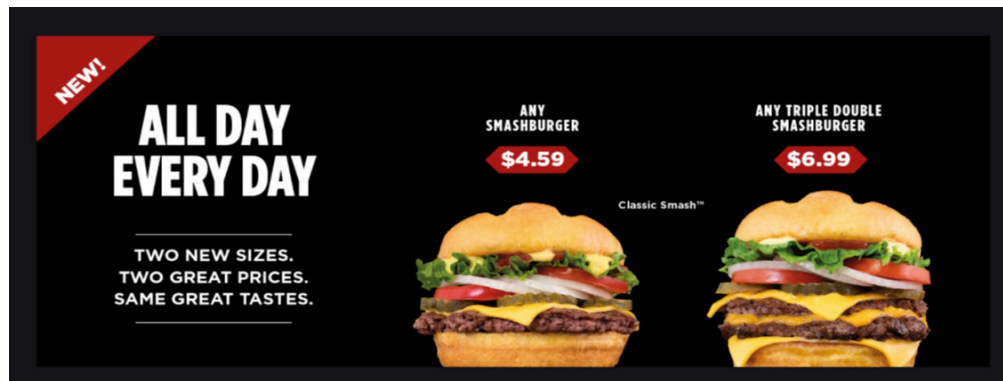
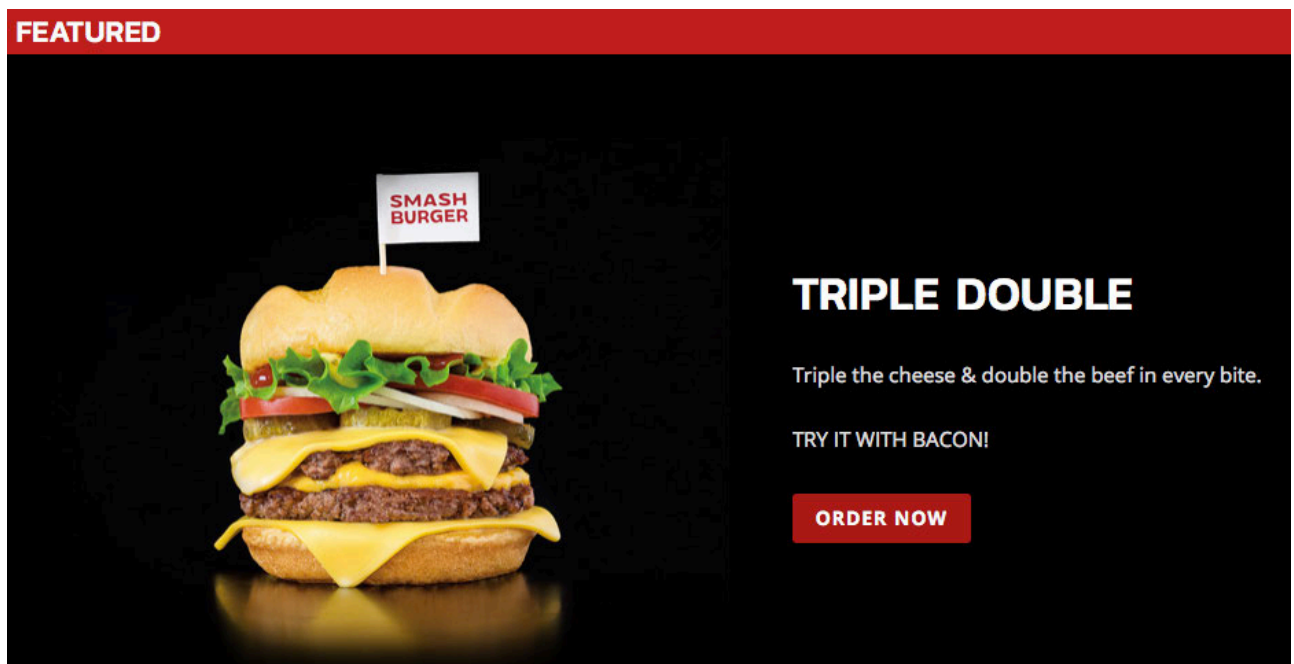
24 19. Since launching the Triple Double, Smashburger has consistently marketed and
25 advertised its Triple Double as containing twice the amount of beef as the Classic Smash.
26 Smashburger’s representations are specifically designed to induce consumers into purchasing

27 _____
28 ¹ See <https://smashburger.com/franchise-opportunities/> (last visited Apr. 9, 2019).

