IN THE CIRCUIT COURT OF
THE ELEVENTH JUDICIAL CIRCUIT,
IN MIAMI-DADE COUNTY, FLORIDA

OFFICE OF THE ATTORNEY GENERAL,
STATE OF FLORIDA,
DEPARTMENT OF LEGAL AFFAIRS,

PLAINTIFF, **CASE NO.: CACE-**

v.

ICEBOX CAFE, L.C., a Florida Limited Corporation; and ICEBOX CAFE AT MIA LLC; a Florida Limited Liability Company; ROBERT SIEGMANN, an individual;

DEFENDANTS.
_____/

COMPLAINT

Plaintiff, OFFICE OF THE ATTORNEY GENERAL, STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS ("**PLAINTIFF**" or the "**ATTORNEY GENERAL**"), hereby sues Icebox Cafe, L.C., a Florida limited liability company; IceBox Cafe at MIA LLC, a Florida limited liability company (collectively, "**DEFENDANTS**"); and Robert Siegmann ("**SIEGMANN**"), an individual; and alleges as follows:

1. The **ATTORNEY GENERAL** brings this action for an injunction pursuant to section 501.207(1)(b) of the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes ("FDUTPA"); and for additional relief provided for by section 501.207(3), Florida Statutes, including, but not limited to, equitable restitution, disgorgement, and any additional legal or equitable relief this Honorable Court deems proper; as well as, civil penalties and attorney's fees and costs provided for by sections 501.2075, 501.277, and 501.2105.

INTRODUCTION

2. During the course of the past two decades, consumer demand for locally-produced foods has grown. The most recent figure reported by the United States Department of Agriculture estimates local food sales in the United States total approximately $6.1 billion annually.

3. Restaurants, such as **DEFENDANTS**, are among food retailers seeking to capitalize on this growing market. **DEFENDANTS'** efforts to profit from the increased demand for locally-sourced or sustainable products, however, include false and misleading claims about their menu items.

4. **DEFENDANTS'** marketing and other claims create the false impression that most, if not all, of **DEFENDANTS'** menu items are made with locally-sourced or sustainable products, when in fact just a small fraction of the food products they use are locally-sourced or sustainable products.

5. Defendant IceBox Cafe at MIA LLC ("**ICEBOX AIRPORT**"), for example, represents that its food products were locally grown and markets meals at the Miami Airport as "farm-to-terminal" options for travelers. In reality, few of the meals, if any, offered and sold at **DEFENDANT ICEBOX AIRPORT** during the relevant period were made with products from local farms or nearby sources.

6. Defendant Icebox Cafe, L.C., ("**ICEBOX MIAMI BEACH**") similarly markets and sells dishes and beverages that are purportedly made with locally-grown or sustainable products.

7. During the relevant period, **DEFENDANT ICEBOX MIAMI BEACH** touted "Garden-to-Glass" and "Farm-to-Bar" cocktails and represented that it purchased products from specific Florida farms and suppliers when such was not the case.

8. **DEFENDANT ICEBOX MIAMI BEACH** also falsely represented during the relevant period that some of its menu options were of a particular nature or quality, such as wild fish or fish that was caught the same day.

9. **DEFENDANTS'** false or misleading claims that their menu items were of a quality or nature, or from a local or sustainable source were designed to, and likely did, induce consumers to frequent their establishments.

10. As a result, consumers who sought to purchase and were willing to pay a premium for locally-grown or sustainable products for a variety of reasons, ranging from food quality to support for the local economy, however, did not receive the represented sustainable, "farm-to-terminal" or other locally-sourced dishes or beverages.

11. Furthermore, Florida businesses that actually source products from local or sustainable vendors were likely detrimentally affected by **DEFENDANTS'** unfair practice of making deceptive material representations.

JURISDICTION, VENUE, AND APPLICABLE LAW

12. This action is brought for and on behalf of the State of Florida, by the Attorney General pursuant to the provisions of FDUTPA.

13. The **ATTORNEY GENERAL** investigated and determined that an enforcement action serves the public interest, as required by section 501.207(2), Florida Statutes.

14. This Court has subject-matter and personal jurisdiction pursuant to the provisions of section 26.012, Florida Statutes.

15. Venue for this action properly lies in the Eleventh Judicial Circuit pursuant to the provisions of sections 47.011, 47.021, and 47.051, Florida Statutes.

16. The actions at issue herein accrued in Miami-Dade County, Florida.

17. At all material times, **DEFENDANTS** and **DEFENDANT SIEGMANN** engaged in trade or commerce as that term is defined by section 501.203(8), Florida Statutes.

18. At all material times, **DEFENDANTS** and **DEFENDANT SIEGMANN** directly and indirectly advertised, solicited, provided, offered, and/or distributed, their goods and services to consumers in the State of Florida.

19. Accordingly, **DEFENDANTS** and **DEFENDANT SIEGMANN** are subject to the provisions of FDUTPA.

20. **DEFENDANTS** and **DEFENDANT SIEGMANN's** actions material to this Complaint occurred within four (4) years of the filing of this action.

PLAINTIFF

21. The **ATTORNEY GENERAL** is an enforcing authority of FDUTPA pursuant to section 501.203(2), Florida Statutes, and is authorized to pursue this action to temporarily and permanently enjoin violations of FDUTPA, as well as to obtain legal, equitable or other appropriate relief, including, *inter alia*, equitable restitution, disgorgement of ill-gotten gains, and other relief as may be provided pursuant to section 501.207, Florida Statutes.

22. The **ATTORNEY GENERAL** is also authorized to seek civil penalties and attorney's fees and cost pursuant to sections 501.2075, 501.2077, 501.2105, Florida Statutes.

DEFENDANTS

23. **DEFENDANT ICEBOX MIAMI BEACH**, is a Florida limited liability company.

24. **DEFENDANT ICEBOX MIAMI BEACH's** principal place of business is located in Miami Beach, Florida.

25. **DEFENDANT ICEBOX AIRPORT** is a Florida limited liability company.

26. **DEFENDANT ICEBOX AIRPORT** operates in Miami, Florida and its principal place of business is located in Miami Beach, Florida.

27. **DEFENDANTS** are owned and operated by Robert Siegmann.

28. **DEFENDANTS** use the website iceboxcafe.com in connection with their operation.

29. **DEFENDANT SIEGMANN** is an adult male over the age of twenty-one and is *sui juris*. Upon information and belief, **DEFENDANT SIEGMANN** is not in the military service and currently resides in Miami-Dade County, Florida.

30. **DEFENDANT SIEGMANN** transacted business on behalf of **DEFENDANTS** in Miami-Dade County, Florida and elsewhere during the relevant period.

31. **DEFENDANT SIEGMANN** is the **DEFENDANTS'** registered agent and managing member.

32. During the relevant period, **DEFENDANT SIEGMANN**, whether acting alone or in concert with others, controlled, had the authority to control, or directly participated in **DEFENDANTS'** acts and practices alleged herein.

33. **DEFENDANT SIEGMANN** knew or should have known **DEFENDANTS'** acts and practices were unfair or deceptive.

DEFENDANTS' ACTS AND PRACTICES

34. Menu items featuring locally-sourced or sustainable products are typically more expensive than those offered at traditional restaurants. The higher costs at "farm-to-table restaurants" are, in part, attributed to the fact that these restaurants usually source their products from multiple vendors, either directly from farms or small distributors that work directly with local farms, as opposed to a few large commercial distributors.

35. Consumers are increasingly willing to pay higher prices based on their perceptions that locally-sourced food products are, *inter alia*, fresher, healthier, safer, or that such purchases support the local economy or environment. In fact, in one study, consumers reported that they were willing to pay a fifty percent (50%) premium for fresh Florida-grown produce.

36. Similarly, a food service industry survey reported that sixty-two percent (62%) of consumers try to purchase local food whenever they can and more than half are willing to pay more for local and sustainable food.

37. **DEFENDANTS** have attempted to capitalize on this market trend by falsely representing to offer and sell consumers "farm-to-table" and other menu items made with locally-sourced or sustainable products.

38. **DEFENDANTS'** menus and marketing systematically and routinely use the terms community, farm-to-table, fresh, or gardens to describe their establishments and food to create the impression that their menu items are made with locally-sourced or sustainable products.

39. For example, during the relevant period, **DEFENDANT ICEBOX AIRPORT** marketed its menu items as "farm-to-terminal," and represented that the items offered and sold to travelers at the Miami Airport were made with locally-grown products. *See,* Images A and B.

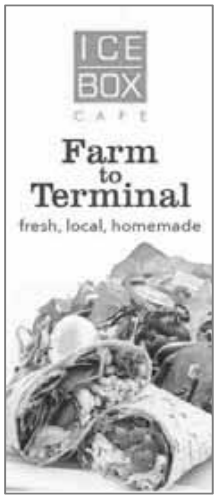

Image A.

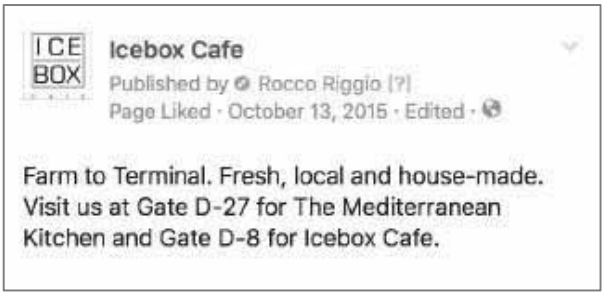

Image B.

40. **DEFENDANT ICEBOX AIRPORT'**s invoices for this same period, however, reflect that it purchased food products primarily from commercial distributors, and that almost none of those products were sourced from local farms or distributors.

41. **DEFENDANT ICEBOX AIRPORT** also misleadingly exaggerated its enrollment in a Florida-run marketing program as state imprimatur that it was a provider of locally-sourced food.

42. Similarly, during the relevant period, **DEFENDANT ICEBOX CAFE MIAMI BEACH's** menus contained claims that some of its menu items were made with products from Paradise Farms, a farm located in Homestead, Florida.

43. **DEFENDANT ICEBOX CAFE MIAMI BEACH's** invoices during the relevant period, however, indicate that **ICEBOX CAFE MIAMI BEACH** did not purchase products from Paradise Farms.

44. Along these same lines, **DEFENDANT ICEBOX CAFE MIAMI BEACH's** menus contained representations that some of its menu items included food products from North Star Seafood, a seafood distributor in Pompano Beach, Florida, which represents to provide environmentally responsible and sustainable seafood.

45. **DEFENDANT ICEBOX CAFE MIAMI BEACH's** invoices during the relevant period indicate that **DEFENDANT ICEBOX CAFE MIAMI BEACH** did not purchase products from North Star Seafood.

46. Moreover, during the relevant period, **DEFENDANT ICEBOX CAFE MIAMI BEACH** represented to sell "Garden-to-Glass" and "Farm-to-Bar" cocktails made with ingredients often picked from a "nearby" garden.

47. This express representation falsely creates the impression that the ingredients are grown in a neighborhood garden, not a commercial farm or farm located hundreds of miles away.

48. Additionally, **DEFENDANT ICEBOX CAFE MIAMI BEACH** claimed to provide consumers wild salmon when in fact **DEFENDANT ICEBOX CAFE MIAMI BEACH** had not purchased any wild salmon during the relevant period.

49. Finally, **DEFENDANT ICEBOX CAFE MIAMI BEACH** also represented to offer consumers fish that was caught the same day during the relevant period.

50. **DEFENDANT ICEBOX CAFE MIAMI BEACH's** invoices fail to substantiate it claims that it purchased fish that had been caught the same day it was sold to consumers.

51. **DEFENDANTS'** unqualified, material representations create a net impression that portrays their menu items in a manner that is materially different from items actually sold to and consumed by consumers.

52. Rather than providing a "farm-to-table" concept in which **DEFENDANTS** offer menu items made with locally-sourced or sustainable products, just a small fraction of the food products purchased by **DEFENDANTS** are locally-sourced or sustainable.

53. Contrary to **DEFENDANTS'** representations, these consumers received items made primarily with products from traditional commercial vendors instead of products supplied by local farmers or vendors.

54. Consumers likely reasonably relied to their detriment on **DEFENDANTS'** false or misleading representations and omissions detailed above.

55. As a result of **DEFENDANTS'** numerous deceptive representations and practices, consumers likely chose to frequent **DEFENDANTS'** establishments instead of their competitors' restaurants and paid for menu items they reasonably believed contained locally-sourced, sustainable, wild, or fresh food products.

56. Moreover, Florida restaurants that actually provide consumers with menu items made with locally-sourced food products were harmed by **DEFENDANTS'** deceptive acts and practices which likely and unfairly induced consumers to frequent **DEFENDANTS'** establishments instead of restaurants that indeed provide locally-sourced or sustainable food products.

57. Accordingly, **DEFENDANTS'** above-described acts and practices have irreparably injured and will likely continue to injure the public and consumers in the State of

Florida. Unless **DEFENDANTS** are permanently enjoined from engaging further in the deceptive and unfair acts and practices complained of herein, their continued activities will result in irreparable harm to the public and consumers in the State of Florida for which there is no adequate remedy at law.

58. **DEFENDANTS** also knew or should have known that their acts and practices, including *inter alia* its misrepresentations or false statements pertaining to the sources and quality of products in **DEFENDANTS'** menu items, were deceptive and unfair

59. Despite this knowledge, **DEFENDANTS** received and accepted funds generated from the above-described conduct and therefore have been unjustly enriched as a result of their deceptive acts and practices in violation of FDUTPA.

DEFENDANTS' FDUTPA VIOLATIONS

FDUPTA

60. FDUTPA provides, *inter alia*, that, "…deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." Section 501.204(1), Fla. Stat.

61. When construing whether acts or practices violate FDUTPA, it is the intent of the Legislature that "due consideration and great weight shall be given to the interpretations [by] the Federal Trade Commission and the federal courts relating to the … Federal Trade Commission Act." Section 501.204(2), Fla. Stat.

62. Additionally, all FDUTPA provisions are to be "construed liberally" to promote the protection of the "consuming public and legitimate business enterprises from those who engage in … deceptive, or unfair acts or practices in the conduct of any trade or commerce" and "to make

state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection." Section 501.202, Fla. Stat.

63. A FDUTPA violation may be based upon any of the following:

> "(a) Any rules promulgated pursuant to the Federal Trade Commission Act, 15 U.S.C. ss. 41 et seq.;
>
> (b) The standards of unfairness and deception set forth and interpreted by the Federal Trade Commission or the federal courts; or
>
> (c) Any law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices." § 501.203(3), Fla. Stat.

64. Once a corporation's liability for violations of FDUTPA is established, individual defendants may be liable for (1) injunctive relief for the corporate defendants' practices if the individual defendants participated directly in the practices or acts or had authority to control them, and (2) monetary relief if the individual had actual or constructive knowledge of the practices.

COUNT I

DEFENDANT ICEBOX AIRPORT'S DECEPTIVE REPRESENTATIONS IN VIOLATION OF FDUTPA

65. Plaintiff adopts, incorporates, and re-alleges Paragraphs 1-64 as if fully set forth herein.

66. In numerous instances during the relevant period, **DEFENDANT ICEBOX AIRPORT** falsely and misleadingly made unqualified representations to consumers that its menu items contained products that had been procured from local or sustainable sources or were of a particular nature or quality. These representations, omissions and practices by **DEFENDANT ICEBOX AIRPORT** likely mislead consumers.

67. As set forth *supra*, representations and omissions pertaining to the source or nature of food products is important to consumers and is therefore material to consumers' purchasing decisions.

68. Consumers likely reasonably relied on **DEFENDANT ICEBOX AIRPORT's** express and implied representations or omissions when purchasing **DEFENDANT ICEBOX AIRPORT's** menu items.

69. Accordingly, **DEFENDANT ICEBOX AIRPORT's** false and misleading representations and omissions were deceptive pursuant to the deception standard set forth and interpreted by the Federal Trade Commission or the federal courts.

70. Therefore, pursuant to section 501.203(3)(b), Florida Statutes, **DEFENDANT ICEBOX AIRPORT's** acts and practices violate FDUTPA.

71. As a result of the above-described FDUTPA violations, **DEFENDANT ICEBOX AIRPORT** is subject to the equitable, legal or other relief provided for by FDUTPA.

72. In addition to equitable monetary relief, **DEFENDANT ICEBOX AIRPORT** is jointly and severally liable for the civil penalties and fees and costs provided for by the Act.

73. **DEFENDANT SIEGMANN** had the authority to control, controlled, or directly participated in **DEFENDANT ICEBOX AIRPORT's** acts and practices.

74. **DEFENDANT SIEGMANN** knew or should have known that **DEFENDANT ICEBOX AIRPORT's** acts and practices alleged herein were unfair or deceptive or prohibited by rule.

75. Accordingly, **DEFENDANT SIEGMANN** is liable for **DEFENDANT ICEBOX AIRPORT's** FDUTPA violations. Therefore **DEFENDANT SIEGMANN** is subject to the

equitable, legal or other relief, as well as the civil penalties and fees and costs provided for by FDUTPA.

COUNT II

ICEBOX CAFE L.C.'s DECEPTIVE REPRESENTATIONS IN VIOLATION OF FDUTPA

76. Plaintiff adopts, incorporates, and re-alleges Paragraphs 1-64 as if fully set forth herein.

77. In numerous instances during the relevant period, **ICEBOX CAFE MIAMI BEACH** falsely and misleadingly made unqualified representations to consumers that its menu items contained products that had been procured from local or sustainable sources or were of a particular nature or quality. These representations, omissions and practices by **DEFENDANT ICEBOX CAFE MIAMI** likely misled consumers.

78. As set forth *supra*, representations pertaining to the source or nature of food products is important to consumers and is therefore material to consumers' purchasing decisions.

79. Consumers likely reasonably relied on **DEFENDANT ICEBOX CAFE MIAMI BEACH's** express and implied representations or omissions when purchasing **DEFENDANT ICEBOX CAFE MIAMI BEACH's** menu items.

80. Therefore, **ICEBOX CAFE MIAMI BEACH's** false and misleading representations or omissions were deceptive pursuant to the deception standard set forth and interpreted by the Federal Trade Commission or the federal courts.

81. Therefore, pursuant to section 501.203(3)(b), Florida Statutes, **DEFENDANT ICEBOX CAFE MIAMI BEACH's** acts and practices violate FDUTPA.

82. As a result of the above-described FDUTPA violations, **DEFENDANT ICEBOX CAFE MIAMI BEACH** is subject to the equitable, legal or other relief provided for by FDUTPA

83. In addition to equitable monetary relief, **DEFENDANT ICEBOX CAFE MIAMI BEACH** is jointly and severally liable for the civil penalties and fees and costs provided for by the Act.

84. **DEFENDANT SIEGMANN** had the authority to control, controlled, or directly participated in **DEFENDANT ICEBOX CAFE MIAMI BEACH's** acts and practices.

85. **DEFENDANT SIEGMANN** knew or should have known that **DEFENDANT ICEBOX CAFE MIAMI BEACH's** acts and practices alleged herein were unfair or deceptive or prohibited by rule.

86. Accordingly, **DEFENDANT SIEGMANN** is liable for **DEFENDANT ICEBOX CAFE MIAMI BEACH's** FDUTPA violations. Therefore **DEFENDANT SIEGMANN** is subject to the equitable, legal or other relief, as well as the civil penalties and fees and costs provided for by FDUTPA

PRAYER FOR RELIEF

WHEREFORE, the Attorney General requests that this Honorable Court:

A. ENTER judgment in favor of Plaintiff and against **DEFENDANTS** and **DEFENDANT SIEGMANN** for the respective counts alleged against them in this Complaint;

B. Permanently ENJOIN **DEFENDANTS** and **DEFENDANT SIEGMANN**, their officers, agents, servants, employees, and those persons in active concert or participation with **DEFENDANTS** and **DEFENDANT SIEGMANN** who receive actual notice of such an injunction, from engaging in conduct related to the acts and practices alleged in this matter;

C. AWARD equitable restitution, disgorgement of ill-gotten gains, or both against **DEFENDANTS** and **DEFENDANT SIEGMANN**, jointly and severally, pursuant to section 501.207, Florida Statutes;

D. ASSESS civil penalties against **DEFENDANTS** and **DEFENDANT SIEGMANN**, jointly and severally, in the amount of Ten Thousand Dollars ($10,000.00) as prescribed by section 501.2075, Florida Statutes, or enhanced civil penalties of Fifteen Thousand Dollars ($15,000.00) for each victimized senior citizen, person with a disability, military service member or the spouse or dependent child of a military service member as prescribed by section 501.2077, Florida Statutes, for each act or practice found to be in violation of FDUTPA;

E. AWARD attorney's fees and costs against **DEFENDANTS** and **DEFENDANT SIEGMANN**, jointly and severally, pursuant to section 501.2075, Florida Statutes, or as otherwise authorized by law; and

F. GRANT such other legal or equitable relief as this Honorable Court deems just and proper.

Dated: May 4, 2018.

Respectfully Submitted,

PAMELA JO BONDI
Attorney General of the State of Florida

/s/ Kristen Pesicek

By: Kristen Pesicek
Assistant Attorney General
Florida Bar No. 109212
Office of the Attorney General
Consumer Protection Division
110 Southeast 6th Street
Ft. Lauderdale, Florida 33301
Telephone: 954.712.4600
Primary: Kristen.Pesicek@myfloridalegal.com
Secondary: Tiffany.Bass@myfloridalegal.com