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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **IN AND FOR SAN FRANCISCO COUNTY**

17 **MONET PARHAM, on behalf of herself**
18 **and those similarly situated,**

19 **Plaintiff,**

20 **vs.**

21 **McDONALD'S CORPORATION and**
22 **McDONALD'S USA, LLC,**

23 **Defendants.**

24 **CASE NO.: CGC-10-506178**

25 **AMENDED CLASS ACTION**
26 **COMPLAINT FOR VIOLATIONS OF**
27 **THE UNFAIR COMPETITION LAW,**
28 **THE CONSUMERS LEGAL REMEDIES**
ACT AND DECLARATORY AND
INJUNCTIVE RELIEF

Plaintiff Requests Jury Trial on all Issues
Triable by a Jury

29 **INTRODUCTION**

30 1. Plaintiff, by and through undersigned counsel, bring this class action on
31 her own behalf and on behalf of the class comprised of all other individuals similarly
32 situated within the State of California, pursuant to California's Unfair Competition
33 Law, Business and Professions Code §§ 17200 *et seq.* ("UCL"), and California's False
34 Advertising Law, Business and Professions Code § 17500, *et seq.* ("FAL"), and The
35 Consumers Legal Remedies Act Civil Code § 1750, *et seq.* ("CLRA") against
36 McDonald's. Plaintiff asserts that Defendants engage in the unfair, unlawful, deceptive
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38

1 and fraudulent practice of promoting and advertising McDonald’s Happy Meal
2 products to very young California children, using the inducement of various toys.

3 2. McDonald’s exploits very young California children and harms their
4 health by advertising unhealthy Happy Meals with toys directly to them. Children eight
5 years old and younger do not have the cognitive skills and the developmental maturity
6 to understand the persuasive intent of marketing and advertising.

7 3. Thus, McDonald’s advertising featuring toys to bait children violates
8 California law because it is inherently deceptive and unfair.

9 4. McDonald’s advertising is also unfair to its competitors, who do not
10 choose to attract very young children with the lure of a toy.

11 5. According to the Institute of Medicine, “Before a certain age, children lack
12 the defenses, or skills, to discriminate commercial from noncommercial content, or to
13 attribute persuasive intent to advertising. Children generally develop these skills at
14 about age 8 years, but children as old as 11 may not activate their defenses unless
15 explicitly cued to do so.”¹

16 6. The United States Supreme Court noted this year that children “have lack
17 of maturity and an underdeveloped sense of responsibility; they are *more vulnerable or*
18 *susceptible to negative influences and outside pressures*, including peer pressure; and
19 their characters are not as well formed.”²

20 7. Federal law has a long history of recognizing that advertising that is not
21 understood to be advertising is misleading to consumers, and intervening to prevent
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25 ¹ INSTITUTE OF MEDICINE, FOOD, MARKETING TO CHILDREN: THREAT OR
26 OPPORTUNITY? ES-4 (National Academics Press 2006).

27 ² *Graham v. Florida*, 130 S.Ct. 2026-2027 (2010) (emphasis added; internal
28 quotations and citations omitted). The Court was speaking of teenagers, but the
comments apply with even more force to younger children.

1 deception.³ “These laws all stem from the principle that the public is entitled to know
2 when and by whom it is being persuaded.”⁴

3 8. Children under the age of eight do not understand advertising; they lack
4 the ability to perceive its persuasive intent. When exposed to advertising, children
5 under eight lack the skills to know when and by whom they are being persuaded.

6 9. Children nonetheless influence the purchasing decisions of their parents.
7 McDonald’s exploits that influence, by bombarding children with advertisements for
8 Happy Meals with toys, knowing that it will result in kids nagging parents to purchase
9 nutritionally poor Happy Meals for their children.

10 10. Internal McDonald’s documents prove its intent to subvert parental
11 authority. One internal document says that “[r]esearch shows when families with kids
12 visit McDonald’s, the kids alone decide on McDonald’s in 53% of the cases ...[o]n all,
13 they [children] influence 95% of family visits to McDonald’s.”⁵ McDonald’s thus
14 affirmatively and knowingly targets the most vulnerable class of consumers, very
15 young children, in order to insidiously and deceptively access parents’ wallets.

16 11. The Federal Trade Commission reported to the President that
17 “[m]arketing directly to children essentially is an end-run” around the parents’ role,
18 and should be stopped.⁶

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20 ³ See e.g. 47 U.S.C. § 317.

21 ⁴ Richard Kielbowicz and Linda Lawson, *Unmasking Hidden Commercials in*
22 *Broadcasting: Origins of the Sponsorship Identification Regulations, 1927-1963*, 56 *Federal*
Communications Law Journal 327, 330 (2004).

23 ⁵ Source: *McDonald’s OPNAD Newsletter*, a “publication for McDonald’s
24 owner / operators.

25 ⁶ Federal Trade Commission, “Marketing Violent Entertainment to Children: A
26 Review of Self-Regulation and Industry Practices in the Motion Picture, Music
27 Recording & Electronic Game Industries” at 54 (2000). Although this comment was in
28 the context of a different form of different form of harmful marketing practices, the
finding applies equally here. The report is available at www.ftc.gov/reports/violence/vioreport.pdf.

1 12. The White House Task Force on Childhood Obesity has stated that
2 restaurants “have an important role to play in creating a food marketing environment
3 that supports, rather than undermines, the efforts of parents and other caregivers to
4 encourage healthy eating among children and prevent obesity.”⁷

5 13. Experts, including the American Psychological Association, agree with the
6 FTC’s and the White House Task Force’s position.

7 14. By advertising that Happy Meals include toys, McDonald’s has helped
8 create, and continues to exacerbate, a super-sized health crisis in California. Increasing
9 numbers of children are making poor nutritional choices, developing unhealthy eating
10 habits that will follow them into adulthood, and becoming obese.

