

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

YVAN WOJTECKI, individually and)
on behalf of all others similarly situated,)
)
Plaintiff,)

v.)

MCDONALD'S CORPORATION,)
MCDONALD'S RESTAURANTS OF ILLINOIS,)
INC., KARAVITES REST. 19772, INC.,)
KARAVITES REST 26, INC.,)
KARAVITES REST. 26230, INC.,)
KARAVITES REST. 3778, INC.,)
KARAVITES REST. 5744, INC., KARAVITES)
RESTAURANT, INC., KARAVITES)
RESTAURANT 11102, LLC., KARAVITES)
RESTAURANT 14806, LLC., KARAVITES)
RESTAURANT #16510, LLC., KARAVITES)
RESTAURANT 1863, LLC., KARAVITES)
RESTAURANT 1968, LLC., KARAVITES)
RESTAURANT 28953, LLC., KARAVITES)
RESTAURANT 31420, LLC., KARAVITES)
RESTAURANT 31591, LLC., KARAVITES)
RESTAURANT 31663, LLC., KARAVITES)
RESTAURANT 33426, LLC., KARAVITES)
RESTAURANT 3518, LLC., KARAVITES)
RESTAURANT 36148, LLC., KARAVITES)
RESTAURANT 4444, LLC., KARAVITES)
RESTAURANT 4532, LLC., KARAVITES)
RESTAURANT 4650, INC., KARAVITES)
RESTAURANT 5230, LLC., KARAVITES)
RESTAURANT 5895, INC., KARAVITES)
RESTAURANT 6298, LLC., KARAVITES)
RESTAURANT 6676, LLC., KARAVITES)
RESTAURANT 6749, LLC., KARAVITES)
RESTAURANT 7690, LLC., KARAVITES)
RESTAURANT 912, LLC., SALABAD, LLC.,)
SOLANO DE-CARRIER MANAGEMENT, LLC.,)
and JDD INVESTMENT CO.,)
Defendants.)

2017L008008
CALENDAR/ROOM I
TIME 00:00
Consumer Fraud

No.: _____

JURY DEMANDED

2017 AUG -8 AM 10:19
FILED
CLERK OF COURT

COMPLAINT

NOW COMES the Plaintiff, YVAN WOJTECKI, by and through his attorneys, SEIDMAN MARGULIS & FAIRMAN, LLP, and HELLER & RICHMOND, LTD., and for his Complaint against the Defendants, MCDONALD'S CORPORATION, MCDONALD'S RESTAURANTS OF ILLINOIS, INC., KARAVITES REST. 19772, INC., KARAVITES REST 26, INC., KARAVITES REST. 26230, INC., KARAVITES REST. 3778, INC., KARAVITES REST. 5744, INC., KARAVITES RESTAURANT, INC., KARAVITES RESTAURANT 11102, LLC., KARAVITES RESTAURANT 14806, LLC., KARAVITES RESTAURANT #16510, LLC., KARAVITES RESTAURANT 1863, LLC., KARAVITES RESTAURANT 1968, LLC., KARAVITES RESTAURANT 28953, LLC., KARAVITES RESTAURANT 31420, LLC., KARAVITES RESTAURANT 31591, LLC., KARAVITES RESTAURANT 31663, LLC., KARAVITES RESTAURANT 33426, LLC., KARAVITES RESTAURANT 3518, LLC., KARAVITES RESTAURANT 36148, LLC., KARAVITES RESTAURANT 4444, LLC., KARAVITES RESTAURANT 4532, LLC., KARAVITES RESTAURANT 4650, INC., KARAVITES RESTAURANT 5230, LLC., KARAVITES RESTAURANT 5895, INC., KARAVITES RESTAURANT 6298, LLC., KARAVITES RESTAURANT 6676, LLC., KARAVITES RESTAURANT 6749, LLC., KARAVITES RESTAURANT 7690, LLC., KARAVITES RESTAURANT 912, LLC., SALABAD, LLC., SOLANO DE-CARRIER MANAGEMENT, LLC., and JDD INVESTMENT CO. states the following:

I. NATURE OF THE ACTION

1. Plaintiff brings this action to recover for overcharges of sales tax imposed by Defendants.

2. This is a consumer class action relating to the unlawful double taxation of sweetened beverages by Defendants. Plaintiff brings this action for violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.*, common law fraud, and money had and received.

