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FILED

DEC - 2 2011

SONYA KRASKI
SNOHOMISH COUNTY CLERK
EX-OFFICIO CLERK OF COURT

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SNOHOMISH COUNTY

DREAM DINNERS CAPITAL REGION, LLC;
DEBBIE GALLO; KATHRYN LAWLER;
WENDY BERRY; CREATIVE COOKING
CONCEPTS, INC.; CASSANDRA AYALA;
KOZY KITCHENS, INC.; SHELEE
FETZER; MONIQUE TAYLOR; TENNYSON
WALSH and THOMAS WALSH; EAT YOUR
HEART OUT, INC.; JENNIFER GARCIA;
MICHAEL TREMAGLIO; LUANNE
SCUDDER ENTERPRISES; LUANNE
SCUDDER; NORTH ANDOVER DREAMS,
LLC; CATHERINE S. HEBERT; RUPPERT
ENTERPRISES, LLC; JEAN RUPPERT-
BOLING; CREATIVE COOKS, LLC; KIM
STEVENS; THE BISCUIT LLC; CARYN
RUTHERFORD and MARK RUTHERFORD;
MEANT TO BE, JR&D, LLC; JENNIFER
SHEA; ROSEMARIE CRAWFORD; DIANE
KAMPHAUS; ROTH & ROTH
ENTERPRISES, INC.; GREG ROTH and
RITA ROTH; TWO PEAS, LLC; LORA
WILSON; CARYN GEORGEN and KEN
GEORGEN; YAWANO, LLC; AND
JENNIFER HEMANN,

Plaintiffs,

v.

NO. 08-2-04004.4

SUMMONS ON AMENDED
COMPLAINT

1 DREAM DINNERS, INC., DREAM DINNERS
2 OPERATIONS, INC.; DREAM DINNERS
3 CANADA, INC.; DREAM DINNERS
4 MARKETING, LLC; LIVING THE DREAM,
5 INC.; DREAM FRANCHISE ADVISORY
6 COUNCIL, INC.; STEPHANIE ALLEN;
7 VERN ALLEN; TINA KUNA; SCOTT KUNA;
8 BROOKE McCURDY and JAMES
9 McCURDY; JOHN A. BENDER, JR., RYAN,
10 SWANSON & CLEVELAND, PLLC; and
11 HOLLAND & KNIGHT,

12 Defendants.

13 TO: ALL NAMED DEFENDANTS

14 A lawsuit has been started against you in the above-entitled court by Plaintiffs.
15 Plaintiffs' claim is stated in the written Amended Complaint, a copy of which is served upon
16 you with this Summons.

17 In order to defend against this lawsuit, you must respond to the Amended Complaint
18 by stating your defense in writing, and serve a copy upon the undersigned attorney for the
19 Plaintiffs within 20 days after the service of this Summons on Amended Complaint within the
20 State of Washington or 60 days if served outside of the State of Washington, excluding the
21 day of service, or a default judgment may be entered against you without notice. A default
22 judgment is one where Plaintiffs are entitled to what they ask for because you have not
23 responded. If you serve a notice of appearance on the undersigned attorney, you are entitled
24 to notice before a default judgment may be entered.

25 You may demand that the Plaintiffs file this lawsuit with the court. If you do so, the
26 demand must be in writing and must be served upon the Plaintiffs. Within fourteen (14) days
after you serve the demand, the Plaintiffs must file this lawsuit with the court, or the service
on you of this Summons and Amended Complaint will be void.

SUMMONS ON AMENDED COMPLAINT - 2 of 3

[197203 v2.doc]

LAW OFFICES
GORDON, THOMAS, HONEYWELL, MALANCA,
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ONE UNION SQUARE
600 UNIVERSITY, SUITE 2100
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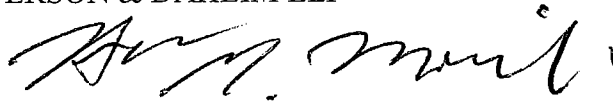
1 If you wish to seek the advice of an attorney in this matter, you should do so promptly
2 so that your written response, if any, may be served on time.

3 This Summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the
4 State of Washington.

5 Dated this 1st day of December, 2008.

7 GORDON, THOMAS, HONEYWELL, MALANCA,
8 PETERSON & DAHEIM LLP

9 By



Howard R. Morrill, WSBA No. 17252

hmorrill@gth-law.com

Attorneys for Plaintiffs

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FILED

DEC - 2 2003

SONYA RAASKI
SNOHOMISH COUNTY CLERK
EX-OFFICIO CLERK OF COURT

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SNOHOMISH COUNTY

DREAM DINNERS CAPITAL REGION, LLC;
DEBBIE GALLO; KATHRYN LAWLER; WENDY
BERRY; CREATIVE COOKING CONCEPTS, INC.;
CASSANDRA AYALA; KOZY KITCHENS, INC.;
SHELLEE FETZER; MONIQUE TAYLOR;
TENNYSON WALSH and THOMAS WALSH; EAT
YOUR HEART OUT, INC.; JENNIFER GARCIA;
MICHAEL TREMAGLIO; LUANNE SCUDDER
ENTERPRISES; LUANNE SCUDDER; NORTH
ANDOVER DREAMS, LLC; CATHERINE S.
HEBERT; RUPPERT ENTERPRISES, LLC; JEAN
RUPPERT-BOLING; CREATIVE COOKS, LLC;
KIM STEVENS; THE BISCUIT LLC; CARYN
RUTHERFORD and MARK RUTHERFORD;
MEANT TO BE, JR&D, LLC; JENNIFER SHEA;
ROSEMARIE CRAWFORD; DIANE KAMPHAUS;
ROTH & ROTH ENTERPRISES, INC.; GREG
ROTH and RITA ROTH; TWO PEAS, LLC; LORA
WILSON; CARYN GEORGEN and KEN
GEORGEN; YAWANO, LLC; AND JENNIFER
HEMANN,

Plaintiffs,

v.