1 the Triple Double which purportedly contains double the beef as Smashburger’s regular-
2 sized Classic Smash, when in reality, it does not.

3 20. Smashburger has used, and continues to use, its “double the beef”
4 representations in multiple various advertising mediums, including but not limited to, its
5 website, its online and in-store menus, displays at its chain restaurants, social media accounts,
6 and in television advertisements.

7 21. For instance, the Triple Double is featured on Smashburger’s website and
8 online menu.² Smashburger’s website explicitly describes the Triple Double as having “Triple
9 the cheese and double the beef in every bite.”



28 ² See <https://smashburger.com/menu/> (last visited Apr. 9, 2019).

22. Smashburger repeats and reinforces its “double the beef” representations in its social media accounts, including in, but not limited to, its Facebook³ and Twitter⁴ accounts;



23. Smashburger has also used its “double the beef” representations in several television commercials promoting the Triple Double. See e.g., <https://vimeo.com/224690849>; <https://vimeo.com/225485077>.

24. In one of these commercials, an actor describes the Triple Double as the “meatiest thing I’ve ever eaten,” and another has a Triple Double in hand and exclaims, “this is a lot of meat.”

25. Smashburger’s in-store menus and displays similarly communicate the same deceptive message: that the Triple Double contains “double the beef” in every bite.

³ See <https://www.facebook.com/smashburger/photos/introducing-the-triple-double-its-the-stuff-burger-dreams-are-made-of-two-layers-/10156519213788228/> (last visited Apr. 9, 2019).

⁴ <https://twitter.com/smashburger/status/1004120736720736256/> (last visited Apr. 9, 2019).

MAKE ANY ENTRÉE A
SMASH COMBO



ADD REGULAR FRIES & A REGULAR FOUNTAIN DRINK (+\$)

SMASH BURGER

SIGNATURES

TRIPLE DOUBLE

Classic Smash™ Beef build with triple the cheese & double the beef in every bite.

THREE LAYERS OF PICKLES, MUSTY CHEESE



TWO JUICY SEASONED BURGERS

TRY IT WITH BACON!

BEEF | CHICKEN
Grilled or Crispy | TURKEY | BLACK BEAN

CLASSIC SMASH™

Served with lettuce, tomato, onion & pickles.

Beef, Turkey & Black Bean burgers include American cheese, Smash Sauce & ketchup on an egg bun.
Chicken includes mayo on a multi-grain bun.

SoCal

Fresh avocado, cilantro, pepper jack, lettuce, tomato, onion, sour cream & chipotle mayo on a telera roll served with a wedge of lime.

BACON AVOCADO CLUB

With lettuce, tomato, ranch dressing & mayo on a multi-grain bun.

BBQ, BACON & CHEDDAR

With haystack onions on an egg bun.

BUFFALO & BLUE CHEESE

With Frank's® RedHot® Buffalo Sauce, lettuce, tomato & mayo on an egg bun.

SPICY JALAPEÑO BAJA

With guacamole, pepper jack, lettuce, tomato, onion & chipotle mayo on a spicy chipotle bun.

SPINACH, CUCUMBER & GOAT CHEESE

With tomato, onion & balsamic vinaigrette on a multi-grain bun.

TRUFFLE MUSHROOM SWISS

With sautéed crimini mushrooms & truffle mayo on an egg bun.

FRIES & SIDES

FRENCH FRIES

SMASHFRIES®

Tossed in rosemary, garlic & olive oil.