11 15. Most Happy Meals are too high in calories, saturated fat, and sodium to
12 be healthful for very young children. Most Happy Meals lack healthful servings of
13 fruits and vegetables and have little dietary fiber and whole grains. According to the
14 Institute of Medicine, “Diets that are high in calories and other constituents such as
15 saturated fats and low in certain nutrients are putting our children and youth at risk for
16 diseases later in life, such as heart disease, stroke, circulatory problems, some cancers,
17 diabetes, and osteoporosis.”⁸

18 16. Advertising poor-nutrition Happy Meals with toys to children is a
19 contributing factor in this crisis.

20 17. These marketing practices are unfair to parents as well as their children
21 because they interfere with the parents’ ability to instill good eating habits in their
22 children and because they cause conflict between parents and their children.

24 _____
25 ⁷ White House Task Force on Childhood Obesity (2010). “Solving the problem of
26 childhood obesity within a generation.” Available at [www.letsmove.gov/tfco_](http://www.letsmove.gov/tfco_fullreport_may2010.pdf)
27 fullreport_may2010.pdf.

28 ⁸ INSTITUTE OF MEDICINE, FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY?
E-1 (National Academies Press 2006).

1 18. McDonald's is engaged in a highly sophisticated scheme to use the bait of
2 toys to exploit children's developmental immaturity and subvert parental authority.
3 That scheme is designed to sell and get children to eat nutritionally unbalanced Happy
4 Meals, which in turn promote obesity and other diet-related diseases.

5 19. Just this month, two prestigious publications, The New York Times and
6 Psychology Today, criticized McDonald's practice of including toys in nutritionally
7 poor meals in order to sell their product.⁹

8 20. McDonald's advertising of Happy Meals with toys is deceptive and unfair
9 to children, unfair to parents, and in violation of California law. For these reasons,
10 Plaintiff seeks the relief set forth herein.

11 JURISDICTION AND VENUE

12 21. This Court has jurisdiction over Plaintiff's claims.

13 22. The claims made by the Plaintiff on behalf of herself and other members of
14 the Class she purports to represent are brought pursuant to the UCL, the FAL and the
15 CLRA for injunctive relief but not for restitution, penalties, or damages. Thus, the value
16 of the claims to Plaintiff and to the class, and thus the amount in controversy, is far
17 below \$75,000. No matter how evaluated, the amount in controversy falls far short of
18 \$5,000,000.00. Accordingly, Plaintiff could not elect to bring this case in federal court
19 because there is an insufficient amount in controversy to evoke federal jurisdiction.

20 23. The jurisdiction and venue of this action in the Superior Court in and for
21 the County of San Francisco is based upon California Code of Civil Procedure § 410.10.

22 24. Venue is appropriate in the County of San Francisco pursuant to
23 California Code of Civil Procedure § 395. Venue in this Court is proper in that
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27 ⁹ See Editorial, *Not So Happy Meals*, N.Y. Times, December 20, 2010, § A at 28.
28 Available at <http://www.nytimes.com/2010/12/20/opinion/20mon4.html> and *The End of the Happy Meal?* Available at <http://www.psychologytoday.com/blog/its-not-just-baby-fat/201012/the-end-the-happy-meal>.

1 McDonald's transacted business in California and the conduct complained of occurred
2 in California.

3 25. Plaintiff files her affidavit showing these facts concurrently with the
4 Complaint as required by CC § 1780(d).

5 **CONDITIONS PRECEDENT**

6 26. All conditions precedent have been performed or have occurred.

7 **PARTIES**

8 27. Monet Parham ("Parham") is a parent residing in Sacramento, California,
9 with children ages two and six. Parham brings this action on her own behalf.

10 28. Plaintiff has standing to bring this case on her own behalf because she has
11 lost money or property because of Defendants' activities, and therefore has suffered an
12 "injury in fact." Plaintiff is also a "consumer" and "real party in interest" as defined by
13 the CLRA.

14 29. Defendants McDonald's Corporation and McDonald's USA, LLC
15 (collectively "McDonald's"), incorporated in Delaware and Illinois, respectively, own
16 and operate the largest and most successful fast food chain in history.

17 **FACTS**

18 **I. Definitions**

19 30. The term "advertising" includes all forms of marketing in all forms of
20 media and venues, including without limitation: print advertisements, television and
21 radio commercials, product labels, magazines, use of licensed characters, use of
22 celebrities, viral marketing, web sites, signage at restaurants, toys, advergaming,
23 sponsorships, school-based marketing (such as book covers and sponsored educational
24 material), and kids clubs.

25 31. "Class Period" is the period from December 15, 2006 for Counts I and III;
26 December 15, 2007 for Count II and to the date of class certification, or as otherwise
27 determined by the Court.
28

1 32. “Happy Meals” are the meals that McDonald’s produces for, and markets
2 directly to, very young children and that are accompanied by a free toy.

3 33. Unless otherwise stated, all references to “children” in this complaint
4 means California-resident children eight years or younger.

5 **II. Background: A Children’s Health Crisis of Epidemic Proportions**

6 34. Increasing numbers of children in California are unhealthy. Many
7 children are becoming overweight or obese and are suffering from diet-related health
8 problems, like diabetes.¹⁰ High-sodium diets boost blood pressure, even in very young
9 children, and saturated fat and cholesterol start clogging arteries in children and
10 youths.

11 35. Diet-related health problems persist into adulthood. The eating habits and
12 attitudes about nutrition that children adopt often extend into adulthood.¹¹

13 36. Currently, 73% of adults are overweight, obese, or extremely obese.¹² A
14 growing number of children are overweight, obese, or suffer from diet-related health
15 problems, which is an indication that the number of adults with these problems will
16 likely grow. This will further burden California’s health-care system, which is already
17 overwhelmed.¹³

18 37. In California, an increased number of children have poor diets, due in
19 significant part to poor-nutrition foods such as Happy Meals. Happy Meals and other
20 poor-nutrition foods often replace healthier foods and beverages in children’s diets and
21 accustom children to seeking and eating poor-nutrition foods even outside the fast-
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23 ¹⁰ INSTITUTE OF MEDICINE, FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY?
24 2-4 (National Academies Press 2006).