DREAM DINNERS, INC., DREAM DINNERS
OPERATIONS, INC.; DREAM DINNERS
CANADA, INC.; DREAM DINNERS MARKETING,
LLC; LIVING THE DREAM, INC.; DREAM
FRANCHISE ADVISORY COUNCIL, INC.;
STEPHANIE ALLEN; VERN ALLEN; TINA
KUNA; SCOTT KUNA; BROOKE McCURDY and
JAMES McCURDY; JOHN A. BENDER, JR.,
RYAN, SWANSON & CLEVELAND, PLLC; and
HOLLAND & KNIGHT,

Defendants.

NO. 08-2-04004-4
AMENDED COMPLAINT

1
2 Come now the Plaintiffs, and for their amended complaint against Defendants allege
3 as follows:

4 **PARTIES**

5 1. Each of the Plaintiffs is an individual, corporation or limited liability company
6 that is or was a franchisee of a “Dream Dinners” home meal preparation service, franchised
7 by defendant Dream Dinners, Inc. The residence of each of the Plaintiffs is set forth on
8 Exhibit 1, which is annexed hereto and made a part hereof.

9 2. Defendant Dream Dinners, Inc. is the franchisor of “Dream Dinners,” which is
10 known as a “meal assembly” service. A meal assembly service provides a central location
11 where members of the public may go to prepare meals in bulk for home consumption. The
12 meal assembly location provides kitchen stations, pre-measured and pre-cut ingredients, tools
13 and containers, so that the customer “assembles” meals that are placed in storage containers,
14 taken home, and either cooked and consumed shortly thereafter or are refrigerated or frozen
15 for later consumption. Dream Dinners, Inc. has its principal place of business in Snohomish,
16 Washington.

17 3. Defendants Dream Dinners Operations, Inc., Dream Dinners Canada, Inc.,
18 Dream Dinners Marketing, LLC, and Living the Dream, Inc. are affiliates of Dream Dinners,
19 Inc. and, upon information and belief, either were directly involved in the unlawful sale of
20 franchises alleged herein or have a controlling interest in Dream Dinners, Inc.

21 4. Defendants Stephanie Allen and Tina Kuna are the founders of Dream
22 Dinners, Inc. and participated and controlled the unlawful and fraudulent sales of franchises
23 alleged herein. They are citizens of Washington State.

24 5. Vern Allen is the husband of Stephanie Allen and together they comprise a
25 marital community under the laws of the State of Washington. Vern Allen’s marital
26

1 community has benefited substantially from the wrongs committed by Stephanie Allen as
2 alleged herein.

3 6. Scott Kuna is the husband of Tina Kuna and together they comprise a marital
4 community under the laws of the State of Washington. Scott Kuna’s marital community has
5 benefited substantially from the wrongs committed by Tina Kuna as alleged herein.

6 7. Defendant Brooke McCurdy is an individual citizen of the State of Washington
7 who was Chief Operating Officer of Dream Dinners during the times complained of here. As
8 Chief Operating Officer of Dream Dinners, Brooke McCurdy is presumptively liable for the
9 franchise law violations of Dream Dinners as alleged herein.

10 8. James W. McCurdy is the husband of Brooke McCurdy, and together they
11 comprise a marital community under the laws of the State of Washington. James W.
12 McCurdy’s marital community has benefited substantially from Brooke McCurdy’s position
13 as Chief Operating Officer of Dream Dinners.

14 9. John A. Bender, Jr. is a citizen of the State of Washington and an attorney who
15 has served as the attorney for Dream Dinners since it began franchising in 2003. Ryan
16 Swanson & Cleveland PLLC is, upon information and belief, a limited liability company
17 engaged in the practice of law in the State of Washington of which John A. Bender is and has
18 been since March 26, 2004 a shareholder or member. Holland & Knight is, upon information
19 and belief, a partnership with its principal place of business in Tampa, Florida and of which
20 John Bender was a member until approximately March 26, 2004. Bender, Ryan Swanson &
21 Cleveland and Holland & Knight will be referred to as the “Attorney Defendants” in this
22 Amended Complaint.
23
24

25 **FACTS**

26 10. Defendant Dream Dinners is engaged in the sale of franchises intended to ease
the burden of home meal preparation. At a Dream Dinners

1 franchised outlet, a customer spends one to two hours assembling meals using Dream
2 Dinners' recipes and prepared ingredients. The customer then leaves with a month or week's
3 worth of meals for the family; these meals can be refrigerated or frozen, and simply need to
4 be thawed and cooked per instructions to enjoy.

6 DEFENDANTS' REPRESENTATIONS

7
8 11. The Dream Dinners concept was originated by Defendants Stephanie Allen
9 and Tina Kuna, who then sought to franchise it. Each of the Plaintiffs was a prospective
10 franchisee and contacted Dream Dinners. In order to induce Plaintiffs to purchase franchises,
11 Dream Dinners, through Allen and Kuna, made a series of misrepresentations and omissions
12 to Plaintiffs to induce them to purchase Dream Dinners franchises. These representations
13 consisted largely of (a) assurances that the Dream Dinners system was "proven;" (b) of
14 "earnings claims" or representations to Plaintiffs of how much money they would make in
15 their franchises or the revenues or profits of existing company-owned outlets; and (c)
16 provision to Plaintiffs of Uniform Franchise Offering Circulars, which were misleading
17 because they were incomplete. These misrepresentations are described below.

