

RETURN DATE: NOVEMBER 17, 2009

**REBECCA DELIO and MARY-ANN  
ELLISON, for themselves and OTHERS  
SIMILARLY SITUATED,**

**Plaintiffs,**

**vs.**

**MCDONALD'S CORPORATION,  
BURGER KING CORPORATION, and  
FRIENDLY ICE CREAM  
CORPORATION,**

**Defendants**

**SUPERIOR COURT  
JUDICIAL DISTRICT OF HARTFORD  
AT HARTFORD**

**OCTOBER 6, 2009**

**COMPLAINT**

1. This Complaint seeks damages for Named Plaintiffs and injunctive and declaratory relief for the Class to prevent Defendants from continuing to unlawfully sell their grilled chicken products to Connecticut consumers while concealing the carcinogenic risk from ingesting these products.
2. Despite Defendants' awareness that their grilled chicken products expose consumers to a chemical known to cause cancer, Defendants knowingly and intentionally sold and continue to sell their grilled chicken products to Connecticut consumers.
3. Through the conduct of their retail operations, Defendants violate the Connecticut Unfair Trade Practices Act, CONN. GEN. STAT. § 42-110a *et seq.* ("CUTPA"), by engaging in unfair methods of competition and unfair or deceptive acts or practices.

**PARTIES**

**Named Plaintiffs**

4. Plaintiff Rebecca Delio, residing at 1435 Bedford St., Apt #6B in Stamford, Connecticut, is an individual representing a class of persons similarly situated, who purchased and ingested Defendants' grilled chicken products. Since before October 21 2006, Ms. Delio consumed approximately one grilled chicken product per week, at one of the following retail outlets in the State of Connecticut: a) Burger King, located at 1058 High Ridge Rd., Stamford, CT 06905; b) Burger King, located at 480 Westport Ave., Norwalk, CT 06851; c) McDonald's, located at 531 Westport Ave., Norwalk, CT 06851; and d) Friendly's, located on 275 Boston Post Rd., Darien, CT. This weekly consumption of grilled chicken products ended on or about the date of October 17, 2008, when Ms. Delio became aware of the carcinogenic risk from grilled chicken. However, at the times and locations of her purchases, there were no existing warnings at the retail outlets, on the packaging, or in the product advertisements about the increased cancer risk from the ingestion of grilled chicken products. Thus, Ms. Delio was denied the opportunities to make informed decisions about risk exposure, to not purchase Defendants' grilled chicken products, and to instead purchase healthful products.

5. Plaintiff Mary-Ann Ellison, residing at 210 Charles St. in Meriden, Connecticut, is an individual representing a class of persons similarly situated, who purchased and ingested Defendants' grilled chicken products. Since October 21, 2006, Ms. Ellison purchased and ingested approximately four grilled chicken products per month at the McDonald's located at 608 N. Colony Rd. (Rt. 5) in Wallingford, CT. Her consumption of grilled chicken products ended on or about October 17, 2008, when she was informed about the carcinogenic risks from consumption of grilled chicken. However, at the times and locations of her purchases, there were no existing warnings at the retail outlet, on the packaging, or in the product advertisements about the increased cancer risk from chicken products. Thus, Ms. Ellison was denied the opportunities to make informed decisions about risk exposure, to not purchase Defendants' grilled chicken products, and to instead purchase healthful products.

### Defendants

6. Defendant McDonald's Corporation, a Delaware corporation authorized to transact business in the State of Connecticut, directly or indirectly—through its subsidiaries, franchisees, and/or licensees—distributes, sells, and has sold to consumers at all of its Connecticut retail outlets the following grilled chicken products: Premium Grilled Chicken Classic Sandwich, Premium Grilled Chicken Club Sandwich, Premium Grilled Chicken Ranch BLT Sandwich, Chipotle BBQ Snack Wrap (Grilled), Premium Southwest Salad with Grilled Chicken, and Premium Bacon Ranch Salad with Grilled Chicken.

7. Defendant Burger King Corporation, a Delaware corporation authorized to transact business in the State of Connecticut, directly or indirectly—through its subsidiaries, franchisees, and/or licensees—distributes, sells, and has sold to consumers at some or all of its Connecticut retail outlets the following grilled chicken products: Tendergrill Chicken Sandwich and Tendergrill Chicken Garden Salad.

8. Defendant Friendly Ice Cream Corporation, a Massachusetts corporation authorized to transact business in the State of Connecticut, directly or indirectly—through its subsidiaries, franchisees, and/or licensees—distributes, sells, and has sold to consumers at some or all of its Connecticut retail outlets the following grilled chicken products: Grilled Chicken Deluxe Sandwich, BBQ Chicken Platter, and Cheddar Jack Chicken with Grilled Chicken.