SWEET POTATO FRIES

TOTS

SMASHTOTS™

Tossed in rosemary, garlic & olive oil.

HAYSTACK ONIONS

With a side of ranch dressing.

CRISPY BRUSSELS SPROUTS

With a side of ranch dressing.

FRIED PICKLES

With a side of ranch dressing.

SIDE SALAD WITH DRESSING

KIDS MEALS

Served with Fries or Unsweetened Applesauce & choice of Kid's Fountain Drink, Organic Milk or Juice. Substitute Tots (+\$).

KIDS SMASH®

CHICKEN STRIPS

Grilled or Crispy

GRILLED CHEESE

SoCal_0318

CRAFT YOUR OWN

BEEF | CHICKEN
Grilled or Crispy | TURKEY | BLACK BEAN

ADD A PATTY (+\$ REG / +\$ BIG)

① **CHOOSE AN ARTISAN BUN**

Classic egg
Multi-grain
Spicy chipotle

Gluten free* (+\$)
Telera roll



② **ADD CHEESE +\$**

Aged Swiss
American
Blue
Goat

Melted aged cheddar
Pepper jack
Sliced aged cheddar

③ **ADD ONE OR MORE TOPPING(S)**

Cucumbers
Fresh jalapeños
Grilled onions

Lettuce
Pickles
Yellow onions

Spinach
Tomato

④ **ADD ONE OR MORE SAUCE(S)**

Ketchup
Yellow mustard
BBQ

Smash Sauce
Spicy chipotle

Mayo
Ranch

⑤ **EXTRA YUM(S) +\$**

Fresh sliced avocado
Applewood smoked bacon
Sautéed crimini mushrooms

Guacamole
Fried egg
Haystack onions

FRESH SALADS

Add Grilled or Crispy Chicken, a Beef Patty, a Turkey Patty, or a Black Bean Patty* (+\$)

BBQ RANCH

Fresh greens, sharp cheddar, applewood smoked bacon, tomatoes & haystack onions with ranch dressing & BBQ sauce.

CLASSIC COBB

Fresh greens, blue cheese, sharp cheddar, fried egg, applewood smoked bacon, tomatoes & onions with ranch dressing.

SPINACH, CUCUMBER & GOAT CHEESE

Tomatoes & onions with balsamic vinaigrette.

BEVERAGES

FOUNTAIN DRINKS

ICED TEA

SHAKES & MALTS

CLASSIC

CHOCOLATE

VANILLA

STRAWBERRY

SPECIALTY

**CHAMELEON COFFEE
OLD-BREW SHAKE**

OREO®

CHOCOLATE OREO®

PEANUT BUTTER

Made with REESE'S® Peanut Butter Sauce

SALTED CARAMEL



*Black bean patty contains egg & cheese. Due to shared cooking & preparation areas, food comes into contact with gluten and animal products.

Additional nutritional information available upon request.

1 26. Consumers like Plaintiff rely on these representations in making purchasing
2 decisions. Indeed, Smashburger’s “double the beef” representations have deceived or have
3 had a tendency to deceive consumers into believing that the Triple Double contains twice
4 the amount of beef as the Classic Smash, or that the Triple Double contains more beef that
5 it actually does.

6 27. As an immediate, direct, and proximate result of Smashburger’s
7 representations, Smashburger injured Plaintiff and Class members in that, among other
8 things, they paid more for the Triple Double than they would have had they known the truth.,
9 and were deprived the benefit of the bargain because the Triple Double was different from
10 what Smashburger warranted, and was of less value than what was represented.

11 28. Based on Smashburger’s advertising and marketing of the Triple Double, it is
12 clear that Smashburger’s representations are intended to induce a common belief in
13 unsuspecting consumers that the Triple Double contains double the amount of beef as the
14 Classic Smash.

15 29. Smashburger knows, or should have known, that it misinforms its consumers
16 regarding the quantity or value of beef contained in the Triple Double.

