

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: 1:19-CV-24755-AHS

PHILLIP WILLIAMS, WILLIAM JONES,
MICHAEL ROBERTS, ALI BEY,
CHRISTOPHER MCGEE, TIFFANY
CUTHRELL, and MARIE VENTER,
individually and on behalf of a class and
subclasses of similarly situated individuals,

Plaintiffs,

v.

BURGER KING CORPORATION, a
Florida corporation,

Defendant.

FIRST AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs Phillip Williams, William Jones, Michael Roberts, Ali Bey, Christopher McGee, Tiffany Cuthrell, and Marie Venter (together “Plaintiffs”), both individually and on behalf of similarly situated individuals, bring this Amended Complaint against Burger King Corporation (“Defendant”) to put a stop to Defendant’s misleading practice of selling and marketing its “Impossible” Whopper burger as a meat-free food option. Despite Burger King’s representations that the Impossible Whopper uses the trademarked “Impossible” patty that is well known as a meat-free and vegan meat alternative, Burger King cooks these vegan patties on the same grills as its traditional meat products, thus covering the outside of the Impossible Whopper’s meat-free patties with meat by-product. Plaintiffs bring this action to obtain redress for all persons injured by Defendant Burger King’s deceptive and unlawful conduct. Plaintiffs allege as follows based

upon personal knowledge as to their own acts and experiences, and as to all other matters, upon information and belief, including investigation conducted by their attorneys.

NATURE OF THE ACTION

1. Plaintiffs brings this class action lawsuit against Defendant for its false and misleading business practices with respect to the marketing and sale of its Impossible Whopper at Burger King restaurants and franchises around America.

2. “Impossible” “meat” is a trademarked product that is owned independently from Burger King that is widely known across the country as a meat substitute. Due to its impressive meat-like appearance, texture and taste, “Impossible” “meat” is one of the most popular meat alternatives in the country.

3. Plaintiffs are all individuals who maintain restricted diets and avoid consuming some or all foods that contain animal by-products.

4. “Impossible” meats contain no animal products or animal by-products. “Impossible” meats are also certified Halal and Kosher.¹

5. On August 8, 2019, Defendant began to offer a version of its most popular and widely advertised “Whopper” burger with an “Impossible” patty, called the “Impossible Whopper.” Since then, Defendant has marketed and sold burgers using “Impossible” patties under the descriptive product name “Impossible Whopper” claiming in advertising that the Impossible Whopper is “0% Beef” and “100% Whopper”.

6. Burger King’s tag line that its Impossible Whopper was “100 % Whopper 0% Beef” was prominently featured both on its in-store and drive-through signage.

¹ See www.cnet.com/news/beyond-meat-vs-impossible-burger-whats-the-difference.

7. However, unbeknownst to Plaintiffs and other consumers across the country, the Impossible Whopper is cooked on the same grills as its traditional meat-based products, creating an advertised meat-free patty that, in fact, is covered in meat by-products.

8. Indeed, Burger King did not clearly display or disclose in its stores or in its drive-throughs the manner in which the Impossible Whopper was prepared or that the Impossible Whopper could be prepared in any alternative manner altogether that would somehow affect whether it retained its quality as a meat-free food product.

9. Plaintiffs and other consumers purchased Impossible Whoppers after reasonably relying on Defendant's deceptive representations about the Impossible Whopper, namely that it was meat-free, and after reasonably believing that the "Impossible" patty would be prepared in a manner that maintained its qualities as a "0% Beef" burger patty.

10. Plaintiffs and other consumers across the country paid a premium price to have an Impossible Whopper as opposed to a traditional Whopper for the sole reason of having a meat-free option.

11. Had Plaintiffs and other consumers known that the Impossible patty used in Burger King's Impossible Whopper was contaminated by meat by-products as a result of Defendant's cooking processes and, therefore, was not meat-free when consumed by Plaintiffs and other consumers, they would not have purchased the Impossible Whopper.

12. On behalf of themselves and the proposed Class and Subclasses defined below, Plaintiffs seek (i) an injunction requiring Defendant to plainly disclose that the Impossible Whopper is cooked on the same grill as its other animal products and that Defendant's future advertising and marketing of its Impossible Whopper comply with state consumer protection and

common laws; (ii) an award of actual and compensatory damages to the Class and Subclasses; and (iii) an award of costs and reasonable attorneys' fees.

PARTIES

13. Defendant Burger King Corporation is a Florida corporation with its headquarters located in Miami, Florida, from where it manages the operations of thousands of Burger King fast-food restaurants throughout the United States.

14. At all relevant times, Plaintiff Phillip Williams has been a resident and citizen of the state of Georgia.

15. At all relevant times, Plaintiff Michael Roberts has been a resident and citizen of the state of California.

16. At all relevant times, Plaintiff William Jones has been a resident and citizen of the state of New York.

17. At all relevant times, Plaintiff Christopher McGee has been a resident and citizen of the state of Mississippi.

18. At all relevant times, Plaintiff Tiffany Cuthrell has been a resident and citizen of the state of Michigan.

19. At all relevant times, Plaintiff Marie Venter has been a resident and citizen of the state of Georgia.

20. At all relevant times, Plaintiff Ali Bey has been a resident and citizen of the state of Florida.

JURISDICTION & VENUE

21. This Court has diversity jurisdiction under 28 U.S.C. § 1332(d) because (i) at least one member of the putative class is a citizen of a state different from any Defendant, (ii) the amount

in controversy exceeds \$5,000,000 exclusive of interests and costs, and (iii) none of the exceptions under that subsection apply to the instant action.

