

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 06-CV-02358-WYD-KLM

RAYMOND BONANNO, et al.,

Plaintiffs,

vs.

THE QUIZNO'S FRANCHISE COMPANY LLC, et al.

Defendants.

**DEFENDANTS' ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM TO
THE AMENDED COMPLAINT**

Defendants, The Quizno's Franchise Company LLC, et al. (collectively "Quiznos") through counsel, hereby file their Answer, Affirmative Defenses and Counterclaim to Plaintiffs' Amended Complaint (the "Complaint").

I. ANSWER

JURISDICTION AND VENUE

1. Quiznos admits that the Court has subject matter jurisdiction over this matter.
2. Quiznos admits that venue is proper in this District.

PARTIES

3. Quiznos lacks information sufficient to admit or deny the allegation that Raymond Bonanno, Anthony Bonanno and Robert Peter (collectively, the "Bonanno Plaintiffs") were at all relevant times citizens of the State of New Jersey. Quiznos admits that the Bonanno Plaintiffs were parties to a franchise agreement with Quiznos Franchising LLC ("QF"). Quiznos

denies that the Bonanno Plaintiffs were consumers for purposes of a Consumer Protection Act claim. Quiznos further denies all allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 3.

4. Quiznos lacks information sufficient to admit or deny the allegation that Rajan Desai and Nisha Desai a/k/a Nisha Bhansali (collectively, the "Desai Plaintiffs") were at all relevant times citizens of the State of New Jersey. Quiznos admits that the Desai Plaintiffs were parties to a franchise agreement with QF and that the trade area reflected in an exhibit to that franchise agreement was Franklin, New Jersey. Quiznos denies that the Desai Plaintiffs were consumers for purposes of a Consumer Protection Act claim. Quiznos further denies all allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 4.

5. Quiznos lacks information sufficient to admit or deny the allegation that Elisa Whitehall ("Whitehall") was at all relevant times a citizen of the State of New Jersey. Quiznos admits that Whitehall entered into a franchise agreement with QF. Quiznos denies that Whitehall was a consumer for purposes of a Consumer Protection Act claim. Quiznos lacks information sufficient to admit or deny the allegation that Whitehall attended a Quiznos seminar in Cherry Hill, New Jersey, and therefore denies this allegation. Quiznos further denies all allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 5.

6. Quiznos lacks information sufficient to admit or deny the allegation that Daljit Parmar and Manjit Parmar (collectively, the "Parmar Plaintiffs") were at all relevant times citizens of the State of New Jersey. Quiznos admits that the Parmar Plaintiffs were parties to

franchise agreements with QF executed in August 2004. Quiznos denies that the Parmar Plaintiffs were consumers for purposes of a Consumer Protection Act claim. Quiznos further denies all allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 6.

7. Quiznos lacks information sufficient to admit or deny the allegation that Richard Varrato ("Varrato") was at all relevant times a citizen of the State of Connecticut. Quiznos admits that Varrato was a party to two franchise agreements with QF, and that Quiznos terminated one of the franchise agreements with Varrato in February 2007. Quiznos denies that Varrato was a consumer for purposes of a Consumer Protection Act claim. Quiznos further denies all allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 7.

8. Quiznos lacks information sufficient to admit or deny the allegation that Megan Makki ("Makki") was at all relevant times a citizen of the State of California. Quiznos admits that Makki was a party to a franchise agreement with QF. Quiznos denies that Makki was a consumer for purposes of a Consumer Protection Act claim and that Quiznos pressured Makki into switching her location to Clayton, California. Quiznos further denies all allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 8.

9. Quiznos lacks information sufficient to admit or deny the allegation that Barton Klatt ("Klatt") was at all relevant times a citizen of the State of California. Quiznos admits that Klatt was a party to a franchise agreement with QF. Quiznos denies that Klatt was a consumer for purposes of a Consumer Protection Act claim. Quiznos further denies all allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 9.

