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Geragos & Geragos

Of Attorneys for Ms. Spencer

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

MARIEL SPENCER,
individually and on
behalf of other customers,

Plaintiff,

v.

**INTERNATIONAL
DAIRY QUEEN, INC.,**

Defendant.

Case No. 3:18-cv-1252

**CLASS ACTION
ALLEGATION
COMPLAINT**

Unlawful Trade Practices

Unjust Enrichment

Demand for Jury Trial

1.

INTRODUCTION

Mariel Spencer files this national class action on behalf of thousands of other Dairy Queen mobile app customers who were lured into a Dairy Queen based solely on the false promise of a free, delicious Blizzard ice cream treat. Under the law, Ms. Spencer and other mobile app customers ripped off by Dairy Queen's bait-and-switch are entitled to a gift card for at least five free Blizzards per person.

2.

Dairy Queen is a billion-dollar subsidiary corporation of Warren Buffett's Berkshire Hathaway Inc. Dairy Queen understands that the fast-food industry involves tight profit margins and high sales volumes. Dairy Queen understands that it's profitable to generate traffic to its locations based on the promise of a free Blizzard, regardless of whether its locations intend to honor its promise. Dairy Queen understands that the law does not permit it to bait-and-switch its customers but continues to do so anyway, even after receiving hundreds of customer complaints through its mobile app.

3.

Customers who fell prey to Dairy Queen's bait-and-switch can sign up to join the class action at DairyQueenCustomers.com.

4.

JURISDICTION AND THE PARTIES

This Court has jurisdiction under 28 U.S.C. § 1332 because the compensation and penalties sought in this case exceed \$5 million, and because Ms. Spencer is a citizen of Oregon and Dairy Queen is a citizen of Delaware.

5.

Defendant International Dairy Queen, Inc. (Dairy Queen) is a Delaware corporation and a “person” as defined at ORS 646.605(4) that regularly advertises delicious Blizzard ice cream treats to customers through its mobile app.

6.

Plaintiff Mariel Spencer (Ms. Spencer) is an Oregon citizen and a Dairy Queen mobile app user and a “person” as defined at ORS 646.605(4) who bought a Blizzard at her local Dairy Queen location for personal consumption in June 2018 in response to Dairy Queen’s mobile app advertisement.

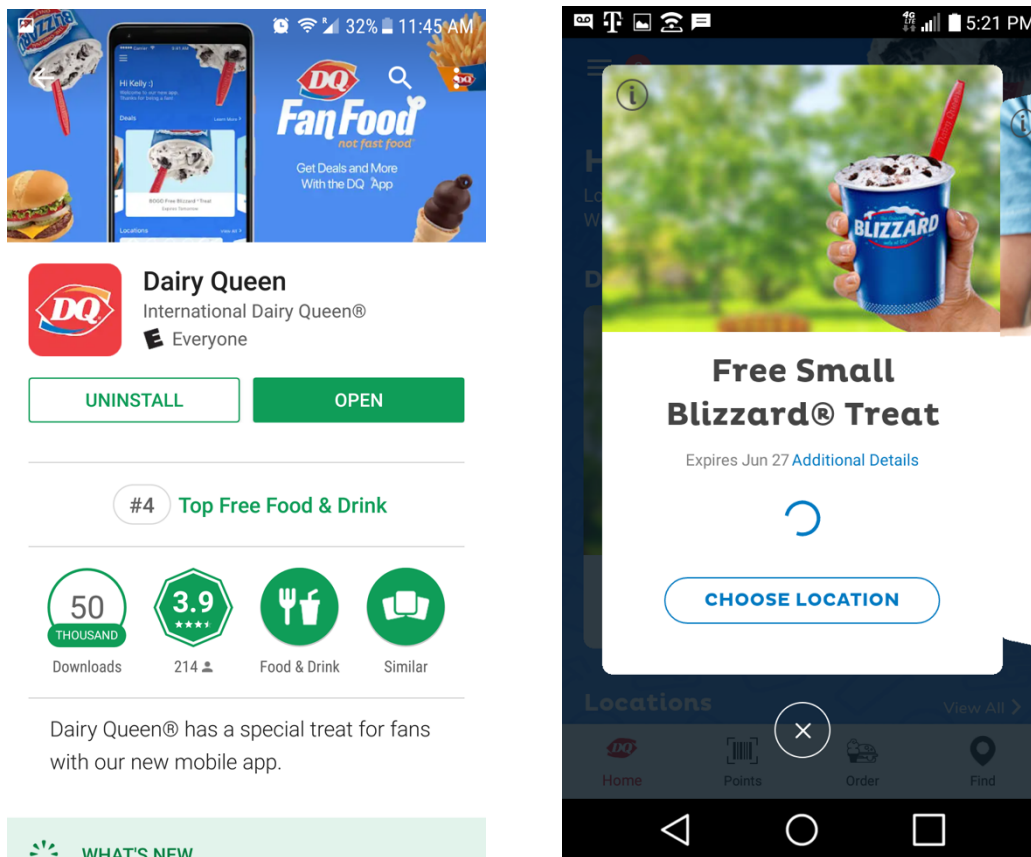
7.