22. This Court has personal jurisdiction over Defendant because Defendant is incorporated in Florida and Defendant's principle place of business is in Florida.

23. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Defendant resides in this judicial district, and Defendant is incorporated and has its principle place of business in Florida.

COMMON ALLEGATIONS OF FACT

24. Burger King is an international restaurant chain that sells various fast food items to consumers throughout the United States, and the world. While Burger King offers a variety of food options, it is best known for its "Whopper" burger made with beef.

25. In order to expand its product offerings and appeal to the growing customer base of vegan and vegetarian consumers, as well as consumers seeking meat-free food options, in April 2019 corporate executives at Burger King's headquarters chose to offer a Whopper burger using "Impossible" patties at certain Burger King locations, calling it the "Impossible Whopper."

26. According to advertising created and/or approved by its corporate office for distribution online, in print, and elsewhere, Burger King's Impossible Whopper is "100% Whopper 0% Beef."

27. Despite the foregoing representations, Burger King's standard procedure is to cook its "Impossible" patties on the same grills that it cooks its traditional meat patties made with beef, chicken or other animal proteins, thus contaminating the otherwise meat-free Impossible patties with meat (including beef) by-products.

28. Defendant has no disclosures on its in-store and drive-through menus that would notify a consumer prior to their purchase of the Impossible Whopper that it was cooked in a manner that would result in meat by-products on the burger and, therefore, an Impossible Whopper purchased for consumer consumption would not in fact be a “meat free” food product.

29. Defendant’s customers, including Plaintiffs, purchased Burger King’s Impossible Whopper and paid a premium for it compared to the price of Defendant’s Whopper burger made with beef, specifically based on Defendant’s representations that an Impossible Whopper would be a meat-free food.

30. Burger King, through its unfair and deceptive practices in offering its Impossible Whopper, monetarily benefits from consumers who legitimately believed that they were paying a premium for a meat-free alternative.

31. Indeed, there are numerous consumer complaints posted online from consumers who have been outraged upon finding out that that the Impossible Whopper is prepared on the same grills as Burger King’s traditional meat products.

32. Indeed, the presence of animal by-products on a food item such as an Impossible Whopper that consumers believe to be meat-free is not only deceptive, but can even pose serious health concerns because individuals who consistently refrain from eating foods containing animal products can have difficulties digesting such food items, including experiencing severe digestive distress that, in turn, may require medical attention or even hospitalization.

33. Defendant’s actions in advertising and selling its Impossible Whopper to Plaintiffs and the other members of the Nationwide Class and Subclasses, without disclosing that the Impossible patty is cooked on the same grills as its traditional meat products, violates Plaintiffs’ rights under the common law and applicable consumer protection statutes.

Facts Specific to Plaintiff Phillip Williams

34. On or around August 2019, after hearing about Burger King's Impossible Whopper through social media advertisements and word of mouth, and having no knowledge about how Burger King actually prepares the Impossible Whopper, Plaintiff Williams decided to visit a local Burger King in Atlanta, Georgia to try the new product.

35. Mr. Williams went to the location's drive-through and ordered an Impossible Whopper with no mayonnaise.

36. While waiting in the drive-through, Mr. Williams observed no signage indicating that the Impossible patty was cooked on the same grill as Burger King's meat products, nor was Mr. Williams notified by Burger King that the Impossible patty would be prepared on the same grills as its traditional meat products. Mr. Williams only saw Defendant's representations that the Impossible Whopper was made with the "Impossible" meat-free burger patty.

37. After checking that his Impossible Whopper did not contain mayonnaise, Mr. Williams proceeded to eat the Impossible Whopper believing that it was a meat-free option.

38. However, Mr. Williams had been duped by Burger King's deceptive practices into eating a meat-free Whopper Patty that was in fact covered in meat by-products.

39. Apart from being misled into consuming meat and/or meat by-products, Mr. Williams also suffered monetary damages in the amount that he paid to purchase the product.

40. Mr. Williams, like the other members of the Nationwide Class and Subclasses, reasonably believed that the Impossible Whopper was in fact "0% Beef" and, therefore, did not contain any meat or meat by-products and paid a premium specifically so he could purchase a meat-free Impossible Whopper. Mr. Williams would not have purchased the Impossible Whopper if he knew that it was cooked in such a manner that it was coated in meat by-products.

Facts Specific to Plaintiff William Jones

41. Between November and December of 2019, Plaintiff Jones purchased at least three Impossible Whoppers from Defendant at one or more of Defendant's New York city locations.

42. Mr. Jones understood based on Defendant's advertising that the Impossible Whopper was a meatless option and purchased Defendant's Impossible Whopper specifically because he wanted to purchase a meat-free food product on each visit that he made.

43. Mr. Jones paid a premium to purchase the Impossible Whopper specifically based on his understanding that the Impossible Whopper was completely free of any animal by-products.

44. However, the Impossible Whoppers Mr. Jones purchased were not in fact free of any animal by-products because they were not cooked on a separate cooking surface and thus came in contact with and contained animal by-products.

45. Mr. Jones did not have any reason to believe that the Impossible Whopper burgers he purchased would contain any animal by-products. At the time Mr. Jones visited Defendant's restaurants he did not see any signage in the store indicating that the Impossible Whopper was cooked on the same grilling surface as Defendant's traditional meat products, or that he could request to have his Impossible Whopper grilled on a separate surface.

