

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

**PENELOPE BAIM BLOCK, BRIJ M.
SHARMA, CHARANJIT SINGH,
LISA M. BERTINI, VANDANA
MAKKER, BALA M. KRISHNA,
TY C. GERHARDT, and JEFFREY
ZIMMERMAN, et al.,**

Plaintiffs,

v.

McDONALD'S CORPORATION,

Defendant.

01 CH 9137

Judge Richard Siebel

CLASS ACTION

**DECLARATION OF JEFFREY A.
NELSON IN RESPONSE TO
MCDONALD'S AND PLAINTIFFS'
MEMORANDA OF DECEMBER 17,
2003**

I, JEFFREY A NELSON, declare the following to be true:

I am a resident of the County of Los Angeles, California, and am a member of the class in the above-captioned action against McDonald's. I previously submitted a declaration on December 3, 2002 "In Opposition to the Recommended Allocation of Cy Pres Funds," which contained additional biographical information.

Copycat attorney Cory Fein has improperly attempted to influence a witness in this case, Dr. T. Colin Campbell, as detailed below. Copycat lawyers' witness Dr. Suzanne Havala has presented sworn testimony to this court which materially conflicts with statements in an email and subsequent phone conversation with Dr. Campbell, as detailed below. Dr. Havala has neglected to reveal her personal financial interest in the settlement proposal, and copycat attorneys fail to report that the VRG-paid nutritionist

writes articles providing recipes for meat and non-vegetarian foods like fish, as detailed below. Copycat attorneys and McDonald's also wish to subvert the terms of the settlement so that funds are not required to go to vegetarian organizations.

I seek no special benefits for Earthsave or any other specific organization I may be affiliated with or which I contribute money to. I seek only to make sure the *cy pres* funds go to legitimate vegetarian groups, and not to non-vegetarian or anti-vegetarian groups, or groups that endorse vegetarian and carnivorous diets at the same time.

***Cy Pres* Funds Must Go to “Vegetarian Organizations”**

In their memoranda filed December 17, 2002, in reply to objections from numerous celebrated vegetarians in the plaintiffs class, copycat plaintiffs' attorney, James O. Lattuner, and McDonald's attorney, Alan Silberman, have failed to rebut any of the evidence presented that Tufts, University of North Carolina Chapel Hill (UNC), Loma Linda University, or the American Dietetic Association (ADA) are not “vegetarian organizations.” They provide no sworn statements from anyone or other evidence to support their contention that Tufts, UNC, Loma Linda or the ADA are a vegetarian organizations under any definition of the term.

Plaintiffs agreed to settle the case if and only if McDonald's made a \$6 million contribution to “vegetarian organizations.” Further, the Settlement stipulated that “The Parties agree that the following principles govern the selection of organizations to share the *cy press* fund: (b) The organizations' dedication to the values of ...vegetarianism.” Settlement Agreement Section 3.1.

McDonalds and copycat attorneys not only fail to provide evidence that any of these four groups is “dedicated to the values of vegetarianism,” they now assert it is irrelevant whether the groups are vegetarian, and they urge the court to ignore the explicit terms of the settlement. They argue that the court should only look at what “programs” or “projects” are being proposed, but not consider whether the organization itself is vegetarian or is dedicated to vegetarian values, as agreed to in the settlement.

By this logic, the Burger King Foundation or the National Cattlemen’s Beef Association are eligible to receive *cy pres* funds if they merely talk a good line and come up with a noble-sounding “vegetarian project.” It does not matter that these organizations may be hostile to vegetarianism, argue McDonald’s and the copycat attorneys. Evidence showing an organization is actually unfriendly to vegetarianism is beside the point; only the project matters, they argue. If this were to be the logic, then review of the merit of such forward-stating proposals should be evaluated by qualified science review groups, such as the National Institutes of Health and similar funding organizations.

By McDonald’s and copycat attorneys own admissions, they are attempting to change the terms of the settlement. This is ample reason to reject their proposal. The plaintiffs did not agree to settle their claims if McDonald’s would give funds to anti-vegetarian organizations which came up with a vegetarian-sounding project after getting a call from Cory Fein.

McDonald’s asserts that:

“Nobody has seriously questioned – or can question – the value of these programs to the settlement class and the good faith efforts and capacity of the many qualified groups that have committed to carry them out.” (McDonald’s Brief, p4, paragraph 4)

But the objectors don't have to question the value of the proposed programs (though they did in detail) because the groups themselves do not meet the threshold test spelled out in 3.1 of the Settlement Agreement of being a "vegetarian organization...dedicated to the values of vegetarianism." It is not the organizations' status as a "vegetarian organization" which is irrelevant, as McDonald's and copycat attorneys argue, it is the project of any group which can not be shown to be a vegetarian organization -- which is irrelevant. The court cannot consider a "project" or "program" in isolation, as McDonald's wishes. It must first assess who and what the proposed group is that would run the program, and determine if it's an appropriate group under settlement terms. And if it is an appropriate group that fits the definition, only then does the court need to look at and evaluate the program itself.

In their briefs, McDonald's and copycat attorneys repeatedly remind the court that McDonald's has approval powers over the recipient list. But so do the plaintiffs. While it is not surprising that McDonald's would act in bad faith and try to trick the plaintiffs' attorneys into approving non-vegetarian groups and groups it has pre-existing relationships with, what is shocking is the complicity of the copycat attorneys in accepting and promoting this scheme. A plaintiffs attorney whose interests were aligned with the plaintiffs class would not tolerate McDonald's attempts to change terms of settlement. Such plaintiffs attorneys would use their own approval powers -- and the court, if necessary -- to force McDonald's to act in good faith. They would not permit McDonald's to reject 99% of bona fide vegetarian organizations and agree instead that non-vegetarian groups be recommended. Yet, when faced with overwhelming evidence from the vegetarian community that several groups on the proposed list are not vegetarian

groups or are in fact anti-vegetarian groups, the copycat attorneys join with McDonald's in the attack against the very class they "represent."