Venue is proper under 28 U.S.C. § 1391 because Dairy Queen advertised a free Blizzard to Ms. Spencer on its mobile app while she was a resident of the Portland, Oregon area.

8.

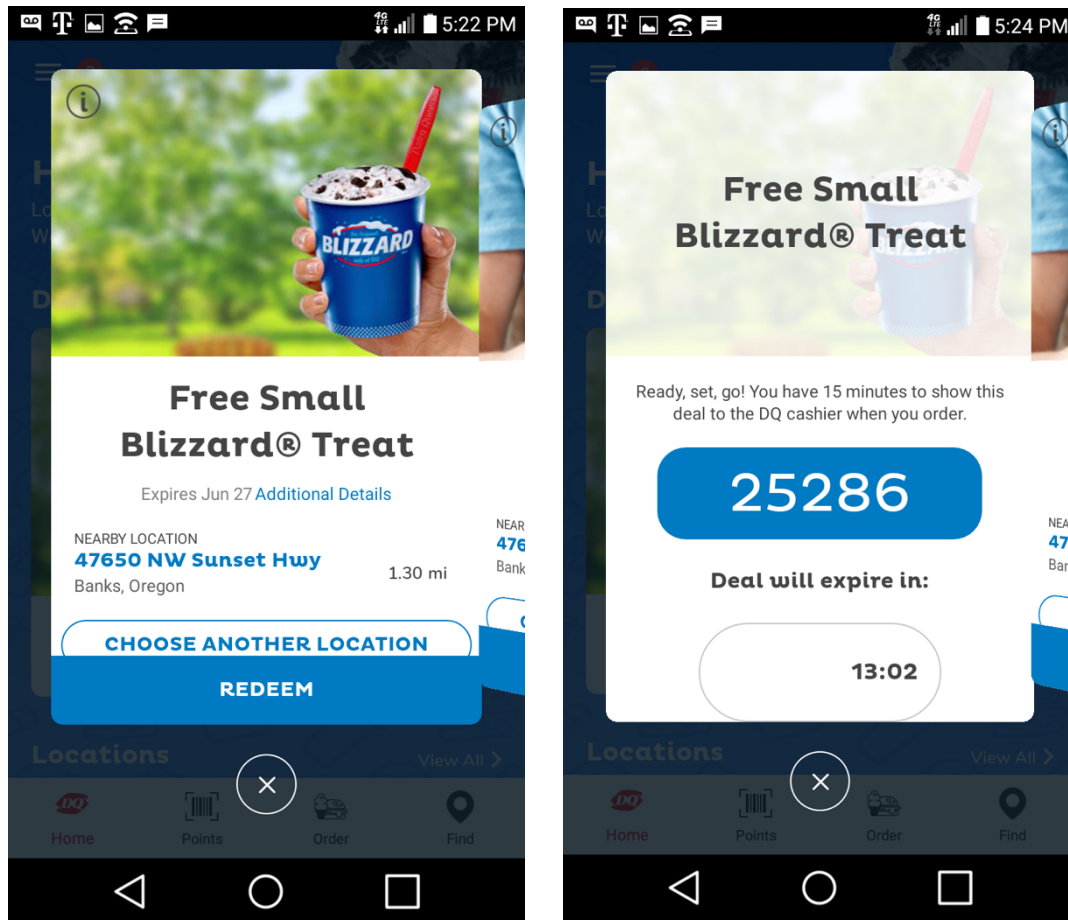
FACTUAL ALLEGATIONS

In 2018, Dairy Queen advertised a mobile app to its customers, in an effort to increase profits and generate traffic to its various locations. Dairy Queen's mobile app advertised that if customers traveled to certain participating Dairy Queen locations, they could purchase a Blizzard at no cost.



9.

In or around June 2018, Dairy Queen advertised to Ms. Spencer on its mobile app that she could visit her local Dairy Queen location in Banks, Oregon and purchase a Blizzard at no cost.



10.

In response to Dairy Queen's advertisement of a free Blizzard, Ms. Spencer traveled to the Dairy Queen location in Banks, Oregon. She showed her mobile app screen to the cashier as Dairy Queen instructed and she followed all other terms and conditions necessary to receive her free Blizzard. However, after ordering, her local Dairy Queen location refused to provide her a Blizzard free of cost. Dairy Queen's false advertisement on its mobile app caused Ms. Spencer the loss of the money charged to her for a full-price Blizzard.

11.

Investigation into Dairy Queen's practices revealed that Ms. Spencer was not alone. Hundreds of other customers have left comments complaining of Dairy Queen's false "free" Blizzard advertisement.

https://play.google.com/store/apps/details?id=com.olo.dairyqueen.production&hl=en_US&showAllReviews=true



BIL Schmitz

★★★★★ June 22, 2018



Free small blizzard is a scam. Let's you redeem even when most locations don't. Deleting app and going to BaskinRobins and spending money there. What a waste of time and looking like an idiot.

International Dairy Queen® June 29, 2018

Thank you for sharing your feedback, we're sorry to hear you have been disappointed. We are working diligently with our independent franchisees to ensure participation our mobile app and provide fans with an enjoyable experience. If you have not already, please reach out to our Fan relations team at <https://m.dq.com/ContactUs>.



