

**In the Circuit Court of the Seventeenth Judicial Circuit
In and For Broward County, Florida**

Case No.: CACE19019340
General Jurisdiction Division

PHILANA HOLMES and HUMBERTO CARABALLO ESTEVEZ,
As Mother and Father and Next Friends of O.H, a minor child,

Plaintiffs,

-vs-

UPCHURCH FOODS, INC. D/B/A MCDONALD'S,
a Florida Profit Corporation, and,
MCDONALD'S USA, LLC,
a Foreign Limited Liability Corporation,

Defendants.

AMENDED COMPLAINT FOR MONEY DAMAGES
AND DEMAND FOR TRIAL BY JURY

FISCHER REDAVID PLLC
4601 Sheridan Street
Suite 320
Hollywood, FL 33021
Telephone: (954) 860-8434
Facsimile: (954) 960-8584
Service@FRTrialLawyers.com (eService Only)
Litigation@FRTrialLawyers.com (Correspondence)

By: */s/ Jordan Redavid, Esq.*
JORDAN REDAVID, ESQ.
Florida Bar No. 109227
JOHN P. FISCHER, ESQ.
Florida Bar No. 99751
Attorneys for Plaintiffs

COMES NOW, the Plaintiffs, PHILANA HOLMES and HUMBERTO CARABALLO ESTEVEZ, as Mother and Father and Next Friends of O.H, their minor child, and allege as follows:

JURISDICTION

1. This is an action for damages in excess of fifteen thousand dollars (\$15,000.00), exclusive of attorneys' fees, costs, and interest, and venue is proper in Broward County, Florida as the incident underlying this action occurred in Tamarac, Broward County, Florida.

2. Plaintiffs, PHILANA HOLMES and HUMBERTO CARABALLO ESTEVEZ, were, at all times material, residents of Broward County, Florida, *sui juris*, and the Mother and Father and Next Friend of O.H., who was, at all times material, their four-year old daughter.

3. Defendant, UPCHURCH FOODS, INC. d/b/a McDONALD'S, is a Florida profit corporation with its principal place of business located at 7600 NW 57th Street, Tamarac, Broward County, Florida 33321 ("Restaurant").

4. Defendant, McDONALD'S USA, LLC, is a foreign limited liability company with its principal place of business in Illinois. At all times material, it was authorized to conduct business in Florida and engaged in substantial activity in Florida; including, but not limited to, selling, leasing, operating, and/or franchising fast-food restaurants; maintaining or employing agents to further business ventures in Broward County, Florida; owning, using, possessing, or holding a mortgage or other lien on any real property within this state; and, based on information and belief, receiving rental payments and/or dividends and/or a percentage of revenue or profit from UPCHURCH FOODS, INC.'s operation of its Restaurant. Also, this defendant caused injury to O.H. within Florida arising out of acts or omissions outside of this state when it engaged in service activities in Florida and products, materials, or things processed, serviced, or manufactured by it were used or consumed within Florida in the ordinary course of commerce, trade, or use.

GENERAL ALLEGATIONS

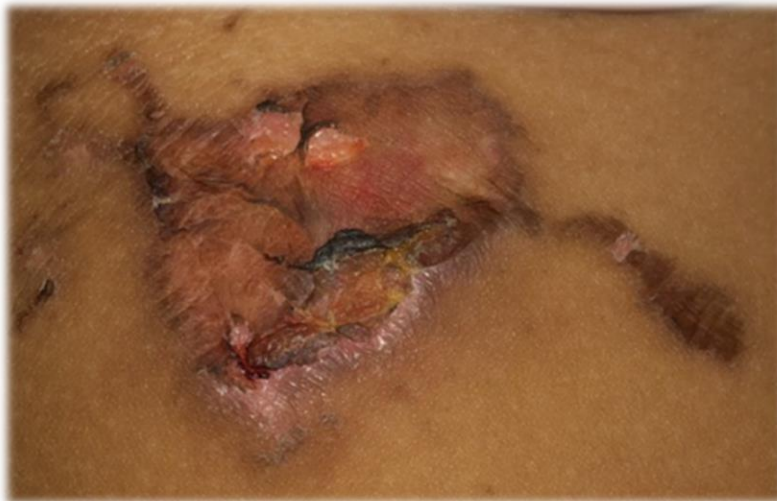
5. On or about August 21, 2019, at approximately 7:40 p.m., O.H. was a rear-seat passenger in a vehicle driven by her mother, PHILANA HOLMES. Her brother, also a minor, was seated beside her in the rear-seat.

