

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

Walter Coleman, Marco DiLeonardo,
Matthew Fox, and Madelyn Salzman on
behalf of themselves and all others similarly
situated,

Plaintiffs,

vs.

Burger King Corporation,

Defendant.

Case No.:

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs Walter Coleman, Marco DiLeonardo, Matthew Fox, and Madelyn Salzman, by and through their undersigned counsel, upon personal knowledge as to themselves and upon information and belief as to all other matters, allege as follows:

1. Plaintiffs bring this action against defendant Burger King Corporation (referred to herein as “Burger King” or “Defendant”), on behalf of themselves and all other similarly situated individuals who purchased a Burger King menu item based on false and misleading advertising concerning the size and/or the amount of ingredients contained in said menu item.

FACTUAL ALLEGATIONS

2. This is a class action against Burger King for unfair and deceptive trade practices concerning the sale of certain falsely advertised menu items.

3. Burger King advertises its burgers as large burgers compared to competitors and containing oversized meat patties and ingredients that overflow over the bun to make it appear that the burgers are approximately 35% larger in size, and contain more than double the meat, than the actual burger.

4. For example, Burger King currently represents that Burger King's Whopper looks as follows on its website and store menu ordering boards:



See https://www.bk.com/menu/picker-picker_5520.

5. However, Burger King's Whopper burger actually looks as follows:



See <https://www.insider.com/best-and-worst-burgers-at-burger-king-ranked#double-cheeseburger-199-4>.

6. Burger King began to materially overstate the size of its burgers in its advertisements in September 2017.

7. Prior to Burger King's introduction of overstated burger photos, Burger King more fairly advertised the size of the Whopper on its website and store menus as follows:



8. A side-by-side comparison of Burger King's former Whopper advertisement to the current Whopper advertisement shows that the burger increased in size by approximately 35% and the amount of beef increased by more than 100%.

FORMER ADVERTISEMENT



CURRENT ADVERTISEMENT



9. Although the size of the Whopper increased materially in Burger King's advertisements, the recipe or the amount of beef or ingredients contained in Burger King's Whopper has never changed.

10. A side-by-side comparison of the Whopper that customers actually receive and Burger King's current Whopper advertisement is as follows:

ACTUAL WHOPPER



CURRENT ADVERTISEMENT



11. Burger King materially overstates the size of nearly every menu item in its current advertisements, including the Impossible Whopper, Big King, Single Quarter Pound King, Bacon King, Double Whopper, Triple Whopper With Cheese, Whopper Jr., Bacon Double Cheeseburger, Double Cheeseburger, Bacon Cheeseburger, Cheeseburger, Hamburger, Whopper Melt, Bacon Whopper Melt, Spicy Whopper Melt, Breakfast Bacon King, Fully Loaded Croissan'Wich, Double Sausage, and the Egg, & Cheese Croissan'Wich (each of these items are referred to at times herein as an "Overstated Menu Item").

12. For example, the current advertisement for Burger King's Big King burger and the Big King burger actually received by customers is as follows:

ACTUAL BIG KING



CURRENT ADVERTISEMENT



13. Expert fast-food critic, John Jurasek, an American YouTube personality, food critic and radio host, that has been featured by several media outlets, including CNN Money, New York Magazine, and Forbes, has recently criticized Burger King for overstating the size of its burgers.

14. Specifically, Mr. Jurasek stated in a review of Burger King's Big King burger, that "the picture [in Burger King's advertisements] makes you think that this thing is like, you know, two pounds or something, that it's going to be this massive, massive, sandwich...[but]...it's not that big. For six bucks, you know, the size is a little disappointing...." See <https://www.youtube.com/watch?v=HqMWcMei1bg&t=248s>.

15. Mr. Jurasek also stated, in a review of Burger King's Whopper Melt sandwich, that "I feel like this is kind of a recurring trend....I always feel like the picture [in Burger King's

advertisements] always makes it seem way bigger than what it really is. I look at this and, I don't know, it's just the picture makes it seem bigger...." See <https://youtu.be/-1Rnk8BC4oo?t=167>.