Aaron Bertram

★★★★★ June 30, 2018



Despite numerous claims that most places accept these - it's not true. Most places do not. And, you can't depend on them listing themselves as accepting mobile deals - my local store showed in the app and the app said they accept the deal, but they don't. Waste of time, absolute nightmare of an ...

Full Review



Traci Signer

★★★★★ June 21, 2018



Not all stores accept coupons from app. 2 stores in my area and neither of them would accept. Basically useless to me.

International Dairy Queen® June 29, 2018

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Jen Ahwesh

★★★★★ June 29, 2018



Local dq won't honor any of the deals on this app so not sure if it's purpose

International Dairy Queen® June 29, 2018

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Kevin Fratzke

★★★★★ June 23, 2018



Read every other review, no location accepts the app coupon. Don't waste phone space on this app!

International Dairy Queen® June 29, 2018

Thank you for sharing your feedback, we're sorry to hear you have been disappointed. We are working diligently with our independent franchisees to ensure participation our mobile app and provide fans with an enjoyable experience. If you have not already, please reach out to our Fan relations team at <https://m.dq.com/ContactUs>.

**A Google user**

★★★★★ June 24, 2018



NORTH LIBERTY DQ LOCATION DOES NOT ACCEPT APP COUPONS - DO NOT GO TO DAIRY QUEEN!

International Dairy Queen® June 29, 2018

Thank you for sharing your feedback, we're sorry to hear you have been disappointed. We are working diligently with our independent franchisees to ensure participation our mobile app and provide fans with an enjoyable experience. If you have not already, please reach out to our Fan relations team at <https://m.dq.com/ContactUs>.

**Julie Brown**

★★★★★ June 25, 2018



None of the 3 DQs in my area accept it, waste of space--deleting it.