25 ¹¹ INSTITUTE OF MEDICINE, FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY?
26 E-1 (National Academies Press 2006).

27 ¹² Results from the 2005-2006 National Health and Nutrition Examination Survey
28 (NHANES) available at [www.cdc.gov/nchs/data/hestat/overweight/overweight_](http://www.cdc.gov/nchs/data/hestat/overweight/overweight_adult.htm)
[adult.htm](http://www.cdc.gov/nchs/data/hestat/overweight/overweight_adult.htm).

¹³ INSTITUTE OF MEDICINE, FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY?
5-28 (National Academies Press 2006).

1 food-restaurant venue. For example, only 2% of children eat a healthy diet consistent
2 with the main dietary recommendations of the U.S. Department of Agriculture.¹⁴ Only
3 6% of children meet the USDA recommended limit of saturated fat intake; only 30% of
4 children consume the USDA-recommended number of servings of milk each day; and
5 only 15% eat the daily recommendation of fruit.¹⁵

6 38. The great majority of Happy Meals sold in California harm children's
7 diets, and do not provide the nutrients required for healthy growth and development.
8 Consumption of poor-nutrition food such as the contents of Happy Meals contributes to
9 the development of obesity, high blood pressure, diabetes, and obesity-related illnesses
10 in children. Even if children consume healthy foods at other times, consumption of
11 Happy Meals is harmful.

12 **III. Advertising Happy Meals with Toys to Children is Unfair & Deceptive**

13 **A. Targeting Children**

14 39. McDonald's practice of marketing poor-nutrition Happy Meals to children
15 in California is pervasive, with over 1300 McDonald's restaurants in California alone.

16 40. McDonald's markets poor-nutrition Happy Meals to California children
17 through television advertisements, store signage, billboards, Web sites, branded
18 merchandise, product packaging, magazines, and in schools and other venues.

19 41. Companies – with McDonald's leading the pack – employ a myriad of
20 methods to determine what children prefer, how to make children like their products,
21 and how to formulate their products, so they appeal almost irresistibly to children.
22 These methods include: conducting consumer studies, observing children playing and
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26 ¹⁴ K. Munoz, S. Krebs-Smith, R. Ballard-Barbash and L. Cleveland, *Food Intakes of*
27 *U.S. Children and Adolescents Compared with Recommendations*, 100 PEDIATRICS 323 (1997).

28 ¹⁵ U.S. Department of Agriculture, Office of Analysis, Nutrition and Evaluation.
CHANGES IN CHILDREN'S DIETS: 1989-1991 to 1994-1996 (USDA 2001).

1 using various products in their homes and schools, and using children as informants on
2 what other children like and do not like.¹⁶

3 42. "Total U.S. expenditures on marketing to children are estimated at \$15-17
4 billion. It is hard to imagine (and certainly difficult to estimate) the total economic
5 stakes involved for businesses that depend upon child purchases and child influence on
6 parental spending."¹⁷

7 43. After studying the effect of marketing on children, the American
8 Psychological Association (APA) released a report on the issue. That report found,
9 "Because young children lack the cognitive skills and abilities of older children and
10 adults, they do not comprehend commercial messages in the same way as do more
11 mature audiences, and, hence, are uniquely susceptible to advertising influence. A
12 substantial body of research evidence documents age-related differences in how
13 children understand and are affected by television advertising. This evidence has
14 formed the basis for a wide range of policies in the United States designed to protect
15 children from advertising that would take unfair advantage of youngsters' limited
16 comprehension of the nature and purpose of commercial appeals. These policies form
17 the foundation of a broad societal consensus that children require special treatment and
18 protection from the unbridled efforts of the economic marketplace."¹⁸

19 44. The APA also noted, "An important side effect of the influence of
20 advertising on children's desire for products is the parent-child conflict that emerges
21 when refusals occur in response to children's purchase-influence attempts. Parents
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23 ¹⁶ JULIET B. SCHOR, *BORN TO BUY*, 120-122 (Scribner 2004).

24 ¹⁷ Dale Kunkel & Jessica Castonguay, *Children and Advertising: Content,*
25 *Comprehension, and Consequences*, in *HANDBOOK OF CHILDREN AND THE MEDIA*, 2ND ED. at
26 36-37 (Dorothy Singer and Jerome Singer eds., Thousand Oaks, CA: Sage)
(forthcoming).

27 ¹⁸ American Psychological Association, *REPORT OF THE APA TASK FORCE ON*
28 *ADVERTISING AND CHILDREN* at 20 (2004), available at [www.apa.org/pi/families/
resources/advertising-children.pdf](http://www.apa.org/pi/families/resources/advertising-children.pdf) (internal citations omitted).

1 obviously cannot honor all purchase requests triggered by television advertising, given
2 the volume of commercials that the average child sees. In one study, more than half of
3 children reported arguing or becoming angry when a toy request was denied; in
4 another, the study observed high rates of child disappointment and anger in response
5 to the majority of parent refusals for cereal requests at the supermarket. Other studies
6 confirm these patterns. In sum, the frequent purchase requests associated with
7 children’s advertising exposure may place a strain on parent-child interaction.¹⁹

8 45. Professor Juliet Schor, a noted expert on consumerism, economics, and
9 family studies, discusses the tension between the responsibilities of parents to make
10 efforts to guide their children’s eating practices and the efforts of marketers to
11 undermine those very efforts. She notes that “a major thrust of contemporary marketing
12 to children is the interposition of the marketer between the parent and child. Marketers
13 create utopian spaces free of parents and employ insidious dual-messaging strategies.
14 Ads position the marketer with the child against the parent”.²⁰

15 46. Professor Schor continues by noting “the undeniable fact of parental
16 responsibility does not imply that it’s only parents who should be held responsible. The
17 complexities of life today render that approach far too simple-minded.”²¹

18 47. California children are deceived by marketing.

