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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

In Re: Smashburger IP Holder, LLC, et al.

ALL CASES

Lead Case No. LA CV19-00993 JAK
(JEMx)

**SECOND AMENDED
CONSOLIDATED CLASS
ACTION COMPLAINT**

JURY TRIAL DEMANDED

Hon. John A. Kronstadt

1 Plaintiffs Andre Galvan, Lucinda Lopez, Barbara Trevino, Thu Thuy Nguyen,
2 Robert Meyer, and Jamelia Harris (collectively, “Plaintiffs”), by their undersigned
3 attorneys, bring this class action complaint against Smashburger IP Holder LLC, and
4 Smashburger Franchising LLC (collectively, “Smashburger” or “Defendants”).
5 Plaintiffs’ allegations are based upon personal knowledge as to their own acts and
6 upon information and belief as to all other matters.

7 **NATURE OF ACTION**

8 1. This is a class action lawsuit on behalf of purchasers of Smashburger’s
9 Triple Double, Bacon Triple Double, and Pub Triple Double burgers (collectively,
10 the “Triple Double Burgers”).

11 2. Smashburger promotes its Triple Double Burgers as containing “Double
12 the Beef.” However, contrary to this statement, Triple Double Burgers actually
13 include two patties that are each half the size of the patties of Smashburger’s regular-
14 sized Classic Smash™ burgers. Therefore, Triple Double Burgers contain the same
15 amount of beef as Smashburger’s regular-sized Classic Smash™ burgers, not
16 “double” the beef.

17 3. Smashburger’s false and misleading use of its “Double the Beef”
18 taglines (such as “Triple the Cheese, Double the Beef in Every Bite,” “Triple the
19 Cheese, Double the Beef, Triple the Options,” and “Classic Smash™ Beef Build
20 with triple the cheese & double beef in every bite”) are thus likely to confuse and
21 mislead the consuming public by causing consumers to believe incorrectly that
22 Smashburger’s products sold under these slogans include twice the beef of
23 Smashburger’s regular-sized Classic Smash™ burgers, which they do not.

24 4. Plaintiffs saw, read, and relied on Defendants’ false and misleading
25 representations that Smashburger’s Triple Double Burgers contained twice the beef,
26 when in fact they did not. Plaintiffs bring this class action on behalf of themselves
27 and other purchasers of Triple Double Burgers and assert claims against Defendants

1 for violations of the California’s Consumers Legal Remedies Act (“CLRA”),
2 California’s False Advertising Law (“FAL”), California’s Unfair Competition Law
3 (“UCL”), and New York’s General Business Law (“GBL”), as well as for fraud,
4 breach of express warranty, and unjust enrichment.

5 **FACTUAL BACKGROUND**

6 5. Smashburger is a worldwide fast-casual hamburger restaurant chain
7 with more than 370 corporate and franchise-owned restaurants in 37 states and 9
8 countries. The chain offers unique burgers in each city where its restaurants are
9 located, but serves its Triple Double Burgers, which purportedly include “triple the
10 cheese & double the beef in every bite” at all locations.¹