International Dairy Queen® June 29, 2018

Thank you for sharing your feedback, we're sorry to hear you have been disappointed. We are working diligently with our independent franchisees to ensure participation our mobile app and provide fans with an enjoyable experience. If you have not already, please reach out to our Fan relations team at <https://m.dq.com/ContactUs>.

**Casey Vinsant**

★★★★★ June 18, 2018



I tried redeeming a deal on the app at my location and they said they don't take digital coupons. Why would they be a listed location if they can't use the coupon? Now, it's been completely wasted because I can't pick a different location and it expires in 15 minutes.

International Dairy Queen® June 29, 2018

Thank you for sharing your feedback, we're sorry to hear you have been disappointed. We are working diligently with our independent franchisees to ensure participation our mobile app and provide fans with an enjoyable experience. If you have not already, please reach out to our Fan relations team at <https://m.dq.com/ContactUs>.

**Alan B**

★★★★★ July 2, 2018



Disappointed. I never got my free Blizzard as promised and every message I get advertising deals doesn't give me the bar code.



A Google user

★★★★★ June 22, 2018



None of the stores in my area support the App, and there are 3 in my area. The app does not benefit me, and the only way to cancel is to contact them. I wouldn't waste my time unless you know for sure your local DQ supports the APP.

International Dairy Queen® June 29, 2018

Thank you for sharing your feedback, we're sorry to hear you have been disappointed. We are working diligently with our independent franchisees to ensure participation our mobile app and provide fans with an enjoyable experience. If you have not already, please reach out to our Fan relations team at <https://m.dq.com/ContactUs>.



Peter Jimenez

★★★★★ June 22, 2018



I went to the Dairy Queen location at 6903 J.F. Kennedy Blvd, North Bergen, NJ. The App incorrectly listed this location as accepting Mobile Deals. When I went there I pressed the button to redeemed the free Blizzard and then I was told that they do not accept coupons. There is even a sign stati...

Full Review

International Dairy Queen® June 29, 2018

Thank you for sharing your feedback, we're sorry to hear you have been disappointed. We are working diligently with our independent franchisees to ensure participation our mobile app and provide fans with an enjoyable experience. If you have not already, please reach out to our Fan relations team at <https://m.dq.com/ContactUs>.

12.

As explained below, Dairy Queen's false advertisement of a free Blizzard on its mobile app violated Oregon's Unlawful Trade Practices Act in several ways.

13.

Dairy Queen violated Oregon's Unlawful Trade Practices Act (ORS 646.608(1)(b)) by causing the likelihood of confusion and misunderstanding as to the source of its mobile app as a payment method for a Blizzard at no cost, and as to the approval for use of its mobile app at Oregon Dairy Queen locations, and as to the locations' sponsorship and approval of its mobile app.

14.

Dairy Queen violated Oregon's Unlawful Trade Practices Act (ORS 646.608(1)(c)) by causing the likelihood of confusion and misunderstanding as to Dairy Queen's affiliation and association with Oregon Dairy Queen locations, and the locations' certification of its mobile app as a valid payment source for a free Blizzard.

15.

Dairy Queen violated Oregon's Unlawful Trade Practices Act (ORS 646.608(1)(e)) by representing that it had approval from Oregon Dairy Queen locations that free Blizzards would be provided using its mobile app when in fact many Oregon Dairy Queen locations had not approved of the mobile app advertisement.

16.

Dairy Queen violated Oregon's Unlawful Trade Practices Act (ORS 646.608(1)(i)) by advertising Blizzards as having no cost, with the intent that Blizzards would not be provided at no cost.

17.

Dairy Queen violated Oregon's Unlawful Trade Practices Act (ORS 646.608(1)(j)) by falsely representing the existence of a price reduction of Blizzards through use of its mobile app at Oregon Dairy Queen locations.

18.

Dairy Queen violated Oregon's Unlawful Trade Practices Act (ORS 646.608(1)(p)) by making false and misleading statements in its mobile app about its promotion used to publicize its Blizzards.

19.