10. Quiznos lacks information sufficient to admit or deny the allegation that Joanne Kjolsen and Kristi Lewis (collectively, the "Kjolsen Plaintiffs") were at all relevant times citizens of the State of Florida. Quiznos admits that the Kjolsen Plaintiffs were parties to franchise agreements with QF. Quiznos denies that the Kjolsen Plaintiffs were consumers for purposes of a Consumer Protection Act claim. Quiznos further denies all allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 10.

11. Quiznos lacks information sufficient to admit or deny the allegation that Ali Naqvi ("Naqvi") was at all relevant times a citizen of the State of Texas. Quiznos admits that Naqvi was a party to a franchise agreement with QFII entered into on or about August 30, 2005. Quiznos denies that Naqvi was a consumer for purposes of a Consumer Protection Act claim. Quiznos further denies all allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 11.

12. Quiznos lacks information sufficient to admit or deny the allegation that Andrzej Sliwowski ("Sliwowski") was at all relevant times a citizen of the State of New York. Quiznos admits that Sliwowski was a party to two franchise agreements with QF and that the trade area reflected in an exhibit to one of those franchise agreements was the intersection of Church Street and Chapel Street in New Haven. Quiznos denies that Sliwowski was a consumer for purposes of a Consumer Protection Act claim. Quiznos further denies all allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 12.

13. Quiznos lacks information sufficient to admit or deny the allegation that Mukand Malhi and Preetinder Malhi (collectively, the "Malhi Plaintiffs") were at all relevant times citizens of the State of Washington. Quiznos admits that the Malhi Plaintiffs were parties to two

franchise agreements with QF and that the trade areas reflected in exhibits to those franchise agreements were Eastgate, Kent and Juanita, Washington. Quiznos denies that the Malhi Plaintiffs were consumers for purposes of a Consumer Protection Act claim. Quiznos further denies all allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 13.

14. Quiznos denies that Quiznos Franchising LLC is a Colorado limited liability company. Quiznos admits the remaining allegations contained in paragraph 14.

15. Quiznos admits that QFII was a Delaware limited liability company with its principal place of business at 1475 Lawrence Street, Suite 400, Denver, Colorado 80202. Quiznos further admits that QFII was the franchisor for Quiznos franchises granted in and after February 2005, and that after February 2005, QFII succeeded to certain rights and liabilities of QF.

16. Admitted.

17. Quiznos denies that TQSC LLC is a Colorado limited liability company. Quiznos admits the remaining allegations contained in paragraph 17.

18. Quiznos admits that Richard E. Schaden is a citizen of Colorado. All other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 18 are denied.

19. Quiznos admits that Richard F. Schaden is a citizen of Colorado. All other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 19 are denied.

GENERAL ALLEGATIONS

20. Quiznos admits that this suit has been brought as a purported class action by certain current and former franchisees of the Quiznos toasted submarine sandwich shop restaurant chain. All other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 20 are denied.

21. It is admitted that Quiznos' predecessors have been in business since 1981. The remaining allegations are denied as stated.

22. Quiznos admits that The Quiznos' Corporation was a publicly-traded entity from February 1994 until December 2001. It is admitted that The Quiznos Corporation, or a successor entity, became a private entity in December 2001. The remaining allegations not expressly admitted, whether expressly stated or implicit, contained in this paragraph are denied.

23. It is admitted that the sale price of shares in the going private transaction was \$8.50 per share. The remaining allegations of paragraph 23 are denied as stated.

24. Quiznos admits that the Court issued an opinion which speaks for itself. Quiznos denies the implications and characterizations of that order and further denies that the Court's findings have any relevance to this action. All other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 24 are denied.

25. Quiznos admits that several plaintiffs who currently or formerly operated Quiznos Sub restaurants as franchisees (all represented by the same counsel as are representing the plaintiffs in this case) have brought pending lawsuits (none of which are even at issue) against Quiznos and other individuals and entities alleging various claims generally consistent with Plaintiffs' characterizations, but denies such characterizations and denies that such lawsuits have

any merit or any relevance to the current action. Quiznos admits further that the current action involves only franchisees who have not opened a Quiznos store. Quiznos denies that it engaged in the various actions and business practices alleged and inferred in paragraph 25. All other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 25 are denied.

