

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION**

CASE NO.: \_\_\_\_\_

POPEYES LOUISIANA KITCHEN, INC.,

Plaintiff,

vs.

FLORIDA POP, LLC; POP RESTAURANT  
HOLDINGS, LLC AND GUILLERMO PERALES,

Defendants.

\_\_\_\_\_ /

**COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES**

Plaintiff Popeyes Louisiana Kitchen, Inc. (“Popeyes”) sues Defendants Florida Pop, LLC (“Company”), Pop Restaurant Holdings, LLC (“PRH”) and Guillermo Perales (“Perales”) (PRH and Perales are hereinafter collectively the “Guarantors”)(Guarantors and Company are hereinafter collectively “Defendants”) and states:

1. This is an action to enjoin Defendants’ unauthorized use of Popeyes’ valuable trademarks and service marks in connection with their unlawful operation of three restaurants as authorized POPEYES® restaurants, as well as for damages under the Lanham Act and the agreements between the parties.

**THE PARTIES**

2. Plaintiff Popeyes is a Minnesota corporation with its principal place of business in Miami, Florida.

3. Defendant Company is a Texas limited liability company with its principal place of business in Dallas, Texas.

4. Defendant PRH is a Delaware limited liability company with its principal place of business in Dallas, Texas.

5. Defendant Perales is a resident of and domiciled in the State of Texas

### **JURISDICTION AND VENUE**

6. Popeyes operates and franchises restaurants throughout the world, including the United States. Founded over twenty-five years ago, Popeyes now has more than 2,700 franchised restaurants in the world.

7. Popeyes' franchise operations are conducted and supervised from its world headquarters located in Miami, Florida. Popeyes and Defendants have carried on a continuous course of direct communications by mail, e-mail and by telephone through Popeyes' headquarters in Miami, Florida.

8. The course of dealing between Popeyes and its franchisees, including Defendants, shows that decision-making authority is vested in Popeyes' headquarters in Miami, Florida.

9. Defendants have breached contracts which were to be performed in Florida due to their failure to cease use of the POPEYES® trademarks and system after their franchise agreements were terminated. These breaches have caused damage to Popeyes at its headquarters in Miami, Florida.

10. This Court has jurisdiction over this action based upon:

(a) Section 39 of the Lanham Act, 15 U.S.C. § 1121, and 28 U.S.C. §§ 1331, 1337, and 1338(a), for the claims arising out of Defendants' violations of Sections 32, 43(a) and 44 of the Lanham Act, 15 U.S.C. §§ 1114, 1125(a) and 1126; and

(b) 28 U.S.C. § 1338(b), and the doctrine of supplemental jurisdiction as codified in 28 U.S.C. § 1367, for the claims arising out of Defendants' breaches of contracts and

common law unfair competition.

11. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. § 1391 and the forum selection clauses agreed to by the parties in their written agreements.

12. Defendants have agreed in writing that in litigation to enforce the terms of the agreements between Popeyes and Defendants, Popeyes, as the prevailing party, shall be paid by Defendants all costs, including attorneys' fees, incurred as a result.

13. Popeyes has engaged the undersigned counsel and has agreed to pay counsel reasonable attorneys' fees for all services rendered in this action and otherwise in connection with enforcing the agreements between Popeyes and Defendants.





### **THE POPEYES' MARKS**

14. To identify the source, origin and sponsorship of Popeyes' facilities, products, and services, Popeyes has extensively employed, caused to be advertised and publicized throughout the United States (and elsewhere) certain distinctive symbols as trademarks and service marks (the "Marks"). Popeyes owns and was the first to adopt and use the Marks as trademarks and service marks and all right, title and interest in and to the Marks and the design, decor and image of POPEYES® restaurants remains vested solely in Popeyes in Miami, Florida.

15. Popeyes operates and franchises POPEYES® restaurants using the Marks on signs, menu boards, posters, uniforms, packaging, cups and other items in advertising to the public through television, print media and the internet.