19 48. Almost no child under the age of six understands marketing; they lack the
20 cognitive maturity to perceive its persuasive intent. For example, children under the age
21 of six believe television commercials are television programs. These effects persist, in
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24 ¹⁹ American Psychological Association, REPORT OF THE APA TASK FORCE ON
25 ADVERTISING AND CHILDREN at 11 (2004), available at [www.apa.org/pi/families/
26 resources/advertising-children.pdf](http://www.apa.org/pi/families/resources/advertising-children.pdf) (internal citations omitted).

27 ²⁰ J. Schor, BORN TO BUY at 161-162 (Scribner 2004).

28 ²¹ J. Schor, BORN TO BUY at 184 (Scribner 2004).

1 somewhat diminished degree but still at a significant level, until the children are older
2 than eight.

3 49. Even the few children who may begin to understand persuasive intent of
4 commercials are not fully able to understand that marketing by self-interested
5 corporations influences their desires.

6 50. "Comprehension of an advertiser's motives or intentions in conveying
7 commercial messages poses a mental challenge that children below roughly 8 years of
8 age are poorly equipped to handle. A younger child is more likely to focus on the
9 product featured in an advertisement, as opposed to thinking about the company that
10 produced it, or the abstract concept of their economic interests."²²

11 51. Thus, because these children do not understand marketing, they are
12 inherently deceived by the marketing, just as adults are deceived by deliberately
13 misleading marketing.

14 52. Marketing poor-nutrition Happy Meals to California children leads them
15 to prefer, purchase, and pester their parents to buy poor-nutrition Happy Meals.

16 53. Children influence their families' expenditures each year.²³ Children as a
17 consumer group, including those eight and younger, spend approximately \$200 billion
18 each year themselves.²⁴ One-third of what they spend is on food and beverages.²⁵

22 ²² Dale Kunkel & Jessica Castonguay, *Children and Advertising: Content,*
23 *Comprehension, and Consequences*, in HANDBOOK OF CHILDREN AND THE MEDIA, 2ND ED. at
24 22 (Dorothy Singer and Jerome Singer eds., Thousand Oaks, CA: Sage) (forthcoming).

25 ²³ INSTITUTE OF MEDICINE, FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY?
26 1-4 (National Academies Press 2006).

27 ²⁴ INSTITUTE OF MEDICINE, FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY?
28 1-4 (National Academies Press 2006).

²⁵ J.U. McNeal *Tapping the Three Kids' Markets*, AMERICAN DEMOGRAPHICS (April
1998), at 36, accessed on LexisNexis, February 9, 2006.

1 54. After being constantly bombarded with advertising for Happy Meals that
2 often feature toys, California children then bombard their parents with requests for the
3 toys and Happy Meals they have seen advertised.

4 55. These requests sometimes lead parents to purchase poor-nutrition Happy
5 Meal items they would otherwise not buy. Parham’s daughters have requested Happy
6 Meals from Parham because of McDonald’s marketing practices, and sometimes
7 Parham, not wishing to cause family rancor, purchases such meals.

8 56. Most California children have no concept of what it means to eat a healthy
9 diet.

10 57. Children rely on outside sources, including parents, friends, and the
11 media, full of powerful advertisements for poor-nutrition Happy Meals, to influence or
12 determine what they should eat.²⁶

13 58. “Food and beverage marketing practices geared to children and youth are
14 out of balance with healthful diets, and contribute to an environment that puts their
15 health at risk.”²⁷

16 59. The marketing of poor-nutrition Happy Meals to California children
17 contributes to their desire to consume and request these products. This type of
18 marketing affects children’s short-term and long-term dietary intakes and their
19 attitudes about nutrition.²⁸

20 60. Thus, the toy may appear to be “free,” but consuming these meals has a
21 high actual health cost.

24 ²⁶ INSTITUTE OF MEDICINE, FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY?
25 5-28 (National Academies Press 2006).

26 ²⁷ Dale Kunkel & Jessica Castonguay, *Children and Advertising: Content,*
27 *Comprehension, and Consequences*, in HANDBOOK OF CHILDREN AND THE MEDIA, 2ND ED. at
36 (Dorothy Singer and Jerome Singer eds., Thousand Oaks, CA: Sage) (forthcoming).

28 ²⁸ INSTITUTE OF MEDICINE, FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY?
5-35-38 (National Academies Press 2006).

1 61. Moreover, according to Roy Bergold, who served as McDonald's
2 advertising head for twenty-nine years, "the toys usually aren't free—they're priced
3 into the meal and companies have found that kids are a lot more tempted by the toys
4 than the food."²⁹

5 62. For all of these reasons, McDonald's unfair and deceptive practice of
6 advertising Happy Meals to children by using the lure of a toy directly and proximately
7 inculcates poor dietary habits in California children, placing them at a lifelong risk of
8 developing a myriad of health problems.

9 63. This in turn contributes to the rising cost of health care in this country.

10 64. This marketing also interferes with and undermines parental control over
11 the health and welfare of their children.

12 65. This action seeks to stop one of the most powerful, unfair, and deceptive
13 practices – tempting kids with toys to get them to nag their parents to buy Happy
14 Meals, thereby restoring an environment in which children and their parents can make
15 dietary choices free from unfair and deceptive child-targeted marketing.

16 66. Fast-food companies – with McDonald's by far in the lead – spent over
17 \$520 million on marketing and sales promotions, including toys, to advertise children's
18 meals.³⁰ Toy premiums made up almost three-quarters of those expenses, totaling over
19 \$350 million. According to data from the NPD Group, fast food restaurants sold more
20 than 1.2 billion children's meals with toys to children ages 12 and under, accounting for
21 20% of all child traffic at those restaurants.³¹ On information and belief, McDonald's
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24 ²⁹ Bergold, Jr., Roy T. "The Obesity Debate." QSR Magazine 2 November 2010: n.
25 pag. Web. 2 November 2010, available at [www.qsrmagazine.com/articles/columnist/
roy_bergold/1110/obesity-1.phtml](http://www.qsrmagazine.com/articles/columnist/roy_bergold/1110/obesity-1.phtml).