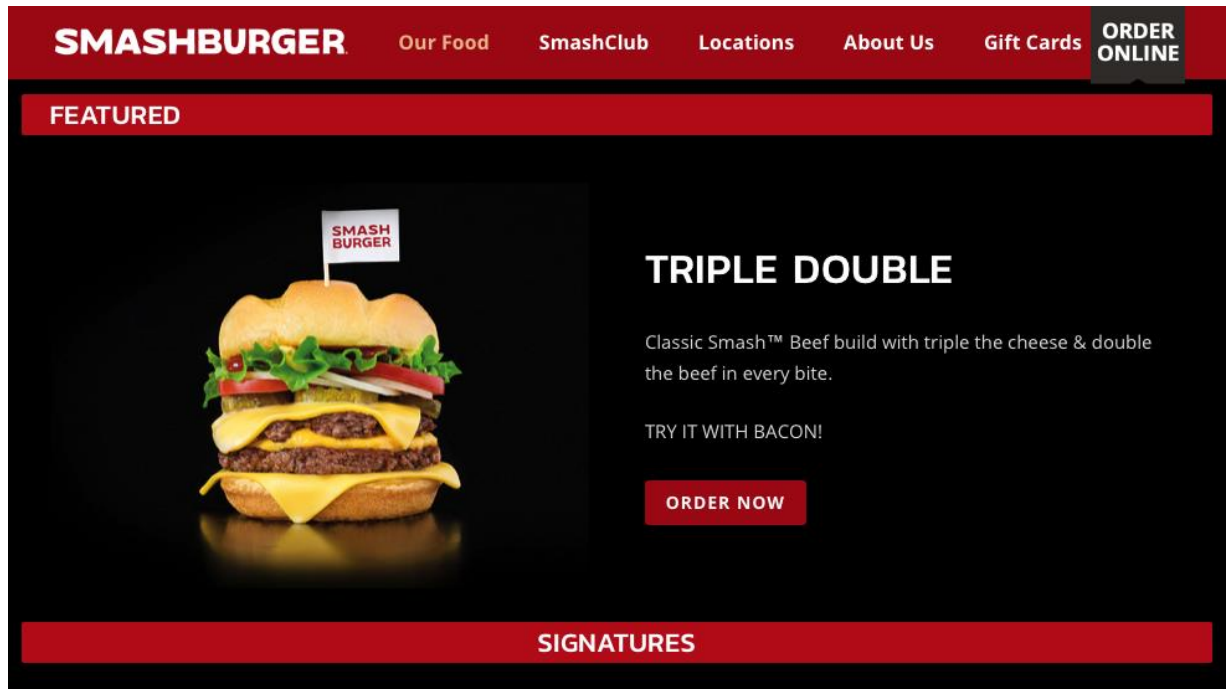
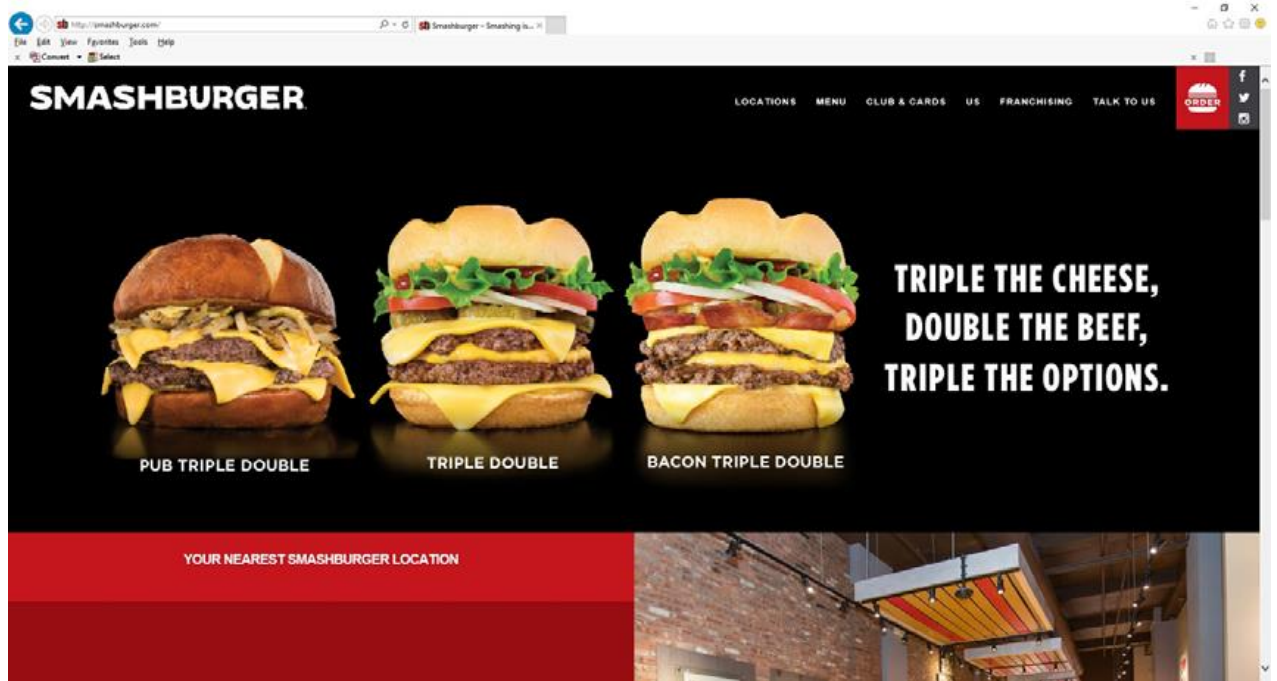
11 6. All Triple Double Burgers include three slices of cheese and two beef
12 patties.

