

MAR-24-2008 14:02

FROM-BRIAN W SMITH PA

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T-679 P.003/022 F-901

IN THE CIRCUIT COURT OF THE 4TH JUDICIAL CIRCUIT
IN AND FOR CLAY COUNTY, FLORIDA

RICHARD and TARI MONTALBANO,
individually, and as parents and natural
guardians of their minor daughter,
O [REDACTED]

CASE NO.:
CIVIL CIRCUIT

3:06-cv-298-j-25 MCR

Plaintiffs,

v.

McDONALD'S CORPORATION, a foreign corporation
and THE KING GROUP INC., a Florida corporation,

Defendants.

AMENDED COMPLAINT

The Plaintiffs, RICHARD and TARI MONTALBANO, individually, and as parent and natural guardians of their minor daughter, O [REDACTED] M [REDACTED] sue the Defendants, Mc DONALD'S CORPORATION, a foreign corporation and THE KING GROUP INC., a Florida corporation, and allege:

GENERAL ALLEGATIONS

1. This is an action for damages in excess of the sum of Fifteen Thousand Dollars (\$15,000.00) exclusive of interest and costs.

PARTIES

2. At all times material hereto, Plaintiffs, RICHARD and TARI MONTALBANO, were husband and wife and residents of Orange Park, Clay County, Florida. They have one minor child, a daughter, O [REDACTED] M [REDACTED], whose date of birth is [REDACTED], 2001.

3. At all times material hereto, Defendant, McDONALD'S CORPORATION ("McDonald's"), was a Delaware corporation authorized to do and is doing business in Florida, to wit: manufacturing, selling, promoting, and distributing fast food products, including french fries, in Clay County, Florida.

4. The Defendant, McDONALD'S CORPORATION, entered into either formal and/or informal agreements with Defendant, THE KING GROUP INC. so that THE KING GROUP INC. would sell and distribute McDonald's fast food products, including french fries, in Clay County, Florida.

5. The Defendant, McDONALD'S CORPORATION, is thus conclusively presumed to be both engaged in substantial and not isolated activities within Florida and operating, conducting, engaging in, or carrying on a business or business venture in Florida.

6. The Defendant, McDONALD'S CORPORATION, has accepted the privileges extended by law to nonresidents of this State to operate, conduct, engage in, or carry on a business or business venture in this State and thus, has appointed the Secretary of State of Florida as its agent on whom all process in this action against it arising out of any transaction or operation connected with or incidental to the business or business venture may be served.

7. The Defendant, THE KING GROUP INC. ("KING GROUP"), is a Florida corporation with its principal place of business in Clay County, Florida. At all times material hereto, Defendant, KING GROUP, was in the business of marketing, promoting, selling and/or distributing McDonald's fast food products in the State of Florida. Further, at all times material hereto, KING GROUP and/or its divisions or affiliates, entered into formal and informal agreements with McDONALD'S CORPORATION, to act as a distributor of McDonald's fast food products. In these agreements, KING GROUP, and/or

its divisions or affiliates agreed to provide nutritional information to enhance provider and public awareness of selected products, including Mc Donald's french fries. Upon information and belief, the aforesaid nutritional information contained false and fraudulent misrepresentations regarding the safety and nutritional composition of Mc Donald's french fries.

GENERAL FACTS APPLICABLE TO ALL COUNTS

8. As used herein, "Defendants" refers collectively to the Defendants, McDONALD'S CORPORATION and KING GROUP.

9. Defendants, independently and collectively, created, manufactured, designed, tested, labeled, supplied, packaged, distributed, marketed, advertised and/or sold Mc Donald's french fries in the State of Florida.

10. At all times material hereto, Defendants had control of the design, assembly, packaging, marketing, advertising, manufacturing, labeling, testing, promoting, distribution and/or sale of Mc Donald's french fries.

11. Mc Donald's french fries were widely advertised and/or promoted by the aforesaid Defendants as containing no gluten or "any wheat" ingredients and were, therefore, safe for consumption by persons, such as the minor Plaintiff, who were allergic to or had an intolerance for foods containing gluten and wheat ingredients.

12. The minor Plaintiff, O [REDACTED] M [REDACTED], suffers from an intolerance of and/or allergy to food products containing gluten and wheat ingredients. As a result, Plaintiffs, RICHARD and TARI MONTALBANO, have been diligent in assuring that their daughter does not consume food products containing gluten and wheat ingredients.

