

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

ANTONIO FIDELIS VALIENTE, On Behalf of
Himself and All Others Similarly Situated,

Plaintiff,

v.

DINEEQUITY, INC., APPLEBEE'S
INTERNATIONAL, INC., d/b/a APPLEBEE'S
NEIGHBORHOOD GRILL & BAR, and
WEIGHT WATCHERS INTERNATIONAL,
INC.

Defendants.

Case No.: 08-CV-2416 (KHV/DJW)

**DEFENDANT APPLEBEE'S
INTERNATIONAL, INC.'S
ANSWER TO THE
COMPLAINT OF ANTONIO
FIDELIS VALIENTE**

Defendant Applebee's International, Inc. ("Applebee's") hereby admits, denies, or otherwise responds to the Complaint ("Complaint") of Antonio Fidelis Valiente ("Plaintiff") as follows:

NATURE OF ACTION

1. Applebee's denies generally and specifically all allegations contained in Paragraph 1 of the Complaint.

2. Applebee's lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 2 of the Complaint and, on that basis, denies each and every allegation contained in Paragraph 2.

3. Applebee's lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 3 of the Complaint and, on that basis, denies each and every allegation contained in Paragraph 3.

4. Applebee's lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint and, on that basis, denies each

and every allegation contained in Paragraph 4.

5. Applebee's denies generally and specifically all allegations contained in Paragraph 5 of the Complaint.

6. Answering Paragraph 6 of the Complaint, Applebee's admits that it has contracted with Defendant Weight Watchers International, Inc. ("Weight Watchers") to offer Weight Watchers[®] menu items. Applebee's further admits that the Weight Watchers[®] menu items list fat, calorie, fiber, and Weight Watchers[®] POINTS[®] information for each dish. Applebee's further admits that POINTS[®] are calculated based on fat, calorie, and fiber content. Applebee's denies all allegations of Paragraph 6 not specifically admitted.

7. Answering Paragraph 7 of the Complaint, Applebee's denies that it "materially misrepresents the actual fat and calorie content – and therefore the number of Weight Watchers[®] Points – of each dish" of the Weight Watchers menu items. Applebee's lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 7 of the Complaint regarding the results of testing and, on that basis, denies each and every allegation regarding testing contained in Paragraph 7. Applebee's admits that the menu lists the Cajun Lime Tilapia as containing 6 grams of fat and 310 calories. To the extent that Paragraph 7 contains legal conclusions, it does not require an answer. Applebee's denies all allegations of Paragraph 7 not specifically admitted.

8. Answering Paragraph 8 of the Complaint, Applebee's denies that it distributes misleading and fraudulent information about the Weight Watchers menu items by interstate wires. Applebee's admits that it maintains a website advertising the Weight Watchers menu items. To the extent Paragraph 8 contains allegations directed at other Defendants, it does not require an answer. Applebee's denies all allegations of Paragraph 8 not specifically admitted.

9. Applebee's lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 9 of the Complaint and, on that basis, denies each and every allegation contained in Paragraph 9.

10. Applebee's lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint and, on that basis, denies each and every allegation contained in Paragraph 10.

11. Paragraph 11 of the Complaint contains legal conclusions and, to that extent, does not require an answer. Applebee's denies all of the allegations contained in Paragraph 11.

12. Paragraph 12 of the Complaint contains legal conclusions and, to that extent, does not require an answer. Applebee's denies all of the allegations contained in Paragraph 12.

13. Paragraph 13 of the Complaint contains legal conclusions and, to that extent, does not require an answer.

PARTIES TO THE ACTION

14. Applebee's lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint and, on that basis, denies each and every allegation contained in Paragraph 14. To the extent that Paragraph 14 contains legal conclusions, it does not require an answer.

15. Answering Paragraph 15 of the Complaint, Applebee's denies that it franchises and operates restaurants under the name "Applebee's Neighborhood Grill & Bar." Applebee's admits that it is a wholly-owned subsidiary and brand of DineEquity, and has a place of business at 11201 Renner Boulevard, Lenexa, Kansas 66219. To the extent Paragraph 15 contains legal conclusions, it does not require an answer. Applebee's denies all allegations not specifically admitted.