McDonald's and copycat attorneys claim they spent "hundreds of hours" researching, evaluating and examining prospective vegetarian organizations to receive funds. This is wholly unbelievable. For example, in Mr. Fein's declaration of November 15, 2002, he describes how UNC became added to the allocation proposal:

Although the proposal initially submitted by the group was not precisely what we were looking for, I corresponded and spoke to Dr. Steven H. Zeisel, MD, PhD, the Associate Dean for Research, and Chairman of the Department of Nutrition, at the School of Public Health and School of Medicine, who submitted a second proposal that contained a very attractive and important project. (Declaration of Corey Fein, Nov 15, 2002, p. 5 line 9 a.)

Someone wants UNC to get money – perhaps McDonalds or maybe the lawyer who is an alumni of UNC, or perhaps the one whose daughter attends UNC, or maybe Suzanne Havala who is employed there, and who is working with the copycat attorneys to get the proposal through (see below). So Mr. Fein works with UNC to come up with a proposal he thinks he can get past the judge. One can only imagine what ridiculous non-vegetarian proposal UNC originally made, when an absolutely reprehensible anti-vegetarian study to benefit the Egg Board was instead deemed "very attractive and important."

Asking UNC to keep submitting proposals until they have one you think you can sell does not constitute "exhaustively researching the vegetarian community." This is figuring out how to give money to your friends, and trying to create some scenery so maybe the judge will fall for it. Had copycat attorneys – or anyone involved in this

process – actually researched the vegetarian community so that they could engage McDonald’s in a true, good faith negotiation, the current list would never have emerged.

VRG Does Not Represent the Interests of Most or even Many Class Members

McDonald’s states that:

“Nelson attacks Vegetarian Resource Group (VRG) (at 7-12) because VRG does not promote litigation as a tactic to advance the interests of vegetarians.” (McDonald’s Memorandum, p3, para 6)

Copycat attorneys offer up a similar theme that “Nelson’s antipathy towards VRG is fueled by his disagreement with their peaceful non-hostile approach...” (plaintiffs brief, p 15, para 2)

These are false speculation and distortions of what I wrote. There are many reasons VRG is objectionable, most notably that they represent a tiny fraction of the class. In fact, I would hazard to say based on new information, that they do not represent the class at all.

In support of the McDonald’s proposed allocation, copycat attorneys provide only one declaration, that of Dr. Suzanne Havala. Dr. Havala “wholeheartedly supports VRG receiving the full recommended amount,” copycat lawyers state in their brief. (Plaintiffs memorandum at p. 14, Paragraph 9) In her declaration in support of the proposal, however, Dr. Havala fails to mention that she is a paid consultant for VRG who has a personal financial interest in the proposed allocation. (See Declaration of T. Colin Campbell PhD, attached hereto as EXHIBIT A). Dr. Havala is also an adjunct assistant professor at UNC (this does not mean that she is a regularly employed faculty member at UNC) whose stock at UNC will no doubt rise if she succeeds in bringing in \$250,000

from McDonald's by helping convince the court UNC is a "vegetarian organization." Dr. Havala is a leader in the Vegetarian Practice Group of the ADA, which she describes in her email to Colin Campbell as having "essentially been a sub-unit of VRG -- all of the leadership initially came from VRG." (EXHIBIT A, Dr. Campbell's declaration and email exhibit from Dr. Havala to Colin Campbell of Dec 10, 2002.) Hence, the only vegetarian the copycat attorneys could produce to support their proposal is someone who has a great deal to gain personally if the court approves the allocation.

Copycat attorneys wish to portray objections from many corners in the vegetarian community as "internecine squabbling" and "petty jealousy" and "greed." They present VRG as representing the "conservative" or "mainstream" vegetarian community, and suggest that John Robbins, Colin Campbell, John McDougall MD, Michael Klaper MD, Joanne Stepaniak, Professor Stanley Sapon – and many others – are merely bug-eyed radicals who are out for cash. Yet they provide no declarations or evidence to back up their fantasies. No vegetarian would back up such insults. These are people who are the heart and soul of the vegetarian community; if vegetarians had gods, these are the deities whom they would worship. They are among the most respected and adored people in the vegetarian community.

While I am not a vegetarian icon like many who have submitted declarations in opposition to the proposed allocation, neither am I a "radical" or somehow trying to engage in "intramural squabbling" with another group, as McDonald's and copycat attorneys claim. Unlike Dr. Havala, I have no financial interest in EarthSave or any of the organizations I'm a member of and endorse; I donate money to these organizations, and don't take any. It is not hostility I feel but disgust for the very few so called

vegetarian groups which are helping McDonald's try to put one over on the vegetarian community.

My own background is as a writer and television producer, who has produced movies for television including the 5-hour NBC mini-series, "On Wings of Eagles" which starred Burt Lancaster and Richard Crenna. I have written books on handwriting analysis and litigation, and currently am producing a documentary for HBO called "Looking for God," and am co-authoring a book called "Moviestar Makeover: Tips and Tales from a Hollywood Face-maker" with a famous makeup artist for major celebrities. I am a graduate of Stanford University, a 46-year-old father of three children who attend private school, take dance lessons and whom I coach twice a week in AYSO soccer. As a vegetarian, my interest in McDonald's French fries has only been when taking my kids to climb at the "playplace." It would have been nice when taking my kids to McDonald's if the "vegetarian fries" they and I ate there really had been vegetarian. I am not a "protestor," a "radical," and this notion from McDonald's and copycat attorneys throughout their briefs that there is a "divide" or a "split" in the vegetarian community between "conservative" and "radical" elements, and that John Robbins, Colin Campbell and the rest of us who object are "extremists" -- is pure nonsense.

Any community has "left" "right" or "center" people in it; the idea that VRG represents "moderate" vegetarians while many or most other vegetarian groups or the people objecting to this settlement do not -- is a fiction unsupported in the McDonald's and copycat lawyers' briefs. They supply no evidence of any kind, no declarations from vegetarian experts, nothing beyond the pontification of these non-vegetarian self-proclaimed "vegetarian expert" lawyers -- who are in a great hurry to settle this case.