46. Mr. Jones would not have purchased the Impossible Whopper had he known that it was not prepared in a manner that would maintain its quality as a meat-free food item.

Facts Specific to Plaintiff Michael Roberts

47. Mr. Roberts is vegan and, accordingly, does not eat anything that contains animal by-products.

48. Between October and November of 2019, Mr. Roberts made several visits to one of Defendant's locations in Los Angeles, California and purchased its Impossible Whopper burger.

49. Mr. Roberts paid a premium for the Impossible Whopper based on Defendant's advertising that it was "0% Beef" and contained an "Impossible" patty that was completely free of any animal by-products.

50. However, as with the Impossible Whoppers purchased by the other Plaintiffs and members of the Nationwide Class and Subclasses, the Impossible Whoppers purchased by Mr. Roberts were cooked on the same grilling surface as other meat products and thus were not in fact "0% Beef" and did not maintain their quality as a meat-free food product.

51. Mr. Roberts did not see any signage regarding how the Impossible Whopper would be prepared or that otherwise indicated that the Impossible Whopper burgers he purchased would not be meat-free.

52. Mr. Roberts would not have purchased the Impossible Whoppers had he known that they were not a meat-free food product as advertised by Defendant and cooked on the same cooking surface as Defendant's other meat products.

Facts Specific to Plaintiff Ali Bey

53. Ali Bey is a resident of Tampa, Florida who maintains a vegan diet free from any animal products.

54. Shortly following Defendant's release of the Impossible Whopper in or about September 2019, Mr. Bey purchased Defendant's Impossible Whopper on three separate occasions from a Burger King location in Tampa Florida.

55. Mr. Bey chose to purchase Defendant's Impossible Whoppers specifically as a result of Defendant's advertising campaign that the Impossible Whopper was "0% Beef" and did not contain any animal products.

56. However, Mr. Bey did not know that the Impossible Whopper burgers that he had

purchased were not in fact free from any animal products and were cooked on the same cooking surface as Defendant's other meat products.

57. Mr. Bey purchased the Impossible Whopper burgers specifically because of Defendant's representations as to their qualities as being "0% Beef" and having an Impossible beef patty that was meat-free, and would not have purchased them had he known that the Impossible Whopper burgers were not in fact meat-free as a result of how they were prepared.

Facts Specific to Plaintiff Christopher McGee

58. Mr. McGee is a citizen of Mississippi who purchased Defendant's Impossible Whopper burger on two occasions in late November 2019 at a Burger King located in Bay St. Louis, Mississippi, where he resides.

59. Mr. McGee, like other purchases of Defendant's Impossible Whopper, maintains a meat-free diet and specifically purchased Defendant's Impossible Whopper after reviewing Defendant's advertising and researching the Impossible Whopper.

60. However, despite specifically inquiring about Defendant's Impossible Whopper and Defendant's representations that it was meat-free, Mr. McGee never discovered or had reason to believe that it was not in fact "0% Beef" because it was cooked on the same cooking surface as other meat products.

61. Indeed, Mr. McGee inadvertently found out that Defendant's Impossible Whopper was not in fact entirely meat-free when after consuming it a second time he experienced severe digestive distress shortly afterwards. Mr. McGee was in such pain and discomfort from eating Defendant's Impossible Whopper that he visited a local hospital for observation.

62. Had Mr. McGee known that Defendant's Impossible Whopper was not in fact completely meat-free and contained animal products from the manner in which it was prepared,

Mr. McGee would have never purchased Defendant's Impossible Whopper.

Facts Specific to Plaintiff Tiffany Cuthrell

63. Ms. Cuthrell is a vegetarian who has abstained from eating any foods containing meat products for over 8 years.

64. Ms. Cuthrell purchased an Impossible Whopper burger in Alma, Michigan on December 14, 2019 specifically because of Defendant's advertising of the Impossible Whopper as being "0% Beef" and containing a meat-free Impossible patty. Ms. Cuthrell believed that Defendant's Impossible Whopper was presented as a readily available fast food option for individuals like herself who did not eat any foods containing meat products.

65. However, unbeknownst to Ms. Cuthrell, the Impossible Whopper burger that she had purchased was not in fact meat-free, and was in fact covered in meat by-products through its cooking process. In fact, within a few hours of eating the Impossible Whopper that she had purchased, Ms. Cuthrell began to feel severely ill as a result of eating the Impossible Whopper.

66. Because Defendant failed to provide any information that would suggest that its Impossible Whopper was anything *but* a meat-free burger, Ms. Cuthrell had to do independent investigation to determine why it caused her such significant distress. Eventually Ms. Cuthrell found out that Defendant cooks the otherwise meat-free Impossible patties on the same surface as its other meat products, thus filling the patty with animal by-products, particles, and juices.

67. Ms. Cuthrell attempted to contact Defendant following her experience to obtain an explanation as to why the Impossible Whopper is cooked on the same surface as other meat products when it is advertised as being meat-free, but did not receive any response.

68. Ms. Cuthrell would not have purchased the Impossible Whopper had she known that it was not in fact completely meat-free and prepared in a manner that maintained its quality as

a meat-free food.