16. Paragraph 16 of the Complaint contains allegations regarding other Defendants and, to that extent, does not require an answer. To the extent Paragraph 16 requires an answer, Applebee's denies that DineEquity currently owns, operates, and/or franchises all Applebee's full service restaurants throughout the United States, and has owned, operated, and/or franchised Applebee's restaurants since November 2007. Applebee's admits that DineEquity is incorporated in Delaware and has a place of business at 450 North Brand, Glendale, California 91203. To the extent Paragraph 16 contains legal conclusions, it does not require an answer. Applebee's denies all allegations not specifically admitted.

17. Paragraph 17 of the Complaint contains allegations regarding other Defendants, and does not require an answer. To the extent Paragraph 17 requires an answer, Applebee's lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 17 of the Complaint and, on that basis, denies each and every allegation contained in Paragraph 17.

JURISDICTION AND VENUE

18. Paragraph 18 of the Complaint contains legal conclusions and, to that extent, does not require an answer. Applebee's lacks sufficient knowledge or information to form a belief as to the truth of the allegation that two-thirds of the class members will be citizens of a state other than Kansas and, on that basis, denies this allegation of Paragraph 18.

19. Answering Paragraph 19 of the Complaint, Applebee's admits that it does business in Kansas. To the extent Paragraph 19 contains legal conclusions, it does not require an answer.

20. Answering Paragraph 20 of the Complaint, Applebee's admits that it does business in Kansas. To the extent Paragraph 20 contains legal conclusions, it does not require an

answer.

FACTUAL ALLEGATIONS

21. To the extent Paragraph 21 of the Complaint contains allegations regarding other Defendants, it does not require an answer. To the extent Paragraph 21 requires an answer, Applebee's denies that DineEquity owns, operates, and/or franchises 1,976 Applebee's restaurants. Applebee's denies that there are over 35 Applebee's restaurants in Kansas.

22. Answering Paragraph 22 of the Complaint, Applebee's admits that in the summer of 2003, Applebee's entered into an agreement with Weight Watchers. Applebee's admits that in May 2004, Applebee's issued a press release in which it referred to a "multi-year agreement with Weight Watchers®." Applebee's further admits that the agreement was a multi-year licensing contract between Applebee's and Weight Watchers. Applebee's admits that the May 2004 press release contained some of the language quoted in Paragraph 22 of the Complaint, and the document speaks for itself. The Weight Watchers website referenced speaks for itself. Applebee's denies that "Defendant DineEquity has maintained this contract with Weight Watchers since purchasing Applebee's in November 2007." Applebee's denies all allegations of Paragraph 22 not specifically admitted.

23. Answering Paragraph 23 of the Complaint, Applebee's admits that it began offering the Weight Watchers® menu items at its Applebee's locations in approximately Spring 2004. Applebee's further admits that in May 2004, Applebee's and Weight Watchers issued a press release with some of the language contained in Paragraph 23 of the Complaint, and the document speaks for itself. Applebee's denies that it acknowledged that customers choose Weight Watchers® menu items options because of the "healthy" nature of those items. Applebee's denies all allegations of Paragraph 23 not specifically admitted.

24. Answering Paragraph 24 of the Complaint, Applebee's admits that in May 2004, Applebee's and Weight Watchers issued a joint press release, and the document speaks for itself. Applebee's denies all allegations of Paragraph 24 not specifically admitted.

25. Answering Paragraph 25 of the Complaint, Applebee's admits that it generally markets the Weight Watchers menu items as being a healthier alternative to the standard menu at Applebee's. Applebee's denies that it "specifically market [sic] to customers who rely on accurate information regarding the fat content, calorie content, and 'Weight Watchers® Points' contained in each meal." Applebee's admits that, as of September 26, 2008, the Applebee's website (www.applebees.com) states: "Whether you're following the Weight Watchers® **POINTS**® Weight-Loss System, or simply looking for alternatives when you're eating out, you'll love these ten Applebee's menu items." To the extent Paragraph 25 contains allegations regarding other Defendants, it does not require an answer. To the extent that Paragraph 25 contains legal conclusions, it does not require an answer. Applebee's denies all allegations of Paragraph 25 not specifically admitted.