26 ³⁰ Federal Trade Commission, *Marketing Food to Children and Adolescents* at ES-3
27 (2008), available at www.ftc.gov/os/2008/07P064504foodmktngreport.pdf. The 2006
28 data in this FTC report are the most recent available publicly.

³¹ *Ibid.*

1 spends far more and distributes far more toys (along with poor-nutrition meals) than
2 any other fast food restaurant.

3 67. McDonald's intent is clear, but internal documents make the intent even
4 clearer.

5 68. One internal McDonald's document brags that "The ultimate goal is to
6 make McDonald's the overwhelming favorite restaurant to visit for adults, *just as it*
7 *already is for kids.*"³²

8 69. Another internal document is more specific: "*McDonald's has strong*
9 *appeal among children because of Happy Meals including fun toys, games, and prizes.*
10 McDonald's also attracts children with the . . . food (especially hamburgers,
11 cheeseburgers, and French fries) and the advertising. . . . *[C]hildren are more attracted*
12 *to McDonald's because of the Happy Meal promotion . . .*"³³

13 70. By advertising Happy Meals with toys as bait, McDonald's unfairly and
14 deceptively markets directly to children. When McDonald's bombards children with
15 advertisements or other marketing for Happy Meals with toys, many children will
16 pester their parents repeatedly to take them to McDonald's, just so they can get the
17 current toy (usually a new one each week). Once there, the children are likely to receive
18 a meal that is too high in calories, saturated fat, added sugars, and sodium, and devoid
19 of whole grains. Developing a lifelong habit of eating unhealthy meals is likely to
20 promote obesity, high blood pressure, heart disease, diabetes, and other life-threatening
21 or debilitating diet-related diseases. These consequences are all caused by kids being
22 baited by a cheap toy.³⁴

25 ³² Source: McDonald's Management News, published for McDonald's
26 owners/operators and store management.

27 ³³ Source: McDonald's Fast Track Report [emphasis added].

28 ³⁴ This complaint is limited to toys and other premiums sold with Happy Meals,
although we note that items for which consumers pay extra, like the since-recalled
Shrek glasses, and the Mighty Meals aimed at older kids also contribute to the problem.

1 71. Children in California spend as much time using screen media (television,
2 videos, video games, and computers) as they spend playing outside.³⁵ Children under
3 the age of six watch over an hour of television per day, and the amount of television
4 watched increases with age.³⁶ Annually, children in California view tens of thousands of
5 television commercials, with at least 30,000 commercials representing a common
6 ceiling.³⁷ Approximately half of the commercials during children’s programming (as
7 classified by the Federal Communications Commissions) are for poor-nutrition food.³⁸
8 Children in California, therefore, see approximately 15,000 television commercials for
9 poor-nutrition food each year. (Of course, they see a multitude of other food
10 advertisements on the Internet, in restaurant windows, and elsewhere).

11 72. Nearly all food advertisements viewed by children and adolescents are for
12 products high in fat, sugar, or sodium,³⁹ and there is increasing evidence that the
13 marketing of unhealthy food products is disproportionately targeted at ethnic minority
14 children.⁴⁰

16 ³⁵ Kaiser Family Foundation, *Zero to Six: Electronic Media in the Lives of Infants,*
17 *Toddlers and Preschoolers* (2003), available at
18 <http://www.kff.org/entmedia/upload/Zero-to-Six-Electronic-Media-in-the-Lives-of-Infants-Toddlers-and-Preschoolers-PDF.pdf>.

19 ³⁶ Kaiser Family Foundation, *Zero to Six: Electronic Media in the Lives of Infants,*
20 *Toddlers, and Preschoolers* (21003), available at
21 <http://www.kff.org/entmedia/upload/Zero-to-Six-Electronic-Media-in-the-Lives-of-Infants-Toddlers-and-Preschoolers-PDF.pdf>.

22 ³⁷ Dale Kunkel & Jessica Castonguay, *Children and Advertising: Content,*
23 *Comprehension, and Consequences*, in HANDBOOK OF CHILDREN AND THE MEDIA, 2ND ED. at
24 6 (Dorothy Singer and Jerome Singer eds., Thousand Oaks, CA: Sage) (forthcoming).

25 ³⁸ INSTITUTE OF MEDICINE, *FOOD MARKETING TO CHILDREN: THREAT OR OPPORTUNITY?*
26 4-42 (National Academies Press 2006).

27 ³⁹ Children: 98%; adolescents: 89%.

28 ⁴⁰ Dale Kunkel & Jessica Castonguay, *Children and Advertising: Content,*
Comprehension, and Consequences, in HANDBOOK OF CHILDREN AND THE MEDIA, 2ND ED. at
11-12 (Dorothy Singer and Jerome Singer eds., Thousand Oaks, CA: Sage)
(forthcoming).

1 73. McDonald's is a leader in these forms of food advertising to young
2 children. Its advertisements directed at young children generally focus on the Happy
3 Meal toy and not on the food content of the Happy Meal.

4 74. McDonald's is well aware of the impact of "pester power" on parents'
5 purchasing decisions and uses it to its advantage by advertising Happy Meals with
6 toys.

7 75. For example, McDonald's founder Ray Kroc said that "if you had \$1 to
8 spend on marketing, *spend it on kids, because they bring mom and dad.*"⁴¹

9 76. The toy has been the key to successful marketing to children of Happy
10 Meals. Joe Johnston, who was on the advertising-agency team in the early 1970s that
11 invented McDonald's Fun Meal, which later became the Happy Meal once a toy was
12 added, acknowledged that "Yes, even then, we knew that *we needed a toy to make it*
13 *work*".