13 7. In a press release dated July 11, 2017 concerning the addition of Triple
14 Double Burgers to Smashburger’s national menu, Smashburger quoted its Co-
15 Founder and Chief Executive Tom Ryan as stating that the Triple Double Burger
16 contains “[d]ouble the juicy, caramelized beef,” that it “provide[s] three times the
17 cheese and double the beef in every bite,” and that it is “Smashburger’s beefiest [...]
18 burger to date.” A true and correct copy of Smashburger’s July, 11, 2017 press
19 release is attached hereto as **Exhibit A**.

20 8. Smashburger has used its “Double the Beef” tagline in multiple
21 variations to advertise and sell its Triple Double Burgers, including “Triple the
22 Cheese, Double the Beef in Every Bite,” “Triple the Cheese, Double the Beef, Triple
23 the Options,” and “Classic Smash Beef Build with triple the cheese & double beef in
24 every bite.” Smashburger has used such taglines in, *inter alia*, menus and displays at
25 its restaurants.

26
27 ¹ See <https://smashburger.com/menu/> (last visited February 8, 2019).

1 9. Smashburger has advertised Triple Double Burgers on the homepage of
2 its website as “Triple the Cheese, Double the Beef, Triple the Options.” See
3 <http://smashburger.com/>.



1 10. Smashburger has advertised Triple Double Burgers through its social
2 media accounts as containing “Double the Beef.”

3 11. Smashburger also used its “Double the Beef” tagline in television
4 advertisements for its Triple Double Burger, stating that the Triple Double Burger
5 contains “Double the Beef in Every Bite” and has “2x Fresh
6 Never-Frozen Beef.” See <https://vimeo.com/225485077>;
7 <https://vimeo.com/224690849>.

8 12. In one such television advertisement, an actor says that the Triple
9 Double Burger is the “meatiest thing I’ve ever eaten,” while another holds up a
10 Triple Double burger and says, “this is a lot of meat.”

11 13. While Smashburger has advertised Triple Double Burgers as containing
12 “Double the Beef,” Triple Double Burgers actually consist of two patties that
13 together contain the same amount of beef as the single patty in Smashburger’s
14 regular-sized burgers, such as Smashburger’s Classic Smash™.

15 14. Smashburger’s “Double the Beef” taglines are likely to influence, and
16 actually did influence, the purchasing decisions of consumers.



1 she known they did not contain “double” the beef compared to Smashburger’s
2 regular Classic Smash™ burger.

3 20. Plaintiff **Barbara Trevino** resides in Glendale, California. Ms.
4 Trevino purchased one or more Triple Double Burgers in California. Before
5 purchasing Triple Double Burgers, Ms. Trevino saw, read, and relied on the
6 representation made on Smashburger’s menu and advertising materials that the
7 burger in fact contained “Double the Beef” as Smashburger’s regular Classic
8 Smash™ burger. Ms. Trevino would not have purchased Triple Double Burgers had
9 she known they did not contain “double” the beef compared to Smashburger’s
10 regular Classic Smash™ burger.

11 21. Plaintiff **Thu Thuy Nguyen** resides in San Clemente, California. Ms.
12 Nguyen purchased approximately 6 Triple Double Burgers in California over the last
13 two years. Before purchasing Triple Double Burgers, Ms. Nguyen saw, read, and
14 relied on the representation made on Smashburger’s menu and advertising materials
15 that the burger in fact contained “Double the Beef” as Smashburger’s regular Classic
16 Smash™ burger. Ms. Nguyen would not have purchased Triple Double Burgers had
17 she known they did not contain “double” the beef compared to Smashburger’s
18 regular Classic Smash™ burger.