Groups like EarthSave – working with schools and community groups to grow food gardens in the city to teach children about vegetarian nutrition, and putting on vegetarian conferences with doctors and noted speakers – these are not “radical” or confrontational organizations. It is just silly that McDonald’s and plaintiffs attorneys would try to convince the court otherwise.

It is not Pulitzer-prize nominee John Robbins and the rest of the people objecting – who together have sold nearly as many books on vegetarianism as there are vegetarians in the U.S. – it is not these notable individuals objecting to the proposal who are out of step with the vegetarian community. The truth is it is VRG which is out of step – and not just with the vegetarians in the class but vegetarians as a whole. While Dr. McDougall and Dr. Klaper and the rest write books advocating meatless diets, Suzanne Havala and Virginia Messina (of VRG, Loma Linda and the ADA) write books and articles about how to eat meat properly and for maximum enjoyment. This is not vegetarian by anyone’s definition – even McDonald’s.

Attached as EXHIBIT B is a section called “Healthier Barbecuing” from a book called “Bottom Line Year Book 2003.” The section was written by VRG’s paid vegetarian consultant, Suzanne Havala. In this section about “barbecuing the right way,” Dr. Havala discusses various ways to prepare beef and chicken, as well as that well-known “meatless” alternative – “fish.” Vegetarians do not consider fish to be vegetarian. The one person the copycat lawyers could find to support their corrupt allocation is someone who not only has a financial interest in the outcome, but who promotes meat-eating. (By contrast, John McDougall MD – who copycat attorneys term as “zealous,” “radical” and “greedy” has also contributed a chapter to the book called “The Ultimate

Cholesterol-Lowering diet” – which is a vegetarian diet – See EXHIBIT C attached hereto.)

Attached as EXHIBIT D is an article in Family Circle Magazine by Virginia Messina, who is another vegetarian nutritionist associated with VRG, Loma Linda and the ADA. In it, Ms. Messina joyfully touts a “Miracle Diet” to “Lose Weight and Beat Heart Disease, Cancer and More.” She takes the reader through seven days of “menu plans” which include “tuna fish pita,” “broiled chicken breast,” and “succulent shrimp miso” which calls for “one pound shimp, peeled and deveined.”

It’s clear why McDonald’s would prefer “vegetarian organizations” like VRG over real vegetarian ones. This is not what most vegetarians would define as “conservative” however, but as “radical” – and most importantly, “not vegetarian.” VRG’s nutritionists are recommending food items which appear on the McDonald’s menu – meat.

It is relevant to note that Dr. Havala is someone who to my knowledge has not had one peer-reviewed research publication in the scientific literature, and of who’s 9 books on vegetarianism, only three are still in print (see EXHIBIT E – Amazon.com search on Suzanne Havala showing most of her books are out of print). Contrast this to the work of Dr. Campbell, who has published nearly 350 peer-reviewed studies in major journals, John Robbins who has sold millions of books on vegetarianism, all of which found enormous audiences and are still in print, best selling author John McDougall (whose work is widely known to have been drawn from heavily by Dr. Havala and others who wrote the first ADA position paper on vegetarian diets), and the rest of the objectors. I do not mean to imply that Dr. Havala’s work in the vegetarian arena has been worthless,

but the court needs to understand as it weighs the testimony of various declarations, who these people really are in relation to each other and the vegetarian community.

VRG is so bent on getting the \$1.4 million allocation under the proposal, they – along with copycat attorney Corey Fein – sought to improperly influence Professor Colin Campbell after he filed his declaration, signed under penalty of perjury. (See ATTACHMENT A, Declaration of Colin Campbell, p3, para 2) The comments Dr. Havala made in her email and phone call to Professor Campbell conflict with and call into serious question the sworn statement she later submitted to this court. (Ibid. see p 3 – 6) It also raises the question whether Mr. Fein acted improperly in attempting to use Dr. Havala to influence a witness in this case.

Not even Dr. Havala, who stands to reap a payday from multiple sources if this allocation is approved, can bring herself to wholeheartedly endorse the full proposal, stating she is “not in a position to comment” about the merits of all the supposed vegetarian groups, and that “they may well be appropriate recipients of funds, but I am not familiar with their proposals and cannot comment further.” (Havala Declaration at p. 10, para 4) But this contradicts her private conversations and emails with Dr. Campbell when she sought to influence him to change his position on VRG. In her communications with him, she privately agreed that Tufts and UNC were inappropriate organizations to receive money under this settlement. According to Dr. Campbell, Dr. Havala agreed with him that the process undertaken by McDonald’s and copycat attorneys was unfair to the plaintiffs class and was essentially rigged. She agreed to ask VRG’s head, Charles Stahler, to meet with Dr. Campbell to discuss problems with the McDonald’s proposal, but she expressed doubt Mr. Stahler would agree to speak with Dr.

Campbell because any other allocation than the one currently on the table from McDonald's would mean VRG "might get less money." Mr. Stahler did not respond to Dr. Campbell's offer to meet and confer. (See Exhibit A, Declaration of Colin Campbell.)

Based on the conduct of VRG in joining hands with McDonald's and the copycat attorneys, their deceitful conduct in supporting this unjust allocation proposal (as outlined in Dr. Campbell's declaration), and based on their newly-discovered support for meat eating, VRG should get no settlement money. This is a lawsuit about the fact that vegetarians do not want meat. VRG's paid "vegetarian representatives" should not be putting out meat recipes. Other vegetarian organizations that want to help people avoid food poisoning always tell people "eat a vegetarian diet to avoid this problem." This is why the plaintiffs sued – so that something "vegetarian" would not contain meat. A "vegetarian" group which also promotes meat eating is not what the plaintiffs had in mind when agreeing to the settlement.