18 **Proven System**

19
20 12. Dream Dinners, Kuna and Allen represented in the franchise agreement, in
21 Discovery Day presentations and in other written material provided to Plaintiffs and in Dream
22 Dinners' websites, that Kuna and Allen were the founders of the "meal replacement" industry
23 and that Dream Dinners had a "proven" system for running franchises offering home meal
24 replacement. Further, this system had management and operation of a business to operate
25 self-prepared home meal replacement systems that was based on uniform standards,
26 procedures and business operations that would result in profitable operations within a few

1 months and readily sustain a revenue of at least \$30,000 a month per franchised center.

2 **Earnings Claims**

3 13. Dream Dinners, Kuna and Allen made earnings claims consisting of
4 representations of both the prospective performance of centers that Plaintiffs were considering
5 opening as well as the performance of existing company owned outlets, knowing that
6 disclosure of Earnings Claims to prospective franchisees could be made lawfully only through
7 the official Uniform Franchise Offering Circular that was to be provided to Plaintiffs by law,
8 and that Earnings Claims had to conform to a particular format, contain certain information
9 and have certain disclaimers. Defendants Dream Dinners, Kuna and Allen made Earnings
10 Claims that did not conform to these requirements, not only knowing that they did not
11 conform, but in which defendant Allen admitted she knew they were in violation of
12 regulations prohibiting disclosure of Earnings Claim in the manner she did:
13

- 14
- 15 a. According to a PowerPoint presentation given during Discovery Day,
16 Plaintiffs would have at least certain minimum numbers of customers per
17 month. The PowerPoint showed estimated numbers of customers per
18 month, gross revenues, cost of goods, operating expenses and net profits in
19 various “scenarios,” which were different revenue levels. Right before
20 showing these numbers to prospective franchisees, Ms. Allen smiled and
21 said, in substance, “I know the lawyers say I’m not supposed to show this
22 to you, but if you write fast, you can get it all down.”
- 23 b. “A full store would have 500 customers a month” and a second store
24 would be expected to open with “at least 150 customers per month,”
25 according to Allen and Kuna. These numbers of customers would
26 generate \$26,700 in monthly revenue and maximum gross revenues per
week would be \$21,360.
- c. Company-owned stores had operated profitably from January 2003
through April 2004, with certain stated numbers of customers, as set forth
on a set of “Frequently Asked Questions” shown on the Dream Dinners’
website. Defendants Dream Dinners, Kuna and Allen further represented
that the franchise operated with “what the perfect number is to make a
profit.”

- 1 d. Corporate stores were operating with 600 to 800 customers per month.
- 2 e. According to detailed “cost breakdowns per session,” showing projections
- 3 of revenues, expenses and profits for one session, and weekly, monthly
- 4 and yearly revenues, the stores were consistently profitable.
- 5 f. A “monthly income and expense forecast” provided in writing to Plaintiffs
- 6 showed revenues, costs and profits at four different levels or “scenarios.”
- 7 g. The cost of food for the operation of a Dream Dinners franchise would not
- 8 exceed 45 percent of the franchisees’ revenues.

9 **The UFOCs**

10 14. Federal and state law require that a franchisor furnish a prospectus or offering

11 circular to each prospective franchisee describing the franchise, certain aspects of the

12 franchise agreement, certain facts about the franchisor and specified other information –

13 including financial statements of the franchisor, copies of all agreements the franchisee had to

14 sign, and data concerning performance of company-owned and franchised outlets. This

15 information is required to be furnished to the prospective franchisee in one, single document

16 entitled the Uniform Franchise Offering Circular or UFOC.

17 15. Instead of furnishing Plaintiffs with a single UFOC, Defendants Dream

18 Dinners, Kuna and Allen provided them with pieces of it, and only provided further

19 information if the prospect showed interest in proceeding with the purchase. In this way,

20 Defendants Dream Dinners, Kuna and Allen prevented Plaintiffs from seeing the entire

21 franchise offering at the outset. Adverse information, such as Dream Dinners’ unaudited

22 financial statements, were withheld, and then produced in a format not in compliance with

23 UFOC Guidelines.

24 **Plaintiffs’ Reliance**

25 16. In reliance upon the such Defendants’ representations, as set forth above,

26 Plaintiffs entered into franchise agreements for Dream Dinners’ franchises, paid Dream

Dinners tens of thousands of dollars, spent tens of thousands of dollars building out their

1 franchises and incurred obligations to landlords and others. Additionally, the individual
2 Plaintiffs were required to sign guarantees of the obligations of their franchises.

3 **DEFENDANTS' CONTRACTUAL UNDERTAKINGS**

4 17. Dream Dinners undertook many contractual obligations to Plaintiffs including
5 the following:

- 6 -- To provide training and support to franchisees;
- 7 -- To assist with promotion, advertising and grand openings;
- 8 -- To provide continuing support to franchisees.

9
10 **FALSITY OF DEFENDANTS' REPRESENTATIONS AND VIOLATIONS OF**
11 **FRANCHISE LAWS**

12 18. Defendant Dream Dinners, Kuna and Allen's representations, as set forth
13 above at paragraph 13, were false, misleading and unlawful under certain state franchise laws
14 in at least the following respects:

- 15 a. There was no proven system, and the system that existed in no way was
16 capable of generating \$30,000 per month in revenues. In fact,
17 Defendants changed the system repeatedly, rebuilt their website and
otherwise undercut the system that Plaintiffs had purchased.
- 18 b. All of the Earnings Claims – the representations of revenues, earnings
19 and profits, of the number of customers that Plaintiffs would have, and
20 the numbers of customers that existing stores had, were false, had no
21 reasonable basis, were unlawful and unrepresentative. Further, they did
22 not conform to federal and state requirements for earnings claims and
the representations that were made were made knowing that they were
unlawful.
- 23 c. Food costs were not 45 percent but in fact exceeded that amount
24 regularly.
- 25 d. The UFOCs provided to Plaintiffs contained, at Item 19, a “negative
26 disclosure” that stated that Dream Dinners did not provide, and did not
authorize others to provide, earnings claims information. That negative
disclosure was false, and included in the UFOC by Defendants
knowing it was false.