9. This Court has jurisdiction over Defendants because they conduct sufficient business in Connecticut and have sufficient minimum contacts in Connecticut to render jurisdiction over them by Connecticut courts consistent with traditional notions of fair play and substantial justice.

10. The venue for filing this enforcement action in Hartford County is expressly permitted, pursuant to CONN. GEN. STAT. § 42-110g(a), because Defendants do business in Hartford County.

### CLASS ALLEGATIONS

11. Rebecca Delio and Mary-Ann Ellison bring this suit pursuant to Connecticut Practice Book §§ 9-7 and 9-8, on behalf of themselves and the Plaintiff Class, which includes all individuals who have purchased and ingested or will purchase and ingest one or more grilled chicken products from one or more of Defendants' Connecticut retail outlets from October 21, 2006 to October 21, 2009. Unless this Court provides relief, Defendants will continue to omit warnings from their advertisements, menus, and retail outlets about the presence of PhIP in their grilled chicken products and the associated cancer risk to consumers from Defendants' grilled chicken products. Thus, each Plaintiff class member was and is damaged by Defendants' deliberate decisions to omit material information about their grilled chicken products in violation of CUTPA.

12. Pursuant to Practice Book §§ 9-7 and 9-8, Plaintiff Class satisfies the requirements to maintain this suit as a class action:

- a. The Class is so numerous that joinder of all members is impracticable, given the huge numbers of Defendants' retail outlets and consumers of Defendants' grilled chicken products;
- b. There are common questions of law and fact, including without limitation the following:
  - i. Is 2-AMINO-1-METHYL-6-PHENYLIMIDAZO[4,5-*b*]PYRIDINE ("PhIP") a known carcinogen?
  - ii. Is the presence of PhIP material to consumer decisions to purchase Defendants' products?
  - iii. Do Defendants have a duty to warn about the presence of a known carcinogen in their grilled chicken products?

- iv. Do Defendants intentionally omit information and/or warnings about the carcinogenic risks from their grilled chicken products in order to reap the benefit of additional sales?
  - v. Do Defendants' omissions of information and/or warnings about the presence of PhIP cause Defendants' representations about their grilled chicken products to be unfair or deceptive?
  - vi. Are the injuries to Plaintiffs sufficient to warrant an injunction?
- c. The claims or defenses of the representative parties are typical of the claims or defenses of the Class. Specifically, all claims are based on Defendants' unfair and deceptive acts and failures to act in violation of CUTPA. With respect to the injunctive and declaratory relief sought, there are no claims that other class members could assert that Named Plaintiffs cannot assert, and there are no defenses that can be asserted against Named Plaintiffs that could not be asserted against other class members;
- d. The representative parties will fairly and adequately protect the interests of the Class. Named Plaintiffs are motivated to obtain full relief for themselves and the Class and have no claims antagonistic to those of the Class. Plaintiffs' attorneys are well-qualified and have considerable experience in filing class actions. Named Plaintiffs share interests in common with the Class and the source of Named Plaintiffs' injuries is the same as that of the entire Class.
- e. Defendants' omissions and misrepresentations of material information about the healthfulness of their grilled chicken products, which could inform safe customer purchase decisions, are questions of law or fact common to the Class that predominate over any questions affecting individual Class members. Injunctive relief is the only relief that can remedy the Class's damages and protect the public at large from Defendants' unlawful and unconscionable

conduct. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

#### FACTS

13. PhIP is a chemical that does not naturally occur in chicken.
14. PhIP forms during the grilling process used by Defendants to cook their grilled chicken products.
15. Connecticut consumers ingest PhIP when they purchase and ingest grilled chicken products sold by Defendants at all of their Connecticut retail outlets, including outlets located in the County of Hartford.
16. Defendants are responsible for exposing their customers to PhIP because Defendants choose to use cooking methods that cause PhIP to form in their grilled chicken products.
17. Defendants are large, sophisticated corporations engaged in the preparation, service, and sale of food.
18. Defendants McDonald's Corporation and Burger King Corporation engage in business in California.
19. Friendly Ice Cream Corporation is a sophisticated food service company assumed to be aware of health issues pertinent to restaurants anywhere in the United States.
20. On October 1, 1994, PhIP was listed as a known carcinogen by the State of California. As of that date, if not sooner, Defendants, along with all other nationwide restaurant chains, were on notice that their grilled chicken products contained a known carcinogen.
21. At all times relevant hereto, Defendants knew or should have known that their grilled chicken products contain PhIP, a known carcinogen. Despite that knowledge, Defendants have elected to conceal that material fact from consumers.