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13. The Plaintiffs, RICHARD and TARI MONTALBANO, purchased McDonald's french fries from the Defendant's restaurants located in Clay County, to be consumed by their minor daughter O. M. [REDACTED] during the years 2004, 2005 and 2006 and the minor Plaintiff did consume McDonald's french fries during those years. The french fries were purchased at stores located in Orange Park, Florida, which are owned by the Defendant, McDONALD'S CORPORATION. French fries were also purchased at stores owned by the Defendant, KING GROUP, also located in Orange Park, Florida. These french fries were purchased and consumed based on representations by the Defendants that the french fries were gluten free, did not contain any gluten or wheat ingredients, and were safe for consumption by persons, such as the minor Plaintiff, who were allergic to or had an intolerance for foods containing gluten and wheat ingredients.

14. Consumption of the Defendant's french fries, containing gluten and wheat ingredients has caused the minor Plaintiff to become seriously ill. Among other conditions, the minor Plaintiff suffers from Celiac Disease and other intestinal problems as a result of consuming McDonald's french fries.

COUNT I-
STRICT PRODUCT LIABILITY

15. The Plaintiffs adopt by reference all of the General Allegations contained in Paragraphs 1 through 14 above, as though fully set forth herein.

16. At all times material hereto, the Defendants, individually and collectively, have engaged in the business of selling, distributing, supplying, designing, manufacturing, marketing and promoting McDonald's french fries, which were defective and unreasonably dangerous to consumers who are allergic to or had an intolerance for foods containing gluten and wheat ingredients, including the minor Plaintiff.

17. At all times material hereto, McDonald's french fries were expected to reach, and did reach, consumers in the State of Florida, who are allergic to or had an intolerance for foods containing gluten and wheat ingredients, including the minor Plaintiff, without substantial changes in the condition in which they were sold.

18. At all times material hereto, McDonald's french fries were in a defective and unreasonably dangerous condition at the time they were placed in the stream of commerce in ways which include, but are not limited to, one or more of the following particulars:

- a. When placed in the stream of commerce, McDonald's french fries contained unreasonably dangerous design defects and were not reasonably safe as intended to be consumed by persons who are allergic to or had an intolerance for foods containing gluten and wheat ingredients, including the minor Plaintiff, subjecting the minor Plaintiff to unreasonable risks of harm;
- b. When placed in the stream of commerce, McDonald's french fries were defective in design and formulation, making their consumption unreasonably dangerous to persons who are allergic to or had an intolerance for foods containing gluten and wheat ingredients, including the minor Plaintiff;
- c. The Defendants failed to conduct sufficient testing on McDonald's french fries which, if properly performed, would have shown that consumption of McDonald's french fries would have serious side effects on persons who are allergic to or had an intolerance for foods containing gluten and wheat ingredients, including the minor Plaintiff

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- d. McDonald's french fries were known to the Defendants to cause harmful side effects on persons who are allergic to or had an intolerance for foods containing gluten and wheat ingredients, and said side effects outweighed any potential utility of the food product; and
- e. McDonald's french fries were not safe for its intended use by customers who are allergic to or had an intolerance for foods containing gluten and wheat ingredients.

19. But for the aforementioned defective and unreasonably dangerous condition of McDonald's french fries, the minor Plaintiff would not have sustained the damages alleged herein.

20. As a proximate cause of the defective condition of McDonald's french fries, the minor Plaintiff, O [REDACTED] M [REDACTED], has sustained serious and permanent illnesses including, but not limited to: Celiac Disease and other intestinal problems. Damages also include pain, suffering and mental anguish, both in the past and in the future, accrued medical expenses, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, and other damages to be proven at trial. Plaintiff's illnesses are permanent and these damages and losses will continue in the future. Further, the minor Plaintiff, O [REDACTED] M [REDACTED] may have suffered an aggravation of pre-existing conditions.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory damages and punitive damages, if and when allowed, and all taxable costs of this action. Plaintiff's demand trial by jury of all issues to be tried.

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COUNT II
STRICT PRODUCT LIABILITY
(FAILURE TO WARN)

21. The Plaintiffs adopt by reference all of the General Allegations contained in Paragraphs 1 through 14 above, as though fully set forth herein.

22. McDonald's french fries were defective and unreasonably dangerous to persons who are allergic to or had an intolerance for foods containing gluten and wheat ingredients, including the minor Plaintiff, when they left the possession of the Defendants, in that they failed to contain warnings or contained warnings which either concealed or misled the consumer as to the dangerous risks and reactions associated with McDonald's french fries for persons who are allergic to or had an intolerance for foods containing gluten and wheat ingredients.