Dairy Queen violated Oregon's Unlawful Trade Practices Act (ORS 646.608(1)(s)) by making false and misleading representations about the cost customers would pay for Blizzards using its mobile app.

20.

Dairy Queen's violations of Oregon's Unlawful Trade Practices Act above were willful and reckless because even after receiving hundreds of complaints, Dairy Queen continued to falsely advertise that Oregon customers could purchase Blizzards for no cost using its mobile app. As a result of Dairy Queen's violations of Oregon's Unlawful Trade Practices Act as alleged above, Ms. Spencer and hundreds of other Oregon customers suffered ascertainable losses of the money they paid to purchase a delicious Blizzard ice cream treat that should have been free, and of the transportation costs and other resources each of them expended to travel to a Dairy Queen location that they otherwise would not have expended had Dairy Queen not lured them in with the false promise of a free Blizzard.

21.

CLASS ACTION ALLEGATIONS

Under FRCP 23, Ms. Spencer brings this action on behalf of herself and all other similarly situated Oregon Dairy Queen customers.

The class is initially defined as:

- a) Oregon Dairy Queen customers who,
- b) after January 1, 2018, downloaded Dairy Queen's mobile app, and
- c) solely in response to an advertisement by Dairy Queen on its mobile app of a free Blizzard,
- d) traveled to a Dairy Queen location provided by the mobile app and
- e) otherwise followed all other terms and conditions necessary to receive a free Blizzard, and
- f) suffered ascertainable losses of the money paid to purchase a Blizzard that should have been free, or of the transportation costs and other resources expended to travel to a Dairy Queen location they otherwise would not have expended had Dairy Queen not lured them in with the false promise of a free Blizzard.

22.

A class action is proper under FRCP 23(a) because based on the number of Dairy Queen locations in Oregon and the number of complaints received on Dairy Queen's mobile app, the class consists of hundreds of individual Oregon customers, and joinder of all members is impracticable. Each class member is identifiable based on Dairy Queen's mobile app records, Dairy Queen's receipts, Dairy Queen's credit card transactions, and based on independently submitted claim forms. Excluded from the class are all attorneys for the class, executives of Dairy Queen, any judge who sits on the case, and all jurors and alternate jurors who sit on the case.

23.

This action can be maintained as a class action under FRCP 23(a) and (b) because there are questions of law and fact common to the class members, which predominate over any questions relating to individual class members, including but not limited to:

- a) Whether Dairy Queen caused the likelihood of confusion and misunderstanding as to the source of its mobile app as a payment method for a Blizzard at no cost, and as to the approval for use of its app by Oregon Dairy Queen locations,
- b) Whether Dairy Queen caused the likelihood of confusion and misunderstanding as to its affiliation and association with

Oregon Dairy Queen locations and the locations' certification of its mobile app as a valid payment source for a free Blizzard,

- c) Whether Dairy Queen falsely represented that it had approval from Oregon Dairy Queen locations that free Blizzards would be provided using its mobile app,
- d) Whether Dairy Queen advertised Blizzards as having no cost, with the intent that Blizzards would not be provided at no cost,
- e) Whether Dairy Queen falsely represented the existence of a price reduction of Blizzards through use of its mobile app at Oregon Dairy Queen locations,
- f) Whether Dairy Queen made false and misleading statements in its mobile app about its promotion used to publicize Blizzards,
- g) Whether Dairy Queen made false and misleading representations about the cost customers would pay for Blizzards using its mobile app,
- h) Whether Dairy Queen behaved willfully, recklessly or maliciously, whether Dairy Queen's behavior as alleged in this complaint violated Oregon's Unlawful Trade Practices Act, and whether under Oregon law, Dairy Queen should be able to retain the money wrongfully charged to customers for Blizzards that were advertised for free.

24.

Ms. Spencer's claims are typical of the claims of the class members, as they are based on the same factual circumstances, common representations, common omissions, and legal theories. Ms. Spencer has no interests adverse to the class members. Ms. Spencer will fairly and adequately represent and protect the interests of the members of the class. Ms. Spencer has retained nationally known and locally respected counsel experienced in class action litigation to further ensure such representation and protection of the class. Ms. Spencer and her counsel intend to prosecute this action vigorously and have the resources necessary to successfully try this case to judgment.