19 22. Plaintiff **Robert Meyer** resides in Hartsdale, New York. Mr. Meyer
20 purchased approximately 25 Triple Double Burgers in New York over the last two
21 years. Before purchasing Triple Double Burgers, Mr. Meyer saw, read, and relied on
22 the representation made on Smashburger’s menu and advertising materials that the
23 burger in fact contained “Double the Beef” as Smashburger’s regular Classic
24 Smash™ burger. Mr. Meyer would not have purchased Triple Double Burgers had
25 he known they did not contain “double” the beef compared to Smashburger’s regular
26 Classic Smash™ burger.

1 February 8, 2015 to the present (the “National Class”). Excluded from the Class are
2 governmental entities, Defendants, Defendants’ affiliates, parents, subsidiaries,
3 employees, officers, directors, and co-conspirators, and anyone who purchased
4 Smashburger’s Triple Double Burgers for resale. Also excluded is any judicial
5 officer presiding over this matter and the members of their immediate families and
6 judicial staff.

7 29. Plaintiffs Galvan, Lopez, Nguyen, Trevino, and Harris also seek to
8 represent a subclass defined as all members of the Class who purchased
9 Smashburger’s Triple Double Burgers within the state of California (the “California
10 Subclass”) at any time from February 8, 2015 to the present.

11 30. Plaintiff Meyer also seeks to represent a subclass defined as all
12 members of the Class who purchased Smashburger’s Triple Double Burgers within
13 the state of New York (the “New York Subclass”) at any time from February 8, 2015
14 to the present.

15 31. Members of the Class and the Subclasses are so numerous that their
16 individual joinder herein is impracticable. The precise number of Class Members
17 and their identities are unknown to Plaintiffs at this time but will be determined
18 through discovery of Defendants’ records. Class Members may be notified of the
19 pendency of this action by mail, email, and/or publication.

20 32. This suit seeks damages and equitable relief for recovery of economic
21 injury on behalf of the Class and Subclasses. Plaintiffs reserve the right to modify or
22 expand the definition of the Class and Subclasses to seek recovery on behalf of
23 additional persons as warranted as facts are learned in further investigation and
24 discovery.

25 33. Common questions of law and fact exist as to all Class Members and
26 predominate over questions affecting only individual Class Members. These
27 common legal and factual questions include, but are not limited to:

- 1 (a) Whether the marketing and advertisements for the Triple Double
- 2 Burgers included false and/or misleading statements;
- 3 (b) Whether Defendants' conduct violated the CLRA;
- 4 (c) Whether Defendants' conduct violated the FAL;
- 5 (d) Whether Defendants' conduct violated the UCL;
- 6 (e) Whether Defendants' conduct violated the GBL;
- 7 (f) Whether Defendants were unjustly enriched;
- 8 (g) Whether Defendants' conduct was fraudulent; and
- 9 (h) Whether Defendants' conduct breached express warranties.

10 34. Plaintiffs' claims are typical of the claims of the proposed Class and of
11 the Subclasses they seek to represent. Each Class Member was subjected to the same
12 illegal conduct, was harmed in the same way and has claims for relief under the same
13 legal theories.

14 35. Plaintiffs are adequate representatives of the Class and of the Subclasses
15 they seek to represent because their interests do not conflict with the interests of the
16 Class and Subclass Members they seek to represent, they have retained counsel
17 competent and experienced in prosecuting class actions, and they intend to prosecute
18 this action vigorously. The interests of Class and Subclass Members will be fairly
19 and adequately protected by Plaintiffs and their counsel.

20 36. The class mechanism is superior to other available means for the fair
21 and efficient adjudication of the claims of Class and Subclass Members. Each
22 individual Class and Subclass Member may lack the resources to undergo the burden
23 and expense of individual prosecution of the complex and extensive litigation
24 necessary to establish Defendants' liability. Individualized litigation increases the
25 delay and expense to all parties and multiplies the burden on the judicial system
26 presented by the complex legal and factual issues of this case. Individualized
27 litigation also presents a potential for inconsistent or contradictory judgments. In

1 contrast, the class action device presents far fewer management difficulties and
2 provides the benefits of single adjudication, economy of scale, and comprehensive
3 supervision by a single court on the issue of a defendant’s liability. Class treatment
4 of the liability issues will ensure that all claims and claimants are before this Court
5 for consistent adjudication of the liability issues.