26. Quiznos admits that in May of 2006, Quiznos sold approximately 49% of its shares to a JP Morgan entity. All other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 26 are denied.

27. Quiznos denies the allegations of paragraph 27.

28. Quiznos denies that it offers for sale trade areas. Quiznos admits it offers the right to operate a Quiznos sub franchise pursuant to written franchise agreements, which speak for themselves. Quiznos denies that Quiznos sells the right to operate a Quiznos sub franchise to the general public, as Quiznos only sells this right to individuals who have completed Quiznos' approval process. All other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 28 are denied.

29. Quiznos denies that the initial franchise fee for a Quiznos franchise is always \$20,000 - \$25,000 per store. Quiznos admits that the total initial investment for operating a Quiznos franchise store on average for some years has been between \$200,000 and \$300,000. Quiznos denies that there are no special requirements to qualify to purchase a Quiznos franchise other than a qualifying credit score. All other allegations not expressly admitted, whether expressly stated or implicit, contained in this paragraph are denied.

30. Quiznos admits that it has advertised the opportunity to operate a Quiznos franchise through print media, radio, and television and used sales seminars. All other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 30 are denied.

31. Quiznos admits that pursuant to certain federal, and in some states, state regulations it provides each prospective franchisee with a Uniform Franchise Offering Circular ("UFOC").¹ All other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 31 are denied.

32. Quiznos admits that its franchisees are required to sign a franchise agreement with Quiznos. The franchise agreements, which have changed over the years, are written documents which speak for themselves and Quiznos denies all allegations inconsistent with their terms. The allegation that Quiznos' franchise agreements are adhesive or deliberately one-sided calls for a legal conclusion, and Quiznos denies this allegation. Quiznos denies all other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 32.

33. Quiznos states that the franchise agreements are documents that speak for themselves. All allegations, characterizations and quotes out of context, inconsistent with the terms of the franchise agreements are denied. The allegation that the franchise agreements are one-sided calls for a legal conclusion, and Quiznos denies this allegation. Quiznos denies all other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 33.

¹ The designation of the disclosure document Quiznos is required to provide to prospective franchisees is now known as a franchise disclosure document ("FDD").

34. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 34.

35. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 35.

36. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 36.

37. Quiznos admits that the compensation of its salespersons has included in part a component based on the sales experienced. Quiznos denies all other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 37.

38. Quiznos admits that the compensation of other persons included in part a component based on success, including at times, success with respect to attendance at sales seminars, signing applications, and selling the franchise. The remaining allegations not expressly admitted, whether expressly stated or implicit, contained in this paragraph are denied.

39. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 39.

40. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 40.

41. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 41.

42. Quiznos states that the franchise agreements are documents that speak for themselves. All allegations inconsistent with the terms of the franchise agreements are denied. The allegation that releases of all liability against Quiznos are obtained by economic duress calls

for a legal conclusion, and Quiznos denies this allegation. Quiznos further denies the remaining allegations, whether expressly stated or implicit, contained in paragraph 42.

43. Quiznos admits that some of the individuals and entities to whom Quiznos sold the right to operate Quiznos franchise stores never opened stores. Quiznos further admits that it received an initial franchise fee from each of these individuals or entities, which fee Quiznos was entitled to receive and retain at the time it was paid. Quiznos further denies all other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 43.

44. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 44.

45. Quiznos admits that it has indicated that it was one of the fastest growing franchises and referred to certain statements of recognition on its website and through certain other media outlets. Quiznos denies the allegations that Quiznos' promotion of itself as one of the fastest growing franchises is based on misleading growth figures and that Quiznos' growth figures are misleading. Quiznos denies all other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 45.

46. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 46.