23. McDonald's french fries, manufactured and/or supplied by the Defendants, were not accompanied by proper warnings regarding all possible adverse side effects associated with the consumption of McDonald's french fries by persons who are allergic to or had an intolerance for foods containing gluten and wheat ingredients.

24. Plaintiffs could not have discovered any defect in McDonald's french fries through the exercise of reasonable care.

25. Plaintiffs did not have the knowledge and/or information they would have received from an adequate warning that the manufacturer or distributor should have communicated to the Plaintiffs.

26. Had adequate warnings or nutritional information been provided, Plaintiff would not have suffered the harmful side effects of gluten and wheat ingredients contained in McDonald's french fries.

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27. The Defendants had a continuing duty to warn consumers who are allergic to or had an intolerance for foods containing gluten and wheat ingredients, including the Plaintiff, of the dangers associated with consumption of McDonald's french fries.

28. As a proximate cause of the defective condition of McDonald's french fries, the minor Plaintiff, O [REDACTED] M [REDACTED] has sustained serious and permanent illnesses including, but not limited to: Celiac Disease and other intestinal problems. Damages also include pain, suffering and mental anguish, both in the past and in the future, accrued medical expenses, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, and other damages to be proven at trial. Plaintiff's illnesses are permanent and these damages and losses will continue in the future. Further, the minor Plaintiff, O [REDACTED] M [REDACTED] may have suffered an aggravation of pre-existing conditions.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory damages and punitive damages, if and when allowed, and all taxable costs of this action. Plaintiff demand trial by jury of all issues to be tried.

COUNT III
NEGLIGENCE

29. The Plaintiffs adopt by reference all of the General Allegations contained in Paragraphs 1 through 14 above, as though fully set forth herein.

30. Defendants, individually and collectively, created, manufactured, designed tested, labeled, supplied, packaged, distributed, marketed, advertised and/or sold Mc Donald's french fries in the State of Florida.

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31. At all times material hereto, Defendants had a duty to Plaintiff to exercise reasonable care in the making, creation, manufacture, assembly, design, testing, labeling, supplying, packaging, distribution, promotion, marketing, advertising and/or sale of their food products.

32. Defendants breached that duty and were negligent in their actions toward the minor Plaintiff, including but not limited to the following:

- a. Failure to include adequate warnings with Mc Donald's french fries that would alert consumers who are allergic to or had an intolerance for foods containing gluten and wheat ingredients, of the potential risks and serious side effects of consuming Mc Donald's french fries and that the french fries contained gluten and wheat ingredients;
- b. Failure to adequately and properly test Mc Donald's french fries for the presence of gluten and wheat ingredients before placing Mc Donald's french fries on the market;
- e. Failure to adequately warn consumers who are allergic to or had an intolerance for foods containing gluten and wheat ingredients, including the minor Plaintiff, that the consumption of Mc Donald's french fries carried a risk of an allergic reaction or serious illness;
- g. Failure to provide adequate post-marketing warnings or instructions after the Defendants knew or should have known of the presence of gluten and wheat ingredients in their french fries and of the significant risks of allergic reaction or serious illness from the consumption of Mc Donald's french fries.
- k. Encouraging the consumption of Mc Donald's french fries, while underplaying the side effects to consumers who are allergic to or had an intolerance for foods containing gluten and wheat ingredients, including the minor Plaintiff, in order to

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make a profit from sales; and

- i. Failure to provide accurate nutritional information regarding the presence of gluten and wheat ingredients in Mc Donald's french fries.

33. Defendants knew or should have known that Mc Donald's french fries contained gluten and wheat ingredients and caused unreasonably dangerous risks and serious side effects to consumers who are allergic to or had an intolerance for foods containing gluten and wheat ingredients, and the Plaintiff was not aware of such risks and serious side effects. Defendants nevertheless advertised, marketed, sold and distributed Mc Donald's french fries, knowing that there was a significant risk of allergic reaction and serious illness effects in consumers who are allergic to or had an intolerance for foods containing gluten and wheat ingredients.

34. But for the Defendants' negligent conduct, as described herein, the minor Plaintiff would not have consumed Mc Donald's french fries, and the minor Plaintiff would not have suffered illness, loss and damage.