6. O.H.'s mother drove her vehicle into the Restaurant's designated drive-thru lane where she placed (and paid for) an order for, *inter alia*, a six-piece Chicken McNuggets Happy Meal with milk and a toy.

7. An UPCHURCH FOODS, INC. employee handed PHILANA HOLMES a bag containing the various food items that she ordered, which included a separate box-container designed for children's Happy Meals inside of which were Chicken McNuggets. PHILANA HOLMES then provided the Happy Meal to her daughter, O.H.

8. The Chicken McNuggets inside of that Happy Meal were unreasonably and dangerously hot (in terms of temperature) and caused O.H.'s skin and flesh around her thighs to burn.

9. As a direct and proximate cause of the unreasonably and dangerously hot Chicken McNuggets, O.H., who was only four years old, is now disfigured and scarred.



COUNT I - STRICT LIABILITY
(As to Defendant Upchurch Foods, Inc. only)

10. Plaintiffs re-allege paragraphs 1 through 9 as if fully set forth herein.

11. At all times material, UPCHURCH FOODS, INC. operated its McDonald's fast-food Restaurant in Tamarac, Florida, in order to generate profit.

12. The Restaurant was engaged in the selling (or otherwise introducing into the stream of commerce) food and beverage products intended for human handling and consumption, including Chicken McNuggets, as well as toys intended to attract and/or entertain children.

13. At all times material, the UPCHURCH FOODS, INC. operated its Restaurant by and through its owners, employees, servants, agents, and/or apparent agents who acted within the course and scope of their respective employment and/or agency.

14. At all times material, UPCHURCH FOODS, INC. placed for sale, and distributed to O.H. by way of her mother, Chicken McNuggets that it knew, or should have known, would be handled by O.H. and her mother in an ordinary manner; including, that those Chicken McNuggets would make contact with the O.H. and/or her mother's skin.

15. At all times material, UPCHURCH FOODS, INC. knew or should have known that the Chicken McNuggets it provided to O.H. by way of her mother would not reasonably be tested for temperature separate and apart from the typical and ordinary methods used by the general public under similar circumstances (e.g. a customer physically touching them—making contact with their human skin).

16. At all times material, UPCHURCH FOODS, INC. knew, or should have known, that those Chicken McNuggets were unreasonably and dangerously high in temperature such that they were not fit for human handling with bare skin by their intended consumer.

17. At all times material, UPCHURCH FOODS, INC. knew, or should have known, that the Chicken McNuggets it intended to provide O.H.'s mother were defective, harmful, and unfit for human handling – let alone consumption – due to their temperature and that they would be received and handled by O.H. and/or her mother in a substantially unchanged condition.

18. At all times material, O.H., a minor child, was a foreseeable handler and/or consumer of those Chicken McNuggets given that she was a child and the nuggets were packaged in a Happy Meal container, which was designed and intended to be attractive to children and handled by children.

19. At all times material, UPCHURCH FOODS, INC. had a duty not to sell or distribute Chicken McNuggets that were unreasonably and dangerously hot in temperature such that they would be defective, harmful, and unfit for human handling – let alone consumption – when received and handled by customers in substantially unchanged condition.

20. At all times material, UPCHURCH FOODS, INC. breached that duty by selling or providing Chicken McNuggets to O.H. and her mother that were unreasonably and inherently dangerous to members of the general public due to their high temperature, including customers like them, when handled and used in their ordinary manner and foreseeable purpose.

21. As a direct and proximate result of UPCHURCH FOODS, INC.'s negligence, O.H. was seriously injured. She has incurred, and will continue to incur, medical expenses for reasonable and related medical treatment in the past and future; she has sustained bodily injuries, physical impairment, and disfigurement; experienced pain, suffering, mental anguish, and emotional distress; she has been and will continue to be inconvenienced; and her ability to enjoy life has been and will continue to be diminished.