McDonald's says that,

There are many different kinds of vegetarians. If VRG represents a more "moderate" or "conservative" segment of the vegetarian community, that is no reason to disqualify them from receiving *cy pres* funds... Hard core or "pure" vegetarians probably would not patronize McDonald's, even for French fries, in the first place. (McDonald's brief, p. 17, para a.)

As noted, VRG is not "conservative" or "moderate" as a vegetarian group – they recommend meat. Regarding McDonald's pontification that "hard core or pure vegetarians" did not consume fries – where is their evidence? And what is the definition of a "hard core" or "pure" vegetarian? McDonald's is hardly an expert on vegetarianism, though it would present itself as such. The class members whose testimony they are

trying to rebut did eat fries from McDonald's. This is the kind of meaningless hyperbole and speculation that permeates McDonald's and the copycat lawyers briefs. Moreover, McDonald's argues here that VRG's reputation as a vegetarian organization is important in considering whether they "qualify" to be a recipient of funds. But it doesn't matter what reputation "as a vegetarian organization" the other organizations which McDonald's proposes may have, only "the project." This just points up again how dirty their thinking is and how dirty this process has been.

McDonald's and copycat lawyers ignore the evidence that groups like Vegetarian Vision, NAVS and AVS are tiny groups with no track record of producing any sort of major projects of importance to the class. They claim criticisms of these groups are mere "jealousy" and "sour grapes" and "intramural squabbling." But past work of these groups is very relevant. To give \$250,000 to a tiny little vegetarian supper club (Vegetarian Vision) which puts on one speaking event a year – a Turkey-free Thanksgiving party – where they have the same speaker in a restaurant with about 70 people attending, this is very relevant when deciding whether it serves the interests of the class to give this miniscule organization \$250,000 of *cy pres* funds.

It is interesting to note that no one from Vegetarian Vision (VV) submitted a sworn statement stating that VV is not a Hindu organization. (The copycat lawyers call it "racist" to mention the fact that VV is a Hindu organization; but it is not "racist" or insulting to call someone Hindu or to point out that their organization is a Hindu organization. The fact that non-Hindus can join does not mean the organization ceases to be Hindu.) Coincidentally, after my previous declaration noting the VV website had not been updated in many months, it has very recently undergone a total revamp.

Nevertheless, their current activities page still lists only three events: a vegetarian cruise around Manhattan “to be announced for 2002” – which means it never actually happened -- a cooking demonstration, and a Thanksgiving dinner. (See attached EXHIBIT F) On their new “About Us” page, they describe “the organization’s main event of the year is of course the food festival.” (See attached EXHIBIT G) They fail to mention, however, that this was actually an EarthSave event in which VV was merely one of hundreds of vendors who paid to have a booth and appear at the EarthSave festival (see attached EXHIBIT H, a copy of the list of participants in EarthSave’s food festival).

McDonald’s cites that “ISKCON Hawaii Inc, a self-described Hawaii charitable organization, seeks a *cy pres* distribution of \$63,000. ISKCON Hawaii purports to conduct a vegetarian meals program on the island of Oahu, but its very narrow geographic reach means that it does not satisfy the settlement agreement for funding *See* Settlement Agreement para 3.1(d); Order at 17.” (McDonald’s brief, p. 23, footnote) By McDonald’s own reasoning, then VV, should not get \$250,000 as its own reach is very narrow. The programs already underway and described on the ISKCON Hawaii website are far more impressive than VV’s, which can only brag about buying at booth and appearing at an EarthSave food festival. If “geographic reach” were really important to McDonald’s, as the settlement calls for, it is very interesting that they do not have any national organizations on their list, and they find pretexts not to consider such organizations. They do know the words and terms of the settlement and can use them where it serves them; they simply do not wish to abide by them where doing so conflicts with their underlying motives.

Copycat attorneys claim that “EarthSave is physically located and especially active in the New York area, but it also has members and activities all over the country, and has agreed to use any funds it receives from this settlement for nationwide projects only.” And then there is a footnote for this statement saying “According to Harshad Parekth, Secretary of Vegetarian Vision, Inc.” (Plaintiffs’ brief, p 16, para 1) Presumably, plaintiffs intended to say “Vegetarian Vision” rather than “EarthSave” in the above sentence. Putting Vegetarian Vision in the sentence makes it a false statement, however. VV does not have “members and activities all over the country”(though EarthSave does), and they understandably can provide no evidence to support the fiction.

In their usual sloppy style, there are footnotes in the copycat lawyers’ brief attributing hearsay statements to third parties such as Harshad Parekth and Charles Stahler, but there are no sworn statements or probative evidence from anyone, other than the VRG declaration from Dr. Havala.

Copycat attorneys claim they spoke “with dozens of leaders in the vegetarian community during the selection process.” (plaintiffs brief, p. 11, para 2) Who are these “dozens of vegetarian leaders?” They do not show up on the proposed allocation list and they did not file declarations in support of this proposal. In fact, most all of them filed in opposition to the proposal.

Copycat attorneys assert the reason individuals from organizations which stand to benefit under the proposal have not submitted declarations supporting the proposal is that they “do not believe that infighting among vegetarian charities is in the best interests of the cause of vegetarianism.” (Plaintiffs brief, p. 9, para 1). The truth is, these organizations other than VRG will not publicly support the proposal. They are aware that

class members are outraged at this corrupt allocation; they value their reputations and will not risk them by endorsing it.

McDonald's Is Not in Best Position to Determine What is in Best Interests of Class

In response to observations that there is not “mutual agreement” in approving the *cy pres* allocations, McDonald's states the parties “have an obligation to the class as a whole to recommend funding that will advance the overall interests of the settlement class *See Stanton v. Boeing...*” (McDonald's brief, p 12, para 2) This is exactly correct, and as multiple declarations from opinion leaders in the vegetarian community demonstrate, this has not yet happened. It is vegetarians – class members – and not McDonald's working with 6 non-vegetarian copycat class action attorneys who can best determine what will advance the overall interests of the class as a whole. As noted, copycat attorneys did not provide declarations from anyone in the vegetarian community who is a well-known and respected leader, expressing support for this allocation. But many bestselling authors, doctors and leaders in the vegetarian community have taken a stand against it. It is individuals like these – and not copycat lawyers or McDonald's – who can best evaluate and define what is in the overall interests of the class. These leaders – real leaders – all oppose the settlement and swear it is not in the best interests of the class. Only one individual who also promotes meat and stands to gain personally (Havala) supports the proposal – and even then only part of it. There is no evidence beyond the lawyers' own chatter to refute the testimony of the many vegetarian experts who have given sworn testimony.