47. Quiznos admits that its website states that one of its goals is "to build up critical mass of Quiznos restaurants," and admits that it has sought to achieve higher sales. Quiznos further admits that it uses advertising as one method of increasing its sales. Quiznos denies all other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 47.

48. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 48.

49. Quiznos admits that in July 2007 it settled a class action lawsuit filed by certain Canadian franchisees. Quiznos further admits that this class consisted of approximately 170 franchises. Quiznos denies that the July 2007 settlement of a class action lawsuit has any relevance to the instant action or that the settlement represents any reflection that that action had merit.

CLASS ACTION ALLEGATIONS

50. The allegations contained in paragraph 50 do not require a response, except that Quiznos denies that this proceeding is proper as a class action and that the named Plaintiffs are appropriate class representatives.

51. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 51.

52. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 52.

53. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 53.

54. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 54.

55. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 55.

56. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 56.

57. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 57.

58. Quiznos lacks information sufficient to admit or deny the allegation that the Bonanno Plaintiffs attended a Quiznos sales seminar in or around July 2004. Quiznos denies that Peter Argow ("Argow") made the representations alleged in paragraph 58, and that the Bonanno Plaintiffs would have been justified in relying on any alleged misrepresentations or on advertisements in New Jersey local newspapers in deciding to sign the franchise agreement. Quiznos further denies all other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 58.

59. Quiznos lacks information sufficient to admit or deny the allegation that the Desai Plaintiffs attended a Quiznos sales seminar in or around March 2003. Quiznos denies that its salespeople made the representations alleged in paragraph 58, and that the Desai Plaintiffs would have been justified in relying on any alleged misrepresentations or on advertisements in New Jersey local newspapers in deciding to sign the franchise agreement. Quiznos admits that the Desai Plaintiffs asked Quiznos to refund their initial franchise fee and that Quiznos, as it was justified in doing, declined to do so. Quiznos further denies all other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 59.

60. Quiznos lacks information sufficient to admit or deny the allegations that Whitehall attended a Quiznos sales seminar in or around February 2004, that Whitehall desired to open a store in Florida, or that Whitehall reviewed the Quiznos website. Quiznos admits that

Whitehall met with Don Luria ("Luria"), and that Whitehall had one or more telephone conversations with Luria prior to signing the franchise agreement. Quiznos denies that Luria made the representations alleged in paragraph 58, and that Whitehall would have been justified in relying on any alleged misrepresentations or in statements on Quiznos' website in deciding to sign the franchise agreement. Quiznos further denies all other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 60.

61. Quiznos lacks information sufficient to admit or deny the allegation that the Parmar Plaintiffs visited Quiznos' website and relied on the representations on the website in filling out an application to become a franchisee. Quiznos admits that Argow called the Parmar Plaintiffs and had a meeting with them regarding the possibility of becoming a Quiznos franchisee. Quiznos denies that Argow made the representations alleged in paragraph 61, and denies that the Parmar Plaintiffs would have been justified in relying on any alleged misrepresentations. Quiznos further denies all other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 61.

62. Quiznos lacks information sufficient to admit or deny the allegation that Varrato attended a sales seminar in April 2004. Quiznos denies all other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 62.

63. Quiznos lacks information sufficient to admit or deny the allegation that Makki researched different franchise opportunities before contacting Quiznos. Quiznos admits that Makki met with Renee Alexander ("Alexander"). Quiznos denies that Alexander is or was a Quiznos employee. Quiznos denies that Alexander made the representations alleged in paragraph 63, and denies that Makki would have been justified in relying on any alleged

misrepresentations. Quiznos further denies all other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 63.

64. Quiznos lacks information sufficient to admit or deny the allegations that Klatt attended a Quiznos sales seminar in or around March 2004, or that he reviewed Quiznos' website and other advertising material and relied on the information on the website or on other advertising material. Quiznos denies that Klatt could have justifiably relied on any alleged misrepresentations or advertisements. Quiznos further denies all other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 64.

65. Quiznos lacks information sufficient to admit or deny the allegations that the Kjolsen Plaintiffs investigated several franchise opportunities, visited the Quiznos website, or reviewed and relied on the information on the website. Quiznos also lacks information sufficient to admit or deny that the Kjolsen Plaintiffs attended two Quiznos seminars, or that the Kjolsen Plaintiffs received the December 13, 2004 e-mail from April Riedel ("Riedel") referenced in paragraph 65. Quiznos denies that Monte Ochs and Luria made the representations alleged in paragraph 65. Further, Quiznos denies that the Kjolsen Plaintiffs would have been justified in relying on any alleged misrepresentations. Finally, Quiznos denies all other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 65.

66. Quiznos lacks information sufficient to admit or deny the allegation that Naqvi attended a Quiznos sales seminar on or about July 28, 2005. Quiznos denies that its representatives made the representations alleged in paragraph 66, and further denies all other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 66.

67. Quiznos admits that Sliwowski met with Kevin Bednowski in or around September 2003. Quiznos denies that Bednowski made the representations alleged in paragraph 67, and further denies all other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 67.

68. Quiznos admits that the Malhi Plaintiffs met with Dianne Moreland and Michael Sellers in or around February 2003, and that Sellers visited a site with the Malhi Plaintiffs. Quiznos denies all other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 68.

ALLEGATIONS COMMON TO CLASS

69. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 69.

70. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 70.

71. Quiznos states that the language of its UFOC, as quoted and referenced in paragraph 71, speaks for itself. All allegations inconsistent with the terms of the UFOC are denied. Quiznos further denies all the remaining allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 71.

72. Quiznos admits only that for certain limited periods of time in certain limited areas, it ceased selling new franchises. The remaining allegations not expressly admitted, whether expressly stated or implicit, in this paragraph are denied.

73. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 73.

74. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 74.

75. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 75.

76. The franchise agreements signed by Plaintiffs and others in the alleged class of plaintiffs are writings, which speak for themselves and Quiznos denies all allegations and characterizations inconsistent with those terms. Quiznos denies all other allegations not expressly admitted, whether expressly stated or implicit, contained in paragraph 76.

77. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 77.

78. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 78. Responding further, the franchise agreements are writings, which speak for themselves and Quiznos denies all allegations and characterizations inconsistent with those terms.

79. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 79.

80. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 80.

FIRST CLAIM FOR RELIEF

81. Quiznos repeats its responses contained in the foregoing paragraphs as if they were set forth in full herein.

82. Quiznos denies that Plaintiffs and others allegedly similarly situated are consumers for the purposes of the Colorado Consumer Protection Act. Quiznos admits that it offers the right to operate a Quiznos franchise for sale to the general public, subject to completion of Quiznos' approval process. The remaining allegations, whether expressly stated or implicit, contained in this paragraph are denied.

83. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 83.

84. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 84.

85. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 85.

86. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 86.

87. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 87.

88. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 88.

89. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 89.

90. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 90.

91. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 91.

92. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 92.

SECOND CLAIM FOR RELIEF

93. Quiznos repeats its responses contained in the foregoing paragraphs as if they were set forth in full herein.

94. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 94.

95. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 95.

96. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 96.

97. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 97.

98. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 98.

99. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 99.

100. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 100.

101. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 101.

102. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 102.

THIRD CLAIM FOR RELIEF

103. Quiznos repeats its responses contained in the foregoing paragraphs as if they were set forth in full herein.

104. Quiznos admits that Plaintiffs signed franchise agreements with either QF or Quiznos Franchising II LLC and that these franchise agreements are binding on Quiznos and Plaintiffs. Quiznos denies the remaining allegations, whether expressly stated or implicit, contained in this paragraph.

105. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 105.

106. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 106.