Facts Specific to Plaintiff Marie Venter

69. Plaintiff Venter maintains a meat and dairy-free diet for personal health reasons.

70. Shortly after Defendant released the Impossible Whopper, on September 9, 2019 Ms. Venter visited one of Defendant's locations in Suwanee, Georgia, and purchased an Impossible Whopper by going through the drive-through.

71. Ms. Venter decided to purchase the Impossible Whopper because she had come across Defendant's advertising and was excited to have an option of a meat-free burger that was flavorful and made by Burger King, who she had associated with making flavorful burgers.

72. Ms. Venter visited Defendant's other locations in the surrounding Atlanta, Georgia area and purchased the Impossible Whopper several more times, always going through the drive-through. Ms. Venter never saw any kind of sign or disclosure regarding the Impossible Whopper being cooked on the same surface as meat products or offering to cook it in any different manner.

73. Indeed, Ms. Venter at all times relied on Defendant's advertising and believed that she was purchasing a meat-free burger that did not contain any meat products in it and was cooked in such a manner that it remained meat-free.

74. Ms. Venter would have never made any of her purchases if she had known that the Impossible Whopper was cooked on the same cooking surface as meat products.

CLASS ACTION ALLEGATIONS

75. Plaintiffs seek class certification under Rule 23 of the Federal Rules of Civil Procedure for the following class and subclasses of similarly situated individuals:

The Nationwide Class: All individuals within the United States who purchased Burger King's Impossible Whopper.

The Florida Subclass: All individuals who purchased Burger King's Impossible Whopper at any Burger King location within the state of Florida.

The California Subclass: All individuals who purchased Burger King's Impossible Whopper at any Burger King location within the state of California.

The Georgia Subclass: All individuals who purchased Burger King's Impossible Whopper at any Burger King location within the state of Georgia.

The New York Subclass: All individuals who purchased Burger King's Impossible Whopper at any Burger King location within the state of New York.

The Mississippi Subclass: All individuals who purchased Burger King's Impossible Whopper at any Burger King location within the state of Mississippi.

The Michigan Subclass: All individuals who purchased Burger King's Impossible Whopper at any Burger King location within the state of Michigan.

76. Excluded from the Nationwide Class and Subclasses are any members of the judiciary assigned to preside over this matter, any officer or director of Defendant, and any immediate family member of such judge, officer or director.

77. Upon information and belief, given that the Impossible Whopper was made available in Burger King locations across the country, there are thousands of members of the Nationwide Class and Subclasses, making the members of the Nationwide Class and Subclasses so numerous that joinder of all members is impracticable.

78. Plaintiffs' claims are typical of the claims of the Nationwide Class and Subclasses they seeks to represent, because the factual and legal bases of Defendant's liability to Plaintiffs and the Nationwide Class and Subclasses are the same, and because Defendant's conduct has resulted in similar injuries to Plaintiffs and to the Nationwide Class and Subclasses. As alleged

herein, Plaintiffs and the Nationwide Class and Subclasses have all suffered damages as a result of Defendant's unfair and deceptive business practices.

79. Common questions of law and fact exist as to all members of the Nationwide Class and Subclasses, and such questions predominate over questions affecting Plaintiffs or individual members of the Nationwide Class and Subclasses. Common questions for the Nationwide Class and Subclasses include, but are not limited, to the following:

a. Whether Defendant's Impossible Whopper was advertised and sold as being meat-free;

b. Whether Defendant's Impossible Whopper was in fact prepared in such a way that upon serving it contained meat by-product and, therefore, was not meat-free;

c. Whether Defendant engaged in fraudulent, false, deceptive and/or unfair conduct and business practices in advertising and selling its meat-free Impossible Whopper that in fact contained meat by-products;

d. Whether Plaintiffs and the members of the Nationwide Class and Subclasses have suffered damages from Defendant's conduct;

e. Whether Defendant was unjustly enriched by receiving profits from its sales of its Impossible Whopper; and

f. Whether Defendant should be enjoined from engaging in such conduct in the future.

80. Plaintiffs will fairly and adequately represent and protect the interests of the other members of the Nationwide Class and Subclasses. Plaintiffs have retained counsel with substantial experience in prosecuting complex litigation and class actions, and Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the members of the Nationwide Class and Subclasses and have the financial resources to do so. Neither Plaintiffs nor their counsel have

any interest adverse to those of the other members of the Nationwide Class and Subclasses.

81. Defendant has acted and failed to act on grounds generally applicable to the Plaintiffs and the other members of the Nationwide Class and Subclasses in advertising and selling its Impossible Whopper burger, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Nationwide Class and Subclasses, and making injunctive or corresponding declaratory relief appropriate for the Nationwide Class and Subclasses as a whole.

82. The factual and legal bases of Defendant's liability to Plaintiffs and to the other members of the Nationwide Class and Subclasses are the same, resulting in injury to Plaintiffs and to all of the other members of the Nationwide Class and Subclasses as a result of Defendant's deceptive sales and marketing of its Impossible Whopper burger.

83. Absent a class action, most members of the Nationwide Class and Subclasses would find the cost of litigating their claims to be prohibitive and would have no effective remedy. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants and promotes consistency and efficiency of adjudication.

FIRST CAUSE OF ACTION
Breach of Contract
(On behalf of Plaintiffs and the Nationwide Class)

84. Plaintiffs hereby incorporate by reference the allegations set forth in paragraphs 1–83 above as if fully set forth herein.

85. Defendant advertised to Plaintiffs and the other members of the Nationwide Class that its Impossible Whopper contained an “Impossible” patty that was meat-free.