1 24. Bender knew that prospective franchisees such as Plaintiffs were coming to
2 Dream Dinners' headquarters for franchise sales presentations, and knew that franchisees
3 would rely upon the information provided by Dream Dinners to them in making the decision
4 to purchase a franchise. Bender further knew that if Dream Dinners presented information
5 that was not lawful or that was misleading that franchisees could sustain damages, and knew
6 that franchisees were relying upon the truthfulness and lawfulness of the disclosures made to
7 them by Dream Dinners in connection with their decisions to purchase franchises. In
8 addition, he undertook or failed to undertake the following:

- 9
10 • He either knowingly, or with reckless disregard of the truth, permitted
11 Dream Dinners to conduct personal meetings with prospective franchisees
12 without providing an offering circular to them, in violation of the
13 requirement that an offering circular be provided no later than the first
14 personal meeting.
- 15 • He knowingly approved the procedure used by Dream Dinners pursuant to
16 which it required prospective franchisees, including Plaintiffs, to sign a
17 binding contract before they could revise a UFOC, or other information, in
18 violation of law.
- 19 • He did not ensure that the UFOC provided to prospective franchisees
20 contained all of the information required to be included in it, that the
21 UFOC was complete, and that it was bound together in a manner that was
22 consistent with the way in which such UFOC had been approved by the
23 state. Rather, he permitted, knowingly or in reckless disregard of the
24 facts, Dream Dinners to deliver UFOCs to prospective franchisees in
25 packets, at different times, and of which only a portion of the UFOC was
26 contained in each packet.
- Bender failed to review the franchise sales process employed by Dream
Dinners and permitted, knowingly or in reckless disregard of the truth,
numerous unlawful earnings claims to be made by Dream Dinners and its
officers in the form of PowerPoint presentations given at discovery day, in
materials on the Dream Dinners website, and in sets of Frequently Asked
Questions that contained break-even information and other information
from which earnings could be derived.
- Bender allowed, permitted and approved the use of financial statements
that contained unlawful earnings claims, and attempted to conceal that fact

by disguising them as part of the audited financial statements.

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25. Bender was a member of Dream Dinners' *de facto* board of directors and maintained a desk in the same space as defendants Allen and Kuna, spending approximately two days a week there. As such, Bender participated in business decisions and decisions not subject to the attorney-client privilege.

26. Bender knew, or should have known, that the financial results shown in the PowerPoint presentation, the frequently asked questions, the sample pro-formas and financial statements, which were given to prospective franchisees, were not representative of the performance that franchisees across the nation could expect, and that there was no reliable basis on which Dream Dinners could represent those numbers as showing reasonable franchisee expectations or a reasonable and representative depiction of actual performance of a franchise. Nonetheless, the PowerPoint, pro-formas, frequently asked questions and financial statements failed to disclose fully the failings of the representations.

27. At all relevant times, Bender knew of and approved Dream Dinners' franchise sales process. At all relevant times, he could have intervened to prevent the violations of franchise sales law by his client.

28. At all relevant times, Defendant Bender knew or reasonably should have known that the information being provided by his clients, Dream Dinners, Allen and Kuna, to Plaintiffs and other prospective franchisees was materially false, incomplete and misleading (or omitted material facts) and he knew or reasonably should have known that Plaintiffs and other prospective franchisees had no reasonable means to uncover the truth that he knew—that his clients Dream Dinners and its officers, had an affirmative duty to deliver true, complete and non-misleading information to Plaintiffs and other prospective franchisees and Defendant Bender had been specifically retained by Dream Dinners to assist it in complying with the requirements of applicable franchise laws and regulations.

1 29. As a result of Bender's failure, in light of what he knew or should have known,
2 to make reasonable and appropriate attempts to ensure that Dream Dinners complied with its
3 obligations under law with respect to franchise sales, provisions of the UFOC, and
4 requirements concerning earnings claims, Plaintiffs relied upon unlawful information that was
5 provided by Dream Dinners.

6 30. Dream Dinners' provision of unlawful earnings claims by way of its
7 PowerPoint presentation, its frequently asked questions, pro-formas and financial statements
8 was, according to Dream Dinners' founders, Stephanie Allen and Tina Kuna, completely
9 approved and reviewed by Bender in advance.

10 31. In addition, Bender spoke with some prospective franchisees and orally gave at
11 least one an earnings claim, stating that it would be easy for the franchisee to make an income
12 of approximately \$40,000 to \$50,000 per year.

13 32. Holland & Knight is liable together with Bender with respect to franchisees
14 that attended Discovery Day presentations prior to March 26, 2004 at which unlawful
15 earnings claims were presented or there was a failure to provide a proper UFOC. Ryan,
16 Swanson & Cleveland is liable together with Bender with respect to franchisees who
17 purchased franchises on or after March 26, 2004.

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20 **COUNT ONE**
21 **(Violation of Washington Franchise Law – All Plaintiffs)**

22 33. Plaintiffs repeat and reallege each and every allegation set forth above as
23 though set forth here in full.

24 34. Dream Dinners' conduct, particularly their false claims of a proven system,
25 their unlawful disclosure of earnings claims in violation of UFOC Guidelines and their
26 provision of UFOC documentation in violation of UFOC Guidelines, violate the Washington
Franchise Investment Protection Act, R.C.W. 19.100.010 *et*

1 *seq.*; Defendants Stephanie Allen and Tina Kuna participated directly in these
2 misrepresentations and Defendant Brooke McCurdy is liable by reason of her position as an
3 officer of Dream Dinners.