WHEREFORE the Plaintiffs hereby demand judgment against the UPCHURCH FOODS, INC. for compensatory damages in an amount exceeding \$15,000, exclusive of interest and costs, reserves the right to later seek leave to amend for punitive damages, and request a trial by jury on all issues.

COUNT II - NEGLIGENCE
(As to Upchurch Foods, Inc., only)

22. Plaintiffs re-allege paragraphs 1 through 20 as if fully set forth herein.

23. At all times material, UPCHURCH FOODS, INC. further owed a duty to general public and its customers, including O.H. and her mother, to employ and/or retain competent employees, servants, and/or agents to operate its business in a reasonably safe manner.

24. At all times material, UPCHURCH FOODS, INC. further owed a duty to general public and its customers, including O.H. and her mother, to adequately train the employees servants, and/or agents it relied on to operate its Restaurant.

25. At all times material, UPCHURCH FOODS, INC. further owed a duty to general public and its customers, including O.H. and her mother, to adequately supervise the employees servants, and/or agents it relied on to operate its Restaurant.

26. At all times material, UPCHURCH FOODS, INC. further owed a duty to general public and its customers, including O.H. and her mother, to prepare and provide its food items to customers in a reasonably safe manner, including that such items were safe for ordinary handling.

27. At all times material, UPCHURCH FOODS, INC. further owed a duty to general public and its customers, including O.H. and her mother, to comply with, and adhere to, corporate policies and/or procedures and/or expectations as it relates to the safety of customers/consumers with respect to food items sold and provided to them.

28. At all times material, UPCHURCH FOODS, INC. further owed a statutory duties under Sections 500.04, 500.10, 500.13, Florida Statutes.

29. Based on information and belief, UPCHURCH FOODS, INC. breached the afore-stated duties in the following ways:

- a. Failing to provide training on making sure the oil within fryers used to cook Chicken McNuggets was not too high;
- b. Failing to supervise its employees, servants, and/or agents to make sure that they maintained the proper temperature of the oil in the fryers used to cook Chicken McNuggets;
- c. Failing to provide adequate training on how to check the temperature of Chicken McNuggets once they were removed from a fryer but before they are provided to customers/consumers;
- d. Failing to have adequate policies and/or procedures on checking the temperature of Chicken McNuggets prior to providing them to customers/consumers;
- e. Failing to supervise its employees, servants, and/or agents to make sure that they properly check the temperature of Chicken McNuggets once they were removed from a fryer but before they are provided to customers/consumers;
- f. Failing to provide adequate training that all food items placed inside of a Happy Meal container were not unreasonably or dangerously hot, defective, dangerous, unfit for handling, or unfit for human consumption;
- g. Failing to have adequate policies and/or procedures on checking that all food items placed inside of a Happy Meal container were not unreasonably or dangerously hot, defective, dangerous, unfit for handling, or unfit for human consumption;

- h. Failing to supervise its employees, servants, and/or agents to make sure that all food items placed inside of a Happy Meal container were not unreasonably or dangerously hot, defective, dangerous, unfit for handling, or unfit for human consumption;
- i. Failing to adequately train on how safety of food items (including their temperature) should not be compromised even when the Restaurant and/or its drive-thru are busy, experience a “rush” of customers, backed up, or otherwise running slower than desired;
- j. Failing to have adequate policies and/or procedures on how safety of food items (including their temperature) should not be compromised even when the Restaurant and/or its drive-thru are busy, experience a “rush” of customers, backed up, or otherwise running slower than desired;
- k. Failing to supervise its employees, servants, and/or agents to ensure that the safety of food items (including their temperature) should not be compromised even when the Restaurant and/or its drive-thru are busy, experience a “rush” of customers, backed up, or otherwise running slower than desired;
- l. Failing to comply with, and adhere to, corporate policies and/or procedures and/or expectations as it relates to the safety of customers/consumers with respect to food items sold and provided to them;
- m. Failing to comply with Sections 500.04, 500.10, and/or 500.13, Florida Statutes, by manufacturing, selling, delivering, holding, or offering for sale Chicken McNuggets and Happy Meals that contained adulterated food, and allowing the receipt in commerce (by O.H. and her mother) of any food that was adulterated (to

wit: deleterious substance of hot oil that rendered the Chicken McNuggets and/or their container(s) injurious to health);

30. As a direct and proximate result of UPCHURCH FOODS, INC.'s negligence, O.H., was seriously injured. She has incurred, and will continue to incur, medical expenses for reasonable and related medical treatment in the past and future; she has sustained bodily injuries, physical impairment, and disfigurement; experienced pain, suffering, mental anguish, and emotional distress; she has been and will continue to be inconvenienced; and her ability to enjoy life has been and will continue to be diminished.