86. Defendant sold its Impossible Whopper at a premium sum in exchange for a meat-

free Whopper Burger.

87. Plaintiffs, like the other members of the Nationwide Class, purchased Defendant's Impossible Whopper from Defendant specifically because it was advertised and represented as a meat-free option.

88. However, Defendant failed to disclose or put Plaintiffs and the other Nationwide Class members on notice that its meat-free Impossible Whopper was in fact cooked and prepared on the same grills as its traditional meat products, thus contaminating it with meat by-product.

89. Neither Plaintiffs nor the other Nationwide Class members received a meat-free Impossible Whopper from Defendant when they purchased the Impossible Whopper because the "Impossible" patty is cooked in a manner that covers it in meat by-products.

90. Plaintiffs and the other Nationwide Class members would not have purchased Defendant's Impossible Whopper had they known that it was cooked on the same grills as its traditional meat products and, as a result, contained meat by-products.

91. As a direct and proximate result of Defendant's breach of contract, Plaintiffs and the other members of the Nationwide Class have been harmed and have suffered damages by purchasing a product that they would not have otherwise bought.

SECOND CAUSE OF ACTION
Violation of Florida's Deceptive and Unfair Trade Practices Act
(On behalf of Plaintiffs and the Nationwide Class)

92. Plaintiffs hereby incorporate by reference the allegations set forth in paragraphs 1–83 above as if fully set forth herein.

93. Plaintiffs and the other Nationwide Class members are "consumers" within the meaning section 501.203(7), Florida Statutes because they are individuals.

94. Defendant was engaged in "trade or commerce" within the meaning of section

501.203(8), Florida Statutes because it was advertising and offering for sale the Impossible Whopper burgers at issue.

95. Defendant's corporate headquarters are in Florida, and the unlawful conduct alleged herein, including the advertising and disclosures made at Defendant's locations throughout the country, was directed, originated, and/or approved from its corporate headquarters.

96. The Impossible Whopper is advertised and represented as being "0% Beef" and containing a meat-free "Impossible" patty.

97. As described above, Plaintiffs and the other members of the Nationwide Class purchased Defendant's Impossible Whopper in reliance upon Defendant's representations that it contained a meat-free "Impossible" patty. Plaintiffs, as did other reasonable consumers and the Nationwide Class, reasonably understood that an "Impossible Whopper" containing an "Impossible" brands patty, along with Defendant's representations that the Impossible Whopper was "0% Beef," meant that the Impossible Whopper would be free of any meat, including any meat by-product.

98. However, Defendant failed to disclose, or did not adequately disclose, that the Impossible patties used to make the Impossible Whopper are in fact prepared and cooked on the same grills as Defendant's traditional meat products and, as part of the cooking and presentation processes that Defendant utilizes, are covered in meat by-product and, thus, are not in fact meat-free.

99. Defendant's conduct of selling a meat-free Impossible Whopper that is in fact covered in meat by-products constitutes unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices within the meaning of section 501.204, *et seq.*, Florida Statutes.

100. Plaintiffs and the other members of the Nationwide Class were injured by Defendant's deceptive and unfair conduct described above because they would not have purchased Defendant's Impossible Whopper had they known that it was not in fact meat-free, or would have otherwise not paid a premium to purchase it. Plaintiffs and the other members of the Nationwide Class therefore suffered actual damages within the meaning of section 501.211, Florida Statutes.

THIRD CAUSE OF ACTION
Violation of New York's Deceptive Acts Or Practices
New York Gen. Bus. Law §349
(On behalf of Plaintiff William Jones and the New York Subclass)

101. Plaintiff William Jones hereby incorporates by reference the allegations set forth in paragraphs 1–83 above as if fully set forth herein.

102. Defendant has committed unfair and deceptive acts and practices pursuant to New York Gen. Bus. Law § 349 by misrepresenting that its Impossible Whopper was meat-free and did not contain any animal by-products when, in fact, it was not a meat-free food product.

103. The forgoing deceptive acts and practices were directed at consumers located within the state of New York.

104. Defendant's forgoing deceptive acts and practices are misleading in a material way because they fundamentally misrepresent the characteristics and benefits of the Impossible Whopper to induce consumers to purchase the Impossible Whopper for a premium price.

105. Plaintiff William Jones and members of the New York Subclass were injured because they would not have purchased the Impossible Whopper had they known that the Impossible Whopper was not in fact meat-free and contained animal by-products from being cooked on the same surface as Defendant's traditional meat products.

106. As a result of Defendant's deceptive and unfair conduct Plaintiff William Jones and Members of the New York Subclass have been damaged in the amount of the purchase price of

the Impossible Whopper.

107. On behalf of himself and the other members of the New York Subclass Plaintiff William Jones seeks to enjoin the unlawful acts and practices described herein, to recover actual damages or 50 dollars per violation, whichever is greater, and reasonable attorney's fees.

FOURTH CAUSE OF ACTION
Violation of New York's False Advertising Act
New York Gen. Bus. Law. § 350
(On behalf of Plaintiff William Jones and the New York Subclass)

108. Plaintiff William Jones hereby incorporates by reference the allegations set forth in paragraphs 1–83 above as if fully set forth herein.

109. By advertising its Impossible Whopper as being “0% Beef” and meat-free when in fact it was not and contained meat and animal by-products as described above, Defendant has engaged in consumer-oriented conducted that is deceptive or misleading in a material way and constitutes false advertising in violation of Section 350 of the New York General Business Law.