16. Another food reviewer, with a channel named SomethingNew, on YouTube, compared the Big King to Burger King's advertisement and stated "this Big King is like the big jester, this ain't the Big King Burger King...." See <https://youtu.be/IpHGmoWJs7s?t=146>.

17. A food reviewer, with a channel named Let Jay Try It, on Youtube, stated "I'm still disappointed on how small it [the Big King] is....To me, it's not worth the price." See <https://youtu.be/uxqnIYTOmZk?t=265>.

18. RDR Food Reviews, another food reviewer on YouTube, stated, in a review of Burger King's Whopper Melt, "it's kind of another one of them deals where when you see the promotion, you're just like, oh my god, that looks sexy good, but when you get it, you get fairly, kind of disappointed." See <https://youtu.be/DuqwuP9NFkE?t=317>.

19. Another food reviewer on YouTube, RobbieP2 Vlogs, in a review of the Big King burger, stated "come on BK, in reality, this is just, nothing but, a plain little double cheeseburger dressed with a few toppings....thought you were the King but right now you are nothing but a prince, heck, you're probably not even court jester, with this tiny thing." See <https://youtu.be/a0MDmGsQc6U?t=117>.

20. A recent article published on March 14, 2022, by Eat This, Not That!, titled "Burger King's Newest Sandwiches Are Making Customers Feel Cheated", cited numerous complaints by Burger King customers who felt cheated by the size of Burger King's Whopper Melts. See <https://www.eatthis.com/news-burger-kings-newest-sandwiches-are-making-customers-feel-cheated/>.

21. Several consumers posted complaints on Twitter. Some examples include the following:



Do not order the Whopper Melt. Somehow [@burgerking](#) managed to trick customers into ordering a smaller "Whopper" for \$5 on literal pieces of bread.

So disappointing. The bread wasn't even toasted and it's tiny AF. Their pictures advertising it are highly misleading.

3:13 AM · Mar 14, 2022 · Twitter for Android

3 Likes



Never been so disappointed upon receiving and unwrapping my whopper melt. So those are my pics but [@BurgerKing](#) WHAT IS THIS !?!?!



1:00 PM · Mar 12, 2022 · Twitter for iPhone

5 Likes



Colin J. McMahon
@cj_mcmahon



Replying to @skaterjo3 and @BurgerKing

So disappointing.



1:04 AM · Mar 15, 2022 · Twitter for iPhone



Space Monkey
@beezeedesigner



Hey @BurgerKing. I order a "Big" King, and get this? Now I'm reading articles about how your new Whopper Melts are tiny too. Wtf is going on? I'll come back when you stop scamming us. I used to be a 2 time a weeker!



5:37 PM · Mar 17, 2022 · Twitter Web App



22. This is not the first time that Burger King has materially overstated the size of its burgers in advertisements.

23. Approximately 12 years ago, Burger King was ordered to stop advertising overstated burgers by the Advertising Standards Authority (“ASA”), the United Kingdom’s regulator of advertising.

24. “The Advertising Standards Authority said it bought three burgers and found their thickness and the overall height was ‘considerably less’ than in the ad....The Advertising

Standards Authority (ASA) said: ‘We also examined the size of the burgers in the hands of an average-sized man and considered that they did not fill the hands to the same extent as the burger featured in the advert’....‘We concluded that the visuals in the advert were likely to mislead viewers as to the size and composition of the product.’” See <https://www.bbc.com/news/uk-10699456>.

25. Burger King’s advertisements for its burger and menu items are unfair and financially damaging consumers as they are receiving food that is much lower in value than what was promised.

26. Burger King’s actions are especially concerning now that inflation, food, and meat prices are very high and many consumers, especially lower income consumers, are struggling financially.

27. Burger King’s promise to consumers of a large portion of food with their purchase are also causing consumers to come to, or order from, Burger King and make purchases that they would not have otherwise made.

28. Burger King is also unfairly competing with burger chains that more fairly advertise the size of their burger and menu items.