Copycat attorneys state that

At the root of all the objections, and repeated throughout almost all of them, is the objection to the basic concept of McDonald's being involved in the selection of the recommended vegetarian recipient groups. However, McDonald's participation in this process was a key term of the settlement Agreement. (Plaintiffs brief, p 2, para 4)

This is untrue. At the root of all the objections is the objection to McDonald's controlling the process, and the fact that no one is representing the interests of the class. Class members object to McDonald's rigging the game and the corrupt, greedy copycat lawyers going along with it. Replace the copycat lawyers with someone actually representing the plaintiffs class, and McDonald's will no longer be able to control the process and act in bad faith – and copycat lawyers will no longer be able to steer \$700,000 to their mothers' and childrens' favorite charities.

The copycat attorneys state:

As a general proposition, one can assume that those who most fervently object to the concept of killing animals for food would not patronize a company that serves more meat, and is thus indirectly responsible for killing more animals, than any other single company in the world... Accordingly, it is appropriate that the vegetarian groups recommended to this Court are perhaps on the moderate end of the spectrum of vegetarian organizations. (Plaintiffs brief, p 3 para 4)

This is sheer nonsense, complete speculation supported by no testimony or evidence from any vegetarian expert or source. The truth is these attorneys don't have a clue about who may have eaten fries at McDonald's or not, nor do they know what is considered "moderate" in the vegetarian community. I do, because I am vegetarian and know many many other vegetarians. People who ate fries were those so incensed to learn they were lied to, they filed this lawsuit. Is someone who files and joins a lawsuit "moderate?" And who defines what's "moderate

Copycat attorneys and McDonald's would have the court believe that ethical vegetarians (who don't eat meat for animal concern reasons) are least likely to eat "vegetarian fries" at McDonald's – and yet PETA and other animal rights groups have whole expensive campaigns dedicated to driving vegetarians to Burger King and other fast food joints which offer vegetarian fare. (See EXHIBIT I, attached hereto, a page from PETA's website "Vegetarians Have it Our Way at Burger King.")

University of North Carolina is a wholly inappropriate candidate

McDonald's claims that I launch an *ad hominem* attack against Dr. Steven Zeisel of UNC. (McDonald's brief, p 20, para 1) However, there are no *ad hominem* comments about Dr. Zeisel, merely observations about the work he does, the study he proposes to undertake with settlement funds, and specific evidence showing he and his school are not vegetarian or vegetarian organizations, but are in fact hostile to the values of vegetarianism. Again, the terms of the settlement require funds be given to vegetarian organizations which are "dedicated to the values of . . . vegetarianism."

McDonald's goes on to state that:

Having objected to the distribution of funds to Loma Linda, Tufts and UNC-CH – all universities and not "vegetarian organizations" according to him – Nelson supports a donation to the Program for Lifetime Nutrition [PLN] at Cornell University. (McDonald's brief, p 21, para 3)

I do support PLN receiving funds because unlike UNC, Loma Linda or Tufts, PLN originated from the findings of the world's most comprehensive study of diet and disease ever conducted that showed consumption of even small quantities of animal-based foods are associated with serious diseases, typically found in Western countries.

PLN will provide highly professional research and media releases on plant-based nutrition. But as neither McDonald's nor copycat attorneys have done the research they claim to have done, they would not know this. McDonald's continues:

Nelson and others (e.g., Epstein at 3; Stepaniak at 2) prefer smaller distributions to more organizations, but persuasive legal precedent is to the contrary. Limiting the number of recipient organizations in order to prevent dilution of the settlement fund provides the most benefit for the settlement class. (McDonald's brief, p 21, para 4)

But diluting the funds by giving them to small, ineffective vegetarian organizations and to organizations which aren't vegetarian or are hostile to vegetarianism – is exactly what McDonald's is trying to do, and it provides the least benefit for the settlement class. McDonald's adds (in the same paragraph) that their proposal “also reduces the administrative time and expense for the Court and the parties in overseeing implementation of the settlement.” Yet the convenience of the accountant, the Court or parties is not what drives this decision in the settlement process. It is the fairness and justice to the plaintiffs class.

Nelson attempted to contact copycat lawyers while working on VegSource.com article

Copycat lawyers complain about an article published on VegSource discussing the litigation, stating, “The Court should note that not once did Nelson contact Plaintiffs’ counsel to ascertain the facts surrounding this litigation.” (Plaintiffs’ brief, p 17, para 4) This is untrue. I telephoned Cory Fein at his law firm in Texas after I had filed my

declaration and while working on the article. Like the attempts of EarthSave earlier to reach Mr. Fein, my call was never returned.

“Hate mail” to VRG and groups supporting the allocation

Copycat lawyers say VRG and others are receiving “hate mail” based on revelations in my article that they support the McDonald’s proposal, which would see money going to non-vegetarian organizations. I have received hundreds of emails and internet postings from people upset by the settlement and disappointed that VRG and other groups are not joining with the vegetarian community in protesting this unfair proposal.

Attached as EXHIBIT J is a true and complete copy of an email sent to VRG about this case, on which I was copied by the sender:

I am a member of Vegetarian Resource Group and I am very disappointed in VRG's role in the McDonald's class action settlement. I still have your May 2001 magazine in which you opposed the lawsuit against McDonald's for lying about animal products being in their French fries....yet you are very willing to hold your hands out for \$1.4 million dollars from McDonald's. I am appalled!

