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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Eugina Harris, individually, and on behalf
of those similarly situated,

Plaintiff,

v.

McDonald's Corporation,

Defendant.

CASE NO. 3:20-cv-06533-RS

**FIRST AMENDED CLASS ACTION
COMPLAINT**

Demand for Jury Trial

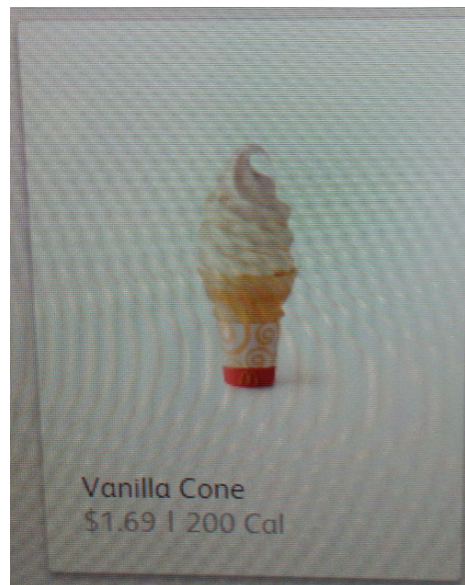
1 Plaintiff Eugina Harris (“Plaintiff”), on behalf of herself and others similarly situated
2 brings this Class Action Complaint against McDonald’s Corporation (“Defendant” or
3 “McDonald’s”), and on the basis of personal knowledge, information and belief, and investigation
4 of counsel, allege as follows:

5 **INTRODUCTION**

6 1. Defendant manufactures distributes, markets, labels and sells “soft serve” ice
7 cream or reduced fat ice cream purporting to be flavored by real vanilla under their
8 “McDonald’s” brand (“Product, ”“Products,” or “Vanilla Soft Serve Ice Cream”).

9 2. During the Class Period (as defined below), Plaintiff Eugina Harris purchased the
10 Products in California.

11 3. McDonald’s falsely and misleadingly markets the Products to consumers as being
12 flavored predominantly with real vanilla - derived from vanilla beans - through representations of
13 its soft serve ice cream as “Vanilla Cone.”



23 4. McDonald’s vanilla representations lead a significant number of consumers to
24 believe that real vanilla is the primary ingredient that flavors the Products.

25 5. This belief is consistent not only with the studies referenced herein but also with
26 the strict federal regulations concerning vanilla which were passed to protect vanilla consumers
27 from being deceived about the ingredients which flavor consumer products.

6. Rather, in stark contrast to Defendant’s representations and reasonable consumers’ reliance, the Product contains non-vanilla, artificial flavors, not disclosed to consumers and far less vanilla than consumers expect.

7. McDonald’s menu boards in its restaurants, drive through displays, self-service kiosks, website, conventional and digital advertising, social media marketing and point-of-sale displays identify the Product as “Vanilla.”

8. The Product’s representation of “Vanilla” “leads consumers to believe that it is flavored primarily with real vanilla.”¹

9. McDonald’s markets its company as a values based company focused on “quality food.”²

10. For example, in its most SEC filing, McDonald’s puts a great emphasis on its “quality ingredients.” In fact, it is mentioned multiple times as being part of the company’s purpose:³

a. “The safety and quality of our food is a top priority and we are constantly innovating to strive to meet and exceed our customers’ expectations. This also includes sourcing **quality ingredients** in responsible ways, supporting farming communities and evolving the Happy Meal to make balanced meals more accessible to families around the globe.”

b. McDonald’s partners with a global network of suppliers and farmers to provide **quality ingredients** and packaging materials. By engaging our supply chain, we have greater visibility and together work toward commitments that support more sustainable production, so we can continue to serve our customers delicious meals they know and love.

¹ Hallagan and Drake at 54; *See also* 21 U.S.C. §343(g) (requiring ingredients to be listed with “the name of the food specified in the definition and standard”); 21 C.F.R. § 101.4(a)(1) (requiring ingredients “be listed by common or usual name”).

² <https://www.mcdonalds.com/us/en-us/about-us/values-in-action.html>

³ McDonald’s 2021 Notice of Annual Shareholders’ Meeting and Proxy Statement, “Our Impact and Brand Purpose” at 10. https://www.sec.gov/Archives/edgar/data/63908/000120677421001039/mcd_courtesy-pdf.pdf (filed April 8, 2021).

11. This message is a core theme disseminated by Defendant’s executives to the public.

12. For example, Alistair Macrow, McDonald’s Global Chief Marketing Officer makes “quality ingredients” his mantra which he projects to the public at almost every opportunity:

a. “We want people to leave our restaurants feeling good about eating our food – not just because it’s delicious, but also we source **quality ingredients** and give customers options.”⁴

b. “...to the farmers who supply **quality ingredients** for our menu.”⁵

13. Rather than delivering quality, authentic vanilla ice cream in each Product, Defendant delivers an artificially boosted flavor purporting to be primarily sourced from real vanilla.

14. By deceptively representing the source of its vanilla flavoring, Defendant is able to generate a greater number of sales and produce a larger profit than it would if it didn’t make its deceptive vanilla representations.

15. Plaintiff seeks damages and an injunction to stop Defendant’s false and misleading marketing practices with regards to its Vanilla Soft Serve Ice Cream.

⁴ McDonald’s website, “Food Quality and Sourcing,” <https://corporate.mcdonalds.com/corpmcd/our-purpose-and-impact/food-quality-and-sourcing.html> (emphasis added).

⁵ Little Black Book News, “Leo Burnett Pays Tribute to the Green Guardians of the Farm in New McDonald's Spot,” August 18, 2014, <https://www.lbbonline.com/news/leo-burnett-pays-tribute-to-the-green-guardians-of-the-farm-in-new-mcdonalds-spot> (emphasis added).

JURISDICTION

1 16. This Court has jurisdiction over this action under the Class Action Fairness Act,
2 28 U.S.C. § 1332(d).

3 17. The amount in controversy exceeds the sum or value of \$5,000,000, exclusive of
4 interest and costs, and the parties are citizens of different states.

5 18. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial
6 part of the events and misrepresentations giving rise to Plaintiff's claims occurred in this District,
7 and Defendant (1) is authorized to conduct business in this District and has intentionally availed
8 itself of the laws and markets of this District through the promotion, marketing, distribution and
9 sale of its products here, (2) resides in this District, and (3) is subject to personal jurisdiction in
10 this District.

PARTIES

11 19. Plaintiff Eugina Harris is a resident of the City of Oakland and County of
12 Alameda, California. During the Class Period (as defined below), in California, she purchased
13 the Product for personal, family, or household consumption and/or use regularly and consistently
14 during at least 2019 and 2020.

15 20. Plaintiff Eugina Harris purchased the Product at McDonald's locations including
16 but not necessarily limited to the location at 6300 E 14th St, Oakland, CA 94621.

17 21. Plaintiff would not have purchased - or would have paid less for - the Product had
18 Plaintiff realized that much of the vanilla flavor came from non-vanilla plant sources.

19 22. Defendant advertised the Product as "Vanilla."

20 23. Plaintiff relied upon these representations when she purchased the Product. She
21 believed that the vanilla flavor in the Product was primarily sourced from real vanilla (i.e.
22 primarily from vanilla beans and the vanilla plant). Plaintiff would not have purchased the
23 Product had Plaintiff understood the true flavor composition of the Product. Plaintiff would
24 purchase the Product again in the future if the Product were remedied to reflect Defendant's
25 labeling and marketing claims for it.
26
27

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