29. Burger King promises large portions of food to steer consumers to Burger King for their meals and away from competitors that more fairly advertise the size of their burgers and menu items, unfairly diverting millions of dollars in sales that would have gone to competitors.

30. For example, the following consumer posted on Twitter that he was disappointed with the size of the Big King and should have went to Wendys.



Leo McIllaney
@LMcIllaney



@BurgerKing so this is the BIG king? Looks very small, the McDouble I had from @McDonalds yesterday was bigger. Should have went to @Wendys



2:46 AM · Mar 6, 2022 · Twitter for iPhone

1 Retweet 1 Like

31. Plaintiffs, on behalf of themselves and all others similarly-situated, seek to end Burger King's unfair and materially misleading advertising and request the following: 1) monetary damages fully compensating all individuals who were deceived by Defendant as a result of purchasing Defendant's Overstated Menu Items; 2) injunctive relief requiring Defendant to provide corrected advertising and/or to discontinue the Overstated Menu Items; and 3) such other relief as the Court deems necessary and appropriate.

THE PARTIES

32. Plaintiff Walter Coleman is a resident of the state of Florida. During the Class Period (defined below), Mr. Coleman purchased a Whopper and a Big King at a Burger King store located in the state of Florida. Mr. Coleman expected the burgers that he purchased to be similar in size to the pictures of the burgers in Burger King's advertisements and on Burger King's store menu ordering board. However, the size of the burgers that Mr. Coleman received were much smaller than advertised and he was financially damaged as a result. If Mr. Coleman knew that said burgers were much smaller than advertised, he would not have purchased the burgers.

33. Plaintiff Marco DiLeonardo is a resident of the state of New York. During the Class Period (defined below), Mr. DiLeonardo purchased a Whopper, a Big King, and a Whopper Melt at a Burger King store located in the state of New York. Mr. DeLeonardo expected the burgers that he purchased to be similar in size to the pictures of the burgers in Burger King's advertisements and on Burger King's store menu ordering board. However, the size of the burgers that Mr. DiLeonardo received were much smaller than advertised and he was financially damaged as a result. If Mr. DiLeonardo knew that said burgers were much smaller than advertised, he would not have purchased the burgers.

34. Plaintiff Matthew Fox is a resident of the state of New York. During the Class Period (defined below), Mr. Fox purchased a Whopper and a Big King at a Burger King store located in the state of New York. Mr. Fox expected the burgers that he purchased to be similar in size to the pictures of the burgers in Burger King's advertisements and on Burger King's store menu ordering board. However, the size of the burgers that Mr. Fox received was much smaller than advertised and he was financially damaged as a result. If Mr. Fox knew that said burgers were much smaller than advertised, he would not have purchased the burgers.

35. Plaintiff Madelyn Salzman is a resident of the state of New York and a part-year resident of Florida. During the Class Period (defined below), Ms. Salzman purchased a Big King at a Burger King store located in the state of Florida. Ms. Salzman expected the burger that she purchased to be similar in size to the pictures of the burger in Burger King's advertisements and on Burger King's store menu ordering board. However, the size of the burger that Ms. Salzman received was much smaller than advertised and she was financially damaged as a result. If Ms. Salzman knew that said burger were much smaller than advertised, she would not have purchased the burger.

36. Defendant Burger King is a Florida corporation with its headquarters and principal place of business located in Miami, Florida.

JURISDICTION AND VENUE

37. This Court has original diversity jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2) ("CAFA"). Certain Plaintiffs are citizens of the State of New York, and Defendant is a citizen of the State of Florida and is headquartered with its principal place of business in the state of Florida. The matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and this is a class action in which the number of members of the proposed class is not less than 100.

38. In addition, this Court has diversity jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S. C. § 1332(a). The matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and certain members of the proposed class are citizens of states different from the state in which Defendant is a citizen.

39. Venue is proper pursuant to 28 U.S.C. § 1391. A substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this judicial district. Further, Defendant

resides in this judicial district for purposes of § 1391. Also, Defendant has used the laws within, and has done substantial business in, this judicial district in that it has promoted, marketed, distributed, and sold the products at issue in this judicial district. Finally, there is personal jurisdiction over Defendant in this judicial district.