II. PARTIES

3. At all times relevant to this Complaint, Plaintiff, Yvan Wojtecki, is and was a resident of Cook County, Illinois.

4. Defendants are corporations doing business in Cook County, Illinois, engaged in the retail sales of food and beverages under the McDonald's brand.

5. Defendants are engaged in the business of retail sales of food and beverages, including the retail sales of sweetened beverages.

6. Defendants own, control, operate, and/or manage McDonald's restaurants in Cook County, Illinois.

FACTS

7. Beginning on August 2, 2017, sweetened beverages became subject to Cook County's Sweetened Beverage Tax Ordinance, Ordinance Number 16-5931, adopting the Sweetened Beverage Tax, Section 74-850 *et seq.*

8. Each retailer making retail sales of sweetened beverages, including Defendants, must collect the Sweetened Beverage Tax from the purchasers of sweetened beverages. See Cook County Ordinances §§ 74-852(a)-(c).

9. The tax collected by retailers making retail sales of sweetened beverages, including Defendants, is collected with the retailers as trustees for and on behalf of Cook County. Cook County Ordinances § 74-852(e)(5).

10. The tax collected by retailers making retail sales of sweetened beverages, including Defendants, is to be collected "in addition to all other taxes" imposed on the sale of such goods. Cook County Ordinances § 74-855.

11. The State of Illinois' sales tax for general merchandise, such as retail sweetened beverages, is 6.250%. 35 ILCS 120/1-14; 86 Ill. Adm. Code 130, § 130.310.

12. In addition to the state sales tax, Cook County general merchandise retail sales are subject to the Regional Transportation Authority (RTA) sales tax of 1.000%, Cook County tax of 1.750%, and municipality tax.

13. In Chicago, the municipality tax is 1.250%, and there is in some areas an additional MPEA Food and Beverage tax.

14. Beginning on August 2, 2017, retailers in Cook County, Illinois, were to begin charging a tax on the retail sale of all sweetened beverages of \$0.01 per ounce.

15. The Sweetened Beverage Tax of \$0.01 per ounce of sweetened beverage is not to be added to the pre-tax price of the good, but is itself to be added to the existing sales tax. See Cook County Ordinances § 74-855.

16. If done properly, Cook County retailers should tax general merchandise, including sweetened beverages, at the existing sales tax rate, and then add the Sweetened Beverage Tax of \$0.01 per ounce to that post-tax total.

17. McDonald's franchisees rely on computerized systems for point-of-sale processing in their stores. Upon information and belief, the computerized point-of-sale system is substantially similar in each McDonald's franchise.

18. Upon information and belief, the calculation of sales tax in transactions is handled by the computerized point-of-sale system in a standardized manner.

19. Upon information and belief, Defendants calculate sales tax by adding the cost of goods to come to a subtotal, and then applying the sales tax rate to that subtotal.

20. On August 8, 2017, Plaintiff, YVAN WOJTECKI, purchased food at a McDonald's franchise restaurant, including a sweetened beverage, and \$0.23 in tax under the Sweetened Beverage Tax.

21. In calculating the subtotal, the Sweetened Beverage Tax of \$0.23 was added to the *pre-tax* price of the goods as a surcharge to form a Sub-Total. This Sub-Total was then made subject to Cook County's sales tax rate, as seen in the receipt, attached hereto as Exhibit A.

22. In doing so, Defendants applied sales tax to the \$0.23 collected under the Sweetened Beverage Tax, totaling approximately \$0.02 in purported sales tax on moneys received pursuant to the Sweetened Beverage Tax.

23. As a result of the above, Plaintiff was overcharged by approximately \$0.02.

24. Plaintiff, and other similarly situated consumers, relied on Defendants' computation of the amount due, and was damaged as a result.

25. Upon information and belief, Defendants, through their point-of-sales systems, have been unlawfully over-charging sales tax to consumers for orders including items subject to the Sweetened Beverage Tax.

26. Upon information and belief, instead of adding \$0.01 per ounce of sweetened beverage to consumers' post-tax totals, Defendants have been, and continue to, include the Sweetened Beverage tax in the *pre-tax* subtotal, and then applying the applicable sales tax rate.

27. The foregoing actions by Defendants amounts to improper sales tax of the Sweetened Beverage Tax itself.

III. CLASS ALLEGATIONS

28. Plaintiff brings this action on behalf of himself and all other similarly situated individuals and seeks certification of the following class:

- (a) All persons who purchased sweetened beverages in (b) Defendants' stores (c) after the Sweetened Beverage Tax went into effect on August 2, 2017 who (d) were charged sales tax on tax owed under the Sweetened Beverage Tax.