17 **CLASS ACTION ALLEGATIONS**

18 30. Plaintiff brings this lawsuit individually and as a class action under Federal Rule
19 of Civil Procedure 23 on behalf of a proposed Class defined as follows.

20
21 All persons in the United States who purchased Smashburger’s Triple Double
22 within the applicable Class Period (the “Nationwide Class”).

23 In the alternative, Plaintiff seeks to represent a Class consisting of:

24 All persons within the State of California who purchased Smashburger’s
25 Triple Double within the applicable Class Period (the “California Class”).

26
27 31. Excluded from the Class are Smashburger, as well as its officers, employees,
28 agents or affiliates, and any judge who presides over this action, as well as all past and present

1 employees, officers and directors of Smashburger. Plaintiff reserves the right to expand, limit,
2 modify, or amend the Class and definitions, including the addition of one or more subclasses,
3 in connection with their motion for class certification, or at any other time, based upon, *inter*
4 *alia*, changing circumstances and/or new facts obtained during discovery.

5 32. The Class meets the requirements of Federal Rules of Civil Procedure 23(a) and
6 23(b)(1), (b)(2), and (b)(3) for all of the following reasons.

7 33. Numerosity: Although the exact number of Class members is uncertain and can
8 only be ascertained through appropriate discovery, the number is great enough such that
9 joinder is impracticable. The disposition of the claims of these Class members in a single
10 action will provide substantial benefits to all parties and to the Court. The parties will be able
11 to identify each member of the Class after Smashburger's document production and/or
12 related discovery.

13 34. Commonality: There are numerous questions of law and fact common to
14 Plaintiff and Class members that predominate over any individual questions. These common
15 legal and factual issues include the following:

- 16 • Whether Smashburger markets and advertises its Triple Double in a deceptive,
17 false, or misleading manner;
- 18 • Whether Smashburger's alleged conduct constitutes violations of the laws
19 asserted;
- 20 • Whether Smashburger engaged in unfair, unlawful and/or fraudulent business
21 practices under the laws asserted;
- 22 • Whether Plaintiff and Class members suffered legally cognizable damages as a
23 result of Smashburger's conduct of which they are entitled and/or restitution,
24 and the proper measure of that loss;
- 25 • Whether Plaintiff and Class members are entitled to equitable relief including
26 injunctive relief.

27 35. Typicality: All of Plaintiff's claims are typical of the claims of the proposed Class
28 she seeks to represent. Plaintiff, like all proposed Class members, has been deceived (or was

1 likely to be deceived) by Smashburger's false and deceptive advertising scheme, as alleged
2 herein. Each Class member was subjected to the same illegal conduct, was harmed in the
3 same way, and has claims for relief under the same legal theories.

4 36. Adequacy: Plaintiff will fairly and adequately protect the interests of the Class
5 she seeks to represent. Plaintiff has no interests that are adverse to, or in conflict with, those
6 of Class members. There are no claims or defenses that are unique to Plaintiff. Likewise,
7 Plaintiff has retained counsel experienced in class action and complex litigation who have
8 sufficient resources to prosecute this action vigorously.

9 37. Predominance: The proposed action meets the requirements of Federal Rule of
10 Civil Procedure 23(b)(3) because questions of law and fact common to the Class predominate
11 over any questions which may affect only individual Class members.

12 38. Superiority: The proposed action also meets the requirements of Federal Rule
13 of Civil Procedure 23(b)(3) because a class action is superior to other available methods for
14 the fair and efficient adjudication of the controversy. Class treatment of common questions
15 is superior to multiple individual actions or piecemeal litigation, avoids inconsistent decisions,
16 presents far fewer management difficulties, conserves judicial resources and the parties'
17 resources, and protects the rights of each Class member. Absent a class action, the majority
18 of Class members would find the cost of litigating their claims prohibitively high and would
19 have no effective remedy.