CLASS ACTION ALLEGATIONS

40. Plaintiffs bring this action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2) and (b)(3) on behalf of the following class:

All persons or entities in the United States who purchased an Overstated Menu Item from Burger King between September 1, 2017 (the “Class Period”), and the date of the final disposition of this action, and/or such class or subclass as the Court may deem appropriate (the “Class”).

41. Plaintiffs reserve the right to amend the definition of the Class if discovery and further investigation reveals that the Class should be expanded or otherwise modified.

42. Plaintiffs reserve the right to establish sub-classes as appropriate.

43. This action is brought and properly may be maintained as a class action under the provisions of Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b)(2) and (b)(3), and satisfies the requirements thereof.

44. There is a well-defined community of interest among members of the Class, and the disposition of the claims of these members of the Class in a single action will provide substantial benefits to all parties and to the Court.

45. The members of the Class are so numerous that joinder of all members of the Class is impracticable. At this time, Plaintiffs believe that the Class includes thousands of members. Therefore, the Class is sufficiently numerous that joinder of all members of the Class in a single action is impracticable under Federal Rule of Civil Procedure Rule 23(a)(1), and the

resolution of their claims through the procedure of a class action will be of benefit to the parties and the Court.

46. Plaintiffs' claims are typical of the claims of the members of the Class whom they seek to represent because Plaintiffs and each member of the Class has been subjected to the same deceptive and improper practices by Defendant and have been damaged in the same manner.

47. Plaintiffs will fairly and adequately represent and protect the interests of the members of the Class as required by Federal Rule of Civil Procedure Rule 23(a)(4). Plaintiffs have no interests that are adverse to those of the members of the Class that they seek to represent. Plaintiffs are committed to the vigorous prosecution of this action and, to that end, Plaintiffs have retained counsel that is competent and experienced in handling complex class action litigation on behalf of consumers.

48. A class action is superior to all other available methods of the fair and efficient adjudication of the claims asserted in this Complaint under Federal Rule of Civil Procedure 23(b)(3) because:

- a. The expense and burden of individual litigation would not be economically feasible for members of the Class to seek to redress their claims other than through the procedure of a class action.
- b. If separate actions were brought by individual members of the Class, the resulting multiplicity of lawsuits would cause members to seek to redress their claims other than through the procedure of a class action; and
- c. Absent a class action, Defendant likely would retain the benefits of their wrongdoing, and there would be a failure of justice.

49. Common questions of law and fact exist as to the members of the Class, as required by Federal Rule of Civil Procedure 23(a)(2), and predominate over any questions that affect individual members of the Class within the meaning of Federal Rule of Civil Procedure 23(b)(3).

50. The common questions of fact include, but are not limited to, the following:

- a. Whether the nationwide practice by Defendant of selling falsely advertised menu items violates the applicable consumer protection statutes;
- b. Whether Defendant engaged in unlawful, unfair, misleading, or deceptive business acts or practices;
- c. Whether Defendant engaged in consumer fraud, deceptive trade practices, or other unlawful acts;
- d. Whether Defendant made any negligent misrepresentations;
- e. Whether Defendant was unjustly enriched; and
- f. Whether Plaintiffs and members of the Class are entitled to an award of reasonable attorneys' fees, pre-judgment interest, and costs of this suit.

51. In the alternative, this action is certifiable under the provisions of Federal Rule of Civil Procedure 23(b)(2) because Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole and necessitating that any such relief be extended to members of the Class on a mandatory, class-wide basis.

52. Plaintiffs are not aware of any difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

COUNT I
Violation of State Consumer Protection Laws

53. Plaintiffs incorporate by reference the allegations in every paragraph of this complaint.

54. Plaintiffs bring this claim on their own behalf and on behalf of all other persons or entities who purchased an Overstated Menu Item based on false representations as alleged herein of said product.