Excluded from the Class are all persons who make a timely election to be excluded from the Class, Defendants and its subsidiaries and affiliates, and all others excluded by law.

29. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of his claim on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

30. **Numerosity – 735 ILCS 5/2-801(1).** The members of the Class are so numerous that individual joinder of all Class members is impracticable. The members of the Class include those who purchase popular items from popular stores in a populous location. The precise number of Class members is presently unknown, but may be ascertained from Defendants' books and records.

31. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

32. **Commonality and Predominance – 735 ILCS 5/2-801(2).** This action involves common questions of law and fact, which predominate over any questions affecting individual members of the Class, including, without limitations:

- a. Whether Defendants improperly charged sales tax on tax owed under the Sweetened Beverage Tax
- b. Whether Plaintiff and the Class are entitled to compensatory damages.

33. **Adequacy of Representation – 735 ILCS 5/2-801(3).** Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the members of the Class he seeks to represent; he has retained counsel competent and experienced in class action litigation; and Plaintiff intends to prosecute this action vigorously. The interests of the Class will be fairly and adequately protected by Plaintiff and his counsel.

34. **Superiority – 735 ILCS 5/2-801(4).** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and members of the Class are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendants, often one to three cents, so it would be impracticable for members of the Class to individually seek redress for Defendants' wrongful conduct. Even if members of the Class could afford individual litigation, the burden on the Court would be high. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

IV. COUNTS FOR DAMAGES

a. Count One – Consumer Fraud Act

35. Plaintiff repeats and re-alleges paragraphs 1 through 34 as if fully set forth herein.

36. Defendants' actions charging consumers, such as Plaintiff, sales tax on pre-tax subtotals that included tax owed under the Sweetened Beverage Tax, constituted deception, fraud, false pretense, false promise, misrepresentation, and/or the concealment, suppression, or omission of a material fact, with the intent that others rely upon the concealment, suppression or omission of such material fact.

37. Charging excessive sales tax not authorized by law constitutes unfair and/or deceptive trade practices under the Consumer Fraud and Deceptive Business Practices Act, 815

ILCS 505/2. People ex rel. Hartigan v. Stianos, 131 Ill.App.3d 575, 580-81 (2nd Dist. 1985),
Saltzman v. Enhanced Services Billing, Inc., 348 Ill.App.3d 740, 749-51 (1st Dist. 2003).

38. In charging excessive sales tax not authorized by law, Defendants engaged in unfair and deceptive acts and practices, in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2.

WHEREFORE, Plaintiff prays that the Court enter judgement in favor of Plaintiff and the class, and against Defendants for:

- a. Compensatory damages;
- b. Punitive damages equal to at least 1% of the annual revenue of each of Defendants' Cook County stores during each year the violations occurred;
- c. An injunction against further overcharges;
- d. Attorney's fees, litigation expenses and costs of suit;
- e. Such other or further relief as the Court deems proper.

b. Count Two – Common Law Fraud

39. Plaintiff repeats and re-alleges paragraphs 1 through 34 as if fully set forth herein.

40. Defendants misrepresented the amount of sales tax due on the transactions of Plaintiff and other consumers.

41. Plaintiff and other consumers relied on the misrepresentation by paying excess sales tax.

42. Defendant knew or recklessly disregarded the manner in which tax should be computed.

WHEREFORE, Plaintiff prays that the Court enter judgement in favor of Plaintiff and the class, and against Defendants for:

- a. Compensatory damages;
- b. Punitive damages equal to at least 1% of the annual revenue of each of Defendants' Cook County stores during each year the violations occurred;
- c. Costs of suit;
- d. Such other or further relief as the Court deems proper.

c. Count Three – Money Had and Received

43. Plaintiff repeats and re-alleges paragraphs 1 through 34 as if fully set forth herein.

44. Defendants unjustly enriched themselves, such that they are obligated in good conscience to make restitution, by overcharging Plaintiff and other consumers on sales tax.

WHEREFORE, Plaintiff prays that the Court enter judgement in favor of Plaintiff and the class, and against Defendants for:

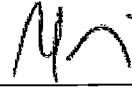
- a. Compensatory damages;
- b. Costs of suit;
- c. Such other or further relief as the Court deems proper.

JURY DEMAND

Plaintiff hereby demands jury trial in this matter.

Respectfully submitted,

YVAN WOJTECKI, individually and on
behalf of all others similarly situated



One of Plaintiff's attorneys

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