4 35. Defendants Dream Dinners Operations, Inc., Dream Dinners Canada, Inc.,
5 Dream Dinners Marketing, LLC, Living the Dream, Inc. and Dream Dinners Advisory
6 Council are liable for the violations of franchise law set forth above by reason of their
7 position as control persons of Dream Dinners or persons occupying a similar status.

8 36. The Attorney Defendants are persons who were engaged directly and indirectly
9 in the sale and offer to sell franchises in the State of Washington and by reason of that are
10 subject to the provisions of the Washington Franchise Act, specifically R.C.W. 19.100.160.
11 Further, Bender was in control of the franchise sales activities of Dream Dinners and its
12 officers. Specifically, Bender was a member of Holland & Knight until March 26, 2004 and
13 Holland & Knight is liable for the sale of franchises to those Plaintiffs who received franchise
14 presentations prior to that date, *i.e.*, Fetzer, Taylor, and Kozy Kitchens, LLC; Greg and Rita
15 Roth and Roth & Roth Enterprises; and Ruppert-Boling and Ruppert Enterprises, LLC. Ryan,
16 Swanson & Cleveland is liable to Plaintiffs who became franchisees or who received
17 presentations to become franchisees after that date. Bender is liable to all Plaintiffs.
18

19 37. Plaintiffs are entitled, by reason of such Defendants' violations of the
20 Washington Franchise Act, to rescind their franchise agreements, have their guarantees
21 canceled and rescinded, and recover restitution and damages from such Defendants in an
22 amount to be proved at trial, plus attorneys' fees and costs.

23 38. Additionally, R.C.W. § 19.100.180 (2)(h) provides that it is unlawful for a
24 franchisor to impose upon a franchisee a standard of conduct that is not reasonable and
25 necessary. Dream Dinners required franchised to pay minimum royalties on the basis of
26 franchisee revenues of \$30,000 per month. In fact, that

1 level of revenue was not reasonable or necessary, and most franchisees and company-owned
2 locations were not capable of achieving that level.

3
4 **COUNT TWO**
5 **(Violation of The New York Franchise Sales Act – New York Plaintiffs)**

6 39. Plaintiffs repeat and reallege each and every allegation set forth above as
7 though set forth here in full. Dream Dinners' conduct, particularly their false claims of a
8 proven system, their unlawful disclosure of earnings claims in violation of UFOC Guidelines
9 and their provision of UFOC documentation in violation of UFOC Guidelines, violate the
10 New York Franchise Sales Act, N.Y. Gen. Bus. Law 680 et seq. Defendants Stephanie Allen
11 and Tina Kuna participated directly in these misrepresentations and Defendant Brooke
12 McCurdy is liable by reason of her position as an officer of Dream Dinners.

13 40. Defendants Dream Dinners Operations, Inc., Dream Dinners Canada, Inc.,
14 Dream Dinners Marketing, LLC, Living the Dream, Inc. and Dream Dinners Advisory
15 Council are liable for the violations of franchise law set forth above by reason of their
16 position as control persons of Dream Dinners or persons occupying a similar status.

17 41. Bender and Ryan, Swanson & Cleveland are liable to Plaintiffs Dream Dinners
18 Capital Region, Gallo, Lawler and Berry (the "New York Franchisees"), by reason of their
19 positions as persons responsible for franchise sales and by reason of the failures of Bender to
20 discharge his duties to these prospective franchisees.

21 42. The New York Franchisees are entitled, by reason of such Defendants'
22 violations of the New York Franchise Sales Act, to rescind their franchise agreements, have
23 their guarantees canceled and rescinded, and recover restitution and damages from such
24 Defendants in an amount to be proved at trial, plus attorneys' fees and costs.
25
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COUNT THREE

(Violation of The Michigan Franchise Investment Law – Michigan Plaintiffs)

43. Plaintiffs repeat and reallege each and every allegation set forth above as though set forth here in full. Dream Dinners’ conduct, particularly their false claims of a proven system, their unlawful disclosure of earnings claims in violation of UFOC Guidelines and their provision of UFOC documentation in violation of UFOC Guidelines, violate the Michigan Franchise Investment Law, Mich. Comp. L. § 445.1501. Defendants Stephanie Allen and Tina Kuna participated directly in these misrepresentations and Defendant Brooke McCurdy is liable by reason of her position as an officer of Dream Dinners.

44. Defendants Dream Dinners Operations, Inc., Dream Dinners Canada, Inc., Dream Dinners Marketing, LLC, Living the Dream, Inc. and Dream Dinners Advisory Council are liable for the violations of franchise law set forth above by reason of their position as control persons of Dream Dinners or persons occupying a similar status.

45. Bender and Ryan, Swanson & Cleveland are liable to Creative Cooks and Kim Stevens by reason of their positions as persons responsible for franchise sales and by reason of Bender’s failure to discharge his duties to these prospective franchisees.

46. Creative Cooks and Kim Stevens, the Michigan Plaintiffs are entitled, by reason of such Defendants’ violations of the Michigan Franchise Investment Law, to rescind their franchise agreements, have their guarantees canceled and rescinded, and recover restitution and damages from such Defendants in an amount to be proved at trial, plus attorneys’ fees and costs.

COUNT FOUR

(Violation of The Indiana Franchise Investment Law – Indiana Plaintiffs)

47. Plaintiffs repeat and reallege each and every allegation set forth above as though set forth here in full. Dream Dinners’ conduct, particularly their false claims of a proven system, their unlawful disclosure of earnings claims

1 in violation of UFOC Guidelines and their provision of UFOC documentation in violation of
2 UFOC Guidelines, violate the Indiana Franchise Act, Ind. Code § 23-2-2.5-1. Defendants
3 Stephanie Allen and Tina Kuna participated directly in these misrepresentations and
4 Defendant Brooke McCurdy is liable by reason of her position as an officer of Dream
5 Dinners.