110. Defendant's false, misleading and deceptive statements and representations of fact, regarding its Impossible Whopper were and are directed at New York consumers.

111. Defendant's false, misleading and deceptive statements and representations of fact did, and are likely to, mislead a reasonable consumer acting reasonably under the circumstances, including Plaintiff William Jones and the other New York Subclass members.

112. Defendant's false, misleading and deceptive statements and representations of fact have resulted in consumer injury or harm to the public interest.

113. Plaintiff William Jones and members of the New York Subclass were injured because they would not have purchased the Impossible Whopper had they known that the Impossible Whopper was cooked on the same surface as Defendant's traditional meat products and, therefore, was not in fact “0% Beef” as advertised by Defendant. As a result, Plaintiff William

Jones and members of the New York Subclass have been damaged in the amount of the purchase price of the Impossible Whopper.

114. On behalf of the himself and the other members of the New York Subclass, Plaintiff William Jones seeks to enjoin the unlawful acts and practices described herein, to recover actual damages or Five Hundred dollars per violation, whichever is greater, and reasonable attorney's fees.

FIFTH CAUSE OF ACTION
Violation of California's False Advertising Law ("FAL")
Bus. & Prof. Code. §§ 17500 *et seq.*
(On behalf of Plaintiff Michael Roberts and the California Subclass)

115. Plaintiff Michael Roberts hereby incorporates by reference the allegations set forth in paragraphs 1–83 above as if fully set forth herein.

116. California's FAL (Bus. & Prof. Code §§17500, *et seq.*) makes it "unlawful for any person to make or disseminate or cause to be made or disseminated before the public in this state, . . . in any advertising device . . . or in any other manner or means whatever, including over the Internet, any statement, concerning . . . personal property or services, professional or otherwise, or performance or disposition thereof, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

117. Defendant has committed acts of false advertising, as defined by the FAL, by using false and misleading statements to promote the sale of its Impossible Whopper to consumers located within the state of California, as described above, and including, but not limited to its advertising that Defendant's Impossible Whopper is "0% Beef" and is meat-free when, in fact, the Impossible Whopper contained meat and animal by-products as a result of the manner in which it was prepared.

118. Defendant knew, or should have known through the exercise of reasonable care,

that these statements were untrue or misleading.

119. Defendant's actions in violation of the FAL were false and misleading such that the general public was and is likely to be deceived.

120. As a direct and proximate result of these acts, consumers have been and are being harmed. Plaintiff Michael Roberts and members of the California Subclass have suffered injury and actual out-of-pocket losses as a result of Defendant's FAL violations because: (a) they purchased Defendant's Impossible Whopper based on Defendant's misrepresentations; (b) they would not have purchased Defendant's Impossible Whopper had they known that the Impossible Whopper was not in fact meat-free and prepared in a way that maintained its qualities as a meat-free food product; and (c) Defendant's Impossible Whopper did not have the characteristics and benefits as advertised and promised. As a result, Plaintiff Michael Roberts and members of the California Subclass have been damaged in the full amount of the purchase price of Defendant's Impossible Whopper.

121. Plaintiff Michael Roberts brings this action pursuant to Bus. & Prof. Code § 17535 for injunctive relief to enjoin the practices described herein and to require Defendant to issue corrective disclosures to consumers. Plaintiff Michael Roberts and the California Subclass are therefore entitled to: (a) an order requiring Defendant to cease the acts of misleading advertising alleged herein; (b) full restitution of all monies paid to Defendant as a result of its deceptive practices; (c) interest at the highest rate allowable by law; and (d) the payment of Plaintiff's attorneys' fees and costs pursuant to, inter alia, California Code of Civil Procedure §1021.5.

SIXTH CAUSE OF ACTION
Violation of the "Unlawful Prong" of the California Unfair Competition Law
("UCL"), Bus. & Prof. Code §§ 17200 *et seq.*
(On behalf of Plaintiff Michael Roberts and the California Subclass)

122. Plaintiff Michael Roberts hereby incorporates by reference the allegations set forth

in paragraphs 1–83 above as if fully set forth herein.

123. The UCL, Bus. & Prof. Code § 17200 *et seq.*, provides, in pertinent part: “Unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising” The UCL also provides for injunctive relief and restitution for UCL violations.

124. “By proscribing any unlawful business practice, section 17200 borrows violations of other laws and treats them as unlawful practices that the UCL makes independently actionable.” *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.*, 20 Cal. 4th 163, 180 (1999) (citations and internal quotation marks omitted).

125. Virtually any law or regulation – federal or state, statutory, or common law – can serve as a predicate for an UCL “unlawful” violation. *Klein v. Chevron U.S.A., Inc.*, 202 Cal. App. 4th 1342, 1383 (2012).

126. Defendant violated the “unlawful prong” by violating the FAL and by breaching its contractual obligation to consumers located within the state of California as described herein.

127. As a direct and proximate result of these acts, consumers have been and are being harmed. More particularly, Plaintiff Michael Roberts and members of the California Subclass have suffered injury and actual out-of-pocket losses as a result of Defendant’s violations of the UCL’s “unlawful prong” because: (a) they purchased Defendant’s Impossible Whopper based on Defendant’s misrepresentations; (b) they would not have purchased Defendant’s Impossible Whopper had they known that the Impossible Whopper was not in fact meat-free and prepared in a way that maintained its qualities as a meat-free food product; and (c) Defendant’s Impossible Whopper did not have the characteristics and benefits as advertised and promised.