16. Set forth below is an abbreviated listing of the Marks registered to Popeyes in the United States Patent and Trademark Office:

| Trademark         | Status     | Application Number | Application Date | Registration Number | Registration Date | Class |
|-------------------|------------|--------------------|------------------|---------------------|-------------------|-------|
| LOVE THAT CHICKEN | Registered | 88/915690          | 05/14/2020       | 6444181             | 08/10/2021        | 43    |

| Trademark  | Status     | Application Number | Application Date | Registration Number | Registration Date | Class          |
|--|------------|--------------------|------------------|---------------------|-------------------|----------------|
| LOVE THAT CHICKEN FROM POPEYES   | Registered | 73/162712          | 03/17/1978       | 1257959             | 11/15/1983        | 42             |
| LOVE THAT CHICKEN! (Stylized)<br><b>LOVE THAT CHICKEN!</b>   | Registered | 73/162713          | 03/17/1978       | 1116753             | 04/17/1979        | 42             |
| P LOUISIANA KITCHEN Seal<br>                              | Registered | 77/506282          | 06/24/2008       | 3681087             | 09/08/2009        | 29, 43         |
| POPEYES  | Registered | 73/029940          | 08/19/1974       | 1021254             | 09/23/1975        | 42             |
| POPEYES  | Registered | 73/052658          | 05/19/1975       | 1030944             | 01/20/1976        | 29             |
| POPEYES  | Registered | 88/883839          | 04/23/2020       | 6399724             | 06/29/2021        | 29, 30, 35, 43 |
| POPEYES  | Registered | 73/162707          | 03/17/1978       | 121096              | 06/26/1979        | 29             |
| POPEYES  | Registered | 73/162627          | 03/17/1978       | 1121699             | 07/10/1979        | 30             |
| POPEYES  | Registered | 73/766279          | 11/29/1988       | 1552225             | 08/15/1989        | 35             |
| POPEYES (Stylized Standing Letters) (Color)<br><b>POPEYES</b>  | Registered | 90/605817          | 03/26/2021       | 6860748             | 09/27/2022        | 43             |
| POPEYES (Stylized)<br>                                  | Registered | 73/361550          | 04/26/1982       | 1267567             | 02/21/1984        | 29, 30, 42     |
| POPEYES LOUISIANA KITCHEN & Design<br>                  | Registered | 77/506242          | 06/24/2008       | 3681086             | 09/08/2009        | 29, 43         |
| POPEYES LOUISIANA KITCHEN (Standing Lockup) (Color)<br> | Registered | 90/605835          | 03/26/2021       | 6860749             | 09/27/2022        | 43             |

17. The registrations of the Marks are currently in full force and effect, and Popeyes has given notice to the public of the registration of the Marks as provided in 15 U.S.C. § 1111.

18. Pursuant to franchise agreements between Popeyes and its franchisees, including Defendants, Popeyes grants its franchisees a limited license and authority to use and display the

Marks, but only in the manner prescribed by Popeyes. In no event is a franchisee authorized to use the Marks after the expiration or termination of its franchise. Such unauthorized use is expressly prohibited under the terms of all Popeyes franchise agreements, including Defendants' franchise agreements with Popeyes.

19. Popeyes and its franchisees have spent many millions of dollars in the United States and abroad advertising and promoting POPEYES® restaurants, services and products.

20. The substantial investment made in the Marks has resulted in valuable good will for the Marks in the United States and elsewhere and for the restaurants, products and services bearing those marks. Popeyes' products and services have met with popular approval and, as a result of Popeyes' extensive sales, advertising, promotion and publicity, the public throughout the world is familiar with the Marks. The products and services associated with the Marks are understood by the public to be produced, marketed, sponsored, supplied by and/or affiliated with Popeyes.

### **THE POPEYES SYSTEM**

21. Popeyes has developed a comprehensive restaurant operating system ("System") for all Popeyes' franchisees worldwide in order to protect the image of POPEYES® restaurants and to ensure uniform, high quality standards. The detailed specifications and procedures of the System are set forth in Popeyes' Operating Standards Manual (the "OPS Manual").

22. Every Popeyes franchisee is required by its franchise agreement to operate its franchise in accordance with the OPS Manual. The OPS Manual sets forth in detail the mandatory Popeyes' restaurant operating standards, specifications and procedures, including rules governing areas such as food preparation, handling, cleanliness, health, sanitation, quality and speed of service. In addition to these strict quality, service and cleanliness requirements, the OPS Manual

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