FOURTH CLAIM FOR RELIEF

107. Quiznos repeats its responses contained in the foregoing paragraphs as if they were set forth in full herein.

108. Quiznos denies the allegations of this paragraph as legal conclusions.

109. Quiznos denies the allegations of this paragraph as legal conclusions and denies any factual allegations of paragraph 109.

110. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 110.

111. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 111.

112. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 112.

FIFTH CLAIM FOR RELIEF

113. Quiznos repeats its responses contained in the foregoing paragraphs as if they were set forth in full herein.

114. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 114.

115. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 115.

116. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 116.

SIXTH CLAIM FOR RELIEF

117. Quiznos repeats its responses contained in the foregoing paragraphs as if they were set forth in full herein.

118. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 118.

119. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 119.

120. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 120.

121. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 121.

122. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 122.

SEVENTH CLAIM FOR RELIEF

123. Quiznos repeats its responses contained in the foregoing paragraphs as if they were set forth in full herein.

124. Quiznos admits that the Malhi Plaintiffs signed a First Addendum to Franchise Agreement on or about July 5, 2006. Quiznos admits other franchise owners have also signed a similar First Addendum to Franchise Agreement.

125. Quiznos states that the document quoted speaks for itself. All allegations inconsistent with the written document are denied.

126. Quiznos states that the document quoted speaks for itself. All allegations inconsistent with the written document are denied.

127. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 127.

128. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 128.

129. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 129.

130. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 130.

131. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 132.

EIGHTH CLAIM FOR RELIEF

132. Quiznos repeats its responses contained in the foregoing paragraphs as if they were set forth in full herein.

133. Quiznos denies that a valid or legitimate controversy exists as to the parties' rights and obligations under the franchise agreement, and further denies that there is any merit to Plaintiffs' allegations of Quiznos' alleged misconduct toward Plaintiffs.

134. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 134.

135. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 135.

136. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 136.

137. Quiznos denies the allegations, whether expressly stated or implicit, contained in paragraph 137.

II. AFFIRMATIVE DEFENSES

1. Plaintiffs' claims are barred in whole or in part by contractual limitations.
2. Plaintiffs' claims are barred by terms of written documents relevant to the subject matter, the statute of frauds, parol evidence, and the merger and integration clauses.

3. Plaintiffs' claims are barred by the doctrines of merger and integration.

4. Plaintiffs' claims are barred by releases.

5. Plaintiffs' claims are barred by the applicable statute of limitations.

6. Plaintiffs' claims are barred in whole or in part by their contractual agreement that Plaintiffs were not relying on any statements other than those contained in the franchise agreement and the UFOC in deciding to purchase a Quiznos franchise.

7. Plaintiffs' claims are barred in whole or in part by Quiznos' compliance with all of its obligations under the franchise agreements and the UFOC, including, but not limited to, all of its disclosure obligations set and established by federal or state regulations.

8. Plaintiffs' claims are barred in whole or in part by Quiznos' compliance with all of its disclosure obligations under applicable law.

9. Plaintiffs' claims are barred in whole or in part by Plaintiffs' breaches of the Franchise Agreements and the Addenda thereto.

10. Plaintiff's damages, if any, are the proximate result of their own actions or omissions.

11. Plaintiffs' claims are barred by Plaintiffs' failure to follow required procedures.

12. Plaintiffs' claims are barred in whole or in part by their failure to mitigate damages, if any.

13. Plaintiffs' claims may be barred in whole or in part by offset or set off.

14. Plaintiffs' claims may be barred in whole or in part by the doctrine of waiver.

15. Plaintiffs' claims may be barred in whole or in part by estoppel.

16. Plaintiffs' claims may be barred in whole or in part by the doctrine of laches.

17. Plaintiffs' claims may be barred by Plaintiffs' unclean hands and lack of good faith.
18. Plaintiffs' claims are barred by the economic loss rule.
19. Plaintiffs' claims are barred by accord and satisfaction.
20. Plaintiffs' claims are groundless, entitling Quiznos to costs and fees.
21. Quiznos reserves the right to supplement its defenses as may be warranted.

III. COUNTERCLAIM

Breach of Contract (by QFA Royalties LLC, Quiznos Franchising LLC and Quiznos Franchising II LLC against all Plaintiffs)

1. Quiznos Franchising LLC or Quiznos Franchising II LLC entered into franchise agreements with all Plaintiffs.
2. These franchise agreements have been assigned to QFA Royalties LLC and are valid and fully enforceable contracts.
3. Under each franchise agreement, each Plaintiff was obligated to find a site for their Quiznos Sub restaurant, submit that site for approval, negotiate and obtain a lease, approved by Quiznos, and was responsible to do what was necessary to open the restaurant.
4. Pursuant to each franchise agreement, each Plaintiff was required to open a Quiznos restaurant within twelve (12) months of the effective date of their franchise agreement.
5. Each franchise agreement grants Quiznos the right to terminate any franchisee who does not open a Quiznos restaurant within twelve (12) months of signing the franchise agreement.

6. Plaintiffs failed to undertake the tasks necessary to open their Quiznos restaurants within twelve (12) months of signing the franchise agreement.

7. By failing to open their Quiznos restaurants within twelve (12) months of signing the franchise agreements with Quiznos, Plaintiffs breached the terms of the franchise agreements.

8. Plaintiffs' breaches of the franchise agreements resulted in damages to Quiznos, including but not limited to, lost future royalties and marketing fees.

9. As a result, Quiznos is entitled to damages in an amount to be proved at trial, resulting from each Plaintiff's breaches of the franchise agreements, as well as Quiznos' costs and fees incurred in pursuing this counterclaim.

WHEREFORE, Quiznos respectfully requests that this Court enter an Order dismissing all of Plaintiffs' claims with prejudice, awarding Quiznos its costs and fees incurred in defending this action, awarding Quiznos its damages resulting from Plaintiffs' breaches of the franchise agreements, as well as Quiznos' costs and fees and any other relief the Court deems appropriate.

Dated this 30th day of September 2008.

s/ Leonard H. MacPhee
Leonard H. MacPhee
Attorney for Defendants
Perkins Coie LLP
1899 Wynkoop Street, Suite 700
Denver, CO 80202
Telephone: (303) 291-2300
Facsimile: (303) 291-2400
Email: lmacphee@perkinscoie.com

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of September 2008 a true and correct copy of the foregoing was sent via email to the following:

- **Andrew Peter Bleiman**
andrew.bleiman@chengcohen.com
- **Kristin M. Bronson**
kbronson@rothgerber.com,jmartinez@rothgerber.com
- **Russell Scott Burnside**
rburnside@greenbergdauber.com,litigationgroup@greenbergdauber.com
- **Fredric Adam Cohen**
fredric.cohen@chengcohen.com
- **Joseph S. Goode**
jsg@kravitlaw.com,reception@kravitlaw.com,dmh@kravitlaw.com,lag@kravitlaw.com
- **John Aaron Hughes**
john.hughes@dlapiper.com
- **William Frederick Jones**
billy.jones@moyewwhite.com,mary.davis@moyewwhite.com
- **Justin M. Klein**
justin@marksklein.com,joanne@marksklein.com,david@marksklein.com,karin@marksklein.com
- **Mark M. Leitner**
mml@kravitlaw.com,reception@kravitlaw.com,dmh@kravitlaw.com,lag@kravitlaw.com
- **David S. Paris**
david@marksklein.com,karin@marksklein.com
- **Michael D. Plachy**
mplachy@rothgerber.com,ccollins@rothgerber.com
- **Ross H. Schmierer**
ross@marksklein.com,karin@marksklein.com

s/ Leonard H. MacPhee

Leonard H. MacPhee
Attorney for Defendants
Perkins Coie LLP
1899 Wynkoop Street, Suite 700
Denver, CO 80202
Telephone: (303) 291-2300
Facsimile: (303) 291-2400
Email: lmacphee@perkinscoie.com