35. As a proximate cause of the negligence of the Defendants, the minor Plaintiff, O [REDACTED] M [REDACTED] has sustained serious and permanent illnesses including, but not limited to: Celiac Disease and other intestinal problems. Damages also include pain, suffering and mental anguish, both in the past and in the future, accrued medical expenses, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, and other damages to be proven at trial. Plaintiff's illnesses are permanent and these damages and losses will continue in the future. Further, the minor Plaintiff, O [REDACTED] M [REDACTED] may have suffered an aggravation of pre-existing conditions

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory damages and

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punitive damages, if and when allowed, and all taxable costs of this action. Plaintiffs demand trial by jury of all issues to be tried.

COUNT IV
BREACH OF EXPRESS WARRANTY

36. The Plaintiffs adopt by reference all of the General Allegations contained in Paragraphs 1 through 14 above, as though fully set forth herein.

37. Defendants, individually and collectively, expressly warranted that McDonald's french fries did not contain any gluten and wheat ingredients, and it was safe for consumers, who are allergic to or had an intolerance for foods containing gluten and wheat ingredients, including the minor Plaintiff, to consume their french fries. In fact, Defendants posted information on their web site, warranting that McDonald's french fries were part of a "Gluten Free Menu".

38. McDonald's french fries did not conform to these express representations because McDonald's french fries were not gluten free, did contain gluten and other wheat ingredients, and it was not safe for consumers who are allergic to or had an intolerance for foods containing gluten and wheat ingredients, including the minor Plaintiff, to consume Defendants' french fries.

39. As a proximate cause of the breach of the express warranty, the minor Plaintiff, O [REDACTED] M [REDACTED] has sustained serious and permanent illnesses including, but not limited to: Celiac Disease and other intestinal problems. Damages also include pain, suffering and mental anguish, both in the past and in the future, accrued medical expenses, loss of capacity for the enjoyment of life, expense of

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hospitalization, medical and nursing care and treatment, and other damages to be proven at trial. Plaintiff's illnesses are permanent and these damages and losses will continue in the future. Further, the minor Plaintiff, [REDACTED] may have suffered an aggravation of pre-existing condition.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory damages and punitive damages, if and when allowed, and all taxable costs of this action. Plaintiffs demand trial by jury of all issues to be tried.

COUNT V
BREACH OF IMPLIED WARRANTY

40. The Plaintiffs adopt by reference all of the General Allegations contained in Paragraphs 1 through 14 above, as though fully set forth herein.

41. At all times material hereto, the Defendants marketed, sold and distributed McDonald's french fries for consumption by consumers who are allergic to or had an intolerance for foods containing gluten and wheat ingredients, such as the minor Plaintiff. Defendants impliedly warranted that McDonald's french fries were of merchantable quality, safe and fit for its intended consumption by consumers who are allergic to or had an intolerance for foods containing gluten and wheat ingredients, including the minor Plaintiff.

42. Plaintiff relied upon the skill and judgment of the Defendants as to whether McDonald's french fries were of merchantable quality, safe and fit for its intended consumption by consumers who are allergic to or had an intolerance for foods containing gluten and wheat ingredients.

43. Contrary to such implied warranty, McDonald's french fries were not of merchantable quality, safe or fit for its intended consumption by consumers who are allergic to or had an intolerance for foods containing gluten and wheat ingredients, because McDonald's french fries were and are unreasonably dangerous and unfit for the purpose for which it was to be consumed by consumers who are

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allergic to or had an intolerance for foods containing gluten and wheat ingredients.

44. As a proximate cause of the breach of implied warranty, the minor Plaintiff O [REDACTED] M [REDACTED] has sustained serious and permanent illnesses including, but not limited to: Celiac Disease and other intestinal problems. Damages also include pain, suffering and mental anguish, both in the past and in the future, accrued medical expenses, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, and other damages to be proven at trial. Plaintiff's illnesses are permanent and these damages and losses will continue in the future. Further, the minor Plaintiff O [REDACTED] M [REDACTED], may have suffered an aggravation of pre-existing conditions.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory damages and punitive damages, if and when allowed, and all taxable costs of this action. Plaintiffs demand trial by jury of all issues to be tried.

COUNT VI
FRAUDULENT MISREPRESENTATION
AND FRAUDULENT CONCEALMENT

45. The Plaintiffs adopt by reference all of the General Allegations contained in Paragraphs 1 through 14 above, as though fully set forth herein.

46. The Defendants, having undertaken the manufacturing, marketing, dispensing, distributing and promotion of Mc Donald's french fries, owed a duty to provide complete and accurate nutritional information regarding Mc Donald's french fries to the minor Plaintiff and anyone else they knew, or should have known, would consume Mc Donald's french fries. Nevertheless, the Defendants fraudulently and intentionally misrepresented material facts regarding the composition and safety of Mc Donald's french fries and failed to inform and did conceal from the Plaintiffs, material facts.