128. Pursuant to Bus. & Prof. Code §17203, Plaintiff Michael Roberts and the California

Subclass are therefore entitled to: (a) an order requiring Defendant to cease the acts of unfair competition alleged herein; (b) full restitution of all monies paid to Defendant as a result of its deceptive practices; (c) interest at the highest rate allowable by law; and (d) the payment of Plaintiff's attorneys' fees and costs pursuant to, *inter alia*, California Code of Civil Procedure §1021.5.

SEVENTH CAUSE OF ACTION
Violation of the "Fraudulent Prong" of the California Unfair Competition Law
("UCL"), Bus. & Prof. Code §§ 17200 *et seq.*
(On behalf of Plaintiff Michael Roberts and the California Subclass)

129. Plaintiff Michael Roberts hereby incorporates by reference the allegations set forth in paragraphs 1–83 above as if fully set forth herein.

130. The UCL, Bus. & Prof. Code § 17200 *et seq.*, provides, in pertinent part: "Unfair competition shall mean and include unlawful, unfair or fraudulent business practices and unfair, deceptive, untrue or misleading advertising"

131. Defendant's conduct, described herein, violated the "fraudulent" prong of the UCL because Defendant misrepresented to consumers within the state of California that the Impossible Whopper contains "0% Beef" and was meat-free, when in fact it contained meat and animal by-products due to how it was prepared.

132. Plaintiff Michael Roberts and members of the California Subclass Members acted reasonably when they purchased Defendant's Impossible Whopper based on their belief that Defendant's representations that the Impossible Whopper was "0% Beef" and contained a meat-free Impossible patty were true.

133. Defendant knew or should have known, through the exercise of reasonable care, that their representations about the Impossible Whopper being a meat-free food product were untrue and misleading.

134. As a direct and proximate result of these acts, consumers have been and are being harmed. Plaintiff Michael Roberts and members of the California Subclass have suffered injury and actual out-of-pocket losses as a result of Defendant's violations of the UCL's "fraudulent prong" because: (a) they purchased Defendant's Impossible Whopper based on Defendant's misrepresentations; (b) they would not have purchased Defendant's Impossible Whopper had they known that the Impossible Whopper was not in fact meat-free and prepared in a way that maintained its qualities as a meat-free food product; and (c) Defendant's Impossible Whopper did not have the characteristics and benefits as advertised and promised.

135. Pursuant to Bus. & Prof. Code §17203, Plaintiff Michael Roberts and members of the California Subclass are therefore entitled to: (a) an order requiring Defendant to cease the acts of unfair competition alleged herein; (b) full restitution of all monies paid to Defendant as a result of their deceptive practices; (c) interest at the highest rate allowable by law; and (d) the payment of Plaintiff's attorneys' fees and costs pursuant to, inter alia, California Code of Civil Procedure §1021.5.

EIGHTH CAUSE OF ACTION
Violation of Michigan's Consumer Protection Act ("MCPA")
Mich. Comp. Laws Ann. § 445.901
(On behalf of Plaintiff Tiffany Cuthrell and the Michigan Subclass)

136. Plaintiff Tiffany Cuthrell hereby incorporates by reference the allegations set forth in paragraphs 1–83 above as if fully set forth herein.

137. Defendant was and is still engaged in trade or commerce within the meaning of the MCPA §445.902(g).

138. Defendant's statements, representations, omissions, and practices made in connection with its sale of its Impossible Whopper to consumers located within the state of Michigan, as alleged herein, were in violation of the following sections of the MCPA § 445.903:

- a. § 445.903(c) by representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities, which they do not have;
- b. § 445.903(s) by failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer;
- c. § 445.903(cc) by failing to reveal facts which are material to the transaction in light of representations of fact made in a positive manner; and
- d. §445.903(y) by failing to provide promised benefits and making gross discrepancies between oral and written representations.

139. Defendant's actions in advertising its Impossible Whopper as "0% Beef" and representing that it was meat-free amount to unfair, unconscionable and/or deceptive business practices in violation of the MCPA as such representations were false and failed to reveal to Plaintiff Tiffany Cuthrell and the other members of the Michigan Subclass that the Impossible Whopper burgers Defendant sold were prepared in such a manner that they were not in fact a meat-free food product and such facts and disclosures were material to Plaintiff Cuthrell's and the other Michigan Subclass members' decisions to purchase the Impossible Whopper.

140. Defendant's violations of the MCPA proximately caused damages to Plaintiff Tiffany Cuthrell and the other Michigan Subclass members who purchased Defendant's Impossible Whopper, including but not limited to, the amount they paid for their Impossible Whopper Purchases.

NINTH CAUSE OF ACTION
Violation of Georgia's Deceptive and Unfair Trade Practices Act
O.C.G.A. § 10-1-390 *et seq.*
(On behalf of Plaintiffs Phillip Williams, Marie Venter, and the Georgia Subclass)

141. Plaintiffs Phillip Williams and Marie Venter hereby incorporate by reference the allegations set forth in paragraphs 1–83 above as if fully set forth herein.

142. Georgia's Fair Business Practices Act, O.C.G.A. § 10-1-390 *et seq.*, is designed to protect the general consuming public, and to end unfair or deceptive acts and practices that harm, or could harm, the consumer marketplace.