6 48. Defendants Dream Dinners Operations, Inc., Dream Dinners Canada, Inc.,
7 Dream Dinners Marketing, LLC, Living the Dream, Inc. and Dream Dinners Advisory
8 Council are liable for the violations of franchise law set forth above by reason of their
9 position as control persons of Dream Dinners or persons occupying a similar status.
10

11 49. Bender and Ryan, Swanson & Cleveland are liable to Ruppert-Boling, Ruppert
12 Enterprises, Luanne Scudder and Luanne Scudder Enterprises (the "Indiana Plaintiffs") for
13 the representations of earnings claims made to them, by reason of their positions as persons
14 responsible for franchise sales and by reason of the failures of Bender to discharge his duties
15 to these prospective franchisees. Holland & Knight is liable to Ruppert-Boling and Ruppert
16 Enterprises for Bender's failure to discharge his duties.

17 50. The Indiana Plaintiffs are entitled, by reason of such Defendants' violations of
18 the Indiana Franchise Act to rescind their franchise agreements, have their guarantees
19 canceled and rescinded, and recover restitution and damages from such Defendants in an
20 amount to be proved at trial, plus attorneys' fees and costs.
21

22 **COUNT FIVE**
23 **(Violation of The Maryland Franchise Law – Maryland Plaintiffs)**

24 51. Plaintiffs repeat and reallege each and every allegation set forth above as
25 though set forth here in full. Dream Dinners' conduct, particularly their false claims of a
26 proven system, their unlawful disclosure of earnings claims in violation of UFOC Guidelines
and their provision of UFOC documentation in violation of

1 UFOC Guidelines, violate the Maryland Franchise Act, MD Code Ann., Bus. Reg. § 14-201.
2 Defendants Stephanie Allen and Tina Kuna participated directly in these misrepresentations
3 and Defendant Brooke McCurdy is liable by reason of her position as an officer of Dream
4 Dinners.

5 52. Defendants Dream Dinners Operations, Inc., Dream Dinners Canada, Inc.,
6 Dream Dinners Marketing, LLC, Living the Dream, Inc. and Dream Dinners Advisory
7 Council are liable for the violations of franchise law set forth above by reason of their
8 position as control persons of Dream Dinners or persons occupying a similar status.

9 53. Bender and Ryan, Swanson & Cleveland are liable to Jennifer Hemann and
10 Yawano, LLC (the “Maryland Plaintiffs”) for the representations and earnings claims made to
11 Plaintiffs Dream Dinners Capital Region, LLC, Gallo, Lawler and Berry, by reason of their
12 positions as persons responsible for franchise sales and by reason of the failures of Bender to
13 discharge his duties to these prospective franchisees.

14 54. The Maryland Plaintiffs are entitled, by reason of such Defendants’ violations
15 of the Maryland Franchise Laws to rescind their franchise agreements, have their guarantees
16 canceled and rescinded, and recover restitution and damages from such Defendants in an
17 amount to be proved at trial, plus attorneys’ fees and costs.

18
19
20 **COUNT SIX**
(Violation of The Virginia Retail Franchise Act – Virginia Plaintiffs)

21
22 55. Plaintiffs repeat and reallege each and every allegation set forth above as
23 though set forth here in full. Dream Dinners’ conduct, particularly their false claims of a
24 proven system, their unlawful disclosure of earnings claims in violation of UFOC Guidelines
25 and their provision of UFOC documentation in violation of UFOC Guidelines, violate the
26 Virginia Retail Franchising Act. Code § 13.1-557. Defendants Stephanie Allen and Tina Kuna
participated directly in these misrepresentations and

1 Defendant Brooke McCurdy is liable by reason of her position as an officer of Dream
2 Dinners.

3 56. Defendants Dream Dinners Operations, Inc., Dream Dinners Canada, Inc.,
4 Dream Dinners Marketing, LLC, Living the Dream, Inc. and Dream Dinners Advisory
5 Council are liable for the violations of franchise law set forth above by reason of their
6 position as control persons of Dream Dinners or persons occupying a similar status.

7 57. Bender and Ryan, Swanson & Cleveland are liable to Cassandra Ayala and
8 Creative Cooking Concepts, Inc. and to T&T Walsh, Inc. and the Walshes (the “Virginia
9 Plaintiffs”) for the representations and earnings claims made to Plaintiffs Dream Dinners
10 Capital Region LLC, Gallo, Lawler and Berry, by reason of their positions as persons
11 responsible for franchise sales and by reason of the failures of Bender to discharge his duties
12 to these prospective franchisees.

13 58. The Virginia Plaintiffs are entitled, by reason of such Defendants’ violations of
14 the Virginia Franchise Laws to rescind their franchise agreements, have their guarantees
15 canceled and rescinded, and recover restitution and damages from such Defendants in an
16 amount to be proved at trial, plus attorneys’ fees and costs.

17
18 **COUNT SEVEN**
19 **(Violation of The Florida Franchise Act – Florida Plaintiffs)**

20 59. Plaintiffs repeat and reallege each and every allegation set forth above as
21 though set forth here in full. Dream Dinners’ conduct, particularly their false claims of a
22 proven system, their unlawful disclosure of earnings claims in violation of UFOC Guidelines
23 and their provision of UFOC documentation in violation of UFOC Guidelines, violate the
24 Florida Franchise Act, Fla. Stat. 817.416. Defendants Stephanie Allen and Tina Kuna
25 participated directly in these misrepresentations and Defendant Brooke McCurdy is liable by
26 reason of her position as an officer of Dream Dinners.

1 UFOC Guidelines and other deceptive and unlawful conduct, as described above. As a result
2 of these Defendants' conduct, the Virginia Plaintiffs are entitled to recover their actual
3 damages under the Virginia Unfair Trade Practices Act, which damages should be trebled,
4 plus attorneys' fees.