6 **COUNT I**

7 **Breach of Express Warranty**

8 37. Plaintiffs repeat the allegations contained in the paragraphs above as if
9 fully set forth herein.

10 38. Plaintiffs bring this Count individually and on behalf of the members of
11 the Class and Subclasses.

12 39. In connection with the sale of Triple Double Burgers, Defendants
13 expressly warranted that Triple Double Burgers contained “Double the Beef.”

14 40. Defendants’ affirmations of fact and promises made to Plaintiffs and the
15 Class and Subclasses on Defendants’ menus and other advertising and marketing
16 materials became part of the basis of the bargain between Defendants on the one
17 hand, and Plaintiffs and the Class and Subclass Members on the other, thereby
18 creating express warranties that Triple Double Burgers would conform to
19 Defendants’ affirmations of fact, representations, promises, and descriptions.

20 41. Defendants breached their express warranties because Triple Double
21 Burgers do not in fact contain “double” the beef. In short, Triple Double Burgers do
22 not contain the quantity expressly warranted.

23 42. Plaintiffs and the Class and Subclass Members were injured as a direct
24 and proximate result of Defendants’ breach because: (a) they would not have
25 purchased Triple Double Burgers if they had known the true facts; (b) they paid for
26 Triple Double Burgers due to the mislabeling; and (c) Triple Double Burgers did not
27

1 have the quantity or value as promised. As a result, Plaintiffs and the Class and
2 Subclasses have been damaged.

3 **COUNT II**

4 **Violations of California’s Consumers Legal Remedies Act (“CLRA”),**
5 **California Civil Code § 1750, *et seq.***

6 43. Plaintiffs incorporate by reference and re-allege each and every
7 allegation set forth above as though fully set forth herein.

8 44. Plaintiffs bring this claim individually and on behalf of the members of
9 the proposed Class and California Subclass against Defendants.

10 45. Civil Code § 1770(a)(5) prohibits “[r]epresenting that goods or services
11 have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities
12 which they do not have or that a person has a sponsorship, approval, status,
13 affiliation, or connection which he or she does not have.” Civil Code § 1770(a)(7)
14 prohibits “[r]epresenting that goods or services are of a particular standard, quality,
15 or grade, or that goods are of a particular style or model, if they are of another.”
16 Civil Code § 1770(a)(9) prohibits “[a]dvertising goods or services with intent not to
17 sell them as advertised.” Civil Code § 1770(a)(16) prohibits “[r]epresenting that the
18 subject of a transaction has been supplied in accordance with a previous
19 representation when it has not.”

20 46. Defendants violated Civil Code § 1770(a)(5), (a)(7), (a)(9), and (a)(16)
21 by making false, and misleading statements by holding out Smashburger’s Triple
22 Double Burgers as containing “Double the Beef,” when in fact they did not.
23 Specifically, Defendants controlled statements on the packaging and the marketing
24 of Smashburger’s Triple Double burgers as well as disseminated these statements in
25 media advertisements and in Smashburger restaurants.

26 47. Plaintiffs and the members of the Class and California Subclass have
27 suffered harm as a result of these violations of the CLRA because they have incurred

1 charges and/or paid monies for Smashburger’s Triple Double Burgers that they
2 otherwise would not have incurred or paid.

3 48. Prior to the filing of this Complaint, CLRA notice letters were sent to
4 Defendants that comply in all respects with California Civil Code §1782(a).
5 Plaintiffs’ counsel sent Defendants the letters via certified mail, return receipt
6 requested, advising Defendants that they are in violation of the CLRA and
7 demanding that they cease and desist from such violations and make full restitution
8 by refunding the monies received therefrom.