You must be fully aware that some of the organizations are NOT Vegetarian organizations that will be receiving large sums of settlement money. Some of these organizations are actually ANTI-vegetarian. When I read the list of proposed recipients of the settlement, I was sickened. And to think that you would become so greedy as to accept your outlandish part of the settlement. What do expect to accomplish from this? I could never trust anything you write about vegetarianism again. You would not be trustworthy in my eyes and the eyes of many other truly vegan and vegetarian people.

This is and will continue to be very bad PR for VRG and I urge you to join in opposition to this settlement. It is unethical for you to accept this money. I will be sure to tell everyone I know and don't know that you sided with McDonald's and lawyers who are very unethical. Shame on VRG!

Aggie Monfette

Royal Oak, Michigan (see EXHIBIT J, attached email from Aggie Monfette to VRG)

This is not what I would term “hate mail,” but is from someone who says she is disgusted with the conduct of VRG by supporting a process whereby money ends up going to non-vegetarian groups. And rightly so. This is the prevailing feeling in the vegetarian community, and it’s even how those who still support VRG feel:

I do want to say that I believe you were too harsh in your criticism of VRG. I am a supporter of VRG and I support them getting some amount of money under the settlement. Having said that, I do agree that most of the proposed allocation should be overturned and thrown out. VRG is a good group, but many of the groups listed are not vegetarian groups and do not belong anywhere near that list. (See attached EXHIBIT XXXX, email from Sarah Weintraub)

This Lawsuit Does Not Encompass Animal Rights, but It Cannot Exclude Class Members Who Are Vegetarian For Animal Rights Reasons

Copycat attorneys and McDonald’s repeatedly state the court made a finding that “[t]he premise of this lawsuit involves providing humans with information to make meaningful dietary choices. The suit does not encompass animal rights issues.” (order at 12.) (McDonald’s brief)

The court made no finding I am aware of, however, that animal rights organizations do not contain class members, or that vegetarian organizations which also champion animal rights are somehow automatically excluded from consideration to receive *cy pres* funds. In other words, an animal rights organization may very well contain and represent hundreds of thousands or millions of class members. Thus, animal rights organizations are appropriate candidate organizations for consideration if they are vegetarian organizations, whereas Tufts, UNC, the ADA and Loma Linda are not.

Whether an animal rights group like PETA or FARM were selected or not is not pre-ordained by any ruling from the court.

I am not personally an animal rights activist or vegetarian for animal rights reasons – before they try to throw that out as a smokescreen. But I’m interested in fairness to the greatest number of class members, and don’t believe that hundreds of thousands of people who are part of the class should be arbitrarily excluded from settlement funds by McDonald’s pointing at the judge as they now do, and saying, “His order won’t let us do it.”

It is interesting to note that McDonald’s and plaintiffs attorneys argue that no vegetarian organization which is also an animal rights group should be considered for an allocation, yet when describing the merits of the Preventive Medicine Research Institute (PRMI), Cory Fein in his Declaration of Recommended Allocation of *Cy Pres* Funds of September 24, 2002, states: “I also noted that People for the Ethical Treatment of Animals (PETA) has praised PRMI’s work.” (Corey Fein Declaration of Sept 24, page 8, 3(a)) In some way, copycat lawyers recognize that animal rights vegetarians are part of the class.

McDonald’s and copycat attorneys reveal their true colors when they claim they must disallow groups like PETA and FARM because those groups do animal rights work. (McDonald’s brief, p. 3, para 5) When facts are produced that show groups like Tufts, the ADA, UNC and others do anti-vegetarian work however, McDonald’s and copycats argue that it’s irrelevant what work those groups do, it’s only relevant what projects they plan to do. They want to have it both ways – it’s appropriate for them to decide to exclude vegetarian groups because of some of the work they may do, but it’s not

appropriate for plaintiff class members to object to a McDonald's-selected anti-vegetarian groups based on the work that group does.

Requirement to give public notice was a sham

The Settlement Agreement in this case is dated March 22, 2002, and as early as April of 2002 – many months before notice of the settlement has been published in *VegNews* or *Satya* pursuant to the Agreement – Mr. Fein had already exchanged letters with the groups which ultimately made his list and had already created the final list of recipients (except for Muslim groups). In other words, his claim of having spent hours and weeks researching and educating himself about the plaintiffs class is demonstrably false. The entire “notice” aspect of the case is a sham, not only because *VegNews* (which prints a mere 50,000 free copies per issue) and *Satya* (a tiny animal rights magazine) are a far more minor vegetarian magazine than *Vegetarian Times* (with nearly a million paid subscribers) or my own site, *VegSource.com*, with 1.4 million monthly visitors, but because public notice was intended to have no impact on the settlement allocation procedures. The allocation selection unfolded in private and without public input in a backroom deal obviously made between McDonald's and copycat lawyers before notice was made to the public and probably before the Settlement Agreement was even signed. (See Attachment B of November 15, 2002, “Joint Memorandum in Support of Distribution of *Cy Pres* Funds” which shows letters from to Mr. Fein from each of the proposed groups starting in April 2002, which letters refer to correspondence and communication with Mr. Fein prior to April of 2002.)

Clearly, McDonalds and copycat attorneys were already agreeing on which non-vegetarian and anti-vegetarian organizations would share in the settlement before entering into settlement on May 22, 2002 because in less than a month, they had already developed virtually the entire list of recommendations (except for Muslim groups, which were subsequently added). Thus, providing public notice to the plaintiffs class was merely scenery, a formality to create the impression that the class was somehow involved when in fact they were never involved and never given any real opportunity to be involved. It was a bad faith notice, a con and a *fait accompli* long before the class was notified and supposedly given a chance to participate. This was a deal done between McDonald's and the copycat lawyers, period. They did not spend hours and weeks and months, as they claim, educating themselves about the vegetarian world and evaluating all manner of applications.