26. Answering Paragraph 26 of the Complaint, Applebee's admits that Applebee's restaurant menus list the caloric and fat content of Weight Watchers menu items, and that menus are generally distributed to each customer visiting an Applebee's restaurant. Applebee's further admits that for the Tortilla Chicken Melt, Onion Soup au Gratin, Chocolate Raspberry Layer Cake, Cajun Lime Tilapia, Italian Chicken & Portobello Sandwich, Steak & Portobellos, and Grilled Chili-Lime Chicken Salad, the fat grams, calories, and Weight Watchers® POINTS® listed in Paragraph 26 of the Complaint are the same as those listed on the menu. Applebee's denies that the Teriyaki Steak 'N Shrimp Skewers and the Confetti Chicken are currently listed as Weight Watchers® menu items. Applebee's further notes that the Exhibit 1 noted in

Paragraph 26 of the Complaint is not attached. Applebee's denies all allegations of Paragraph 26 not specifically admitted.

27. Answering Paragraph 27 of the Complaint, Applebee's denies that each Applebee's restaurant has the same or substantially the same menu. Applebee's admits that the Weight Watchers[®] menu items are available at http://www.applebees.com/Menu_WW.aspx (erroneously listed as http://www.applebees.com/Menu_WW_static.aspx). Applebee's further admits that the menus contain identical or substantially identical information about the caloric and fat content of the Weight Watchers[®] menu items. To the extent that Paragraph 27 contains legal conclusions, it does not require an answer. Applebee's denies all allegations of Paragraph 27 not specifically admitted.

28. Answering Paragraph 28 of the Complaint, Applebee's admits that its menus are generally distributed to customers each time they eat at an Applebee's, and have generally been provided on a daily basis for the past four years. Applebee's lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 28 regarding what customers see when they log onto the website and, on that basis, denies these allegations. To the extent that Paragraph 28 contains legal conclusions, it does not require an answer. Applebee's denies all allegations of Paragraph 28 not specifically admitted.

29. To the extent that Paragraph 29 of the Complaint contains allegations regarding other Defendants, it does not require an answer. To the extent an answer is required, Applebee's lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 29 of the Complaint and, on that basis, denies each and every allegation contained in Paragraph 29. To the extent that Paragraph 29 contains legal conclusions, it does not require an answer.

30. To the extent that Paragraph 30 contains allegations regarding other Defendants, it does not require an answer. To the extent an answer is required, Applebee's lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 30 of the Complaint and, on that basis, denies each and every allegation contained in Paragraph 30. To the extent that Paragraph 30 contains legal conclusions, it does not require an answer.

31. Applebee's denies generally and specifically all allegations contained in Paragraph 31 of the Complaint. To the extent that Paragraph 31 contains legal conclusions, it does not require an answer.

32. Applebee's lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 32 of the Complaint and, on that basis, denies each and every allegation contained in Paragraph 32.

33. Answering Paragraph 33 of the Complaint, Applebee's admits that the Applebee's restaurant menu states that the Cajun Lime Tilapia contains 6 grams of fat, 310 calories, and 6 Weight Watchers® POINTS®. As to the allegations about laboratory tests, Applebee's lacks sufficient knowledge or information to form a belief as to the truth of these allegations and, on that basis, denies these allegations of Paragraph 33. Applebee's denies all allegations of Paragraph 33 not specifically admitted.

34. Answering Paragraph 34 of the Complaint, Applebee's admits that the menu states that the Italian Chicken & Portobello Sandwich contains 6 grams of fat, the Garlic Herb Chicken contains 6 grams of fat, and the Steak & Portobellos contains 10 grams of fat. As to the remaining allegations in Paragraph 34, Applebee's lacks sufficient knowledge or information to form a belief as to the truth of the allegations and, on that basis, denies these allegations of

Paragraph 34.

35. Applebee's lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 35 of the Complaint and, on that basis, denies each and every allegation contained in Paragraph 35.

36. Applebee's lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 36 of the Complaint and, on that basis, denies each and every allegation contained in Paragraph 36.

37. Paragraph 37 of the Complaint contains legal conclusions and, to that extent, does not require an answer. To the extent Paragraph 37 requires an answer, Applebee's denies all of the allegations contained in Paragraph 37.

38. Paragraph 38 of the Complaint contains legal conclusions and, to that extent, does not require an answer. To the extent Paragraph 38 requires an answer, Applebee's lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 38 and, on that basis, denies each and every allegation contained in Paragraph 38.