14 77. A consultant for McDonald's brags, "McDonald's knows that by targeting
15 families, it hits one of the most attractive, loyal consumer groups available. It gets into
16 *the parents' wallets via the kids' minds*". Given the strength of this strategy, it's no
17 wonder that McDonald's has become what it is.⁴²

18 78. McDonald's has a long history of targeting children and families.
19 McDonald's Founder Kroc boasted, "we used to spot good locations for McDonald's
20 stores by flying over a community and looking for schools and church steeples."⁴³

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22 ⁴¹ Roy T. Bergold, Jr., "Is Obesity Really Our Fault?" QSR Magazine (June 2010),
23 accessible at www.qsrmagazine.com/articles/columnists/roy_bergold/0610/obesity-1.phtml. Mr. Bergold was McDonald's advertising head for 29 years.

24 ⁴² Martin Lindstrom, "Branding: Its [sic] All About Focus," available at
25 www.martinlindstrom.com/index.php/cmsid__list_articles/__1159. Mr. Lindstrom
26 advises McDonald's on all aspects of brand building including sensory branding,
27 neuromarketing and optimization.
28 http://www.martinlindstrom.com/index.php/cmsid__consulting.

⁴³ Kroc, Ray, *Grinding It Out: The Making of McDonald's*, p.176 (Contemporary Books, Inc. 1976).

1 79. The deceptive nature of McDonald’s Happy Meals marketing is not
2 debatable. Even industry insiders recognize it.

3 80. The long-time head of McDonald’s advertising recently commented that
4 “Research says that *seven-year-olds and younger accept what we say in advertising as*
5 *the truth*. Heck, three-year-olds can identify brands using just their corporate logos.
6 According to a survey commissioned by the Center for a New American Dream back in
7 2002, the average kid asks his parent for something nine times before the parent gives
8 in....*What’s a mother to do under this assault?*”⁴⁴

9 81. “In an ideal world, perhaps parents would ignore all of children’s
10 requests for lavish toys and unhealthy snack foods, but, in fact, research is clear that
11 parents have a high rate of yielding to children’s purchase-influence requests.
12 Moreover, most children begin to receive their own spending money as young as eight
13 years of age, and one of the earliest products they are allowed to buy without explicit
14 parental consent is snack foods.”⁴⁵

15 82. After the Center for Science in the Public Interest (CSPI), lead counsel in
16 this action, sent notice of intent to sue to McDonald’s (in an unsuccessful effort to
17 resolve this problem without litigation), a marketing-industry insider noted that “CSPI
18 claims McD’s violates several state consumer laws because advertising to kids is
19 ‘inherently deceptive, because young kids are not developmentally advanced enough to
20 understand the persuasive intent of marketing.’ *This, as a fact, is true.*”⁴⁶

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22 ⁴⁴ Roy T. Bergold, Jr., *supra*.

23 ⁴⁵ Dale Kunkel & Jessica Castonguay, *Children and Advertising: Content,*
24 *Comprehension, and Consequences*, in HANDBOOK OF CHILDREN AND THE MEDIA, 2ND ED. at
25 33 (Dorothy Singer and Jerome Singer eds., Thousand Oaks, CA: Sage) (forthcoming).

26 ⁴⁶ Jim Edwards, “How McDonald’s Happy Meal Will Survive This Perfect Storm of
27 Child Abuse Accusations and Litigation.” CBS Interactive (July 8, 2010), available at
28 <http://www.bnet.com/blog/advertising-business/how-mcdonald-8217s-happy-meal-will-survive-this-perfect-storm-of-child-abuse-accusations-and-litigaton/5156>
[emphasis added]. Mr. Edwards is former managing editor of *Adweek* and has covered
drug marketing at *Brandweek*.

1 83. It is also true that businesses that refuse to bribe children to drive their
2 profits are at a competitive disadvantage.

3 84. Parents in California have almost no ability or opportunity to control
4 where and how their children view marketing. Marketing aimed at California children
5 is everywhere: on television, in magazines, on Web sites, on billboards, on school buses,
6 in restaurants, and in school cafeterias and on school vending machines.

7 85. On information and belief, McDonald's is aware of the inability of
8 California children to understand the persuasive intent of marketing and its impact on
9 their decision-making. Yet, in California, McDonald's knowingly takes advantage of the
10 cognitive immaturity of children and advertises poor-nutrition Happy Meals to them,
11 often advertising "free" toys to make its marketing efforts particularly persuasive.

12 **IV. McDonald's Advertising Directly, Proximately, and Cognizably Harms**
13 **California Children and Their Parents**

14 86. California parents' lack of control over the marketing of Happy Meals to
15 their children strains their ability to raise healthy children and to instill healthy eating
16 habits in them.⁴⁷

17 87. McDonald's deceptively markets Happy Meals, continuing its decades-old
18 practice of advertising Happy Meals with toys to market directly to children in order to
19 bypass the parents and increase sales.

20 88. After years of criticism of its marketing practices, McDonald's pledged to
21 the Better Business Bureau that it would advertise only Happy Meals that meet
22 McDonald's own nutrition standards for children (although those standards are weaker
23 than appropriate). However, that pledge fails to address McDonald's insidious use of
24 toys in advertising its products to children. Regardless of the Happy Meal combinations
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27 ⁴⁷ JULIET B. SCHOR, BORN TO BUY 130-32, 160-65 (Scribner 2004).
28

1 shown in advertising, almost all Happy Meal combinations are nutritionally
2 inappropriate for very young children. Moreover, the default⁴⁸ choice for the side dish
3 tends to be the nutritionally poor French fries, not the less-harmful (but still not
4 healthy) Apple Dippers with sugary Caramel Dipping Sauce.⁴⁹

5 89. A reasonable lunch for a young child should contain no more than 430
6 calories (one-third of the 1,300 calories that is recommended daily intake for sedentary
7 children 4 to 8 years old)

8 90. The pre-suit notice delivered to McDonald's on June 22, 2010, described
9 the problems set out in detail herein, describing the number of unhealthy meals thus:
10 McDonald's Web site lists 24 Happy Meal combinations. Considering that a reasonable
11 lunch for a young child would contain no more than 430 calories (one third of the 1,300
12 calories that is the recommended daily intake for children 4 to 8 years old), not a single
13 Happy Meal meets that target. The average of all 24 meals is 26 percent higher in
14 calories than a reasonable lunch. In fact, one meal (cheeseburger, French fries, and
15 chocolate milk) hits 700 calories — a whopping 63 percent higher (and more than half
16 the calories for the entire day).
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19 91. The source for these numbers was McDonald's own published Happy
20 Meals nutrition information available on its website, and dated June 2, 2010.