One of the groups I am involved with, EarthSave International, was never contacted, though McDonald's and copycat lawyers claim to have researched many groups including EarthSave. EarthSave was given no opportunity to describe itself or what work it might undertake. This is not sour grapes from EarthSave, by the way, but my presenting firsthand knowledge that the copycat lawyers are unrepentantly dishonest about how they conducted themselves in the settlement. Regarding EarthSave, McDonald's says, for example:

VLAN suggested that organization [EarthSave] to the parties many months ago, and in doing so, revealed its environmental protection orientation. (According to information provided to the parties by VLAN, EarthSave "supplies information, support and practical programs to those who have learned that their food choices impact environmental health They also raise awareness of the ecological destruction linked to the production of 'food animals.'") Nothing in the

settlement agreement or any order of the Court requires the parties to fund such an organization. (McDonald's brief, p. 20, para 4.)

This is the extent of their "research" on major vegetarian organizations. Someone who is not an EarthSave member or involved with EarthSave gives their own short description of the group, and McDonald's decides that description does not mean EarthSave is a "vegetarian organization." End of their two second investigation. On to Tufts and UNC to see how we can work with them with drafts of proposals to come up with one which might look good enough to trick the court into approving giving the money to non-vegetarian organizations.

The description given of EarthSave by VLAN, by the way, is not complete or accurate. Yet this is the extent of the parties' "research." Meanwhile, when the Executive Director of EarthSave attempts to contact Mr. Fein when she belatedly finds out about the process, her calls are not returned.

I am not putting EarthSave's lack of receiving settlement money at issue here. I am merely using this as an example to show what has occurred. The "research" by copycat attorneys and McDonald's has not been exhaustive and thorough. The real research was probably that McDonald's sought to negate and neutralize the impact of the settlement, and wanted to insure that no vegetarian groups which make a significant impact in the world would be included. Obviously, much of this "research" was done before the settlement agreement was even signed. It was, "We'll give the money to vegetarian organizations – nod nod, wink wink – and to Mr. Fein's favorite personal charity – nod nod, wink wink," and thus the fate of the class was sealed.

Proposed Allocation is Rife with Conflict

McDonald's complains that one objector, VLAN, complains about conflicts of interests between recipient groups and attorneys. Says McDonald's: "Quite the contrary, the parties provided full disclosure of all links to recommended groups, no matter how attenuated, in order to demonstrate the absence of any conflicts of interest." (McDonald's brief, p 15, para 2) However, merely disclosing a conflict of interest does not make it go away. And when one considers that out of all the Hindu groups in the U.S., it just so happens that the one group recommended to get the most money of any group -- \$700,000 -- just coincidentally happens to be the group one of the copycat attorneys' mother belongs to and two other copycat attorneys send their kids to for school, it's a shameless disgrace. It is a major conflict of interest that reeks of self-dealing, and the court should not permit copycat attorneys to turn the settlement into a way to donate to the lawyers' personal charities.

"Greed" of Objectors?

Copycat attorneys try to make a point that several of the individuals objecting to the proposed allocation are affiliated with EarthSave. (Plaintiffs brief, p. 1, para 2) Had they actually done the research they claim to have done, they would know that most of these individuals are also on the advisory boards of many local and national vegetarian groups, such as Vegetarian Times Magazine, PCRM, NHA, NAVS, AVS, FARM, Farm Sanctuary and others. That is because this is a Who's Who list of highly impressive vegetarian leaders. They are not lobbying for EarthSave or any particular group in their declarations; they are lobbying for fairness.

Unlike Dr. Havala who is lobbying with copycat attorneys for the McDonald's proposal, none of these declarants has a personal financial interest in any allocation of these funds. Nor do I – I donate time and money to EarthSave and other organizations, but I do not receive money from them. Copycat attorneys claim several objectors' credibility is undermined because they request funds for a vegetarian organization they personally like or support. (plaintiffs brief, p 2, para 1) Absolutely they request funds, and this is appropriate. I strongly suspected the judge will throw out this corrupt list and that he would therefore either appoint someone to represent the plaintiffs interests in coming up with a new list, or would himself attempt to create a fair list. Hence, I advised the declarants that they should select an organization they know well and educate the judge about in the event he decides to consider individual organizations himself. It is clear from materials filed by copycat lawyers that they have no interest in educating the court. Like Dr. Havala only receiving a portion of Dr. Campbell's declaration, so that she does not see the full picture, the attorneys omit what they do not want the court to see and consider, such as the fact that that they have sought pretexts to reject consideration of worthy organizations based on hearsay and nonsense, not actual good faith investigation.

So when copycat lawyers point out John Robbins' son, Ocean, operates YES! which John Robbins advocates for consideration, this is probably the first that the judge – and the copycat attorneys – have heard about this organization. Unlike Dr. Havala, John Robbins has no financial stake in YES! receiving funds, he has no financial ties to YES! (other than \$1 a year YES pays to Mr. Robbins and his wife to rent hundreds of square feet of office space).

For me personally, this is not about any particular group. It's about the fact that no major vegetarian organizations are benefiting from this, and I do care that non-vegetarian and anti-vegetarian organizations are proposed to receive funds. This is not about a particular group being in the list or not; it's about exposing and fighting an Enron-esque settlement. You do not need to be vegetarian to see what's going on here and to realize how patently unjust this allocation proposal is. Here you have lawyers with no clients asking the court to award hundreds of thousands of dollars in legal fees while pointing their fingers at real vegetarians who are outraged at their conduct, and calling them "greedy!" This is the worst-case scenario of the pot calling the kettle black, and I hope and pray that the court sees what is going on here.