20 39. Plaintiff's claims also meet the requirements of Federal Rule of Civil Procedure
21 23(b)(1) because prosecution of separate actions by individual Class members would create
22 a risk of inconsistent or varying adjudications that would establish incompatible standards
23 for Defendant. Varying adjudications could establish incompatible standards with respect to:
24 whether Defendant's ongoing conduct violates the claims alleged herein; and whether the
25 injuries suffered by Class members are legally cognizable, among others. Prosecution of
26 separate actions by individual Class members would also create a risk of individual
27 adjudications that would be dispositive of the interests of other Class members not parties
28 to the individual adjudications, or substantially impair or impede the ability of Class members

1 to protect their interests.

2 **FIRST CAUSE OF ACTION**

3 **Violation of Cal. Civ. Code § 1750, *et seq.***

4 **California’s Consumers Legal Remedies Act (“CLRA”)**

5 40. Plaintiff incorporates by reference each of the preceding factual allegations.

6 41. The CLRA has adopted a comprehensive statutory scheme prohibiting various
7 deceptive practices in connection with the conduct of a business providing goods, property,
8 or services to consumers primarily for personal, family, or household purposes. The self-
9 declared purposes of the CLRA are to protect consumers against unfair and deceptive
10 business practices and to provide efficient and economical procedures to secure such
11 protection.

12 42. Defendants Smashburger IP Holder LLC and Smashburger Franchising LLC
13 are “persons” as defined by Civil Code Section 1761(c), because both are limited liability
14 companies, as set forth in this Complaint.

15 43. Defendant Jollibee Foods Corporation is a “person” as defined by Civil Code
16 Section 1761(c), because it is a corporation as set forth in this Complaint.

17 44. Plaintiff and Class members are “consumers” within the meaning of Civil Code
18 Section 1761(d).

19 45. The Triple Doubles purchased by Plaintiff and the Class constitute “goods”
20 and within the meaning of Cal. Civ. Code § 1761(a).

21 46. Smashburger’s sale of Triple Doubles to Plaintiff and the Class constitute
22 “transactions,” as defined by Cal. Civ. Code § 1761(e).

23 47. Plaintiff and Class members purchased Triple Doubles from Smashburger
24 stores for personal, family, and household purposes, as defined by Cal. Civ. Code § 1761(d).

25 48. Venue is proper under Cal. Civ. Code § 1780(d) because a substantial portion
26 of the conduct at issue occurred in this District. An affidavit establishing that this Court is
27 the proper venue for this action is attached below.

28

1 49. As described herein, Smashburger’s practices constitute violations of California
2 Civil Code Section 1770 in at least the following respects:

3 a. In violation of Section 1770(a)(5), Smashburger misrepresented that the
4 Triple Double had characteristics, benefits, or uses that it does not have (that it contains
5 “double the beef” of the Classic Smash when in fact it does not);

6 b. In violation of Section 1770(a)(7), Smashburger misrepresented that the
7 Triple Double was of a particular standard, quality, and/or grade when it was of another (that
8 it contains “double the beef” of the Classic Smash when it fact it does not);

9 c. In violation of Section 1770(a)(9), Smashburger advertised the Triple
10 Double with an intent not to sell it as advertised (advertising it as containing “double the
11 beef” of the Classic Smash when in fact it does not); and

12 d. In violation of Section 1770(a)(16), Smashburger misrepresented that the
13 Triple Double was supplied in accordance with previous representations when it was not
14 (that it contains “double the beef” when in fact it does not).

15 50. Smashburger’s misrepresentations regarding the Triple Double were material
16 to Plaintiff and Class members because a reasonable person would have considered them
17 important in deciding whether or not to purchase the Triple Double.

18 51. Plaintiff and Class members relied upon Smashburger’s material
19 misrepresentations and would have acted differently had they known the truth.

20 52. As a direct and proximate result of Smashburger’s material misrepresentations,
21 Plaintiff and Class members have been irreparably harmed.