5
6 **COUNT FOURTEEN**
(Violation of The Indiana Unfair Trade Practice Act – Indiana Plaintiffs)

7 73. Plaintiffs repeat and reallege each and every allegation set forth above as
8 though set forth here in full.

9 74. Under the Indiana Unfair Trade Practice Act, unfair and deceptive acts and
10 practices in commerce are declared unlawful. Dream Dinners, Kuna, Allen and Bender,
11 Ryan, Swanson & Cleveland have engaged in unfair trade practices by their violations of
12 UFOC Guidelines and other deceptive and unlawful conduct, as described above. As a result
13 of these Defendants' conduct, the Indiana Plaintiffs are entitled to recover their actual
14 damages under the Indiana Unfair Trade Practices Act, which damages should be trebled, plus
15 attorneys' fees. Additionally, Holland & Knight is liable to Ruppert-Boling and to Ruppert
16 Enterprises because Bender was a member of that firm at that time.

17
18 **COUNT FIFTEEN**
19 **(Violation of The Maryland Unfair Trade Practice Act – Maryland Plaintiffs)**

20 75. Plaintiffs repeat and reallege each and every allegation set forth above as
21 though set forth here in full.

22 76. Under the Maryland Unfair Trade Practice Act, unfair and deceptive acts and
23 practices in commerce are declared unlawful. Dream Dinners, Kuna, Allen and Bender and
24 Ryan, Swanson & Cleveland have engaged in unfair trade practices by their violations of
25 UFOC Guidelines and other deceptive and unlawful conduct, as described above. As a result
26 of these Defendants' conduct, the Maryland Plaintiffs are entitled to recover their actual

1 damages under the Maryland Unfair Trade Practices Act, which damages should be trebled,
2 plus attorneys' fees.

3 **COUNT SIXTEEN**

4 **(Violation of The Michigan Unfair Trade Practice Act – Michigan Plaintiffs)**

5 77. Plaintiffs repeat and reallege each and every allegation set forth above as
6 though set forth here in full.

7 78. Under the Michigan Unfair Trade Practice Act, unfair and deceptive acts and
8 practices in commerce are declared unlawful. Dream Dinners, Kuna, Allen and Bender and
9 Ryan, Swanson & Cleveland have engaged in unfair trade practices by their violations of
10 UFOC Guidelines and other deceptive and unlawful conduct, as described above. As a result
11 of these Defendants' conduct, the Michigan Plaintiffs are entitled to recover their actual
12 damages under the Michigan Unfair Trade Practices Act, which damages should be trebled,
13 plus attorneys' fees.

14 **COUNT SEVENTEEN**

15 **(Violation of The Florida Unfair Trade Practice Act – Florida Plaintiffs)**

16 79. Plaintiffs repeat and reallege each and every allegation set forth above as
17 though set forth here in full.

18 80. Under the Florida Unfair Trade Practice Act, unfair and deceptive acts and
19 practices in commerce are declared unlawful. Dream Dinners, Kuna, Allen and Bender and
20 Ryan, Swanson & Cleveland have engaged in unfair trade practices by their violations of
21 UFOC Guidelines and other deceptive and unlawful conduct, as described above. As a result
22 of these Defendants' conduct, the Florida Plaintiffs are entitled to recover their actual
23 damages under the Florida Unfair Trade Practices Act, which damages should be trebled, plus
24 attorneys' fees.
25
26

COUNT EIGHTEEN
(Common Law Fraud)

1
2 81. Plaintiffs repeat and reallege each and every allegation set forth above as
3 though set forth here in full.

4 82. Defendants Dream Dinners, Allen and Kuna made deliberate and knowing
5 misrepresentations of fact, knowing that they were untrue and unlawful, with the intent that
6 Plaintiffs rely upon them to their detriment. Plaintiffs did so rely upon them to their
7 detriment, with the result that they lost millions of dollars.

8 83. As a result of the common law fraud of Defendants Dream Dinners, Allen and
9 Kuna, Plaintiffs are entitled to recover from Dream Dinners, Allen and Kuna their actual
10 damages in an amount to be proved at trial and to have their guarantees rescinded and
11 canceled.

COUNT NINETEEN
(Negligent Misrepresentation)

12
13
14 84. Plaintiffs repeat and reallege each and every allegation set forth above as
15 though set forth here in full.

16
17 85. Defendants Dream Dinners, Kuna, Allen and the Attorney Defendant supplied
18 information consisting of the PowerPoint Presentation, pro formas, frequently asked questions
19 and other information regarding earnings of existing or prospective Dream Dinners outlets
20 that such Defendants knew would guide Plaintiffs in their business dealings, and specifically
21 in their decisions to purchase Dream Dinners franchises; these Defendants were negligent in
22 obtaining and communicating this information in that they (a) did not include in the UFOC
23 with proper disclaimers and accompanying information; (b) there was no reasonable basis for
24 the information or for Defendants to representing that Plaintiffs could rely on it. The
25 Plaintiffs relied on this information reasonably; and the false information caused Plaintiffs
26 damages.

1 92. The Attorney Defendants also knew that the sale of franchises is highly
2 regulated and that earnings claim information could be given to prospective franchisees only
3 in a lawful manner – *i.e.*, within the Uniform Franchise Offering Circular, accompanied by
4 appropriate disclaimers.

5 93. John Bender knew that Kuna and Allen were giving earnings claims
6 information to prospective franchisees unlawfully – *i.e.*, outside of the UFOC and without
7 disclaimers.

8 94. John Bender advised Dream Dinners to include, in item 19 of its Offering
9 Circular, a “negative disclosure” that stated that Dream Dinners did not furnish or authorize
10 its salespersons to furnish earnings claims information. That statement was false because, in
11 fact, Dream Dinners did furnish such information.

