

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

SUMMONS ON AMENDED COMPLAINT - 1 of 3

[197203 v02.doc]

LAW OFFICES
GORDON, THOMAS, HONEYWELL, MALANCA,
PETERSON & DAHEIM LLP
ONE UNION SQUARE
600 UNIVERSITY, SUITE 2100
SEATTLE, WASHINGTON 98101-4185
(206) 676-7500 - FACSIMILE (206) 676-7575

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,
PETERSON & DAHEIM LLP
ONE UNION SQUARE
600 UNIVERSITY, SUITE 2100
SEATTLE, WASHINGTON 98101-4185
(206) 676-7500 - FACSIMILE (206) 676-7575

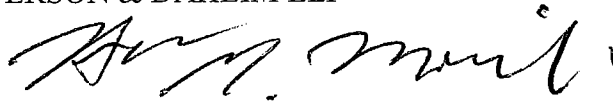
1 If you wish to seek the advice of an attorney in this matter, you should do so promptly
2 so that your written response, if any, may be served on time.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

PARTIES

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

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

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

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

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

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
18 otherwise undercut the system that Plaintiffs had purchased.
- 19 b. All of the Earnings Claims – the representations of revenues, earnings
20 and profits, of the number of customers that Plaintiffs would have, and
21 the numbers of customers that existing stores had, were false, had no
22 reasonable basis, were unlawful and unrepresentative. Further, they did
23 not conform to federal and state requirements for earnings claims and
24 the representations that were made were made knowing that they were
25 unlawful.
- 26 c. Food costs were not 45 percent but in fact exceeded that amount
regularly.
- d. The UFOCs provided to Plaintiffs contained, at Item 19, a “negative
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.