22. Outside of the scientific oncology community and upper management of national restaurant chains, few people are aware of the presence of PhIP in grilled, flame-grilled, or barbequed chicken.

23. Upon information and belief, Defendants concealed the presence of a known carcinogen in their grilled chicken products to retain profits that would be lost, in whole or in part, as a result of properly informed consumers choosing other food products.

24. Upon information and belief, if Defendants had truthfully informed consumers of the presence of a known carcinogen in their grilled chicken products, many, if not most, consumers would have chosen to avoid the increased cancer risk by choosing healthier food options that did not contain carcinogenic chemicals.

25. By omitting a material fact about the increased cancer risk from ingesting Defendants' grilled chicken products, Defendants intended to generate and/or increase consumer purchases of their grilled chicken products from the consumer reliance created by these omissions. Defendants' omissions and accompanying intent are unfair and deceptive business practices that violate CUTPA, CONN. GEN. STAT. § 42-110b.

26. PhIP ingestion increases a consumer's risk of cancer. No safe level for ingestion of food products containing PhIP has been established by any governmental entity within the United States.

27. Defendants knew or should have known and should be aware that no safe level for ingestion of food products containing PhIP has been established by any governmental entity within the United States.

28. As a matter of efficient judicial administration and practicability, Named Plaintiffs represent a Class of consumers, similarly situated, who purchased or will purchase Defendants' grilled chicken products in Connecticut.

29. This action is brought on behalf of both Named Plaintiffs and the represented Plaintiff Class. The Plaintiff Class consists of all consumers who purchased or will purchase grilled chicken items at any retail outlet owned by Defendants in Connecticut

from October 21, 2006 to October 21, 2009 without having received warnings or information about either the presence of PhIP in Defendants' grilled chicken products or the increased cancer risk from PhIP through ingestion of Defendants' grilled chicken products.

30. Warning signs are the primary relief sought by this action and the only relief sought for the unnamed class members. These signs will advise consumers about the presence of a known carcinogen in Defendants' grilled chicken products. They will be prominently posted at all of Defendants' retail outlets, on their menus, and in advertisements for grilled chicken products, located or distributed in Connecticut. Such warnings might include:

**WARNING: WELL-DONE GRILLED, FLAME-GRILLED, OR BARBEQUED CHICKEN CONTAINS CHEMICALS KNOWN TO CAUSE CANCER.**

**WARNING: WELL-DONE GRILLED, FLAME-GRILLED, OR BARBEQUED CHICKEN, INCLUDING THE GRILLED CHICKEN SERVED IN THIS RESTAURANT, CONTAINS CHEMICALS KNOWN TO CAUSE CANCER.**

**WARNING: THOROUGHLY COOKED GRILLED CHICKEN, INCLUDING THE GRILLED CHICKEN SERVED IN THIS RESTAURANT, CONTAINS CHEMICALS KNOWN TO CAUSE CANCER.**

31. Plaintiffs seek injunctive relief mandating at least one of the aforesaid warnings and a declaratory judgment determining Defendants' obligations to provide effective warnings about the increased cancer risk from ingesting Defendants' grilled chicken products.

32. As a direct result of Defendants' unlawful and unconscionable consumer practices that violated CUTPA, Named Plaintiffs suffered an ascertainable loss: the purchase prices

of the products. No damages are sought for any unnamed class member other than attorneys' fees and costs of suit.

33. Scientists from the Physicians Committee for Responsible Medicine ("PCRM") and The Cancer Project conducted an analysis of grilled chicken products sold directly or indirectly by Defendants McDonald's Corporation and Burger King Corporation in the State of California.

34. Using a scientifically valid methodology, the scientists purchased grilled chicken product samples from retail outlets owned or operated by McDonald's Corporation and Burger King Corporation, including their operating subsidiaries, franchisees, and/or licensees in the State of California. Each sample was tagged using a code system, which blinded the testing laboratory to the source of the sample, and shipped to Columbia Analytical Services. Columbia Analytical Services is an independent environmental testing laboratory certified by the National Environmental Laboratory Accreditation Conference Institute ([www.nelac-institute.org](http://www.nelac-institute.org)), whose results are recognized by all states and the U.S. Environmental Protection Agency.

35. Columbia Analytical Services tested a total of 100 samples of grilled chicken products for PhIP.

36. All of the tested grilled chicken samples were found to contain substantial levels of the known carcinogen, PhIP.

37. Upon information and belief, Defendants' grilled chicken products are prepared in the same manner throughout the United States.