22 53. In accordance with Cal. Civ. Code § 1782(a), on March 7, 2019, prior to the
23 filing of this Complaint, Plaintiff’s counsel served Smashburger with notice of these CLRA
24 violations by certified mail, return receipt requested.

25 54. Smashburger failed to respond to Plaintiff’s letter or agree to rectify the
26 problems associated with the actions detailed above and give notice to all affected consumers
27 within 30 days of the date of written notice, as proscribed by § 1782.
28

55. On behalf of Class members, Plaintiff seeks injunctive relief in the form of an order enjoining Smashburger from making such material misrepresentations and to engage in a corrective advertising to alert consumers of these misrepresentations. Plaintiff also seeks actual, punitive, and statutory damages, restitution, attorneys' fees and costs, and any other relief the Court deems proper as a result of Smashburger's violations of the CLRA.

SECOND CAUSE OF ACTION

Violation of Cal. Bus. & Prof. Code § 17500, *et seq.*

California's False Advertising Law ("FAL")

56. Plaintiff incorporates by reference each of the preceding factual allegations.

57. Smashburger routinely engages in a scheme of advertising that the Triple Double contains double the amount of beef of Smashburger's Classic Smash, when in fact it does not.

58. Smashburger's advertisement of the Triple Double misrepresented the true nature of the amount of beef it contains. These advertisements are being made to consumers located within the State of California and come within the definition of advertising as contained in the FAL in that such representations are intended to induce consumers like Plaintiff and Class members to purchase Smashburger's Triple Double. Smashburger knows, or in the exercise of reasonable care should know, that its "double the beef" representations are false, misleading, deceptive, and violated California law.

59. Smashburger's misleading and deceptive advertising practice give consumers the false impression that the Triple Double contains twice the amount of beef as Smashburger's Classic Smash. Plaintiff necessarily and reasonably relied on Smashburger's representations regarding the Triple Double, and all members of the Class are and have been exposed to such representations. Consumers, including Plaintiff and members of the Class, are among the intended targets of Smashburger's representations.

60. As a direct and proximate result of Smashburger's misleading and false advertisements, Plaintiff and Class members have suffered injury in fact and have lost money. Had Plaintiff and Class members known that Smashburger's representations, advertisements,

1 and other inducements misrepresents the true amount of beef contained in the Triple
2 Double, they would not have purchased Smashburger’s Triple Double, or would have paid
3 less for them.

4 61. Plaintiff, on behalf of herself and all other similarly situated consumers, and as
5 appropriate, on behalf of the general public, seek restitution and injunctive relief to prohibit
6 Smashburger from continuing the unfair, unlawful, and fraudulent practices alleged herein,
7 and any other relief deemed proper by the Court.

8 **THIRD CAUSE OF ACTION**

9 **Violation of Cal. Bus. & Prof. Code § 17200, *et seq.***

10 **California’s Unfair Competition Law (“UCL”)**

11 62. Plaintiff incorporates by reference each of the preceding factual allegations.

12 63. The UCL prohibits any “unlawful, unfair, or fraudulent” act or practice, as well
13 as any “unfair, deceptive, untrue or misleading” advertising. Cal. Bus. & Prof. Code § 17200.

14 64. Smashburger violated the “unlawful” prong of the UCL by making material
15 misrepresentations regarding the amount of beef contained in the Triple Double, in violation
16 of state and federal law.

17 65. Smashburger’s acts and practices alleged above, without limitation, the CLRA,
18 FAL, and FTCA.

19 66. Plaintiff and Class members suffered substantial injury by virtue of
20 Smashburger’s unlawful scheme of advertising that the Triple Double contains twice the
21 amount of beef as Smashburger’s Classic Smash, when in fact it does not.

22 67. Smashburger’s actions alleged herein violate the laws and public policies of
23 California and the federal government.

24 68. There is no benefit to consumers in allowing Smashburger to deceptively
25 market and advertise the Triple Double in violation of California law.