55. Plaintiffs and each member of the Class is a consumer, purchaser or other person entitled to the protection of the consumer protection laws of the state in which he/she purchased an Overstated Menu Item.

56. The consumer protection laws of the state in which Plaintiffs and each member of the Class who purchased an Overstated Menu Item declare that unfair or deceptive acts or practices in the conduct of trade or commerce are unlawful.

57. Each of the fifty states and the District of Columbia have enacted statutes designed to protect consumers against unfair, deceptive, fraudulent and unconscionable trade and business practices and false advertising. These statutes are:

- a. Alabama Deceptive Trade Practices Act, Ala. Statues Ann. §§ 8-19-1, *et seq.*;
- b. Alaska Unfair Trade Practices and Consumer Protection Act, Ak. Code § 45.50.471, *et seq.*;
- c. Arizona Consumer Fraud Act, Arizona Revised Statutes, §§ 44-1521, *et seq.*;
- d. Arkansas Deceptive Trade Practices Act, Ark. Code § 4-88-101, *et seq.*;
- e. California Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.*, and California's Unfair Competition Law, Cal. Bus. & Prof Code § 17200, *et seq.*;
- f. Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-101, *et seq.*;

- g. Connecticut Unfair Trade Practices Act, Conn. Gen. Stat § 42-110a, *et seq.*;
- h. Delaware Deceptive Trade Practices Act, 6 Del. Code § 2511, *et seq.*;
- i. District of Columbia Consumer Protection Procedures Act, D.C. Code § 28 3901, *et seq.*;
- j. Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. Ann. § 501.201, *et seq.*;
- k. Georgia Fair Business Practices Act, § 10-1-390 *et seq.*;
- l. Hawaii Unfair and Deceptive Practices Act, Hawaii Revised Statutes § 480 1, *et seq.*, and Hawaii Uniform Deceptive Trade Practices Act, Hawaii Revised Statutes § 481A-1, *et seq.*;
- m. Idaho Consumer Protection Act, Idaho Code § 48-601, *et seq.*;
- n. Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1, *et seq.*;
- o. Indiana Deceptive Consumer Sales Act, Indiana Code Ann. §§ 24-5-0.5-0.1, *et seq.*;
- p. Iowa Consumer Fraud Act, Iowa Code §§ 714.16, *et seq.*;
- q. Kansas Consumer Protection Act, Kan. Stat. Ann §§ 50 626, *et seq.*;
- r. Kentucky Consumer Protection Act, Ky. Rev. Stat. Ann. §§ 367.110, *et seq.*, and the Kentucky Unfair Trade Practices Act, Ky. Rev. Stat. Ann §§ 365.020, *et seq.*;
- s. Louisiana Unfair Trade Practices and Consumer Protection Law, La. Rev. Stat. Ann. §§ 51:1401, *et seq.*;

- t. Maine Unfair Trade Practices Act, 5 Me. Rev. Stat. § 205A, *et seq.*, and Maine Uniform Deceptive Trade Practices Act, Me. Rev. Stat. Ann. 10, § 1211, *et seq.*;
- u. Maryland Consumer Protection Act, Md. Com. Law Code § 13-101, *et seq.*;
- v. Massachusetts Unfair and Deceptive Practices Act, Mass. Gen. Laws ch. 93A;
- w. Michigan Consumer Protection Act, §§ 445.901, *et seq.*;
- x. Minnesota Prevention of Consumer Fraud Act, Minn. Stat. §§ 325F.68, *et seq.*; and Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.*;
- y. Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1, *et seq.*;
- z. Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010, *et seq.*;
- aa. Montana Unfair Trade Practices and Consumer Protection Act, Mont. Code §30-14-101, *et seq.*;
- bb. Nebraska Consumer Protection Act, Neb. Rev. Stat. § 59 1601, *et seq.*, and the Nebraska Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. § 87-301, *et seq.*;
- cc. Nevada Trade Regulation and Practices Act, Nev. Rev. Stat. §§ 598.0903, *et seq.*;
- dd. New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-A:1, *et seq.*;
- ee. New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8 1, *et seq.*;
- ff. New Mexico Unfair Practices Act, N.M. Stat. Ann. §§ 57 12 1, *et seq.*;
- gg. New York Deceptive Acts and Practices Act, N.Y. Gen. Bus. Law §§ 349, *et seq.*;
- hh. North Dakota Consumer Fraud Act, N.D. Cent. Code §§ 51 15 01, *et seq.*;