143. Plaintiffs Williams and Venter and each member of the Georgia Subclass are "consumers" under the meaning of Georgia's Fair Business Practices Act.

144. The Impossible Whopper burgers that Plaintiffs Williams and Venter and each member of the Georgia Subclass purchased constitute "goods" within the meaning of the Fair Business Practices Act.

145. Defendant has violated, and continues to violate the Fair Business Practices Act in at least the following respects:

(a) Defendant has represented to Plaintiffs Williams and Venter and other members of the Georgia Subclass that the Impossible Whopper has characteristics and benefits that it does not have by advertising that it is meat-free when in fact it is not;

(b) Defendant has represented to Plaintiffs Williams and Venter and other members of the Georgia Subclass that the Impossible Whopper is of a particular standard, quality and grade, although it is not because the Impossible Whopper was not in fact "0% Beef"; and

(c) Defendant has advertised the Impossible Whopper to consumers within the state of Georgia with an intent not to sell it as advertised.

146. Unless Defendant is permanently enjoined from continuing to engage in such violations, other consumers in the state of Georgia who purchase an Impossible Whopper from Defendant will be damaged by Defendant's acts and practices in the same way as Plaintiffs Williams and Venter and the other members of the Georgia Subclass have been damaged.

147. Plaintiffs Phillip Williams and Marie Venter, on behalf of themselves and other

members of the Georgia Subclass, seek all damages to which they are entitled pursuant to Georgia's Fair Business Practices Act, including treble damages and attorney's fees, as well as an order enjoining Defendant from engaging in the unlawful acts and practices described herein.

TENTH CAUSE OF ACTION
Unjust Enrichment
(On behalf of Plaintiffs and the Nationwide Class)

148. Plaintiffs hereby incorporate by reference the allegations set forth in paragraphs 1–83 above as if fully set forth herein.

149. Plaintiffs and the other members of the Nationwide Class purchased Defendant's Impossible Whopper because it was represented as containing an "Impossible" brand burger patty that was meat-free.

150. Plaintiffs and the other members of the Nationwide Class have conferred substantial benefits to Defendant when they purchased its "Impossible Whopper."

151. Defendant failed to disclose to Plaintiffs and the other members of the Nationwide Class that its Impossible Whoppers were not in fact meat-free because the Impossible Whopper burgers they purchased were prepared on the same grills as its traditional meat products.

152. Despite numerous reviews and consumer outrage upon learning that its Impossible Whopper burgers were contaminated with and contained meat by-products, Defendant kept payments from numerous consumers, including Plaintiffs and the other members of the Nationwide Class who purchased its Impossible Whopper burgers.

153. Defendant's retention of the payments and premiums received from Plaintiff and the other members of the Nationwide Class is unconscionable, and unless these payments are reimbursed, Defendant will be unjustly enriched.

154. As the direct and proximate result of Defendant's unjust enrichment, Plaintiffs and

the Nationwide Class are entitled to restitution of all profits, benefits, and other advantages attained by Defendant through the unlawful and deceptive conduct described herein.

REQUEST FOR RELIEF

Plaintiffs, on behalf of themselves and the Nationwide Class and Subclasses, request the following relief:

- A. Certifying the Nationwide Class and Subclasses as defined above, appointing Plaintiffs as class representatives and the undersigned as class counsel;
- B. Declaring that Defendant's actions, as set forth herein, are unconscionable and force Defendant to return all benefits gained, profits received, etc. from its deceptive marketing and sale of its Impossible Whopper burgers so as to make full restitution to Plaintiffs and the other members of the Nationwide Class and Subclasses;
- C. Declaring that Defendant be financially responsible for actually providing a meat-free burger that is properly prepared as to maintain its quality as a meat-free food when selling its Impossible Whopper burgers to consumers;
- D. Awarding injunctive and equitable relief as necessary to protect the interests of Plaintiffs and the other members of the Nationwide Class and Subclasses;
- E. Awarding actual compensatory and any other damages the Court sees fit to the members of the Nationwide Class and Subclasses;
- F. Awarding reasonable attorneys' fees, costs, and other litigation expenses;
- G. Awarding pre- and post-judgment interest, as allowable by law; and
- H. Awarding such further and other relief as the Court deems just and equitable.

JURY DEMAND

Plaintiffs request trial by jury of all claims that can be so tried.

Dated: February 24, 2020

PHILLIP WILLIAMS, WILLIAM JONES,
MICHAEL ROBERTS, ALI BEY, CHRISTOPHER
MCGEE, TIFFANY CUTHRELL, AND MARIE
VENTER , INDIVIDUALLY AND ON BEHALF
OF A CLASS AND SUBCLASSES OF
SIMILARLY SITUATED INDIVIDUALS

/s/ David P. Healy
One of their Attorneys

David P. Healy (940410)
Dudley, Sellers, Healy, Heath & Desmond, PLLC
SunTrust Financial Center
3522 Thomasville Rd., Suite 301
Tallahassee, Florida 32309
Tel: (850) 222-5400
Fax: (850) 222-7339
dhealy@davidhealylaw.com

Eugene Y. Turin (admitted *pro hac vice*)
McGuire Law, P.C.
55 W. Wacker Dr., 9th Fl.
Chicago, IL 60601
Tel: (312) 893-7002
Fax: (312) 275-7895
eturin@mcgpc.com