26 69. The gravity of the harm inflicted on Plaintiff and Class members outweighs any
27 legitimate justification, motive or reason for marketing and advertising the Triple Double in
28 a deceptive and misleading manner in violation of California law. Accordingly, Smashburger’s

1 actions are immoral, unethical, and unscrupulous, offend established California public
2 policies, and cause substantial injury to Plaintiff and members of the Class.

3 70. Through its false advertising scheme, Smashburger fraudulently concealed
4 from, and intentionally failed to disclose to, Plaintiff and other similarly situated, the truth
5 about the amount of beef the Triple Double contains.

6 71. Smashburger's misleading marketing and advertisements have deceived and
7 continue to deceive reasonable consumers. Plaintiff and Class members were deceived about
8 the amount of beef contained in Smashburger's Triple Double, as Smashburger prominently
9 represented that the Triple Double contains "double the beef" on both online and in-store
10 menus and displays, which consumers relied upon in making their purchases.

11 72. Plaintiff and Class members relied on Smashburger's material
12 misrepresentations and would not have paid for, or would not have paid as much for, the
13 Triple Double had they known the truth.

14 73. Smashburger's practices, as set forth above, have misled Plaintiff, the Class, and
15 the public in the past and will continue to mislead in the future. Consequently, Defendant's
16 practices constitute unlawful, unfair, and fraudulent business practices within the meaning of
17 the UCL.

18 74. As a direct and proximate result of Smashburger's unlawful, unfair, and
19 fraudulent conduct, Plaintiff and Class members lost money or property.

20 75. Smashburger's conduct caused substantial injury to Plaintiff and Class
21 members. Accordingly, Plaintiff seeks an order enjoining Smashburger from committing
22 such unlawful, unfair, and fraudulent business practices, and seek monetary damages for what
23 Plaintiff and Class members paid for the Smashburger's Triple Double and/or restitutionary
24 disgorgement of profits from Defendant. Plaintiff also seeks attorneys' fees and costs under
25 Cal Code Civ. Proc. § 1021.5.

26 **FOURTH CAUSE OF ACTION**

27 **Breach of Express Warranty**

28 76. Plaintiff incorporates by reference each of the preceding factual allegations.

1 77. Plaintiff, and each member of the Class, formed a contract with Smashburger
2 at the time Plaintiff and other members of the Class purchased the Triple Double. The terms
3 of that contract include the promises and affirmations of fact made by Smashburger
4 regarding the Triple Double, and through other advertising as described above. This
5 advertising constitutes express warranties, became part of the basis of the bargain, and is part
6 of a standardized contract between Plaintiff and the members of the Class on the one hand,
7 and Smashburger on the other.

8 78. All conditions precedent to Smashburger's liability under this contract have
9 been performed by Plaintiff and each member of the Class.

10 79. Smashburger breached the terms of this contract, including the express
11 warranties, with Plaintiff and the Class, because the Triple Double does not in fact contain
12 twice the amount of beef as the Classic Smash, and does not contain the quantity expressly
13 warranted.

14 80. As a result of Smashburger's breach of its contract, Plaintiff and members of
15 the Class have been damaged because they purchased the Triple Double because of, and in
16 reliance of, Smashburger's deceptive promises and affirmations of fact. Because the Triple
17 Double did not have the quantity or value as promised, Plaintiff and members of the Class
18 have been harmed.

19 **FIFTH CAUSE OF ACTION**

20 **Unjust Enrichment**

21 81. Plaintiff incorporates by reference each of the preceding factual allegations.

22 82. As the intended, direct, and proximate cause of Smashburger's false, misleading,
23 and deceptive representations, Smashburger has been unjustly enriched through more sales
24 of the Triple Double and higher profits at the expense of Plaintiff and the Class.

25 83. Plaintiff and Class members conferred benefits on Smashburger by purchasing
26 the Triple Double.