25.

A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Absent class-wide adjudication, members of the class are without effective recourse. Few, if any, class members can afford to prosecute individual actions against Dairy Queen, especially in light of the Blizzard cost at issue. Absent class treatment, Dairy Queen's alleged wrongdoing would go unabated, and no class member would be afforded the opportunity to seek judicial relief, whether for themselves or for the public good generally.

26.

The nature of the fairly low cost of the product at issue (a delicious Blizzard ice cream treat) means that very few, if any class members will choose to litigate a claim on an individual basis. This case is only economically viable as a class action. A class action is appropriate under FRCP 23(b)(3) because the questions of law and fact regarding the nature and legality of Dairy Queen's behavior as alleged in this complaint predominate over any questions affecting only individual class members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy, for the following reasons:

- a) The prosecution of separate actions creates a risk of inconsistent or varying rulings,
- b) The common questions of law and fact described above predominate over questions affecting only individual members,
- c) Individual class members would have little interest in controlling the prosecution of separate actions due to the nature of the delicious Blizzard ice cream treat at issue and because of the expenses of litigation, and
- d) A class action will be an efficient method of adjudicating the claims of the class members.

27.

CLAIMS FOR RELIEF

– Claim 1 for Violation of the UTPA –

Dairy Queen's behavior as alleged in this complaint willfully and recklessly violated Oregon's Unlawful Trade Practices Act, including ORS 646.608(1)(b),(c),(e) (i), (j), (p), and (s). Dairy Queen's behavior was reckless, in pursuit of profit, and constituted a wanton, outrageous and oppressive violation of the rights of Ms. Spencer and the putative class members to be free from unlawful trade practices. As a result of Dairy Queen's violation of Oregon's Unlawful Trade Practices Act as alleged above, Ms. Spencer and all other similarly situated individual customers are entitled to statutory damages, punitive damages, and reimbursed litigation expenses, fees and costs under ORS 646.638.

28.

– Claim 2 for Unjust Enrichment –

As a matter of justice and equity, Dairy Queen should not be able to retain the profits it gained from Ms. Spencer and the putative class under these circumstances. Ms. Spencer and the putative class are entitled to restitution based on Dairy Queen's unjust enrichment as alleged in this complaint.

29.

Demand for jury trial.

30.

PRAYER FOR RELIEF

Ms. Spencer seeks relief as follows:

- A.** An order that Dairy Queen violated Oregon's Unlawful Trade Practices Act,
- B.** A judgment against Dairy Queen for the monetary value of at least five Blizzards per class member,
- C.** Reimbursement of litigation expenses, fees and costs, and
- D.** For any other relief this Court may determine is fair and proper.

July 13, 2018

RESPECTFULLY FILED,

s/ Michael Fuller

Michael Fuller, OSB No. 09357

Lead Trial Attorney for Ms. Spencer

OlsenDaines

US Bancorp Tower

111 SW 5th Ave., Suite 3150

Portland, Oregon 97204

michael@underdoglawyer.com

Direct 503-743-7000

PROOF OF MAILING

I declare and certify that on the date below I caused a copy of this complaint to be mailed to the following:

**Ellen Rosenblum
Oregon Attorney General
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096**

July 13, 2018

s/ Michael Fuller
Michael Fuller, OSB No. 09357
Lead Trial Attorney for Ms. Spencer
OlsenDaines
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Direct 503-743-7000

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.**

Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Oregon

MARIEL SPENCER

Plaintiff

v.

INTERNATIONAL DAIRY QUEEN, INC.

Defendant

)
)
)
) Civil Action No. 3:18-cv-1252
)
)
)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* International Dairy Queen, Inc.
c/o registered agent The Corp. Trust Co.
Corporation Trust Center 1209 Orange St.
Wilmington, DE 19801

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Mariel Spencer
c/o attorney Michael Fuller
US Bancorp Tower
111 SW 5th Ave., Suite 3150
Portland, Oregon 97204

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk