

Exhibit 1
Plaintiffs' First Amended Complaint

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

BOB PETERSON, Individually and on Behalf of FU'S)
GOLD LLC; JOHN USHER and DEBORAH USHER,)
Individually and on Behalf of FULL PLATE LLC, ONE)
BIG MAMA'S LLC, TWO BIG MAMA'S LLC, THREE)
BIG MAMA'S LLC, FOUR BIG MAMA'S LLC, FIVE)
BIG MAMA'S LLC, ATTITUDE LATITUDE, INC.,)
JOHN N. USHER REVOCABLE TRUST DATED 11/9/93)
DEBORAH J. LYNN USHER REVOCABLE TRUST)
DATED 11/9/93, and 40 ACRES AND A MULE INC.;)
HOWARD GOLDT and JEFF GOLDT, Individually and) CIVIL ACTION
on Behalf of H&J GOLDT CORP.; EDMUND H.) Case No.:
WATKINS III and ASHLEY SHELLEY; MIKE) 1:06-cv-3087(RWS)
HARGREAVES II and AMER ABUGHERIR, Individually)
and on Behalf of CENTRAL FLORIDA LAND)
INVESTMENTS INC. and RAM003,LLC; WILL)
GRISWOLD, Individually and on Behalf of TRIAD)
RESTAURANT MANAGEMENT, LLC; DAVID A.)
WEINBERG, Individually and on Behalf of WE 3, INC.;)
LARRY SCRYBALO and DENISE MCCURDY,)
Individually and on Behalf of SLR HOLDINGS INC.;)
TONY WONG, HELEN WONG, NORMAN WONG,)
and ELIZABETH WONG, Individually and on Behalf of)
WONG FU'S NOODLE HOUSE, INC.; HANIF)
MERCHANT and ABDULLAH VIRANI, Individually)
on Behalf of SUGARLOAF NOODLE HOUSE, INC.,)
and ROGER D. JONES and BEATRICE JONES,)
Individually and on Behalf of JONJEWLYN, INC.,)
))
Plaintiffs,)
))
v.)
))
H. MARTIN SPROCK, III; DARYL DOLLINGER;)
RAVING BRANDS HOLDINGS, INC.; MAMA FU'S)

NOODLE HOUSE, INC.; MAMA FU'S PEACHTREE,)
 LLC; MOE'S SOUTHWEST GRILL, LLC; DOC)
 GREEN'S GOURMET SALADS, INC.; BONEHEAD'S)
 SEAFOOD, INC.; CORPORATE JOHN DOES X, Y, Z;)
 and INDIVIDUAL JOHN DOES A, B, and C;)
)
 Defendants.)

FIRST AMENDED COMPLAINT

COME NOW Plaintiffs, and file this their First Amended Complaint against the Defendants H. MARTIN SPROCK, III, DARYL DOLLINGER, RAVING BRANDS HOLDINGS, INC., MAMA FU'S NOODLE HOUSE, INC., MAMA FU'S PEACHTREE, LLC, MOE'S SOUTHWEST GRILL, LLC, DOC GREEN'S GOURMET SALADS, INC., BONEHEAD'S SEAFOOD, INC., CORPORATE JOHN DOES X, Y, and Z, and INDIVIDUAL JOHN DOES A, B, and C, showing the Court as follows:

THE PARTIES

1.

Plaintiff FU'S GOLD LLC is a limited liability company and a franchisee of Defendant MAMA FU'S NOODLE HOUSE, INC. ("MFNH").

2.

Plaintiff BOB PETERSON is the owner of FU'S GOLD LLC and is personal guarantor or otherwise has individual, personal financial liability exposure for losses

of the corporate Plaintiff's franchise restaurant.

3.

Plaintiff FULL PLATE, LLC is a limited liability company having financial losses and liability exposure for losses of the corporate Plaintiffs in connection with development of their franchise restaurants.

4.

Plaintiff ONE BIG MAMA LLC is a limited liability company that invested in development of a Mama Fu's franchise restaurant.

5.

Plaintiff TWO BIG MAMA'S, LLC is a limited liability company that invested in development of a Mama Fu's franchise restaurant.

6.

Plaintiff THREE BIG MAMA'S LLC is a limited liability company that invested in development of a Mama Fu's franchise restaurant.

7.

Plaintiff FOUR BIG MAMA'S LLC is a limited liability company that invested in development of a Mama Fu's franchise restaurant.

8.

Plaintiff FIVE BIG MAMA'S LLC is a limited liability company that invested

in development of a Mama Fu's franchise restaurant.

9.

Plaintiff ATTITUDE LATITUDE INC. is a corporation that invested or loaned money for development of Mama Fu's franchise restaurants.

10.

Plaintiff JOHN H. USHER REVOCABLE TRUST DATED 11/9/93 is a trust having financial losses and liability exposure for losses of the corporate Plaintiffs in connection with development of their Mama Fu's franchise restaurants.

11.

Plaintiff DEBORAH J. LYNN USHER REVOCABLE TRUST DATED 11/9/93 is a trust having financial losses and liability exposure for losses of the corporate Plaintiffs in connection with development of their Mama Fu's franchise restaurants.

12.

Plaintiffs JOHN USHER and DEBORAH USHER are the owners of Plaintiffs FULL PLATE LLC, ONE BIG MAMA'S LLC, TWO BIG MAMA'S LLC, THREE BIG MAMA'S LLC, FOUR BIG MAMA'S LLC, FIVE BIG MAMA'S LLC, and ATTITUDE LATITUDE INC. and are personal guarantors or otherwise have individual, personal financial liability exposure for losses of the corporate Plaintiffs.

13.

Plaintiff H&J GOLDT CORPORATION is a Georgia corporation whose principal place of business is located in Alpharetta, Fulton County, in the State of Georgia. H&J GOLDT CORPORATION is a franchisee of Defendant MFNH.

14.

Plaintiffs JEFF GOLDT and HOWARD GOLDT are the owners of H&J GOLDT CORPORATION and are personal guarantors or otherwise have individual, personal financial liability exposure for losses of the corporate Plaintiff's franchise restaurant.

15.

Plaintiffs EDMUND H. WATKINS III and ASHLEY SHELLEY are franchisees of MFNH and are personal guarantors or otherwise have individual, personal financial liability exposure for losses of their franchise restaurant.

16.

Plaintiffs CENTRAL FLORIDA LAND INVESTMENTS, INC. and RAM003, LLC are corporations organized and existing under the laws of Florida whose principal place of business is located in the State of Florida. CENTRAL FLORIDA LAND INVESTMENTS, INC. and RAM003, LLC are franchisees of Defendant MFNH.

17.

Plaintiffs MIKE HARGREAVES II and AMER ABUGHERIR are the owners of CENTRAL FLORIDA LAND INVESTMENTS, INC. and RAM00, LLC and are personal guarantors or otherwise have individual, personal financial liability exposure for losses of the corporate Plaintiff's franchise restaurant.

18.

Plaintiff TRIAD RESTAURANT MANAGEMENT, LLC is a limited liability company organized and existing in the State of North Carolina with its principal place of business located in that State. TRIAD RESTAURANT MANAGEMENT, LLC is a franchisee of Defendant MFNH.

19.

Plaintiff WILL GRISWOLD is the owner of TRIAD RESTAURANT MANAGEMENT, LLC and is personal guarantor or otherwise has individual, personal financial liability exposure for losses of the corporate Plaintiff's franchise restaurant.

20.

Plaintiff WE 3, INC. is a corporation organized and existing in the State of Kentucky whose principal place of business was, at the time of the events giving rise to this lawsuit, located in Cincinnati, Ohio. WE 3, INC. is a franchisee of Defendant

MFNH.

21.

Plaintiff DAVID A. WEINBERG is the owner of WE 3, INC. and is a personal guarantor or otherwise has individual, personal financial liability exposure for losses of the corporate Plaintiff's franchise restaurant.

22.

Plaintiff SLR HOLDINGS, INC. is a Georgia corporation whose principal place of business is located in the State of Georgia. SLR HOLDINGS, INC. is a franchisee of Defendant MFNH.

23.

Plaintiffs LARRY SCRYBALO and DENISE MCCURDY are the owners of SLR HOLDINGS, INC. and are personal guarantors or otherwise have individual, personal financial liability exposure for losses of the corporate Plaintiff's franchise restaurant.

24.

Plaintiff WONG FU'S NOODLE HOUSE, INC. is a corporation and a franchisee of Defendant MFNH.

25.

Plaintiffs TONY WONG, HELEN WONG, NORMAN WONG, and

ELIZABETH WONG are the owners of WONG FU'S NOODLE HOUSE, INC. and are personal guarantors or otherwise have individual, personal financial liability exposure for losses of the corporate Plaintiff's franchise restaurant.

26.

Plaintiff SUGARLOAF NOODLE HOUSE INC. is a Georgia corporation having its principal place of business in the State of Georgia and is a franchisee of Defendant MFNH.

27.

Plaintiffs HANIF MERCHANT and ABDULLAH VIRANI are the owners of SUGARLOAF NOODLE HOUSE INC. and are personal guarantors or otherwise have individual, personal financial liability exposure for losses of the corporate Plaintiff's franchise restaurant.

28.

Plaintiff JONJEWLYN, INC. is an Alabama corporation having its principal place of business in Huntsville, Alabama, and is a franchisee of Defendant MFNH.

29.

Plaintiffs ROGER D. JONES and BEATRICE M. JONES are the owners of JONJEWLYN, INC. and are personal guarantors or otherwise have individual, personal financial liability for losses of the corporate Plaintiff's franchise restaurant.

30.

Defendant H. MARTIN SPROCK, III ("SPROCK") is the current and/or past President, CEO and principal shareholder of some or all of the corporate Defendants. Defendant SPROCK is a resident of the State of North Carolina and will be served in accordance with the Georgia Long-Arm Statute.

31.

Defendant DARYL DOLLINGER is a current and/or past officer and principal shareholder of some or all of the corporate Defendants. Service of process may be perfected on Defendant DOLLINGER at his place of residence, 375 Eastcote Drive, Atlanta, Fulton County, Georgia 30350.

32.

Defendant RAVING BRANDS HOLDINGS, INC. ("RAVING") is a for-profit corporation incorporated and having its principal place of business in the State of Georgia. Service of process may be perfected on Defendant RAVING's registered agent, Stephen M. Lamastra, at Defendant's registered office located at 2915 Peachtree Road, Atlanta, Fulton County, Georgia 30305. Defendant RAVING is controlled by Defendant SPROCK and is affiliated with other corporate Defendants.

33.

Defendant MAMA FU'S NOODLE HOUSE, INC. ("MFNH") is a for-profit

corporation incorporated and having its principal place of business in the State of Georgia. Service of process may be perfected on Defendant MFNH's registered agent, Stephen M. Lamastra, at Defendant's registered office located at 1935 Peachtree Road, Atlanta, Fulton County, Georgia 30309. Defendant MFNH is the franchisor for a restaurant business known as Mama Fu's Asian House ("Mama Fu's").

34.

Defendant MAMA FU'S PEACHTREE, LLC ("MFP"), is a for-profit corporation incorporated and having its principal place of business in the State of Georgia. Service of process may be perfected on Defendant MFP's registered agent, H. Martin Sprock, at Defendant's registered office located at 1935 Peachtree Road, Atlanta, Fulton County, Georgia 30309. Defendant MFP operates a Mama Fu's franchise restaurant.

35.

Defendant MOE'S SOUTHWEST GRILL, LLC ("MOE'S"), is a for-profit corporation incorporated and having its principal place of business in the State of Georgia. Service of process may be perfected on Defendant MOE'S registered agent, J. Rutherford Seydel, at Defendant MOE'S registered office located at 285 Peachtree Ctr. Ave., Suite 2300, Atlanta, Fulton County, Georgia 30303. Defendant MOE'S is an affiliate of MFNH and MFP.

36.

Defendant DOC GREEN'S GOURMET SALADS, INC. ("DOC"), is a for-profit corporation incorporated and having its principal place of business in the State of Georgia. Service of process may be perfected on Defendant DOC's registered agent, Stephen N. Lamastra, at Defendant's registered office located at 1935 Peachtree Road, Atlanta, Fulton County, Georgia 30309. Defendant DOC is an affiliate of MOE'S, MFNH, and MFP.

37.

Defendant BONEHEAD'S SEAFOOD, INC. ("BONE"), is a for-profit corporation incorporated and having its principal place of business in the State of Georgia. Service of process may be perfected on Defendant BONE's registered agent, Stephen N. Lamastra, at Defendant's registered office located at 2915 Peachtree Road, Atlanta, Fulton County, Georgia 30305. Defendant BONE is an affiliate of DOC, MOE'S, MFNH, and MFP.

38.

Defendants CORPORATE JOHN DOES X, Y, and Z are legal entities who, on information and belief, wrongly and unfairly gained possession of assets owned by or held for the benefit of the Mama Fu's franchise system. The Corporate John Doe Defendants obtained these assets to the detriment of Plaintiffs and without their

knowledge, permission, or acquiescence.

39.

Defendants INDIVIDUAL JOHN DOES A, B, and C are real persons who, on information and belief, wrongly and unfairly gained possession of assets owned by or held for the benefit of the Mama Fu's franchise system. The Individual John Doe Defendants obtained these assets to the detriment of Plaintiffs and without their knowledge, permission, or acquiescence.

JURISDICTION AND VENUE

40.

This Court has jurisdiction over the claims asserted herein and venue is proper by virtue of one or more of the named Defendants having its registered agent and registered office in this County.

BACKGROUND FACTS

41.

Defendants SPROCK, DOLLINGER, and others caused Defendant MFNH to be incorporated in November, 2002, for the purpose of operating Mama Fu's Pan-Asian themed fast food restaurants and selling franchise opportunities for operation of such restaurants. Defendants SPROCK, DOLLINGER and others individually engaged in wrongful conduct that damaged Plaintiffs.

42.

As of March 31, 2003, Defendant MFNH had one company-owned Mama Fu's restaurant and no franchised restaurants.

43.

At various times during 2003, Defendants MFNH, SPROCK, DOLLINGER, and others promoted the sale of Mama Fu's franchise restaurants to Plaintiffs and entered into discussions whereby Plaintiffs could potentially purchase a Mama Fu's franchise from the Defendant MFNH, and operate a Mama Fu's franchise restaurant business.

THE UNIFORM FRANCHISE OFFERING CIRCULAR (UFOC)

44.

Federal Trade Commission trade regulation rules require a franchisor to disclose certain information to prospective franchisees before selling a franchise business. The Uniform Franchise Offering Circular ("UFOC") is a disclosure format accepted by the Federal Trade Commission for conveying the required information to prospective franchisees.

45.

Defendant MFNH presented each Plaintiff with the 2003 UFOC for a Mama Fu's franchise business. A copy of the UFOC is attached as Ex. A.

46.

One of the primary purposes of the UFOC is to provide a prospective franchisee with clear, accurate and concise information relating to the total amount of money that the franchisee will be required to spend to develop and open its franchise business, and support the franchise. The UFOC also provides detailed information on obligations the franchisor owes to the franchisee during the franchise relationship. The franchisor is responsible for ensuring that its disclosures in the UFOC are accurate and clear.

47.

The 2003 UFOC states that MFNH has no affiliate corporations. UFOC at p. 5. In fact, there were and are other corporations affiliated with MFNH. These affiliates include all or some of the other corporate Defendants, and others.

48.

On information and belief, the undisclosed affiliated companies were and/or are owned or controlled by the same principals who own or control Defendant MFNH, including Defendants SPROCK, DOLLINGER, and others.

49.

On information and belief, Defendants SPROCK, DOLLINGER, and other MFNH principals also own or control Defendants CORPORATE JOHN DOES X, Y,

and Z.

THE FRANCHISE AGREEMENT

50.

In reliance on the disclosures made by Defendant MFNH in its UFOC, Plaintiffs entered into franchise agreements with Defendant MFNH and incurred personal financial obligations to lenders, landlords, and others. A copy of the form of Franchise Agreement entered into by Plaintiffs is contained in the attached UFOC as Ex. D (at page 53).

Defendant MFNH's Representations and Promises Regarding Its Experience, Knowledge, and Expertise

51.

Defendant MFNH in its Franchise Agreement represents that through "substantial expenditure of time, effort and money" it "developed and perfected a system of opening and operating MAMA FU'S NOODLE HOUSE restaurants (the 'MAMA FU'S System')." Franchise Agreement, Ex. D to UFOC at p. 53.

52.

At the time of making this representation, Defendant MFNH had not developed any system of opening and operating MAMA FU'S NOODLE HOUSE restaurants.

53.

At the time of making this representation, Defendant MFNH had not perfected

any system of opening and operating MAMA FU'S NOODLE HOUSE restaurants.

54.

At the time of making this representation, there was no functional or successful "MAMA FU'S System" for opening and operating MAMA FU'S NOODLE HOUSE restaurants.

55.

Defendant MFNH in its Franchise Agreement represents that it "acquired knowledge and experience in the composition, distribution, advertising and sale of food products by restaurants using the MAMA FU'S System ("MAMA FU'S restaurants") and with respect to the style of the buildings and signs used by said restaurants and has successfully established a reputation, demand and goodwill for the products sold by such restaurants[.]" Franchise Agreement, Ex. D to UFOC at p. 53.

56.

Defendant at the time of the representation had not acquired knowledge or experience in the Mama Fu's restaurant business.

57.

Defendant at the time of the representation had not established a reputation for Mama Fu's restaurants.

58.

Defendant at the time of the representation had not established demand for the Mama Fu's restaurant products.

59.

Defendant at the time of the representation had not established goodwill for the Mama Fu's restaurant business.

60.

Defendant in its Franchise Agreement represents that "MAMA FU'S NOODLE HOUSE restaurants and the products sold therein have a reputation for excellence that has been acquired and is being maintained by continuing research and advertising programs[.]" Franchise Agreement, Ex. D to Offering Circular at p. 53.

61.

Defendant at the time of the representation had not acquired a reputation for excellence.

62.

Defendant at the time of the representation had not maintained any reputation for excellence and did not maintain continuing research or advertising programs.

63.

Defendants did not have, and did not dedicate resources to develop, the

expertise it represented it had to successfully operate and market an Asian type casual fast food restaurant. Defendants' lack of knowledge and expertise in this area caused the Mama Fu's brand and franchise operation to fail.

64.

Moreover, in furtherance of their efforts to induce Plaintiffs into executing franchise agreements with MFNH, Defendants SPROCK, DOLLINGER, MFNH, MOE'S, and RAVING executed a fraudulent scheme, whereby they intentionally misrepresented the success of the corporate-owned restaurant to prospective franchisees.

65.

On days in which prospective franchisees, such as Plaintiffs, were visiting Atlanta, Georgia in order to observe the operations of the corporate-owned, and lone, Mama Fu's restaurant, Defendants SPROCK, DOLLINGER, MFNH, MOE'S, and RAVING required employees (and perhaps others) to hand out vouchers or coupons for free food near and around the subject restaurant. Such coupons or vouchers were known as "Fu's Gold."

66.

The "Fu's Gold" was distributed particularly aggressively on dates that prospective franchisees were expected to observe the operations of the restaurant.

This aggressive distribution of the "Fu's Gold" coupons or vouchers was intended to make the restaurant appear busier than usual.

67.

The "Fu's Gold" campaign was developed and executed by SPROCK, DOLLINGER, MFNH, MOE'S, and RAVING specifically to create a false perception as to the amount of business that the store conducts, and to create a false impression regarding the restaurant's potential business and profitability.

Defendant's Marketing and Development Obligations

68.

The Franchise Agreement obligates Plaintiffs to pay two percent (2%) of their net sales, every two weeks, to Defendant MFNH for a "National Advertising Fund." UFOC at pp. 10, 17, 20-21; Franchise Agreement, Ex. D to Offering Circular at p. 60 ¶ 8. (UFOC at p. 10). The Advertising Fee could be raised, at the discretion of Defendant, as high as four percent (4%) of Plaintiffs' net sales.

69.

The Franchise Agreement states that proceeds from the National Advertising Fund "will be expended . . . for the production or purchase of such radio, television, print and/r other advertising materials as the Franchisor deems necessary on a national, regional or local basis." Franchise Agreement, Ex. D to Offering Circular at

p. 60 ¶ 8 (emphasis supplied).

70.

Promotion of the franchise brand is a necessary obligation of the Defendant franchisor, for the Plaintiff's respective Mama Fu's restaurant businesses to succeed. Marketing and promotion of the brand by the Defendant franchisor is particularly critical, because Mama Fu's is an entirely new restaurant business in competition with other more established and recognized Pan-Asian restaurant brands.

71.

At the time Plaintiffs and Defendant MFNH entered into their franchise relationships, Defendant knew that competition within the market for the foods and services offered by Mama Fu's restaurants was very high. Defendant states in its UFOC, "The market for quick service and take-out Pan-Asian restaurants is *well developed.*" (UFOC at p. 5) (emphasis supplied).

72.

Defendant MFNH failed to establish the National Advertising Fund and failed to promote and protect the Mama Fu's brand.

73.

Instead, on information and belief, Defendant MFNH's principals stripped and depleted MFNH of its limited assets, contrary to the interests of MFNH, its

franchisees, and the other corporate and individual Plaintiffs.

74.

The Franchise Agreements also obligate Defendants MFNH to furnish counseling and advisory services to the franchisee Plaintiffs, at Plaintiffs' request and at no charge to Plaintiffs, in the following areas:

- (a) equipment selection and layout;
- (b) employee selection and training;
- (c) advertising and promotion;
- (d) recipes, food, formulas and specifications;
- (e) bookkeeping and accounting;
- (f) purchasing and inventory control;
- (g) operational problems and procedures;
- (h) periodic inspections; and
- (i) new developments and improvements in the Mama Fu's System.

Franchise Agreement, Exhibit D to UFOC at page 61.

75.

Defendant MFNH substantially failed to provide Plaintiffs with counseling and advisory service regarding equipment selection and layout.

76.

Defendant MFNH substantially failed to provide Plaintiffs with counseling and advisory service regarding employee selection and training.

77.

Defendant MFNH substantially failed to provide Plaintiffs with counseling and advisory service regarding advertising and promotion.

78.

Defendant MFNH substantially failed to provide Plaintiffs with counseling and advisory service regarding recipes, food, formulas and specifications.

79.

Defendant MFNH substantially failed to provide Plaintiffs with counseling and advisory service regarding bookkeeping and accounting.

80.

Defendant MFNH substantially failed to provide Plaintiffs with counseling and advisory service regarding purchasing and inventory control.

81.

Defendant MFNH substantially failed to provide Plaintiffs with counseling and advisory service regarding operational problems and procedures.

82.

Defendant MFNH substantially failed to provide Plaintiffs with counseling and advisory service regarding periodic inspections.

83.

Defendant MFNH substantially failed to provide Plaintiffs with counseling and advisory service regarding new developments and improvements in the Mama Fu's System.

84.

Defendant MFNH knew, at the time Plaintiffs and Defendants entered into their respective Franchise Agreements, that Plaintiffs did so in reliance on the representations made by MFNH in the UFOC and the Franchise Agreement. Franchise Agreement, Ex. D to UFOC at p. 75.

85.

Defendant MFNH also knew, at the time Plaintiffs and MFNH entered into their respective Franchise Agreements, that Plaintiffs did so in reliance on the Plaintiffs' observations of the Mama Fu's business operations. Such operations were intentionally bolstered by the "Fu's Gold" coupon and voucher campaign, which SPROCK, DOLLINGER, MFNH, MOE'S and RAVING specifically orchestrated in order to create a false impression of the restaurant's business potential and

profitability in the minds of prospective franchisees, such as Plaintiffs.

Intermingling of Corporate, Affiliate, and Individual Assets

86.

Defendants MFNH, SPROCK, DOLLINGER and others owe Plaintiffs a duty of good faith to spend, disburse, and use MFNH corporate assets in the best interests of the Mama Fu's franchise system.

87.

The Defendants have commingled their personal and corporate assets, and have otherwise disregarded the separate identity of each individual and corporate Defendant, such that the Defendants are not legally distinct or distinguishable as separate persons or entities. Defendants' assets are spent, disbursed, and intermingled as though all Defendants are in fact one large entity.

88.

Defendants have wrongly usurped MFNH's assets, owned and held for the benefit of the MFNH franchises and its franchisees, and disbursed and applied these assets in furtherance of their own personal financial gain, to the detriment of Plaintiffs.

Undisclosed "Kickbacks" from Suppliers

89.

Franchisors are required to disclose to potential franchisees any commissions, revenues, or other payments made to the franchisor, distributors, suppliers, and others in the franchise supply chain, for goods and services the franchisor requires or recommends be purchased by its franchisees. Specifically, 16 C.F.R. § 436.1(11) requires a franchisor to provide:

A description of the basis for calculating, and, if such information is readily available, the actual amount of, any revenue or other consideration to be received by the franchisor or persons affiliated with the franchisor from suppliers to the prospective franchisee in consideration for goods or services which the franchisor requires or advises the franchisee to obtain from such suppliers.

90.

The purpose of this requirement is to alert franchisees to any "kickback" arrangement directly or indirectly benefiting the franchisor, its principals, and affiliated companies whenever the franchisor requires or encourages its franchisees to purchase goods or services from a particular supplier.

91.

On information and belief, Plaintiff franchisees have overpaid, and continue to overpay, for food, supplies, equipment, and other goods and services used in their franchise operations, as a result of "kickback" arrangements benefiting the

Defendants.

92.

MFNH did not disclose to Plaintiffs any "kickback" arrangement required to be disclosed pursuant to 16 C.F.R. § 436.1(11).

93.

Purchasing for the MFNH franchise system is managed by a third-party supplier/distributor which is owned in whole or in part by one or more of the Defendants.

94.

Due to the beneficial "kickbacks" under the current supply system, Defendants have actively obstructed and prevented Plaintiffs from seeking more competitive pricing on goods and services used in the operation of their restaurants.

95.

Defendants' failure to disclose the "kickback" arrangements, and interference with Plaintiffs' ability to obtain more cost effective goods and services from other suppliers, have caused substantial losses to Plaintiffs.

96.

Defendants' violation of Federal Trade Commission regulations and other wrongful acts set forth herein violate Section 2(c) of the Robinson-Patman Act, 15

U.S.C. § 12, entitling Plaintiffs to treble damages, attorney's fees, and prejudgment interest.

Market Development Rights

97.

In connection with their franchise operations, Plaintiffs were offered the opportunity to pay fees for Mama Fu's development rights in certain territories.

98.

Defendants' failure to create and support a Mama Fu's brand rendered these Market Development rights worthless. Defendants knew they were worthless at the time they were sold to Plaintiffs.

COUNT I ACCOUNTING and RECEIVERSHIP

99.

Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 98 as though fully set forth herein.

100.

Defendants' misappropriation, misapplication, looting and commingling of MFNH assets has left MFNH without sufficient funds to market and advertise its franchise restaurant business to grow restaurant patronage.

101.

As a direct result of Defendants' usurping and intermingling of MFNH assets, and other financial misconduct, Plaintiffs have suffered and continue to suffer financial as well as intangible losses in the operation of their Mama Fu's restaurant businesses.

102.

Plaintiffs are entitled to proper use of MFNH funds for operation of the MFNH franchise business for the benefit of its franchisees. Current financial practices of Defendants have caused and continue to cause loss and waste.

103.

Plaintiffs are entitled to an accounting to determine the full extent of Defendants' misappropriation, looting, and abuse of MFNH assets.

104.

Plaintiffs are entitled to reimbursement by the recipients of misappropriated and misapplied MFNH funds.

105.

Plaintiffs are entitled to immediate judicial appointment of a temporary receiver to take possession of MFNH and its property for the protection of the Mama Fu's franchise business and franchise system, and to hold such property subject to the

Orders of this Court.

COUNT II
GEORGIA CIVIL RICO

106.

Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 105 as though fully set forth herein.

107.

Defendants, individually and as a group, constitute an "enterprise" as defined in O.C.G.A. § 16-14-3(6).

108.

Defendants, through a pattern of racketeering activity and proceeds derived therefrom, acquired or maintained, directly or indirectly, an interest in or control of an enterprise, and personal property including money, in violation of O.C.G.A. § 16-14-4(a).

109.

Defendants conducted or participated in, directly or indirectly, an enterprise through a pattern of racketeering activity in violation of O.C.G.A. § 16-14-4.

110.

The individual Defendants conspired or endeavored to violate O.C.G.A. § 16-14-4(a) and (b), in violation of O.C.G.A. § 16-14-4(c).

111.

Defendants engaged in at least two acts of racketeering activity in furtherance of one or more incidents, schemes, or transactions that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents in violation of O.C.G.A. § 16-14-3(8)(A).

112.

Defendants committed at least two acts of racketeering activity, including the commission of theft by conversion (O.C.G.A. § 16-8-4), theft by deception (O.C.G.A. § 16-8-3), theft by taking (O.C.G.A. § 16-8-2), and falsification, concealment, and fraudulent financial documentation (O.C.G.A. § 16-10-20).

113.

The above offenses were committed as part of a systematic and ongoing pattern over a number of months.

114.

Defendants are civilly liable to Plaintiffs for violating the Georgia R.I.C.O. statute.

115.

Plaintiffs are entitled to three times the actual damages sustained and punitive

damages pursuant to O.C.G.A. § 16 14-6(c). Plaintiffs are also entitled to recover attorneys' fees and costs of investigation and litigation reasonably incurred due to Defendants' violation of the Georgia RICO statute.

**COUNT III
FRAUD**

116.

Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 115 as though fully set forth herein.

117.

As set forth herein, Defendants made material false representations of fact to Plaintiffs and omitted material and mandatory disclosures of fact in connection with Plaintiffs' purchase of Mama Fu's franchise rights.

118.

Defendants knew these representations were false when they made them, and knew of their material omissions.

119.

Defendants made these false representations and omissions to Plaintiffs for the purpose of inducing Plaintiffs to invest in Mama Fu's franchise operations.

120.

Plaintiffs reasonably relied on Defendants' false representations in deciding to

purchase or otherwise invest in Mama Fu's franchise restaurants and Market Development rights, to Plaintiffs' detriment.

121.

Defendants' fraudulent conduct caused Plaintiffs to incur substantial monetary losses connected with the operation of their Mama Fu's franchise restaurants.

**COUNT IV
BREACH OF CONTRACT**

122.

Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 121 as though fully set forth herein.

123.

By their actions and failures to act, Defendants materially breached or tortiously induced a material breach of the MFNH Franchise Agreements with Plaintiffs.

124.

Defendants' acts with respect to the Franchise Agreement caused Plaintiffs to suffer financial losses and harm in amounts to be proved at trial, for which the Defendants are liable.

COUNT V
BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING

125.

Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 124 as though fully set forth herein.

126.

Pursuant to Georgia law, O.C.G.A. § 11-1-203, Defendants owed and continue to owe Plaintiffs a duty of good faith and fair dealing with respect to the disclosures, undertakings, representations, and actions to be taken as set forth in the UFOC, the Franchise Agreement, and other writings setting forth the rights and duties of the parties.

127.

Defendants' acts, misrepresentations, omissions, and failures to act constitute bad faith and a breach of the duty of good faith and fair dealing towards the Plaintiffs.

128.

As a result of the Defendants' breach of the duty of good faith and fair dealing, Plaintiffs suffered monetary damages and losses in an amount to be proved at trial, for which the Defendants are liable.

COUNT VI
NEGLIGENT MISREPRESENTATION

129.

Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 128 as though fully set forth herein.

130.

Defendants' misstatements and misrepresentations were made to Plaintiffs without due care or with reckless disregard for their truthfulness or untruthfulness.

131.

Plaintiffs reasonably relied on the truthfulness of these statements in making their decisions to enter into business relationships with Defendants and incur financial obligations with Defendants and others.

132.

The Defendants' misstatements were material to Plaintiffs' business decisions.

133.

Plaintiffs suffered financial and other harm caused by Defendants' negligent misrepresentations, for which Defendants are liable.

COUNT VII
UNJUST ENRICHMENT and BREACH OF IMPLIED CONTRACT

134.

Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 133 as though fully set forth herein.

135.

Defendant MFNH induced Plaintiffs to pay them certain franchise development, marketing, and other fees by representing to Plaintiffs that these fees would be used to promote new Mama Fu's franchises and promote the Mama Fu's restaurant business to potential new patrons.

136.

Plaintiffs reasonably relied on these representations by Defendant in deciding to purchase their franchises and pay these fees.

137.

Defendants retained these payments but did not develop new Mama Fu's franchises and did not market or promote the Mama Fu's restaurant business to potential new patrons in any significant way.

138.

Defendants continue to collect such payments from Plaintiffs, and will continue to demand such payments from Plaintiffs, although Defendants will not expend these

funds to promote and support the Mama Fu's brand.

139.

Plaintiffs conveyed a benefit and will continue conveying such benefit on Defendants by paying these development and marketing fees, and Defendants knowingly accepted and retained this benefit and will continue to accept and retain this benefit.

140.

It is inequitable to allow Defendant to retain these fees in these circumstances. Therefore, in the interests of justice and equity, Defendant must return these fees to the Plaintiffs.

**COUNT VIII
FLORIDA FRANCHISE ACT**

141.

Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 140 as though fully set forth herein.

142.

Plaintiffs who are residents of and doing business in the State of Florida have a right of action accruing under the Florida Franchise Act for Defendants' knowing and intentional misrepresentations and omissions in the sale of a franchise business to the Florida franchisees.

143.

The Florida Plaintiffs own Mama Fu's restaurants that are part of the Mama Fu's franchise system and are dependent on Defendants for the basic supply of goods for operation of their restaurant businesses.

144.

Defendants misrepresented, by omission or otherwise, the prospects or chances for success of the Florida Plaintiffs' proposed franchise businesses, the known required total investment, and/or Defendants' efforts to sell or establish more franchises than is reasonable to expect the market or market area to sustain.

145.

The Florida Plaintiffs reasonably relied on the Defendants' representations in reaching their decisions to invest in their Mama Fu's restaurants.

146.

Because of Defendants' material misrepresentations and omissions in violation of the Act, the Florida Plaintiffs are entitled to recover as damages their entire investments in their Mama Fu's franchise restaurants, franchise fees, and attorney's fees, in amounts to be proved at trial, and exemplary damages in amounts deemed appropriate in the enlightened conscience of the jury.

COUNT VIII
VIOLATION OF SECTION 2(C) OF THE ROBINSON PATMAN ACT

147.

Plaintiffs incorporate by reference the allegations set forth in 1 through 146, as though fully set forth herein.

148.

Section 2(c) of the Robinson-Patman Act, 15 U.S.C. § 12 *et seq.*, provides, in relevant part, as follows:

It shall be unlawful for any person engaged in commerce, in the course of such commerce, pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, or any party to such transaction other than the person by whom such compensation is so granted or paid.

149.

Defendants engage (or have engaged) in commerce by, among other things, establishing national and regional contracts for the provision of provisions, beverages and other products to Mama Fu's franchisees throughout the United States, including Plaintiffs.

150.

Mama Fu's has entered into exclusive and/or preferred contracts with particular vendors to provide provisions, beverages and other products to franchisees. In this connection, Defendants have accepted benefits from vendors, in exchange for the opportunity to access and market goods, wares and merchandise to the franchisees and to execute agreements to sell provisions, beverages and other products to the Mama Fu's franchisees, including Plaintiffs.

151.

These payments constitute undisclosed and illegal "kickbacks," which have not been paid for services rendered in connection with the sale or purchase of provisions, beverages or products by Mama Fu's or its franchisees.

152.

Plaintiffs have been injured and may continue to be injured by these acts because Plaintiffs are restricted in their choice of and access to independent vendors and consequently have paid prices for provisions, beverages and other products that were higher than it would have paid in the absence of such kickback scheme.

153.

Defendants' kickback scheme is *per se* unlawful and constitutes *per se* competitive injury.

154.

By reason of the forgoing, Defendants have violated Section 2(c) of the Robinson-Patman Act, and Plaintiffs are entitled to treble damages therefrom, the costs of this litigation, attorneys' fees and pre-judgment interest, pursuant to 15 U.S.C. § 15(a).

COUNT IX
VIOLATION OF THE FLORIDA
DECEPTIVE AND UNFAIR TRADE PRACTICES ACT

155.

Plaintiffs incorporate by reference the allegations set forth in paragraphs 1 through 154, as though fully set forth herein.

156.

This is an action for violation of Florida Statutes §§ 501.201 and 501.203 (3).

157.

Defendants MFNH are "franchisors" within the meaning of 16 C.F.R. § 436.1, *et seq.*

158.

The Florida Plaintiffs were "potential franchisee[s]" within the meaning of 16 C.F.R. § 436.1, *et seq.*

159.

Defendants are engaged in the conduct of trade or commerce in the State of Florida.

160.

The FTC's Franchise Rule, 16 C.F.R. § 436.1 provides, in relevant part:

“In connection with the advertising, offering, licensing, contracting, sale, or other promotion in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, of any franchise, or any relationship which is represented either orally or in writing to be a franchise, it is an unfair or deceptive act or practice within the meaning of section 5 of that Act for any franchisor or franchise broker:

(a) To fail to furnish any prospective franchisee with the following information accurately, clearly, and concisely stated, in a legible, written document at the earlier of the ‘time for making of disclosures’ or the first ‘personal meeting’ [specifications follow].”

161.

Florida's Deceptive and Unfair Trade Practices Act, Fl. Stat. § 501.203 (3), expressly provides that violations of the FTC Rule constitute violations of the Florida Deceptive and Unfair Trade Practices Act.

162.

Defendant MFNH engaged in a “kickback” scheme, which MFNH failed to disclose in the UFOC delivered to the Plaintiffs.

163.

Under the FTC Franchise Rule (16 C.F.R. § 436.1), franchisors must disclose to potential franchisees such kickback schemes, as follows:

11) A description of the basis for calculating, and, if such information is readily available, the actual amount of, any revenue or other consideration to be received by the franchisor *or persons affiliated with the franchisor* from suppliers to the prospective franchisee in consideration for goods or services which the franchisor requires or advises the franchisee to obtain from such suppliers. (emphasis added).

164.

The purpose of such disclosure is to alert the franchisee to the presence of a “kickback” arrangement whenever the franchisor requires or advises that a franchisee do business with a particular supplier or group.

165.

Moreover, Defendant MFNH made various other misrepresentations throughout the UFOC’s that they distributed to the Plaintiffs, as outlined in greater detail above.

166.

As a direct, proximate and foreseeable result of Defendants’ violations of the Florida Deceptive Trade Practices Act, the Florida Plaintiffs have suffered damages.

167.

The Florida Plaintiffs are entitled to recover attorney’s fees pursuant to Florida Statute § 501.2105.

WHEREFORE, premises considered, Plaintiffs pray for the following relief:

(a) That judgment be entered in favor of Plaintiffs and against the Defendants on all counts of the Complaint;

(b) That Plaintiffs recover from Defendants monetary damages in amounts to be proved at trial;

(c) That Plaintiffs recover from Defendants trebled damages for Defendants' anti-trust violations, in an amount to be proved at trial;

(d) That Defendants reimburse Plaintiffs for marketing and development costs and other losses in amounts to be proved at trial;

(e) That Defendants pay Plaintiffs' costs of this litigation including attorney's fees and expenses;

(f) That the Court order an accounting to determine sums wrongly usurped and distributed by Defendants to other certain Defendants, to the detriment of Plaintiffs;

(g) That the Court appoint a temporary receiver to take possession of Mama Fu's franchise property and hold it subject to the Orders of this Court; and

(h) For all other remedies at law or in equity as this Court may deem fair and just.

Respectfully submitted this 28th day of December, 2007

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