21 92. Three days after it received the pre-suit notice, McDonald's altered this
22 data, reducing the amount of calories and sugar.⁵⁰
23

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25 ⁴⁸ A "default" item is one that the McDonald's employee includes in a Happy Meal
without asking.

26 ⁴⁹ Apple Dippers consist of apple slices and a sugary caramel dipping sauce,
27 effectively the kind of caramel apple one might buy at a carnival.

28 ⁵⁰ Nutrition.mcdonalds.com/nutritionexchange/Happy_Meals_Nutrition_List.pdf
(last accessed December 14, 2010).

1 93. After McDonald's altered its own data, three of the 24 meals suddenly met
2 the calorie target described in the pre-suit notice.

3 94. Plaintiff has no idea why McDonald's would suddenly alter its own data
4 in a manner that made these three meals appear healthier (but still not healthy — all 24
5 meals exceed 400 mg of sodium, one-third of the 1,200-milligram recommendation for
6 sodium for children).

7 95. In a CSPI study of 44 McDonald's outlets, the default Happy Meal almost
8 always included French fries. In response to a request for a hamburger Happy meal, the
9 McDonald's employee, without asking customers which side dish they wanted,
10 provided fries 93 percent of the time.⁵¹ (Beverage choices were usually offered, but a
11 soft drink was the first option offered 78 percent of the time.)

12 96. Thus, McDonald's claims it is serving up healthier options, but in fact it is
13 not, for several reasons:

- 14 • The best-possible combination is still fried chicken and a caramel apple.⁵²
- 15 • Although McDonald's briefly depicts the best-possible combinations in its
16 advertising, those depictions are fleeting. It engages in bait-and-switch
17 93% of the time, substituting the far-more-unhealthy French fries for
18 Apple Dippers. Indeed, many of McDonald's commercials aimed at very
19 young children are intended to spur visits to McDonald's stores rather
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24 _____
25 ⁵¹ Twenty-seven health and nutrition professionals visited 44 restaurants in 14
26 states. They purchased 41 Happy Meals inside of restaurants and 34 drive-throughs, for
27 a total of 75 assessments.

28 ⁵² This meal consists of four fried Chicken McNuggets and less than half of one
small apple accompanied by caramel sauce, with less calories, saturated fat, and sodium
than the other choices.

1 than to promote a particular food item...but, of course, the toys are
2 heavily featured.

- 3 • On information and belief, the cost of McDonald's to produce an order of
4 French fries is significantly less than the cost to produce the apples and
5 dipping sauce for the Apple Dippers. Thus, McDonald's bait-and-switch
6 practice is likely based largely on financial motives.

7
8 97. McDonald's duplicitous approach to marketing directed to children can
9 be seen in a recent press release that boasts that the Company's Shrek-based promotion
10 will "encourage kids to 'Shrek Out' their Happy Meals around the world with menu
11 options like fruits, vegetables, low-fat dairy and fruit juices."⁵³ In reality, though, the
12 whole point of the Shrek promotion is to get kids into McDonald's where they most
13 likely will end up being served unhealthy default options and eating unhealthy meals.

14 98. Consider the Happy Meal composed of a cheeseburger, French fries, and
15 chocolate milk. That meal has 700 calories (more than half a day's worth for sedentary
16 young children), 9 grams of saturated fat (more than half the 14 gram recommended
17 limit), 1,080 milligrams of sodium (more than three-fourths of the 1,200 milligram limit),
18 and about twice the 16-gram recommended daily limit for added sugars. Furthermore,
19 the bun is made with white flour, not the whole-wheat flour that is recommended for at
20 least half a consumer's grain intake.
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26 ⁵³ [www.aboutmcdonalds.com/mcd/media_center/recent_news/corporate/
27 Press_Release_McDonalds_Launches_Shrek_Themed_Happy_Meal_to_Motivate_Kids_
28 to_Eat_More_Fruits_Vegetables_and_Dairy.html](http://www.aboutmcdonalds.com/mcd/media_center/recent_news/corporate/Press_Release_McDonalds_Launches_Shrek_Themed_Happy_Meal_to_Motivate_Kids_to_Eat_More_Fruits_Vegetables_and_Dairy.html)

1 **V. Plaintiff's Experience**

2 99. Parham's daughters, ages two and six, continually clamor to be taken to
3 McDonald's "for the toys."

4 100. Parham's daughters have been deceived by McDonald's marketing
5 practices.

6 101. Parham's daughters do not understand that McDonald's marketing efforts
7 are intended to make them want to eat Happy Meals. The girls interpret this marketing
8 as good advice for proper eating.

9 102. Often, Parham's daughters want Happy Meals because toys based on
10 trusted characters from television and movies (such as Shrek) endorse the Happy Meals
11 in McDonald's advertising.

12 103. Some of the many toys that have induced Parham's daughters to clamor
13 for Happy Meals and to pester Parham to purchase Happy Meals for the sake of
14 obtaining a toy are:
15

- 16 • I-Carly lip gloss and note pad
- 17 • Various stuffed toys (intended for use by children under three)
- 18 • Barbie lip gloss and small comb
- 19 • Shrek movie character figures
- 20 • Strawberry Shortcake mini-dolls with paper and mini-stamps
- 21 • "American Idol" toy

22 104. McDonald's marketing practices are unfair to Parham and the members of
23 the Parents Class and both unfair and deceptive to Parham's daughters and other
24 California children under the age of eight.

25 105. McDonald's has unfairly influenced Parham's daughters. Its Happy Meals
26 advertising aimed at children has influenced their desire for the toy and therefore their
27
28

1 desire to eat the poor-nutrition Happy Meals, thereby harming their health without
2 their knowledge or comprehension.

3 106. When given the choice, Parham's daughters want to eat Happy Meals
4 instead of fruits, vegetables, and whole grains because McDonald's has convinced them
5 that they need to get the toy.

6 107. McDonald's marketing practices are unfair to Parham and members of the
7 Parents Class.
8

9 108. One instance that is particularly frustrating to Parham, because it is
10 outside of her control, is that her six-year-old daughter's friends are McDonald's viral
11 marketers.

12 109. Parham's six-year-old daughter learns of Happy Meal toys from other
13 children in her playgroup, despite Parham's efforts to restrict her exposure to
14 McDonald's advertising and her access to Happy Meal toys.
15

16 110. This is McDonald's advertising directive – to subvert parental authority
17 and mobilize pester power in order to sell unhealthy meals to kids using the lure of a
18 toy.

19 111. McDonald's has unfairly interfered with Parham's relationship with her
20 children.
21

22 112. Because of McDonald's marketing, Parham's daughters frequently pester
23 Parham into purchasing Happy Meals, thereby spending money on a product she
24 would not have otherwise purchased.

25 113. Parham often purchases each Happy Meal two times over, as her two-
26 year-old daughter wants to follow her older sister's example, and becomes upset if she
27 does not also receive a Happy Meal toy.
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CLAIMS FOR RELIEF

COUNT I

ENGAGING IN UNFAIR MARKETING AND BUSINESS PRACTICES

(Parham individually and as class representative)

126. It is unlawful to engage in unfair acts or practices while engaged in any trade or commerce in California. California Business and Professions Code § 17200 *et seq.*

127. McDonald’s violates the California Unfair Competition Law each time it markets Happy Meals to California children.

128. Plaintiff has lost money or property because of Defendants’ activities, and therefore has suffered an “injury in fact.”

COUNT II

ENGAGING IN UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES

(Parham individually and as class representatives)

129. “Unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful.” Consumer Legal Remedies Act California Civil Code § 1750, *et seq.* (“CLRA”).

130. The Happy Meals at issue are “goods” as defined by CLRA § 1761(a).

131. Defendants are “persons” as defined by CLRA § 1761(c).

132. Plaintiff and the Putative Class members are “consumers” as defined by CLRA § 1761(d).

133. The purchase of Happy Meals by the Plaintiff and Putative Class members are “transactions” as defined by CLRA § 1761(e).

1 134. McDonald's advertising and selling Happy Meals with toys to very young
2 children is prohibited pursuant to the CLRA because it is inherently deceptive and was
3 "undertaken by any person in a transaction intended to result or which results in the
4 sale or lease of goods or services to any consumer."

5 135. McDonald's violates the CLRA by knowingly and intentionally
6 advertising Happy Meals with toys to very young children.

7
8 136. This unfair and deceptive practice violates CLRA § 1770(a)(5), which
9 prohibits "Representing that goods or services have sponsorship, approval,
10 characteristics, ingredients, uses, benefits, or quantities which they do not have . . ."

11 137. This unfair and deceptive practice is also a violation of CLRA § 1770(a)(7)
12 which prohibits "Representing that goods or services are of a particular standard,
13 quality, or grade, or that goods are of a particular style or model, if they are of another."

14 138. McDonald's unfair and deceptive acts and practices have violated, and
15 continue to violate the CLRA, because they extend to transactions that are intended to
16 result, or have resulted, in the sale or lease of goods or services to consumers, including
17 the Plaintiff and the Putative Class members.

18
19 139. As a direct and proximate result of McDonald's unfair and deceptive acts
20 and practices, the Plaintiff and the Putative Class members have suffered damage in
21 that they purchased deceptively advertised and unhealthy Happy Meals.

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23 140. Plaintiff would not have bought Happy Meals but for McDonald's
24 deceptive marketing to very young children with a toy.

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COUNT III

**ENGAGING IN UNLAWFUL METHODS OF COMPETITION AND
UNFAIR OR DECEPTIVE ACTS OR PRACTICES**

(Parham individually and as class representatives)

141. McDonald's acts and practices constitute unlawful business acts and practices.

142. McDonald's marketing with toys and other inducements is inherently deceptive to very young children.

143. McDonald's business practices alleged above are unlawful under the CLRA, which forbids deceptive advertising, among other things. By violating the CLRA, McDonald's has committed unlawful acts and have violated California Business and Professions Code § 17200 *et seq.*

RELIEF REQUESTED

Plaintiffs, individually and on behalf of all others similarly situated, respectfully request that the Court:

1. Certify the claims to be asserted as a class action pursuant to the Consumer Legal Remedies Act, California Civil Code § 1750, *et seq* and California Code of Civil Procedure § 382.

2. Declare that McDonald's advertising acts and practices violate the California Unfair Competition Law and the California Consumer Legal Remedies Act.

3. Enjoin McDonald's from continuing to advertise Happy Meals to California children featuring toys.

4. Award costs and attorney's fees, in an amount to be determined at trial.

5. Order McDonald's to pay reasonable costs, attorneys' fees, and expert fees.

6. Grant all other relief that the Court deems just and proper.

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JURY REQUEST

PLAINTIFFS REQUEST A TRIAL BY JURY AS TO ALL ISSUES SO TRIABLE.

Dated January 5, 2011



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