Non-vegetarian departments at universities may not receive settlement funds

Copycat lawyers state that

Objectors make a point that some of these universities have raised concerns about the healthiness of vegetarian diets. Because these are universities, they must be welcoming of open intellectual debate. One would hope that the atmosphere of political correctness would not preclude these universities from encouraging a full and open exploration of all sides of the debate regarding vegetarian diets and the ability of vegetarians to obtain necessary nutrients. (Plaintiffs brief, p 12 para 4)

The settlement does not say monies are go to debate clubs but to vegetarian groups. These universities can debate all they want – they can and they should. But they cannot do it using money intended for vegetarian organizations. Copycat lawyers continue:

While some class members are vegetarian purely for ethical reasons, and presumably wouldn't eat animals regardless of the nutrition issues, other class

members are vegetarian for health reasons, and are interested in first-rate studies regarding nutrition and vegetarianism. (ibid, p 13, para 2)

Clearly, class members do not consider these universities to be doing “first-rate studies regarding nutrition and vegetarianism.” Moreover, this is not what the settlement calls for – to give money to universities unfriendly to vegetarianism so they can do studies which more likely to benefit McDonald’s and the Egg Board than the class. Though McDonald’s and the copycat lawyers argue the reverse, the truth is that vegetarians interested in health are probably the least likely to go to McDonalds whereas those simply seeking to avoid animal products for ethical or religious reasons – but don’t care about health – are far more likely.

Even class members who are vegetarian alumni of Tufts School of Nutrition oppose Tufts receiving *cy pres* funds. Dina Aronson, a registered dietitian who received her Masters Degree in Nutrition from Tufts in 1996, implores the court:

Please DO NOT BE MISLED: Tufts University is in no way, shape, or form a vegetarian organization. I was a student there from 1994 to 1996, and let me assure you, no part of Tufts has a vegetarian vision. My personal experience with the professors and teachers at Tufts School of Nutrition revealed them not to be pro-vegetarian, and some to be anti-vegetarian.

Giving money to Tufts by labeling it as a “vegetarian organization” is completely unjust, and totally inconsistent with the conditions of the settlement.

See EXHIBIT L, attached hereto, the Declaration of Dina Aronson, MS, RD

Giving money to the ADA will harm, not help, class members interests

According to copycat lawyer’s own witness, Dr. Havala, the ADA is not a vegetarian friendly organization. In her email to Dr. Campbell, she is “scared silly of ADA having any control over funds that might go to” the vegetarian practice group at the

ADA. (See EXHIBIT A, Declaration of Colin Campbell, p 4, paragraph 2) Dr. Havala told Dr. Campbell the Veg Practice group is “backtracking” and will come out with a watered-down endorsement of vegetarianism, caving into pressures from companies like McDonald’s and others opposed to vegetarianism. (Ibid, p 5, para 1) Although Dr. Havala endorses the ADA in her declaration, in her email to and phone conversations with Dr. Campbell, she presents a different picture of the organization, one that instills fear in her at the idea of the control the ADA attempts to exert over the Veg Practice group.

McDonald’s and Copycat Lawyers Arguments Rife with Speculation, Lacking Any Credible Evidence

Copycat attorneys provide many unsubstantiated claims about the nature of the vegetarian community, yet they provide no evidence to back this up. They say, “Nelson at one point claimed that Vegetarian Resource Group’s website got so much traffic that it was somehow illegally manipulating the major search engines to direct all vegetarians to Vegetarian Resource Group” Copycat attorneys then have a footnote to back this up which reads: “According to Charles Stahler, of Vegetarian Resource Group.” (Plaintiffs brief, p. 8, para 1)

This is a gross misrepresentation of the facts. I never claimed VRG was getting a great deal of traffic. What happened in fact is that an employee of VRG – Dar Ververka - - was a volunteer editor for a search engine called DMOZ, which supplies rankings to many other search engines. Ms. Ververka was caught knowingly excluding several major vegetarian sites from the DMOZ.org search engine. This was confirmed by the people at

Yahoo who run DMOZ.org, who apologized to VegSource and described Ms. Ververka's actions as a "gross abuse of her position." Subsequently she was removed from her position at DMOZ. This is all ancient history from five years ago, all of which I forgave long ago though I still have copies of email correspondence with Stahler and DMOZ on this issue. This is not what this case is about, however.

Copycat attorneys and McDonald's claim all the objectors may not agree with each other 100 percent, and therefore should somehow dismiss their observations and complaints. But this is not true. All the objectors do agree that the proposed allocation is wrong and that approving it would be a fraud on the class. Of course no settlement can please everyone, but McDonald's has managed to come up with a settlement that pleases no one – other than one individual who stands to gain from it. And in response to overwhelming outrage that the allocation is unjust and a paucity of support, rather than look at it and say "How can we make this better?" the copycat attorneys do the opposite.

Conclusion

McDonald's and copycat attorneys are clearly in a "say anything" mode. They are throwing everything they can against the wall and hoping something will stick, even when their arguments work at cross purposes and contradict each other. McDonald's clearly wants to minimize the impact this settlement can have on the vegetarian community, on the plaintiffs class. The motivation of copycat attorneys is obviously to create the shortest line between themselves and their legal fee lottery winnings.

McDonald's is a corporation worth billions of dollars. No lawyer they hire to represent them in litigation is going to be stupid. He or she will be a high paid, well

educated individual. For McDonald's to do what it has done in trying to subvert the settlement agreement – this can be no accident. It was intentional, just as the copycat attorneys have acted with reckless disregard for the interests of the plaintiffs class, and gone along with McDonald's scheme to subvert the settlement. These attorneys are now fighting for their shares of millions in legal fees. They should not receive fees – they should be sanctioned for their actions. The responsible thing for the copycat attorneys would have been to listen to the objections of class members, not try to shove the McDonald's proposal down class members' throats.

If indeed McDonald's must continue in its role of approving groups for proposed allocation, then copycat attorneys should be removed and replaced by advocates who will probably represent the class. Just as their vegetarian clients fired them, the court should remove them from any authority to represent vegetarians and insure that someone with the interests of the class at heart will be there to negotiate in good faith against McDonald's.

I certify that attached Exhibits **A through L** are true and correct copies of records noted.

I declare under penalty of perjury under the laws of the State of Illinois, and the State of California, that the foregoing is true and correct to the best of my knowledge.

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Respectfully submitted at Chatsworth, California on this 2nd day of January, 2003.

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