WHEREFORE the Plaintiffs hereby demand judgment against the UPCHURCH FOODS, INC. for compensatory damages in an amount exceeding \$15,000, exclusive of interest and costs, reserves the right to later seek leave to amend for punitive damages, and request a trial by jury on all issues.

COUNT III - BREACH OF IMPLIED WARRANTIES

(As to Upchurch Foods, Inc., only)

31. Plaintiffs re-allege paragraphs 1 through 20 as if fully set forth herein.

32. At all times material, UPCHURCH FOODS, INC. had an implied warranty of merchantability under 672.314, Florida Statutes.

33. At all times material, UPCHURCH FOODS, INC. had an implied warranty of fitness for a particular purpose under 672.315, Florida Statutes.

34. At all times material, UPCHURCH FOODS, INC. knew or should have known that these implied warranties extended to any natural person who is in the family or household of its buyer (to wit: O.H.'s mother) if it is reasonable to expect her (to wit: O.H., a child in her mother's car who just purchased a Happy Meal) to consume or be affected by the Chicken McNuggets. Fla.

Stat. § 672.318.

35. At all times material, O.H. and her mother relied on said implied warranties.

36. At all times material, UPCHURCH FOODS, INC. failed to comply with Section 672.314, Florida Statutes, given that the Chicken McNuggets were served for value and intended to be consumed on the premises or elsewhere following the sale and the Chicken McNuggets were not merchantable due to their unreasonable and dangerous temperature as implied in the contract of their purchase.

37. At all times material, UPCHURCH FOODS, INC. failed to comply with Section 672.315, Florida Statutes, given that it, as the seller, knew or should have known at the time of contracting to provide the Chicken McNuggets to O.H.'s mother that they would be used for a particular purpose (to wit: handled and consumed by a human being, including a child such as O.H. if included in a Happy Meal) and the buyer relied on the seller's skill or judgment to furnish suitable and safe Chicken McNuggets.

38. As a direct and proximate result of UPCHURCH FOODS, INC.'s breach of these implied warranties, O.H. was seriously injured. She has incurred, and will continue to incur, medical expenses for reasonable and related medical treatment in the past and future; she has sustained bodily injuries, physical impairment, and disfigurement; experienced pain, suffering, mental anguish, and emotional distress; she has been and will continue to be inconvenienced; and her ability to enjoy life has been and will continue to be diminished.

WHEREFORE the Plaintiffs hereby demand judgment against the UPCHURCH FOODS, INC. for compensatory damages in an amount exceeding \$15,000, exclusive of interest and costs, reserves the right to later seek leave to amend for punitive damages, and request a trial by jury on all issues.

COUNT IV - BREACH OF EXPRESS WARRANTIES

(As to Upchurch Foods, Inc., only)

39. Plaintiffs re-allege paragraphs 1 through 20 as if fully set forth herein.

40. At all times material, UPCHURCH FOODS, INC. express warranted that the Chicken Nuggets sold and provided at its Restaurant would conform to the affirmation or promise of their purpose, which was to be safely handled and consumed by humans (including children, if included in a Happy Meal) . Fla. Stat. § 672.313.

41. At all times material, UPCHURCH FOODS, INC. knew or should have known that these express warranties extended to any natural person who is in the family or household of its buyer (to wit: O.H.'s mother) if it is reasonable to expect her (to wit: O.H., a child in her mother's car who just purchased a Happy Meal) to consume or be affected by the Chicken McNuggets. Fla. Stat. § 672.318.

42. At all times material, O.H. and her mother relied on said express warranties.

43. At all times material, UPCHURCH FOODS, INC. failed to comply with Section 672.313, Florida Statutes, given that it, as the seller, knew or should have known at the time of contracting to provide the Chicken McNuggets to O.H.'s mother that they would be used for a particular purpose (to wit: handled and consumed by a human being, including a child such as O.H. if included in a Happy Meal) and the buyer relied on the seller's skill or judgment to furnish suitable and safe Chicken McNuggets.