47. The Defendants fraudulently and intentionally misrepresented to the Plaintiffs and the general

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public that Mc Donald's french fries did not contain any gluten and wheat ingredients, and it was safe for consumers, who are allergic to or had an intolerance for foods containing gluten and wheat ingredients.

48. The Defendants fraudulently and intentionally misrepresented and concealed nutritional information regarding Mc Donald's french fries including, but not limited to, the fact that the French fries and or cooking oil and/or cooking process used to prepare their French fries contained gluten and wheat ingredients.

49. At the time that the fraudulent and intentional misrepresentations were made, the Defendants knew that Mc Donald's french fries were unsafe for consumption by consumers who are allergic to or had an intolerance for foods containing gluten and wheat ingredients, and their consumption posed a risk of allergic reaction and/or serious illness.

50. The fraudulent misrepresentations of and/or active concealment alleged above were perpetuated directly and/or indirectly by the Defendants, acting in their individual and/or collective capacities.

51. The fraudulent misrepresentations of the Defendants took the form of publically disseminated misinformation and elaborate marketing, promotional and advertising activities designed to conceal and mislead the public about the nutritional composition and safety of Mc Donald's french fries.

52. The Defendants knew that these representations were false and/or misleading at the time they were made, omitted or concealed, and they made the aforesaid misrepresentations with the intent or purpose that the minor Plaintiff, and others similarly situated, would rely on them, leading to the consumption of Mc Donald's french fries by the minor Plaintiff.

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53. At the time of Defendants' fraudulent misrepresentations, neither the minor Plaintiff nor her parents were aware of the falsity of the statements being made, and her parents believed them to be true. Plaintiffs had no knowledge of the information concealed and/or suppressed by Defendants.

54. Plaintiffs justifiably relied on and/or were induced by the fraudulent misrepresentations and/or active concealment and the absence of accurate nutritional information, which the Defendants suppressed, concealed and failed to disclose.

55. Defendants had a post-sale duty to warn the Plaintiffs about the potential risks and complications associated with the consumption of their french fries by consumers who are allergic to or had an intolerance for foods containing gluten and wheat ingredients, including the minor Plaintiff.

56. The fraudulent misrepresentations of and/or active concealment by the Defendants constitute a continuing fraud.

57. Defendants made the fraudulent misrepresentations and/or actively concealed this information with the intention and specific desire that the minor Plaintiff and the consuming public would rely on such, or the absence of information, in selecting McDonald's french fries as a food product that was free of any gluten and wheat ingredients.

58. As a proximate cause of the fraudulent misrepresentations regarding McDonald's french fries, the minor Plaintiff, O [REDACTED] M [REDACTED] has sustained serious and permanent illnesses including, but not limited to: Celiac Disease and other intestinal problems. Damages also include pain, suffering and mental anguish, both in the past and in the future, accrued medical expenses, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, and other damages to be proven at trial. Plaintiff's illnesses are permanent and these damages and losses will

continue in the future. Further, the minor Plaintiff, O [REDACTED] M [REDACTED], may have suffered an aggravation of pre-existing conditions. these damages and losses will continue in the future.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory damages and punitive damages, if and when allowed, and all taxable costs of this action. Plaintiffs demand trial by jury of all issues to be tried.

COUNT VII
NEGLIGENT MISREPRESENTATION
AND NEGLIGENT CONCEALMENT

59. The Plaintiffs adopt by reference all of the General Allegations contained in Paragraphs 1 through 14 above, each inclusive, as though fully set forth herein.

60. The Defendants, having undertaken the manufacturing, marketing, dispensing, distributing and promotion of Mc Donald's french fries, owed a duty to provide complete and accurate information regarding Mc Donald's french fries to the minor Plaintiff and anyone else they knew, or should have known, would consume Mc Donald's french fries. Nevertheless, the Defendants misrepresented material facts regarding the composition and safety of Mc Donald's french fries and negligently failed to inform and did conceal from the Plaintiff, material facts regarding their french fries.

61. The Defendants negligently misrepresented to the Plaintiff and the general public that Mc Donald's french fries did not contain any gluten and wheat ingredients, and it was safe for consumers, who are allergic to or had an intolerance for foods containing gluten and wheat ingredients to consume their french fries.