9 **COUNT III**

10 **Violations of California’s Unfair Competition Law (“UCL”)**
11 **Business & Professions Code § 17200, *et seq.***

12 49. Plaintiffs incorporate by reference and re-allege each and every allegation
13 set forth above as though fully set forth herein.

14 50. Plaintiffs bring this claim individually and on behalf of the members of
15 the proposed Class and California Subclass.

16 51. Defendants violated the unlawful prong of the UCL by violating Civil
17 Code § 1770(a)(5), Business & Professions Code § 17500, and the Federal Trade
18 Commission Act (“FTCA”) which prohibits “unfair or deceptive acts or practices in
19 or affecting commerce” and false advertisements under 15 U.S.C. § 45(a)(1) and 15
20 U.S.C. § 52(a), as described above.

21 52. Defendants’ misrepresentations and other conduct, described herein,
22 violated the “unfair” prong of the UCL in that Defendants’ conduct is substantially
23 injurious to consumers and offends public policy.

24 53. Defendants’ acts and practices described above also violate the UCL’s
25 proscription against engaging in fraudulent conduct.

26 54. Plaintiffs and the members of the Class and California Subclass have
27 suffered harm as a result of the violations of the UCL because they have incurred

1 charges and/or paid monies for Triple Double Burgers they otherwise would not have
2 incurred or paid.

3 **COUNT IV**

4 **Violation of California’s False Advertising Law**

5 **Business & Professions Code § 17500, *et seq.***

6 55. Plaintiffs repeat the allegations contained in the paragraphs above as if
7 fully set forth herein.

8 56. Plaintiffs bring this claim individually and on behalf of the members of
9 the proposed Class against Defendants and on behalf of the California Subclass
10 against Defendants.

11 57. California’s FAL (Bus. & Prof. Code §§17500, *et seq.*) makes it
12 “unlawful for any person to make or disseminate or cause to be made or
13 disseminated before the public in this state, . . . in any advertising device . . . or in
14 any other manner or means whatever, including over the Internet, any statement,
15 concerning . . . personal property or services, professional or otherwise, or
16 performance or disposition thereof, which is untrue or misleading and which is
17 known, or which by the exercise of reasonable care should be known, to be untrue or
18 misleading.”

19 58. Throughout the Class Period, Defendants committed acts of false
20 advertising, as defined by the FAL, by using false and misleading statements to
21 promote the sale of Triple Double Burgers, as described above, and including, but
22 not limited to, representing that Triple Double Burgers contain “Double the Beef.”

23 59. Defendants knew or should have known, through the exercise of
24 reasonable care, that their statements were untrue and misleading.

25 60. Defendants’ actions in violation of the FAL were false and misleading
26 such that the general public is and was likely to be deceived.

27

1 **COUNT VII**

2 **Violation Of New York’s General Business Law § 349**

3 73. Plaintiff Robert Meyer hereby incorporates by reference the allegations
4 contained in all preceding paragraphs of this complaint.

5 74. Plaintiff brings this claim individually and on behalf of the proposed
6 New York Subclass against Defendants.

7 75. New York’s General Business Law § 349 prohibits deceptive acts or
8 practices in the conduct of any business, trade, or commerce.

9 76. In its sale of goods throughout the State of New York, Defendants
10 conduct business and trade within the meaning and intendment of New York’s
11 General Business Law § 349.

12 77. Plaintiff and members of the New York Subclass are consumers who
13 purchased products from Defendants for their personal use.

14 78. By the acts and conduct alleged herein, Defendants have engaged in
15 deceptive, unfair, and misleading acts and practices, which include, without
16 limitation, misrepresenting material information about Triple Double Burgers,
17 including but not limited to the fact that Triple Double Burgers do not contain
18 “double” the beef.

19 79. The foregoing deceptive acts and practices were directed at consumers.

20 80. The foregoing deceptive acts and practices are misleading in a material
21 way because they fundamentally misrepresent the characteristics and quantity of beef
22 in Triple Double Burgers to induce consumers to purchase same.

23 81. By reason of this conduct, Defendants engaged in deceptive conduct in
24 violation of New York’s General Business Law.