44. As a direct and proximate result of UPCHURCH FOODS, INC.'s breach of these express warranties, O.H. was seriously injured. She has incurred, and will continue to incur, medical expenses for reasonable and related medical treatment in the past and future; she has

sustained bodily injuries, physical impairment, and disfigurement; experienced pain, suffering, mental anguish, and emotional distress; she has been and will continue to be inconvenienced; and her ability to enjoy life has been and will continue to be diminished.

WHEREFORE the Plaintiffs hereby demand judgment against the UPCHURCH FOODS, INC. for compensatory damages in an amount exceeding \$15,000, exclusive of interest and costs, reserves the right to later seek leave to amend for punitive damages, and request a trial by jury on all issues.

COUNT V - NEGLIGENT TRAINING AND SUPERVISION

(As to McDonald's USA, LLC, only)

45. Plaintiffs re-allege paragraphs 1 through 9 as if fully set forth herein.
46. At all times material, UPCHURCH FOODS, INC.'s Restaurant operated as a franchise or agent of McDONALD'S USA, LLC.
47. At all times material, McDONALD'S USA, LLC owed a duty to the general public to adequately train the people that it would ultimately permit or consent to operate a McDonald's fast-food restaurant location as a franchisee and/or owner/operator, including UPCHURCH FOODS, INC. That duty to train included, but was not limited to:
 - a. Safe preparation of food items, including Chicken McNuggets;
 - b. Safe use of fryers, including the temperature of any oil used in them;
 - c. Safe packaging of food items prior to being provided to customers;
 - d. Safe operation of drive-thrus;
 - e. The proper or expected temperature of Chicken McNuggets to know when they are sufficiently cooked, as well as at the time they are provided to the customers;
 - f. The proper or expected method to remove Chicken McNuggets from a fryer and

place them in another container to allow them to cool down to a safe temperature for handling;

- g. Standard of care and inspection of any food items reasonably expected to be placed inside of a Happy Meal container;
- h. Not to compromise the safety of consumers, including with the temperature of their food, by rushing food from the fryer to a consumer when the restaurant is busy or the drive-thru is backed up; and,
- i. Expectations in terms of the duration of time it should take to receive an order and complete the order by delivering the items to the customer.

48. At all times material, McDONALD'S USA, LLC owed a duty to the general public to adequately supervise the people that it permits or consents to operate a McDonald's fast-food restaurant location as a franchisee and/or owner/operator, including UPCHURCH FOODS, INC. That duty to supervise includes, but is not limited to, ensuring compliance with franchise/owner/operator training, as well as any corporate policies and procedures disseminated from McDONALD'S USA, LLC to its franchises/owners/operators, such as UPCHURCH FOODS, INC. that set standards or expectations on how to operate a restaurant.

49. At all times material, McDONALD'S USA, LLC breached the afore-stated duties and it was foreseeable that, as a direct and proximate result, customers of the Restaurant might sustain injury or be harmed.

50. As a direct and proximate result of McDONALD'S USA, LLC's breach of these duties, UPCHURCH FOODS, INC. was able to operate its Restaurant in an unsafe and noncompliant manner and, as a direct, foreseeable, and proximate result of that, O.H. was seriously injured. She has incurred, and will continue to incur, medical expenses for reasonable and related

medical treatment in the past and future; she has sustained bodily injuries, physical impairment, and disfigurement; experienced pain, suffering, mental anguish, and emotional distress; she has been and will continue to be inconvenienced; and her ability to enjoy life has been and will continue to be diminished.

WHEREFORE the Plaintiffs hereby demand judgment against the McDONALD'S USA, LLC for compensatory damages in an amount exceeding \$15,000, exclusive of interest and costs, reserves the right to later seek leave to amend for punitive damages, and request a trial by jury on all issues.

COUNT VI - VICARIOUS LIABILITY / AGENCY
(As to McDonald's USA, LLC, only)

51. Plaintiffs re-allege paragraphs 1 through 9 as if fully set forth herein.

52. At all times material, UPCHURCH FOODS, INC.'S Restaurant operated as a franchisee and/or operator and/or agent of McDONALD'S USA, LLC.