38. Upon information and belief, the grilled chicken products tested in California are identical to the grilled chicken products sold by Defendants' Connecticut restaurants.

39. PhIP is listed as a chemical known to the State of California to cause cancer or reproductive toxicity. State of California Environmental Protection Agency Office of Environmental Health Hazard Assessment, *Safe Drinking Water and Toxic Enforcement Act of 1986, Chemicals Known to the State to Cause Cancer or Reproductive Toxicity*,

August, 2000, available at: <http://www.oehha.ca.gov/prop65/pdf/80400LSTA.pdf> (last visited Aug. 20, 2009).

40. The international scientific community and the United States government recognize PhIP as a possible and suspected cause of cancer in humans. National Toxicology Program, U.S. Department of Health and Human Services, Public Health Service, *Report on Carcinogens, Eleventh Edition*, available at <http://ntp.niehs.nih.gov/index.cfm?objectid=32BA9724-F1F6-975E-7FCE50709CB4C932> (last visited Aug. 28, 2009); IARC (International Agency for Research on Cancer). *Monographs on the Evaluation of Carcinogenic Risks to Humans* 229-242, IARC 56 (1993).

41. The cancer risk from exposure to PhIP has been known for decades. HCAs, the class of chemicals to which PhIP belongs, were first discovered in 1977. Nagao, M. and Sugimura, T., *FOODBORNE CARCINOGENS: HETEROCYCLIC AMINES* (John Wiley & Sons 2002). As early as the 1970s, dietary exposure to PhIP was implicated as a factor in cancer rates. Knize, J. and Felton, J., *Formation and Human Risk of Carcinogenic Heterocyclic Amines Formed from Natural Precursors in Meat*, 63 *NUTRITION REVIEWS* 158 (2005).

42. Numerous studies have addressed the genotoxicity of HCAs. Genotoxicity concerns the adverse effects of physical and chemical agents on the genetic material in cells and the subsequent results of changes to those cells. HCAs are highly mutagenic in *Salmonella typhimurium*, *Escherichia coli*, and cultured human cells. Other genotoxicity studies have demonstrated that HCAs induce DNA strand breaks, chromosomal aberrations, and sister chromatid exchanges. "There is a general consensus that human exposure to potent genotoxic [HCAs] produced in meat during cooking is widespread. . . . Data show that, even at low doses, [HCAs] form DNA adducts in . . . humans." Knize and Felton (2005), *supra*.

43. HCAs, including PhIP, have also been the subject of numerous human epidemiological studies, the vast majority of which strongly suggest a correlation between consumption of well-done meat and multisite carcinogenesis in humans. Studies have found compelling correlations between PhIP exposure and several types of cancer, including colorectal, breast, pancreatic, and prostate. R. Sinha et al., *2-amino-1-methyl-6-phenylimidazo[4,5-b]pyridine, a carcinogen in high-temperature-cooked meat, and breast cancer risk*, 92 JOURNAL OF THE NATIONAL CANCER INSTITUTE 1352 (2000); S. Nowell et al., *Analysis of total meat intake and exposure to individual heterocyclic amines in a case-control study of colorectal cancer: contribution of metabolic variation to risk*, 506-507 MUTATION RESEARCH 175 (2002); AJ Cross et al., *A prospective study of meat and meat mutagens and prostate cancer risk*, 65 CANCER RESEARCH. 11779 (2005); LM Butler et al., *Heterocyclic amines, meat intake and association with colon cancer in a population-based study*, 157 AM J EPIDEMIOLOGY. 434 (2003). KE Anderson et al., *Meat intake and cooking techniques: associations with pancreatic cancer*, 506-507 MUTATION RESEARCH 225 (2002).

44. Chicken is high in some types of PhIP precursors such as arginine, glutamic acid, leucine, phenylalanine, tyrosine, and isoleucine. Knize, supra. Grilled chicken therefore has been found to contain particularly high levels of PhIP. R. Sinha, *An Epidemiologic Approach to Studying Heterocyclic Amines*, 506-507 MUTATION RESEARCH 197 (2002).

45. Upon information and belief, Defendants knew or should have known about the carcinogenic risk from ingestion of food products containing PhIP based on a reasonable review of the available scientific data.

46. Even if Defendants had neither reviewed the available scientific data regarding PhIP, nor became aware of the October 1, 1994 listing of PhIP as a chemical known to the State of California to cause cancer, PCRMC sent notices to Defendants McDonald's Corporation and Burger King Corporation in April 2006.