CLASS ACTION ALLEGATIONS

39. Paragraph 39 of the Complaint contains legal conclusions and, to that extent, does not require an answer.

40. Paragraph 40 of the Complaint contains legal conclusions and, to that extent, does not require an answer.

41. Answering Paragraph 41 of the Complaint, Applebee's admits that there are approximately 2,000 Applebee's restaurants nationwide – in all fifty states and the District of Columbia – and each restaurant offers substantially the same Weight Watchers[®] menu items. Applebee's further admits that millions of consumers across the nation, residing in many different

states, frequent Applebee's. Applebee's lacks sufficient knowledge or information to form a belief as to the truth of the allegations that hundreds of thousands of consumers have ordered Weight Watchers[®] menu items and, on that basis, denies these allegations. To the extent Paragraph 41 of the Complaint contains legal conclusions, it does not require an answer. Applebee's denies all allegations of Paragraph 41 not specifically admitted.

42. Answering Paragraph 42 of the Complaint, Applebee's denies that each Weight Watchers[®] menu item costs between \$3.99 and \$9.99. To the extent Paragraph 42 contains legal conclusions, it does not require an answer. Applebee's denies all allegations of Paragraph 42 not specifically admitted.

43. Paragraph 43 of the Complaint contains legal conclusions and, to that extent, does not require an answer. Applebee's denies all allegations of Paragraph 43.

44. Paragraph 44 of the Complaint contains legal conclusions and, to that extent, does not require an answer. Applebee's denies all allegations of Paragraph 44.

45. Paragraph 45 of the Complaint contains legal conclusions and, to that extent, does not require an answer. To the extent an answer is required, Applebee's lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 45 regarding what Plaintiff or members of the proposed class ordered and purchased and, on that basis, denies these allegations of Paragraph 45. Applebee's denies all other allegations of Paragraph 45.

46. Paragraph 46 of the Complaint contains legal conclusions and, to that extent, does not require an answer. To the extent an answer is required, Applebee's denies all allegations of Paragraph 46.

47. Paragraph 47 of the Complaint contains legal conclusions and, to that extent, does

not require an answer. Applebee's denies all allegations of Paragraph 47.

48. Paragraph 48 of the Complaint contains legal conclusions and, to that extent, does not require an answer.

49. Paragraph 49 of the Complaint contains legal conclusions and, to that extent, does not require an answer. Applebee's denies all allegations of Paragraph 49.

50. Paragraph 50 of the Complaint contains legal conclusions and, to that extent, does not require an answer. Applebee's denies all allegations of Paragraph 50.

51. Paragraph 51 of the Complaint contains legal conclusions and, to that extent, does not require an answer. Applebee's denies all allegations of Paragraph 51.

52. Paragraph 52 of the Complaint contains legal conclusions and, to that extent, does not require an answer. Applebee's denies all allegations of Paragraph 52.

53. Paragraph 53 of the Complaint contains legal conclusions and, to that extent, does not require an answer. Applebee's denies all allegations of Paragraph 53.

54. Paragraph 54 of the Complaint contains legal conclusions and, to that extent, does not require an answer. Applebee's denies all allegations of Paragraph 54.

JURY TRIAL DEMANDED

55. Paragraph 55 of the Complaint contains legal conclusions and, to that extent, does not require an answer.

**COUNT I
(VIOLATION OF THE RACKETEER INFLUENCED AND
CORRUPT ORGANIZATIONS ACT, 18 U.S.C. § 1962(C))**

56. Answering Paragraph 56 of the Complaint, Applebee's incorporates by reference and repleads all of the admissions, denials, and allegations contained in Paragraphs 1-55 above.

57. Paragraph 57 of the Complaint contains legal conclusions and does not require an

answer. Applebee's denies all allegations of Paragraph 57.

58. Paragraph 58 of the Complaint contains legal conclusions and, to that extent, does not require an answer. Applebee's denies all allegations of Paragraph 58.

59. Paragraph 59 of the Complaint contains legal conclusions and, to that extent, does not require an answer. To the extent Paragraph 59 requires an answer, Applebee's denies all allegations of Paragraph 59.