62. The Defendants negligently misrepresented and concealed nutritional information regarding McDonald's french fries, including, but not limited to the fact that the French fries and or cooking oil and/or cooking process used to prepare their French fries contained gluten and wheat ingredients.

63. McDonald's French fries were unsafe for consumption by consumers who are allergic to or had an intolerance for foods containing gluten and wheat ingredients, and the consumption of the french fries by such persons posed a risk of allergic reaction and serious illness, which outweighed the purported benefits of its consumption, such that serious illness was caused to the minor Plaintiff.

64. Defendants negligently misrepresented and actively concealed adverse information at a time when they knew or should have known that McDonald's french fries had defects, dangers and characteristics that were other than what the Defendants had represented about McDonald's french fries to the consuming public, including the minor Plaintiff.

65. The negligent misrepresentations of and/or concealment alleged above were perpetuated directly and/or indirectly by the Defendants, acting in their individual and/or collective capacities.

66. The negligent misrepresentations of the Defendants took the form of publically disseminated misinformation designed to conceal and mislead about the nutritional composition and safety of McDonald's french fries.

67. The Defendants knew or should have known that these representations were false and/or misleading at the time they were made, omitted or concealed and they made the aforesaid misrepresentations with the intent or purpose that the minor Plaintiff, and others similarly situated, would rely on them, leading to the consumption of McDonald's french fries by the minor Plaintiff.

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68. At the time of Defendants' negligent misrepresentations, Plaintiffs were unaware of the falsity of the statements being made and believed them to be true. Plaintiffs had no knowledge of the information concealed and/or suppressed by Defendants.

69. Plaintiffs justifiably relied on and/or were induced by the negligent misrepresentations and/or active concealment and the absence of accurate information, which the Defendants suppressed, concealed and failed to disclose.

70. Defendants had a post-sale duty to warn the Plaintiffs about the potential risks and complications associated with the consumption of their french fries by consumers who are allergic to or had an intolerance for foods containing gluten and wheat ingredients, including the minor Plaintiff.

71. The negligent misrepresentations of and/or active concealment by the Defendants constitute a continuing tort.

72. Defendants negligently made the misrepresentations when it was foreseeable that the minor Plaintiff and the consuming public would rely on such information, or the absence of information, in selecting Mc Donald's french fries as a food product free of gluten and wheat ingredients.

73. As a proximate cause of the negligent misrepresentation and/or omissions regarding Mc Donald's french fries, the minor Plaintiff, O [REDACTED] M [REDACTED] has sustained serious and permanent illnesses including, but not limited to: Celiac Disease and other intestinal problems. Damages also include pain, suffering and mental anguish, both in the past and in the future, accrued medical expenses, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, and other damages to be proven at trial. Plaintiff's illnesses are permanent and these damages and losses

will continue in the future. Further, the minor Plaintiff, **[REDACTED]**, may have suffered an aggravation of pre-existing conditions.

WHEREFORE, Plaintiffs demand judgment against Defendants for compensatory damages and punitive damages, if and when allowed, and all taxable costs of this action. Plaintiffs demand trial by jury of all issues to be tried.

COUNT VI
VIOLATION OF THE FLORIDA DECEPTIVE AND
UNFAIR TRADE PRACTICES ACT

74. The Plaintiffs adopt by reference all of the General Allegations contained in Paragraphs 1 through 14 above, each inclusive, as thought fully set forth herein.

75. The sale for the french fries at issue in this cause was a "consumer transaction" within the scope of the Florida Deceptive and Unfair Trade Practices Act, Sections 501.201 to 201.213, Florida Statutes.

76. Plaintiffs were consumers of food products from the Defendants, including the subject french fries.

77. Plaintiffs have never been engaged in the business of the sale of food products.

78. In engaging in the above described conduct, Defendants committed an unfair and deceptive act or practice in connection with the marketing, distribution and sale of its french fries, in that Defendant knew that the french fries could not be consumed for the purposes for which Plaintiffs bought them, without suffering illness.

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79. As a result of Defendants' fraudulent conduct, Plaintiffs have suffered actual damages including, but not limited to medical expenses, which were proximately caused by Defendants' violation of the Florida Deceptive and Unfair Trade Practices Act.

WHEREFORE, Plaintiffs request judgment against Defendants for actual damages, reasonable attorney's fees and cost of suit, pursuant to Sections 501.211(2), Florida Statutes, and any further relief that the court may deem just and proper and further demand trial by jury.

DATED this 23rd day of March, 2006.

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