27 84. Smashburger has been unjustly enriched in retaining the revenues derived from
28 Plaintiff and Class members' purchases of the Triple Double. Retention of those moneys

1 under the circumstances is unjust and inequitable because Smashburger misrepresented that
2 the Triple Double contained “double the beef.” These false and deceptive representations
3 caused injuries to Plaintiff and Class members because they would not have purchased the
4 Triple Double or not paid as much for the Triple Double had they known the truth.

5 85. Because Smashburger’s retention of the non-gratuitous benefits conferred on
6 them by Plaintiff and Class members is unjust and inequitable, Smashburger must pay
7 restitution to Plaintiff and Class members for its unjust enrichment, as ordered by the Court.

8 **RELIEF REQUESTED**

9 Plaintiff, individually and on behalf of all others similarly situated, requests that the
10 Court enter judgment against Smashburger as follows:

- 11 A. An order certifying this action as a class action under Federal Rule of Civil
12 Procedure 23, defining the Class as requested herein, appointing the
13 undersigned as Class Counsel, and finding that Plaintiff is a proper
14 representative of the Class requested herein;
- 15 B. Injunctive relief requiring Smashburger to disseminate corrective advertising
16 alerting consumers to its misrepresentations concerning its fabricated reference
17 prices;
- 18 C. An order requiring Smashburger to pay all costs associated with Class notice
19 and administration of classwide relief;
- 20 D. An award to Plaintiff and all Class members of compensatory, consequential,
21 incidental, and statutory damages, restitution, and disgorgement, in an amount
22 to be determined at trial;
- 23 E. An award of attorneys’ fees, costs, and expenses, as provided by law or equity;
- 24 F. An order requiring Smashburger to pay pre-judgment and post-judgment
25 interest, as provided by law or equity; and
- 26 G. Such other or further relief as the Court may allow.
- 27
28

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues in this action so triable of right.

Respectfully submitted,

AHDOOT & WOLFSON, PC

Dated: April 11, 2019

/s/ Tina Wolfson

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Counsel for Plaintiff and the Putative Class

1 **AFFIDAVIT OF TINA WOLFSON**

2 I, Tina Wolfson, declare as follows:

3 1. I am an attorney with the law firm of Ahdoot & Wolfson, PC, counsel for
4 Plaintiff in this action. I am admitted to practice law in California and before this Court, and
5 am a member in good standing of the State Bar of California. This declaration is made
6 pursuant to California Civil Code section 1780(d). I make this declaration based on my
7 research of public records and upon personal knowledge and, if called upon to do so, could
8 and would testify competently thereto.

9 2. Venue is proper in this Court because Plaintiff suffered injuries as a result of
10 Defendants' acts in this District, many of the acts and transactions giving rise to this action
11 occurred in this District, and Defendants (1) conduct business in this District, (2) have
12 intentionally availed themselves of the laws and markets of this District through the
13 distribution and sale of their merchandise in this District, and (3) are subject to personal
14 jurisdiction in this District.

15 3. Plaintiff Barbara Trevino is a resident of Los Angeles County, California.

16 4. Defendants Smashburger IP Holder LLC and Smashburger Franchising LLC
17 are both Delaware limited liability companies each having a principal place of business at
18 3900 East Mexico Avenue, Suite 1200, Denver, Colorado. Smashburger IP Holder LLC and
19 Smashburger Franchising LLC are both authorized to conduct and regularly conduct
20 business in the State of California.

21 5. Defendant Jollibee Foods Corporation (USA) is the parent company of
22 Smashburger IP Holder LLC and Smashburger Franchising LLC. Jollibee Foods Corporation
23 is registered to do business and regularly conducts business in the State of California.

24 I declare under penalty of perjury under the laws of the United States and the State of
25 California this 11th day of April, 2019 in Los Angeles, California that the foregoing is true
26 and correct.

27 /s/ Tina Wolfson
28 Tina Wolfson

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Challenges Smashburger's 'Double the Beef' Claims for Triple Double Burger](#)