60. Paragraph 60 of the Complaint contains legal conclusions and, to that extent, does not require an answer. To the extent Paragraph 60 requires an answer, Applebee's admits that written menus have been sent through the mails to Applebee's restaurants around the nation. Applebee's denies all allegations not specifically admitted.

61. Paragraph 61 of the Complaint contains legal conclusions and allegations regarding other Defendants and, to that extent, does not require an answer. To the extent an answer is required, Applebee's lacks sufficient knowledge or information to form a belief as to the truth of these allegations and, on that basis, denies each and every one of these allegations.

62. Paragraph 62 of the Complaint contains legal conclusions and allegations regarding other Defendants and, to that extent, does not require an answer. To the extent an answer is required, Applebee's lacks sufficient knowledge or information to form a belief as to the truth of these allegations and, on that basis, denies each and every one of these allegations.

63. Paragraph 63 of the Complaint contains legal conclusions and, to that extent, does not require an answer. To the extent Paragraph 63 requires an answer, Applebee's admits that on the "Weight Watchers" tab of its website, Applebee's lists information on the fat grams, calories, and Weight Watchers[®] POINTS[®] contained in each Weight Watchers[®] menu item. Applebee's denies all allegations of Paragraph 63 not specifically admitted.

64. Paragraph 64 of the Complaint contains legal conclusions and allegations regarding other Defendants and, to that extent, does not require an answer. To the extent an answer is required, Applebee's admits that DineEquity's website lists Applebee's as one of its "Brands" under the "Brands" tab. Applebee's further admits that the webpage lists the "Applebee's" logo and has a link the Applebee's website. Applebee's denies all allegation of Paragraph 64 not specifically admitted.

65. Paragraph 65 of the Complaint contains legal conclusions and allegations regarding other Defendants and, to that extent, does not require an answer. To the extent an answer is required, Applebee's admits that Weight Watchers[®] POINTS[®] are generally based on *inter alia* on fat and calorie content of the dishes. To the extent a further answer is required, Applebee's lacks sufficient knowledge or information to form a belief as to the truth of these allegations and, on that basis, denies each and every one of these allegations. Applebee's denies all allegation of Paragraph 65 not specifically admitted.

66. Paragraph 66 of the Complaint contains legal conclusions and, to that extent, does not require an answer. Applebee's denies all allegations of Paragraph 66.

67. Paragraph 67 of the Complaint contains legal conclusions and, to that extent, does not require an answer. Applebee's denies all allegations of Paragraph 67.

68. Paragraph 68 of the Complaint contains legal conclusions and, to that extent, does not require an answer.

COUNT II
(VIOLATION OF RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
ACT, 18 U.S.C. § 1962(c))

69. Answering Paragraph 69 of the Complaint, Applebee's incorporates by reference and repleads all of the admissions, denials, and allegations contained in Paragraphs 1-68 above.

70. Paragraph 70 of the Complaint contains legal conclusions and, to that extent, does not require an answer. Applebee's denies all allegations of Paragraph 70.

71. Paragraph 71 of the Complaint contains legal conclusions and, to that extent, does not require an answer. Applebee's denies all allegations of Paragraph 71.

72. Paragraph 72 of the Complaint contains legal conclusions and, to that extent, does not require an answer. Applebee's denies all allegations of Paragraph 72.

73. Paragraph 73 of the Complaint contains legal conclusions and, to that extent, does not require an answer.

**COUNT III
(VIOLATION OF KANSAS CONSUMER PROTECTION
ACT — K.S.A. § 50-626(b)(1)(A))**

74. Answering Paragraph 74 of the Complaint, Applebee's incorporates by reference and repleads all of the admissions, denials, and allegations contained in Paragraphs 1-73 above.

75. Paragraph 75 of the Complaint contains legal conclusions and, to that extent, does not require an answer.

76. Paragraph 76 of the Complaint contains legal conclusions and, to that extent, does not require an answer. To the extent Paragraph 76 requires an answer, Applebee's denies all allegations of Paragraph 76.

77. Paragraph 77 of the Complaint contains legal conclusions and, to that extent, does not require an answer. To the extent Paragraph 77 requires an answer, Applebee's denies all allegations of Paragraph 77.