- ii. North Carolina Unfair and Deceptive Trade Practices Act, North Carolina General Statutes §§ 75-1, *et seq.*;
- jj. Ohio Deceptive Trade Practices Act, Ohio Rev. Code. Ann. §§ 4165.01. *et seq.*;
- kk. Oklahoma Consumer Protection Act, Okla. Stat. 15 § 751, *et seq.*;
- ll. Oregon Unfair Trade Practices Act, Rev. Stat § 646.605, *et seq.*;
- mm. Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Penn. Stat. Ann. §§ 201-1, *et seq.*;
- nn. Rhode Island Unfair Trade Practices And Consumer Protection Act, R.I. Gen. Laws § 6-13.1-1, *et seq.*;
- oo. South Carolina Unfair Trade Practices Act, S.C. Code Laws § 39-5-10, *et seq.*;
- pp. South Dakota's Deceptive Trade Practices and Consumer Protection Law, S.D. Codified Laws §§ 37 24 1, *et seq.*;
- qq. Tennessee Trade Practices Act, Tennessee Code Annotated §§ 47-25-101, *et seq.*;
- rr. Texas Stat. Ann. §§ 17.41, *et seq.*, Texas Deceptive Trade Practices Act;
- ss. Utah Unfair Practices Act, Utah Code Ann. §§ 13-5-1, *et seq.*;
- tt. Vermont Consumer Fraud Act, Vt. Stat. Ann. tit. 9, § 2451, *et seq.*;
- uu. Virginia Consumer Protection Act, Virginia Code Ann. §§ 59.1-196, *et seq.*;
- vv. Washington Consumer Fraud Act, Wash. Rev. Code § 19.86.010, *et seq.*;
- ww. West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-6-101, *et seq.*;
- xx. Wisconsin Deceptive Trade Practices Act, Wis. Stat. §§ 100.18, *et seq.*;
- yy. Wyoming Consumer Protection Act, Wyoming Stat. Ann. §§ 40-12-101, *et seq.*

58. The Overstated Menu Items marketed and sold by Defendant constitute products to which these consumer protection laws apply.

59. Defendant violated the above stated consumer protection laws by its deceptive practices and Plaintiffs and Class members were damaged as a result, the exact amount to be determined at trial.

COUNT II
Breach of Contract

60. Plaintiffs incorporate by reference the allegations in every paragraph of this complaint.

61. Defendant, through its advertising in store and online, offered Overstated Menu Items based on the materially false and misleading advertisements described above.

62. Plaintiffs and numerous other customers purchased said Overstated Menu Items based on Defendant's representations.

63. Defendant breached its sales contracts with Plaintiffs and similarly situated customers who purchased an Overstated Menu Item.

64. Defendant failed to disclose that the Overstated Menu Items were smaller than advertised.

65. As a result of Defendant's breach of contract, Plaintiffs and similar purchasers of an Overstated Menu Item suffered damages, the exact amount to be determined at trial.

COUNT III
Negligent Misrepresentation

66. Plaintiffs incorporate by reference the allegations in every paragraph of this complaint.

67. Defendant, directly or through its agents and employees, made false representations, concealments, and nondisclosures to Plaintiffs and members of the Class.

68. Defendant, through its advertising in store and online, offered Overstated Menu Items based on the materially false and misleading advertisements described above.

69. Defendant made and intended the misrepresentations to induce the reliance of Plaintiffs and members of the Class to purchase an Overstated Menu Item.