25 82. Defendants’ actions are the direct, foreseeable, and proximate cause of
26 the damages that Plaintiff and members of the New York Subclass have sustained
27 from having paid for and consumed Defendants’ products.

1 of the Class and New York Subclass, and Plaintiffs’ attorneys as Class
2 Counsel to represent the members of the Class and Subclasses;

- 3 b. For an order declaring the Defendants’ conduct violates the statutes
- 4 referenced herein;
- 5 c. For an order finding in favor of Plaintiffs, the nationwide Class, and the
- 6 Subclasses on all counts asserted herein;
- 7 d. For compensatory, statutory, and punitive damages in amounts to be
- 8 determined by the Court and/or jury;
- 9 e. For prejudgment interest on all amounts awarded;
- 10 f. For an order of restitution and all other forms of equitable monetary
- 11 relief;
- 12 g. For an order requiring Defendants to undertake a corrective advertising
- 13 campaign;
- 14 h. For injunctive relief as pleaded or as the Court may deem proper;
- 15 i. For an order awarding Plaintiffs and the Class and Subclasses their
- 16 reasonable attorneys’ fees and expenses and costs of suit; and
- 17 j. Granting such other and further relief as may be just and proper.

18 **DEMAND FOR TRIAL BY JURY**

19 Plaintiffs demand a trial by jury of all issues so triable.

20 Dated: August 22, 2019

BURSOR & FISHER, P.A.

21
22 By: /s/ Blair E. Reed

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EXHIBIT A

Smashburger Launches "Triple Double" Burger

NEWS PROVIDED BY

Smashburger →

Jul 11, 2017, 09:00 ET

DENVER, July 11, 2017 /PRNewswire/ -- It's the stuff burger dreams are made of ... two layers of juicy beef, three layers of melted cheese, wrapped up in an artisan bun. Smashburger is making dreams come true, adding the all-new Triple Double to its national menu on July 11, 2017.



SMASHBURGER LAUNCHES "TRIPLE DOUBLE" BURGER It's the stuff burger dreams are made of ... two layers of juicy beef, three layers of melted cheese, wrapped up in an artisan bun. Smashburger is making dreams come true, adding the all-new Triple Double to its national menu on July 11, 2017.

The Triple Double will feature two of Smashburger's famous fresh never frozen beef patties, two slices of American cheese and one slice of aged cheddar, delivering maximum burger happiness in every bite. It's Smashburger's beefiest, cheesiest burger to date and will quickly become a favorite for burger lovers everywhere.

"We're giving people more of what they love. Double the juicy, caramelized beef, made-to-order and seared to perfection. And triple the cheesy goodness," said Smashburger Co-Founder & Chief Executive Officer, Tom Ryan. "This will be Smashburger's new iconic menu item, providing three times the cheese and double the beef in every bite."

The Triple Double starts with fresh, never frozen, beef. Smashed and seared on a hot, buttered griddle, locking in the flavor and juices. The highest quality cheeses are added and topped with toasted artisan buns. As with any Smashburger, you can add your favorite fresh produce, toppings and high-quality condiments. And it pairs perfectly with their incredible sides and hand-spun shakes.

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The Triple Double will be available at all full menu US Smashburger locations as of July 31, 2019. For more information on Smashburger, please visit www.smashburger.com or check us out on Facebook, Twitter, or Instagram.

About Smashburger

Smashburger is a leading fast casual better burger restaurant known for its fresh never frozen, beef burgers that are smashed on the grill to sear in the juices and seal in the flavor. In addition to burgers, Smashburger offers grilled or crispy chicken sandwiches, black bean burgers, fresh salads, signature side items such as Haystack onions and Veggie Frites, and hand-spun Haagen-Dazs® shakes. On each market menu, Smashburger offers locally inspired items like the regional burger, as well as regional sides and local craft beer. Smashburger began in 2007 with the vision of Rick Schaden and funding by Consumer Capital Partners—the private equity firm that Rick and his father Richard own. There are currently more than 370 corporate and franchise restaurants operating in 38 states and nine countries. To learn more, visit www.smashburger.com.

SOURCE Smashburger

Related Links

<http://www.smashburger.com>