78. Paragraph 78 of the Complaint contains legal conclusions and, to that extent, does not require an answer. To the extent Paragraph 78 requires an answer, Applebee's denies all allegations of Paragraph 78.

79. Paragraph 79 of the Complaint contains legal conclusions and, to that extent, does not require an answer. Applebee's denies all allegations of Paragraph 79.

80. Paragraph 80 of the Complaint contains legal conclusions and, to that extent, does not require an answer.

**COUNT IV
(VIOLATION OF KANSAS CONSUMER PROTECTION
ACT — K.S.A. § 50-626(b)(1)(D))**

81. Answering Paragraph 81 of the Complaint, Applebee's incorporates by reference and repleads all of the admissions, denials, and allegations contained in Paragraphs 1-80 above.

82. Paragraph 82 of the Complaint contains legal conclusions and, to that extent, does not require an answer.

83. Paragraph 83 of the Complaint contains legal conclusions and, to that extent, does not require an answer. To the extent Paragraph 83 requires an answer, Applebee's denies all allegations of Paragraph 83.

84. Paragraph 84 of the Complaint contains legal conclusions and, to that extent, does not require an answer. To the extent Paragraph 84 requires an answer, Applebee's denies all allegations of Paragraph 84.

85. Paragraph 85 of the Complaint contains legal conclusions and, to that extent, does not require an answer. To the extent Paragraph 85 requires an answer, Applebee's denies all allegations of Paragraph 85.

86. Paragraph 86 of the Complaint contains legal conclusions and, to that extent, does not require an answer.

**COUNT V
(CIVIL CONSPIRACY)**

87. Answering Paragraph 87 of the Complaint, Applebee's incorporates by reference

and repleads all of the admissions, denials, and allegations contained in Paragraphs 1-86 above.

88. Paragraph 88 of the Complaint contains legal conclusions and, to that extent, does not require an answer. Applebee's denies all allegations of Paragraph 88.

89. Paragraph 89 of the Complaint contains legal conclusions and, to that extent, does not require an answer. Applebee's denies all allegations of Paragraph 89.

90. Paragraph 90 of the Complaint contains legal conclusions and, to that extent, does not require an answer. To the extent Paragraph 90 requires a response, Applebee's denies all allegations of Paragraph 90.

91. Paragraph 91 of the Complaint contains legal conclusions and, to that extent, does not require an answer. Applebee's denies all allegations of Paragraph 91.

92. Paragraph 92 of the Complaint contains legal conclusions and, to that extent, does not require an answer. To the extent Paragraph 92 requires an answer, Applebee's denies all allegations of Paragraph 92.

93. Paragraph 93 of the Complaint contains legal conclusions and, to that extent, does not require an answer. To the extent Paragraph 93 requires an answer, Applebee's denies all allegations of Paragraph 93.

**COUNT VI
(UNJUST ENRICHMENT)**

94. Answering Paragraph 94 of the Complaint, Applebee's incorporates by reference and repleads all of the admissions, denials, and allegations contained in Paragraphs 1-93 above.

95. Paragraph 95 of the Complaint contains legal conclusions and, to that extent, does not require an answer.

96. Paragraph 96 of the Complaint contains legal conclusions and, to that extent, does not require an answer. To the extent Paragraph 96 requires an answer, Applebee's denies all

allegations of Paragraph 96.

97. Paragraph 97 of the Complaint contains legal conclusions and, to that extent, does not require an answer. Applebee's denies all allegations of Paragraph 97.

98. Paragraph 98 of the Complaint contains legal conclusions and, to that extent, does not require an answer. Applebee's denies all allegations of Paragraph 98.

99. Paragraph 99 of the Complaint contains legal conclusions and, to that extent, does not require an answer.

AFFIRMATIVE DEFENSES

Without assuming the burden of proof on any matters that would otherwise rest with Plaintiff, and expressly denying any and all wrongdoing, Applebee's alleges the following additional reasons why Plaintiff is not entitled to any relief:

FIRST AFFIRMATIVE DEFENSE (Failure to State a Claim)

The Complaint and each purported cause of action in the Complaint fails to state facts sufficient to constitute a cause or causes of action against Applebee's upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE (No Deceptive Act or Practice)

Plaintiff's claims are barred, in whole or in part, because there was no deceptive act or practice. Each and every representation and advertisement for the products at issue in the Complaint ("Products") that was produced and disseminated clearly and accurately portrayed the characteristics, ingredients, uses, benefits, quantities, standard, quality, and grade of the Products.

**THIRD AFFIRMATIVE DEFENSE
(Performance of Duties)**

Applebee's has fully performed any and all contractual, statutory, and other duties, and Plaintiff is therefore estopped from asserting any cause of action against Applebee's.

**FOURTH AFFIRMATIVE DEFENSE
(No Standing)**

Plaintiff is not entitled to relief under the statutes and legal theories invoked in the Complaint because Plaintiff lacks standing.

**FIFTH AFFIRMATIVE DEFENSE
(Lack of Justifiable Reliance)**

Plaintiff's claims are barred, in whole or in part, because Plaintiff knew, at all times, the characteristics, ingredients, uses, benefits, quantities, standard, quality, and grade of the Products and therefore could not have justifiably relied on the alleged misrepresentations or omissions asserted in the Complaint.

**SIXTH AFFIRMATIVE DEFENSE
(Conduct Not Unlawful)**

The representations and advertising regarding the Products are not unlawful. No representation or advertisement contains any false or misleading statement or promises any good not intended to be delivered. As such, the representations and advertising are not, and were not, in violation of any law or regulation.

**SEVENTH AFFIRMATIVE DEFENSE
(Substantial Compliance)**

Applebee's has substantially complied with the requirements of the law as they pertain to this lawsuit and such substantial compliance bars Plaintiff's claims.

**EIGHTH AFFIRMATIVE DEFENSE
(Disclaimer)**

Applebee's alleges that this action is barred in whole or in part because the menus for the Products provide a clear and appropriate disclaimer regarding any variation in the nutritional information.

**NINTH AFFIRMATIVE DEFENSE
(Conduct Not Unfair)**

The representations and advertising regarding the Products are not unfair. No representation or advertisement contains any false or misleading statement or promises any good not intended to be delivered. As such, the representations and advertising are not, and were not, unfair.

**TENTH AFFIRMATIVE DEFENSE
(Reasonable Business Justification)**

Applebee's alleges that this action is barred, because the actions of Applebee's were and are reasonable and lawful based on legitimate business and economic justifications.

**ELEVENTH AFFIRMATIVE DEFENSE
(Cause in Fact)**

No act or omission by Applebee's or by any person or entity for which Applebee's was responsible was the cause of any injury in fact, damages, or loss of money or property alleged by Plaintiff.

**TWELFTH AFFIRMATIVE DEFENSE
(No Proximate Cause)**

Plaintiff's claims are barred, in whole or in part, because Applebee's has not engaged in any activity or conduct that is a proximate cause of any injury in fact, damages, or loss of money or property alleged by Plaintiff.

**THIRTEENTH AFFIRMATIVE DEFENSE
(Superseding Causes)**

Any and all violations alleged in the Complaint were the result of superseding or intervening causes arising from the acts or omissions of parties that Applebee's neither controlled nor had the legal right to control, and such alleged violations were not proximately or otherwise caused by any act, omission, or other conduct of Applebee's.

**FOURTEENTH AFFIRMATIVE DEFENSE
(Contribution)**

Any and all violations alleged in the Complaint were proximately caused or contributed to by the acts, omissions, conduct, or products of parties other than Applebee's, and for this reason, the Complaint fails to state facts sufficient to constitute a cause of action against Applebee's.

**FIFTEENTH AFFIRMATIVE DEFENSE
(Express and Implied Consent)**

Plaintiff expressly and/or implied consented to and/or had knowledge of all activities or conditions alleged in the Complaint to have caused its harm, and thus, is barred from seeking relief for such harm.

**SIXTEENTH AFFIRMATIVE DEFENSE
(Aggravation of Harm)**

To the extent any harm exists, Applebee's is informed and believes and, on that basis, alleges that Plaintiff's actions have aggravated such harm, and thus, any recovery from Plaintiff's Complaint for such harm should be barred or reduced accordingly.

**SEVENTEENTH AFFIRMATIVE DEFENSE
(Failure to Mitigate)**

If Plaintiff has suffered any damages or injury in fact, which Applebee's expressly denies, Applebee's alleges that Plaintiff's recovery is barred by its failure to mitigate, reduce, or

otherwise avoid its damages or injuries.

**EIGHTEENTH AFFIRMATIVE DEFENSE
(Equitable Estoppel and Equitable Indemnity)**

Based upon the terms of sale of the Products and Plaintiff's conduct, Plaintiff's claims are barred by the doctrines of equitable estoppel and equitable indemnity.

**NINETEENTH AFFIRMATIVE DEFENSE
(Waiver)**

Based upon the terms of the sale of the Products and Plaintiff's conduct, Plaintiff's claims are barred by the doctrine of waiver.

**TWENTIETH AFFIRMATIVE DEFENSE
(Statute of Limitations)**

Plaintiff's claims and damages are barred and/or limited by the applicable statutes of limitations.

**TWENTY-FIRST AFFIRMATIVE DEFENSE
(Laches)**

By virtue of Plaintiff's unreasonable delay in commencing this action, which duly has caused prejudice to Applebee's, the Complaint and each purported cause of action asserted therein are barred by the doctrine of laches.

**TWENTY-SECOND AFFIRMATIVE DEFENSE
(Unclean Hands)**

The Complaint and each and every purported claim against Applebee's is barred by the doctrine of unclean hands in that Plaintiff's own actions have caused the damages Plaintiff may have incurred, if any.

**TWENTY-THIRD AFFIRMATIVE DEFENSE
(No Actual Injury)**

Plaintiff is not entitled to relief under the legal theories invoked in the Complaint because

Plaintiff suffered no actual injury and suffered no damages.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE
(No Basis for Injunctive Relief)**

Declaratory and injunctive relief are not appropriate for some or all of the allegations because, if Plaintiff is entitled to a remedy, which Applebee's denies, money damages would be an adequate remedy and no threat of immediate harm exists sufficient to support a grant of injunctive relief.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE
(Actions Pursuant to Local, State or Federal Authority)**

Applebee's is not liable for any acts or omissions undertaken by or at the direction of local, state or federal authority, including, without limitation, acts or omissions made in accordance with regulations, ordinances, statutes, and laws applicable at the time of the acts or omissions at issue.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE
(Not Maintainable As Class Action)**

Applebee's alleges that this action is barred in whole or in part, because Plaintiff's claims are not maintainable as a class action, there are not sufficiently common issues of reliance as to the individual members of the purported class, and the named Plaintiff is not an adequate, typical, suitable, or appropriate representative of the purported class.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE
(Unjust Enrichment)**

Any award to the Plaintiff in this action would constitute unjust enrichment.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE
(Attorneys' Fees Improper)**

Plaintiff's Complaint fails to state a claim or set forth facts sufficient to support a claim for attorneys' fees.

**TWENTY-NINTH AFFIRMATIVE DEFENSE
(Improper Choice of Law)**

The application of Kansas law to the Plaintiff and members of the proposed Class is improper.

**THIRTIETH AFFIRMATIVE DEFENSE
(Uncertainty)**

The Complaint and each cause of action therein presented are vague, ambiguous, and uncertain. Applebee's reserves the right to add additional defenses as the factual bases for each of Plaintiff's claims and allegations becomes known.

**THIRTY-FIRST AFFIRMATIVE DEFENSE
(Reservation of Additional Defenses)**

Applebee's hereby reserves the right to amend its answer to raise additional affirmative defenses as they become available or apparent to Applebee's through discovery in this matter or otherwise.

WHEREFORE, Applebee's prays for judgment as follows:

1. That Plaintiff take nothing by his Complaint and that the Complaint be dismissed with prejudice;
2. That the request for injunctive relief be denied;
3. That Applebee's be awarded its costs of suit;
4. That the request for attorneys' fees and costs by Plaintiff and his counsel be denied; and
5. For such other and further relief as the Court deems just and proper.

Respectfully Submitted,

BAKER STERCHI COWDEN & RICE, L.L.C.

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**Application for Admission Pro Hac Vice to be filed*

**ATTORNEYS FOR DEFENDANT
APPLEBEE'S INTERNATIONAL, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of October, 2008, I electronically filed the foregoing with the clerk of the court by using CM/ECF system which will send electronic filing to the following attorney of record:

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