53. At all times material, McDONALD'S USA, LLC authorized, permitted, and consented to allow UPCHURCH FOODS, INC. to operate its Restaurant.

54. At all times material, as set forth in Counts I – IV of this complaint, UPCHURCH FOODS, INC. was negligent in its operation of the Restaurant, which caused personal injuries to O.H.

55. At all times material, McDONALD's USA, LLC was the principal and/or franchisor and/or had control of UPCHURCH FOODS, INC.'S Restaurant and is vicariously liable under the Doctrine of Respondeat Superior and/or Vicarious Liability and/or Actual Agency and/or Apparent Agency and/or Inherent Agency for the negligence of its franchisee and/or agent, UPCHURCH FOODS, INC., as it relates to the Restaurant.

56. As a direct and proximate result of UPCHURCH FOODS, INC.'S breach of its duties and/or warranties as set forth in Counts I – IV of this complaint, O.H. was seriously injured. She has incurred, and will continue to incur, medical expenses for reasonable and related medical treatment in the past and future; she has sustained bodily injuries, physical impairment, and disfigurement; experienced pain, suffering, mental anguish, and emotional distress; she has been and will continue to be inconvenienced; and her ability to enjoy life has been and will continue to be diminished.

57. WHEREFORE the Plaintiffs hereby demand judgment against the McDONALD'S USA, LLC for compensatory damages in an amount exceeding \$15,000, exclusive of interest and costs, reserves the right to later seek leave to amend for punitive damages, and request a trial by jury on all issues.

COUNT VII - FAILURE TO WARN (STRICT LIABILITY)

(As to McDonald's USA, LLC, only)

58. Plaintiffs re-allege paragraphs 1 through 9 as if fully set forth herein.

59. Based on information and belief, McDONALD'S USA, LLC controls the sourcing of food items for UPCHURCH FOODS, INC. that are sold at the Restaurant, including but not limited to Chicken McNuggets.

60. Based on information and belief, McDONALD'S USA, LLC controls the process of which food items are sold as menu items by UPCHURCH FOODS, INC. at the Restaurant, including but not limited to Chicken McNuggets.

61. Based on information and belief, McDONALD'S USA, LLC controls the process by which food items are prepared and/or cooked by UPCHURCH FOODS, INC. at the Restaurant, including but not limited to Chicken McNuggets.

62. Based on information and belief, McDONALD'S USA, LLC controls the process by food items are stored, packaged, contained after being prepared and/or cooked by UPCHURCH FOODS, INC. at the Restaurant, including but not limited to Chicken McNuggets.

63. Based on information and belief, McDONALD'S USA, LLC controls the process by food items are packaged and/or placed in containers and/or bags after being prepared and/or cooked by UPCHURCH FOODS, INC. at the Restaurant, including but not limited to Chicken McNuggets, and delivered and/or provided to customers.

64. Based on information and belief, McDONALD'S USA, LLC controls the design, manufacturing, and supplying of packages, containers, and/or bags to UPCHURCH FOODS, INC. that are designed and intended to have UPCHURCH FOODS, INC. place food items in, including but not limited to Happy Meal boxes and Chicken McNuggets boxes.

65. At all times material, McDONALD'S USA, LLC knew or should have known that food items prepared at the Restaurant in fryers, including but not limited to Chicken McNuggets, in accord with the McDONALD'S USA, LLC system, training, policies, and procedures, would be defective (to wit: too hot of a temperature for immediate or prompt safe human handling and/or consumption) because the foreseeable risk of harm from touching and/or consuming the product could have been reduced or avoided by provided reasonable instructions or warnings on either the Happy Meal box and/or container or the Chicken McNuggets box and/or container, and McDONALD'S USA, LLC's failure to provide those instructions or warnings made the products unreasonably dangerous.

66. As a direct and proximate result, O.H. was seriously injured. She has incurred, and will continue to incur, medical expenses for reasonable and related medical treatment in the past and future; she has sustained bodily injuries, physical impairment, and disfigurement; experienced

pain, suffering, mental anguish, and emotional distress; she has been and will continue to be inconvenienced; and her ability to enjoy life has been and will continue to be diminished.

67. WHEREFORE the Plaintiffs hereby demand judgment against the McDONALD'S USA, LLC for compensatory damages in an amount exceeding \$15,000, exclusive of interest and costs, reserves the right to later seek leave to amend for punitive damages, and request a trial by jury on all issues.