70. Plaintiffs and numerous other customers purchased an Overstated Menu Item based on Defendant's representations.

71. Defendant failed to disclose that the Overstated Menu Items were smaller than advertised.

72. In making the representations of fact to Plaintiffs and members of the Class described herein, Defendant has failed to fulfill its duty to disclose the material facts set forth above. The direct and proximate cause of this failure to disclose was Defendant's negligence and carelessness.

73. Defendant, in making the misrepresentations and omissions, and in doing the acts alleged above, knew or reasonably should have known that the representations were not true.

74. Plaintiffs and members of the Class reasonably relied upon these false representations and nondisclosures by Defendant when purchasing an Overstated Menu Item, which reliance was justified and reasonably foreseeable.

75. As a result of Defendant's wrongful conduct, Plaintiffs and members of the Class have suffered damages, the exact amount to be determined at trial.

COUNT IV
Unjust Enrichment

76. Plaintiffs incorporate by reference the allegations in every paragraph of this complaint.

77. By its wrongful acts and omissions, Defendant has been unjustly enriched at the expense of Plaintiffs and members of the Class, and thus Plaintiffs and members of the Class were unjustly deprived of time and value of money provided to Defendant.

78. It would be inequitable and unconscionable for Defendant to retain the profit, benefit, and other compensation they obtained from the deceptive, misleading, unfair and unlawful conduct alleged herein.

79. Plaintiffs and members of the Class seek restitution from Defendant, and seek an order of this Court disgorging all profits, benefits, and other compensation obtained by Defendant from its wrongful conduct.

RELIEF REQUESTED

80. Accordingly, Plaintiffs, on behalf of themselves and the members of the Class, seek judgment as follows:

1. Certifying the Class as requested herein, certifying Plaintiffs as the representatives of the Class, and appointing Plaintiffs' co-counsel as co-counsel for the Class;

2. Ordering that Defendant is financially responsible for notifying all members of the Class of the alleged misrepresentations and omissions set forth herein;

3. Awarding Plaintiffs and the members of the Class compensatory damages in an amount according to proof at trial;

4. Awarding restitution and disgorgement of Defendant's revenues to Plaintiffs and members of the Class;

5. Awarding declaratory and injunctive relief, including: enjoining Defendant from continuing the unlawful practices as set forth herein, and directing Defendant to identify, with Court supervision, victims of their conduct and pay them restitution and disgorgement of all monies acquired by Defendant by means of any act or practice declared by this Court to be wrongful or unlawful;

6. Awarding to Plaintiffs and the Class punitive damages;

7. Ordering Defendant to stop selling Overstated Menu Items or to correct the deceptive behavior;

8. Awarding interest on the monies wrongfully obtained from the date of collection through the date of entry of judgment in this action;

9. Awarding attorneys' fees, expenses, and recoverable costs reasonably incurred in connection with the commencement and prosecution of this action; and

10. Directing such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs and the Class demand a trial by jury as to all matters so triable.

Dated: March 28, 2022

/s/ Anthony J. Russo, Jr.

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

DEFENDANTS
County of Residence of First Listed Defendant
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
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excludes Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise
TORTS: PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Medical Malpractice; PRISONER PETITIONS: Habeas Corpus: 463 Alien Detainee, 510 Motions to Vacate Sentence, 530 General, 535 Death Penalty; Other: 540 Mandamus & Other, 550 Civil Rights, 555 Prison Condition, 560 Civil Detainee - Conditions of Confinement
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC 881, 690 Other
LABOR: 710 Fair Labor Standards Act, 720 Labor/Management Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Employee Retirement Income Security Act
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157
INTELLECTUAL PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 835 Patent - Abbreviated New Drug Application, 840 Trademark, 880 Defend Trade Secrets Act of 2016
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g))
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party 26 USC 7609
OTHER STATUTES: 375 False Claims Act, 376 Qui Tam (31 USC 3729(a)), 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit (15 USC 1681 or 1692), 485 Telephone Consumer Protection Act, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes

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 - Transfer, 8 Multidistrict Litigation - Direct File

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 RULE 23, F.R.Cv.P. 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.Cv.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; **NOTE: 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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- 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.
 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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 actual dollar amount 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. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: