UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

BANCO LAFISE, S.A.
BANCO LAFISE PANAMA, S.A.,
LAFISE BANK LIMITED,
BANCO LAFISE BANCENTRO, S.A.,
BANCO LAFISE (HONDURAS), S.A., and
FIDUCIARIA LAFISE, S.A., foreign corporations

Plaintiffs,

v.

BURGER KING CORPORATION,

Defendant.
_______________________________________/

COMPLAINT FOR DAMAGES

Plaintiffs BANCO LAFISE, S.A., BANCO LAFISE PANAMA, S.A., LAFISE BANK LIMITED, BANCO LAFISE BANCENTRO, S.A., BANCO LAFISE (HONDURAS), S.A., and FIDUCIARIA LAFISE, S.A., (collectively "PLAINTIFFS" or "BANK" or "LAFISE") hereby file their Complaint against Defendant BURGER KING CORPORATION ("BKC") and state as follows:

JURISDICTION AND VENUE

1. Plaintiff BANCO LAFISE, S.A. is a corporation organized and existing under the laws of Costa Rica with its principal place of business located at Mall Multicentro, Desamparados Centro, Desamparados, Costa Rica. Plaintiff BANCO LAFISE PANAMA, S.A. is a corporation organized and existing under the laws of Panama with its principal place of business located at Torre Global Plaza, Floor 37, 50th Street,

Panama City, Panama. LAFISE BANK LIMITED is a corporation organized and existing under the laws of Montserrat with its principal place of business located in Farara Plaza, Brades, Montserrat. BANCO LAFISE BANCENTRO, S.A. is a corporation organized and existing under the laws of Nicaragua with its principal place of business located at Centro Financiero Lafise, Masaya Street, Managua, Nicaragua. BANCO LAFISE (HONDURAS), S.A. is a corporation organized and existing under the laws of Honduras with its principal place of business located at La Plazuela, Edificio La Plazuela, Miguel de Cervantes Avenue, Tegucigalpa, Honduras. FIDUCIARIA LAFISE, S.A. is a corporation organized and existing under the laws of Panama with its principal place of business located at Torre Global Plaza, Floor 37, 50th Street, Panama City, Panama.

2. Defendant BKC is a corporation organized and existing under the laws of Florida. BKC's headquarters are located at 5505 Blue Lagoon Drive, Miami, Florida 33126.

3. This Court has complete diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(2), as this is an action for damages over $75,000, exclusive of interest and costs, and it is between a citizen of Florida and citizens of foreign states. 28 U.S.C. § 1332(a)(2).

4. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. § 1391(a) because the claims herein arose as a result of Defendant's misrepresentations made in Miami, Florida.

5. All conditions precedent to bringing this action have been waived, excused or otherwise been performed.

6. This action is brought by the Bank based upon Defendant BKC's false statements about the financial condition of the business that were intended to and did induce the Bank to make

loans that were ultimately not able to be repaid by the borrowing entities and have not been repaid in full.

7. BKC fraudulently, or in the alternative, negligently, misrepresented to the Bank the financial condition and provided false financial statements and projections for existing BKC franchise operations in Costa Rica and Panama. Such financial statements falsely touted the prospects for success of the operation of Burger King restaurants in Costa Rica and of Burger King restaurants throughout Central America. BKC's fraudulent misrepresentations were made to induce the Bank into making loans to the entity with which BKC was pursuing a joint venture to grow the brand and build new restaurants in the region.

8. Defendant BKC's false financial statements and economic projections were part of an aggressive business model adopted by BKC to seek territorial strategic partnerships or joint ventures with Burger King franchisees who would commit to develop and manage franchises on an exclusive basis in such territories and regions as were delegated to the venture assigned by Burger King. BKC itself described its strategy in 2012 as its "aggressive global expansion" initiative:

> The expansion of our international restaurant network is an integral part of our global portfolio realignment project. As part of this project we expect to accelerate our international development with strategic partners and joint ventures. Generally, these strategic arrangements grant one or more franchisees the exclusive right to develop and manage Burger King restaurants in a specific country or region in exchange for commitments for substantial new restaurant development and a minority equity interest in the joint venture. We expect to focus our international expansion plans predominantly in high-growth emerging markets where we believe our current penetration is low relative to our potential. During 2011-12 we entered into joint venture and master franchise agreements in Brazil, Russia, and China. In 2013, we entered into joint venture and master franchise agreements in South Africa, India, and France. We expect to introduce the Burger King brand in additional new markets during 2014 and beyond.

> Aggressively pursuing refranchising opportunities: We are aggressively pursuing opportunities to refranchise our domestic and international Company restaurants to new and existing franchisees, with the goal of approaching a 100% franchised system. We believe that a highly franchised business model will make our business less capital intensive and enhance our profits and margins.

9. From the outset, BKC made clear to the investing public that its aggressive international growth initiative would rely on "third-party capital sources".

> Since 3G's acquisition of Burger King in October 2010, EBITDA minus CapEx has increased from $320 million in 2010, to $503 million in 2011, with 2012 EBITDA minus CapEx expected to be nearly double that of 2010's results. As importantly, Burger King's management has made substantial progress in accelerating international growth through the formation of joint ventures with third-party capital sources and local operators. As a result of management's initiatives and the power of this global brand, I am confident this will be an excellent investment for Justice shareholders.

BKC 2012 NYSE Announcement.

10. In fact, BKC's actual but unstated goal was to falsely portray the profitability of the prospective venture and performance of existing restaurant operations and opportunities for expansion in the territories it had earmarked for partnership to attract capital and existing franchisees to partner up with BKC and grow the brand aggressively and quickly.

11. Its success in achieving its illicit goal depended upon: a) deflecting the risk of the venture on such "third-party capital sources" with minimal capital infusion by BKC; and b) its portrayal of proposed territorial expansion as a select opportunity given to its favored franchisees. Toward that end, BKC retained Daniel Schwartz, a Wall Street savvy investment banker, as CEO to charter its course. Schwartz was retained to foster and promote BKC's aggressive attempt to

remake itself as a Wall Street darling. It is under his stewardship that the acts giving rise to this complaint occurred.

12. BKC's initiative also presumed that regardless of the initial profitability of the venture, it could upon default of its joint venture partner (if the business did not turn out to be as profitable as presented), literally resume restaurant operations and assign/or resell the failed restaurants to new and eager franchisees. In this way, BKC would maintain its presence with a new set of operators despite the financial demise of the venture, the demise of its partner and the unsatisfied obligations of its capital sources.

13. In 2011, Rafael Belloso approached Lafise to finance his acquisition of Burger King restaurant operations in Costa Rica. At the time, Belloso was a franchisee in good standing of Burger King restaurants in Venezuela and Panama. Lafise funded Belloso's acquisition of the Costa Rica restaurant operations.

14. Beginning in or about 2012, BKC began discussions with Belloso to provide him with territorial exclusivity to grow new Burger King Restaurants in Central America and to create a joint venture where Belloso's company, Beboca, Ltd. ("Beboca"), and BKC would partner up to expand the BKC brand in Central America. Beboca and BKC entered a Master Franchise and Development Agreement ("MFDA") providing that Beboca would serve as a master franchisee for Central America, in addition to serving as a franchisee in Costa Rica and Panama. Pursuant to the MFDA, Beboca would provide to franchisees in Central America services traditionally provided by BKC as the franchisor. In return, Beboca would keep a portion of the royalties traditionally paid to BKC as franchisor.

15. In May 2012, BKC hosted a meeting in BKC's corporate offices in Miami, Florida,

for the purpose of promoting its proposed joint venture with Beboca to develop and expand the number of Burger King restaurants in Central America. Consistent with its stated policy of utilizing third-party credit finance to fund its expansion, BKC requested that representatives of Lafise attend.

16. As a condition of creating the joint venture, BKC insisted that the joint venture proceed with no debt on the operating company level and that existing debt at the operating company level for Costa Rica and Panama be refinanced to be owed by Beboca, so that BKC's interest was unencumbered by the approximately $7 million of existing debt of the Panama and Costa Rica operations.

17. This refinancing was a direct benefit to BKC, as BKC would become a co-owner in the joint venture, and refinancing would place the debt obligation on Beboca, the holding company that would co-own the joint venture with BKC instead of the debt remaining on the operating company level, where it would be an indirect obligation of BKC as well. With the Bank's refinancing, the debt obligation would be that of BKC's joint venture partner alone.

18. Consistent with its announced intentions to rely upon third-party financing and its existing network of franchisees, BKC also required that Beboca seek out lines of credit totaling $20 million which would be extended to the joint venture to fund restaurant expansion in Central America.

19. At the May 2012 meeting in Miami, BKC's President for Latin America and the Caribbean, Jose Tomas, made statements to Lafise principals that materially misrepresented the financial performance of the 33 Costa Rican Burger King restaurants. At the meeting Mr. Tomas presented financial summaries of Beboca's (who owned the Costa Rica and Panama BKC

restaurants) most recent financial performance and for the years 2012 and 2011, as well as projections for the growth of restaurant operations in Panama and Costa Rica and the remaining countries of Central America. The written summary of the presentation made to Lafise principals was termed the BK Centam Model or "Central America Burger King Investment Opportunity" and was also later provided to Lafise principals in writing,

20. The Costa Rican Burger King restaurants represented 33 of the existing 47 restaurants in Costa Rica and Panama. Therefore, the performance of the Costa Rican restaurants was paramount to Lafise's decision to finance the prospective joint venture between BKC and Beboca.

21. BKC's presentation and so called BK Centam Model were materially false as they related to the previous performance of the Costa Rican Burger Restaurants and their projections of the future of such restaurants in Costa Rica. In particular:

A. BKC stated and the BK Centam Model represented that average per store revenue for the 33 Costa Rican restaurants was $770,000;

B. Expenses of those restaurants as a percentage of gross revenue were represented as 84%;

C. EBITDA ("Earnings Before Interest Taxes Depreciation and Amortization"), a widely used formula for determining corporate profitability and performance, was stated as 16% of revenue or approximately $4 million for all 33 Burger King restaurants in Costa Rica.

D. Indeed, the BK Centam Model forecast EBITDA in Costa Rica to increase from 16.0% in 2011 to 16.5% in 2012, to 17% in 2013, and to 17.5% in

2013.

22. BKC further urged the Bank not to do its own financial analysis and stated that as franchisor, BKC's own financial reports accurately portrayed the financial performance of their franchisee. In short, BKC warranted the accuracy of its franchisee's financial performance.

23. BKC knew its representations set forth in paragraph 21 hereof and in the BK Centam Model were false when made and were made intentionally with the intent that Plaintiff rely upon the same.

24. BKC's misrepresentations were material to the Bank's decision to provide a $7.575 million loan to Beboca on December 4, 2012 (the "Sponsor Loan").

25. BKC's misrepresentations were material to the Bank's decision to extend a $20 million credit facility to the Joint Venture on December 7, 2012 (the "Credit Facility," and together with the Sponsor Loan, the "Loans"), which Credit Facility was drawn down by $4 million.

26. The Bank reasonably relied on BKC's misrepresentations.

27. As a result of the Loans Lafise extended, on November 5, 2012, BKC and Beboca entered a Joint Venture and Investment Agreement (hereinafter "JVIA") governing this relationship. Beboca would raise the necessary capital, and BKC would contribute its brand, menu and operational system. Beboca owned 75% of the Joint Venture and BKC 25%.

28. Ultimately, Beboca failed in its efforts to raise the equity necessary for the development of the joint venture covering all of Central America, and failed in its performance under the MFDA.

29. Accordingly, in late June 2013, the MFDA was terminated by agreement of BKC and Beboca. Beboca's interest became limited to 75% ownership of the franchises in Costa Rica

and Panama.

30. On July 3, 2013, Bank principals met with BKC executives Francisco Demesa and Jose Dias. At that time, BKC represented to the Bank's principals that Beboca's inept management team had caused the financial condition of the franchised restaurants to flounder and become unstable.

31. BKC therefore proposed to the Bank's principals that BKC and the Bank replace management and assume control of the mismanaged franchise.

32. Through August of 2013, each of the Loans was current.

33. Ultimately, however, even with new management, the business continued to struggle and eventually the franchises were terminated by BKC. The subject loans have not been repaid in full.

34. As a direct and proximate result, Plaintiffs have been damaged.

COUNT I (FRAUDULENT MISREPRESENTATION)

35. Plaintiff realleges and incorporates by reference all of the allegations set forth in the preceding paragraphs 1 through 34 as though fully stated herein.

36. BKC made material and intentional misrepresentations of fact while knowing the statements were false and for the purpose of inducing the Bank into making the Loans.

37. Plaintiff reserves the right, upon proper showing of record evidence, to seek leave of Court to amend its complaint to assert a claim for punitive damages.

WHEREFORE, Plaintiff demands the entry of the following relief:

A. General damages for the unpaid amount of the Loans, including interest;

B. Costs of suit incurred herein; and

C. Such other and further relief as the court may deem proper.

COUNT II (NEGLIGENT MISREPRESENTATION)

38. Plaintiff realleges and incorporates by reference all of the allegations set forth in the preceding paragraphs 1 through 22 and 24 through 37 as though fully stated herein.

39. BKC's misrepresentations of material fact were false and BKC was negligent in making the statements, as BKC should have known the statements were false.

WHEREFORE, Plaintiff demands the entry of the following relief:

D. General damages for the unpaid amount of the Loans, including interest;

E. Costs of suit incurred herein; and

F. Such other and further relief as the court may deem proper.

Dated: June 12, 2017

Respectfully submitted,

WEIL QUARANTA, P.A.
200 South Biscayne Boulevard
Southeast Financial Center, Suite 900
Miami, Florida 33131
T: 305.372.5352
F: 305.372.5355

By: *s/ Ronald P. Weil*
Ronald P. Weil
Iva U. Ravindran
RWeil@weilquaranta.net
IRavindran@weilquaranta.net