COUNT VIII - FAILURE TO WARN (NEGLIGENCE)

(As to McDonald's USA, LLC, only)

68. Plaintiffs re-allege paragraphs 1 through 9 as if fully set forth herein.

69. Based on information and belief, McDONALD'S USA, LLC controls the sourcing of food items for UPCHURCH FOODS, INC. that are sold at the Restaurant, including but not limited to Chicken McNuggets.

70. Based on information and belief, McDONALD'S USA, LLC controls the process of which food items are sold as menu items by UPCHURCH FOODS, INC. at the Restaurant, including but not limited to Chicken McNuggets.

71. Based on information and belief, McDONALD'S USA, LLC controls the process by which food items are prepared and/or cooked by UPCHURCH FOODS, INC. at the Restaurant, including but not limited to Chicken McNuggets.

72. Based on information and belief, McDONALD'S USA, LLC controls the process by food items are stored, packaged, contained after being prepared and/or cooked by UPCHURCH FOODS, INC. at the Restaurant, including but not limited to Chicken McNuggets.

73. Based on information and belief, McDONALD'S USA, LLC controls the process by food items are packaged and/or placed in containers and/or bags after being prepared and/or

cooked by UPCHURCH FOODS, INC. at the Restaurant, including but not limited to Chicken McNuggets, and delivered and/or provided to customers.

74. Based on information and belief, McDONALD's USA, LLC controls the design, manufacturing, and supplying of packages, containers, and/or bags to UPCHURCH FOODS, INC. that are designed and intended to have UPCHURCH FOODS, INC. place food items in, including but not limited to Happy Meal boxes and Chicken McNuggets boxes.

75. At all times material, McDONALD's USA, LLC owed a duty of reasonable care that a reasonably careful designer, manufacturer, seller, importer, distributor, and/or supplier would use under like circumstances, which required that McDONALD's USA, LLC give appropriate warning(s) on Happy Meal and/or Chicken McNuggets containers and/or boxes and/or packaging about particular risks of harm (to wit: too hot of a temperature for immediate or prompt safe human handling and/or consumption) associated with food items prepared using fryers at the Restaurant in accord with the McDONALD's USA, LLC system, including by not limited to Chicken McNuggets, which McDONALD'S USA, LLC knew or should have known are involved in the reasonably foreseeable use(s) of said food items.

76. At all times material, McDONALD'S USA, LLC breached the aforestated duties.

77. As a direct and proximate result, O.H. was seriously injured. She has incurred, and will continue to incur, medical expenses for reasonable and related medical treatment in the past and future; she has sustained bodily injuries, physical impairment, and disfigurement; experienced pain, suffering, mental anguish, and emotional distress; she has been and will continue to be inconvenienced; and her ability to enjoy life has been and will continue to be diminished.

78. WHEREFORE the Plaintiffs hereby demand judgment against the McDONALD'S USA, LLC for compensatory damages in an amount exceeding \$15,000, exclusive of interest and

costs, reserves the right to later seek leave to amend for punitive damages, and request a trial by jury on all issues.

DATED this 17th day of December, 2019.

FISCHER REDAVID PLLC
4601 Sheridan Street
Suite 320
Hollywood, FL 33021
Telephone: (954) 860-8434
Facsimile: (954) 860-8584
Service@FRTrialLawyers.com (Service Only)
Litigation@FRTrialLawyers.com (Correspondence)

By: /s/ Jordan Redavid, Esq.
JORDAN REDAVID, ESQ.
Florida Bar No. 109227
JOHN P. FISCHER, ESQ.
Florida Bar No. 99751
IAN G. WARD, II, ESQ.
Florida Bar No. 108392
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned attorney does hereby affirm that a true and accurate copy of the foregoing was electronically served on counsel for all defendants: Sherry M. Schwartz, Esq. and Jordan S. Bacheneimer, Esq., via email, to their designated address(es): sherry.schwartz@csklegal.com, Jordan.bacheneimer@csklegal.com, and Nancy.hernandez@csklegal.com on this 17th day of December, 2019.

By: /s/ Jordan Redavid, Esq.
JORDAN REDAVID, ESQ.
Florida Bar No. 109227