12 95. The Attorney Defendants had a duty to Plaintiffs to ensure that such earnings
13 claims information as was given to them was accurate, reliable and could be used by
14 prospective franchisees in a manner that was foreseeable – *i.e.*, in deciding to purchase their
15 franchises.

16 96. The Attorney Defendants breached their duty to Plaintiffs to ensure that
17 earnings claims information they received from Dream Dinners was reliable, accurate and
18 lawfully presented by disregarding the fact that Dream Dinners was giving earnings claims
19 information outside of the UFOC and unlawfully; and by failing to ensure that such
20 information was reliable and could be relied upon by prospective franchisees in deciding to
21 purchase a franchise. In so doing, the Attorney Defendants failed to exercise the degree of
22 care that a reasonable attorney would exercise under the circumstances, and failed to exercise
23 the degree of care that a reasonable person in those circumstances would exercise.

24 97. Bender is liable to all plaintiffs for his negligence; Holland & Knight is liable
25 to Fetzer, Taylor and Kozy Kitchens, LLC; to Greg and
26

1 Rita Roth and Roth & Roth Enterprises; and to Ruppert-Boling and Ruppert Enterprises, LLC
2 and Ryan, Swanson & Cleveland is liable to all plaintiffs who received earnings information
3 or signed franchise agreements after March 26, 2004.

4 **NOTICE OF RESCISSION**

5 98. Plaintiffs hereby give notice of their election to rescind their franchise
6 agreements and any ancillary agreements with Defendants. Consistent with this election,
7 Plaintiffs hereby tender their franchises and all things which they should, in equity, return to
8 Defendants, conditioned upon Defendants' reciprocal tender of the moneys and other things
9 equity should require them to return to Plaintiffs. Until further notice, those Plaintiffs
10 continuing to operate their businesses in association with Defendants' name and marks will
11 continue to report and/or pay the contract royalties, not as any waiver or affirmation of the
12 parties' contract(s), but simply as a means of mitigating any damages and/or maintaining a
13 status quo which may help facilitate an agreed rescission.
14

15
16 WHEREFORE, Plaintiffs demand a trial by jury, and upon trial, judgment:

- 17 (a) Rescinding their franchise agreements, personal guarantees and other
18 transactions that they entered into with Dream Dinners, Inc. and
19 directing the parties regarding the mutual exchanges required to effect
20 rescission;
- 21 (b) Awarding them actual damages as a result of Defendants' wrongdoing;
- 22 (c) A trebling of those damages pursuant to state unfair trade practice
23 and/or franchise investment laws;
- 24 (d) Reasonable attorneys' fees, interest and costs pursuant to state unfair
25 trade practice and/or franchise investment laws; and

26
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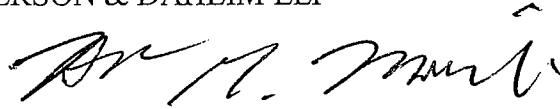
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1 (e) Such other and further relief as the Court deems just and proper.

2 Dated this 1st day of December, 2008.

3 GORDON, THOMAS, HONEYWELL, MALANCA,
4 PETERSON & DAHEIM LLP

5 By



6 _____
7 Howard R. Morrill, WSBA No. 17252
8 hmorrill@gth-law.com
9 Attorneys for Plaintiffs

EXHIBIT 1 - PLAINTIFFS

Cassandra Ayala Creative Cooking Concepts, Inc. Virginia Beach, VA 23456	The Walshs, Cassandra Ayala and Creative Cooking Concepts, Inc. are the "Virginia Plaintiffs."
Shellee Fetzer Monique Taylor Kozy Kitchens, Inc. Shoreline, WA	
Debbie Gallo Kathryn Lawler Wendy Berry Dream Dinners Capital Region, LLC Latham, NY 12110	Gallo, Lawler, Berry and Dream Dinners Capital Region, LLC are referred to as the "New York Plaintiffs."
Jennifer Garcia Michael Tremaglio Eat Your Heart Out, Inc. Oxford, CT 06478	
Caryn & Ken Georgen Dream Dinners Des Moines, WA Auburn, WA 98001	
Catherine S. Hebert North Andover Dreams, LLC North Andover, MA 01845	
Jennifer Hemann Yawano, LLC Rockville, MD 20852	Hemann and Yawano, LLC are referred to as the "Maryland Plaintiffs."
Greg & Rita Roth Roth & Roth Enterprises, Inc. Issaquah, WA 98027	
Jean Ruppert-Boling Ruppert Enterprises, LLC Granger, IN 46530	Jean Ruppert-Boling, Rupert Enterprises, LLC, Luanne Scudder and Luanne Scudder Enterprises are referred to as the "Indiana Plaintiffs."

AMENDED COMPLAINT
EXHIBIT 1

<p>Caryn Rutherford Mark Rutherford The Biscuit LLC Boise, ID 83702</p>	
<p>Luanne Scudder Luanne Scudder Enterprises Carmel, IN 46032</p>	<p>Jean Ruppert-Boling, Rupert Enterprises, LLC, Luanne Scudder and Luanne Scudder Enterprises are referred to as the "Indiana Plaintiffs."</p>
<p>Jennifer Shea Rosemarie Crawford Diane Kamphaus Meant to Be, JR&D, LLC Walpole, MA 02081</p>	
<p>Kim Stevens Creative Cooks, LLC Scotts, MI 49088</p>	<p>Stevens and Creative Cooks, LLC are referred to as the "Michigan Plaintiffs."</p>
<p>Tennyson & Thomas Walsh Chesapeake, VA 23320</p>	<p>The Walshs, Cassandra Ayala and Creative Cooking Concepts, Inc. are the "Virginia Plaintiffs."</p>
<p>Lora Wilson Two Peas, LLC Sanford, FL 32771</p>	

AMENDED COMPLAINT
EXHIBIT 1