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SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH.

**SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY**

NICOLE RUE TURNER and J. ERIC TURNER,

wife and husband,

Plaintiffs,

vs.

DREAM DINNERS, INC., a Washington

corporation; STEPHANIE ALLEN and VERN

ALLEN, wife and husband; and TINA KUNA and

SCOTT KUNA, wife and husband; JOHN A

BENDER JR; KEVIN J COLLETTE; JOANIE Y

KIM; HOLLAND & KNIGHT LLP; RYAN

SWANSON & CLEVELAND PLLC,

Defendants

Case No.: 08-2-02623-8

FIRST AMENDED COMPLAINT FOR
VIOLATION OF WASHINGTON FRANCHISE
INVESTMENT PROTECTION ACT AND
BREACH OF CONTRACT

1. Plaintiffs are individuals and husband and wife. Plaintiffs are franchisees of defendant Dream Dinners, Inc. They reside in and operate a Dream Dinners franchise in Springfield, Ohio.

- 1 2. Defendant Dream Dinners, Inc. is a Washington corporation with its principal place of
2 business in Snohomish County that offers and sells Dream Dinners franchises in Washington,
3 and in a number of other states.
- 4 3. Defendant Stephanie Allen is a resident of Snohomish County, Washington. On information
5 and belief, Allen is an officer and director of Defendant Dream Dinners, Inc. and was so at all
6 relevant times herein.
- 7 4. Defendant Vern Allen, on information and belief, is the husband of Defendant Stephanie
8 Allen. Defendant Vern Allen's marital community has benefited from the wrongs committed
9 by Defendant Stephanie Allen herein.
- 10 5. Defendant Tina Kuna is a resident of Snohomish County, Washington. On information and
11 belief, Kuna is an officer and director of Defendant Dream Dinners, Inc. as was so at all
12 relevant times herein.
- 13 6. Defendant Scott Kuna, on information and belief, is the husband of Defendant Tina Kuna.
14 Defendant Scott Kuna's marital community has benefited from the wrongs committed by
15 Defendant Tina Kuna herein.
- 16 7. Defendant Dream Dinners, Inc., defendants Allen and defendants Kuna are collectively
17 referred to herein as "Dream Dinners Defendants".
- 18 8. Defendants John A Bender, Joanie Y Kim, Kevin J Collette, Holland & Knight LLP, and
19 Ryan Swanson & Cleveland PLLC are collectively referred to herein as "Lawyer
20 Defendants".
- 21 9. On or about January 9, 2005, Dream Dinners Defendants required Plaintiffs to sign a binding
22 contract as a pre-condition to receiving any further information regarding the Dream Dinners
23 Franchise opportunity and, specifically, before receiving a Uniform Franchise Offering
24 Circular.
- 25

1 10. In about February, 2005, Dream Dinners Defendants invited Plaintiffs to attend a "Discovery
2 Day" held in Snohomish, Washington. Plaintiffs were not provided with a Uniform
3 Franchise Offering Circular until after they attended the Discovery Day. Part of that
4 Discovery Day was a PowerPoint presentation by Dream Dinner Defendants showing the
5 revenues and expenses purportedly produced by two Dream Dinners facilities operated by
6 Dream Dinners Defendants.

7 11. In about February, 2005, Dream Dinners Defendants presented Plaintiffs with a Uniform
8 Franchise Offering Circular. Item 19 of that offering circular contained the following false
9 statement:

10 Dream Dinners, Inc. does not furnish or authorize its salespersons to
11 furnish any oral or written information concerning the actual or
12 potential sales, costs, income or profits of a franchise. Actual results
vary from unit to unit and Dream Dinners, Inc. cannot estimate the
results of any particular franchise.

13 12. Contrary to the representation contained in Item 19 that Dream Dinners Defendants do not
14 furnish earnings information, Dream Dinners Defendants and their lawyers and accountants
15 added pages to the audited financial statements that contained essentially the same earnings
16 information that was presented in the PowerPoint presentation during "Discovery Day". The
17 additional information so presented did not comply with the requirements for an earnings
18 claim statement as then required by the Uniform Franchise Offering Circular Guidelines as
19 required by the Washington Franchise Investment Protection Act.

20 13. At no time before Plaintiff's invested in the Dream Dinners franchise did any of the
21 Defendants inform Plaintiffs that the earnings claims given in connection with the audited
22 financial statement and in the Discovery Day PowerPoint presentation were no longer
23 reasonably representative of how the company-owned outlets and franchised outlets were
24 performing during calendar year 2004 and continuing into 2005.

- 1 14. Plaintiffs paid an initial franchise fee of \$30,000 and a “grand opening fee” of \$5,000 and
2 entered into a franchise agreement with Dream Dinners Defendants dated April 6, 2005. The
3 Franchise Agreement provides, among other things: “This Agreement and all transactions
4 contemplated by this Agreement shall be governed by, and construed and enforced in
5 accordance with, the laws of the State of Washington.”
- 6 15. Dream Dinners Defendants represented to Plaintiffs, including in the “introduction” to the
7 franchise agreement that Dream Dinners Defendants had a well-developed and tested
8 “system” , including “uniform standards and procedures . . . training . . . advertising and
9 promotional programs . . . customer development and service techniques . . . “ What
10 Plaintiffs discovered, after investing in the franchise, was that Dream Dinners Defendants’
11 “system” was in the early development stages and being developed on an ad hoc basis with
12 no signs of a “proven system”.
- 13 16. Dream Dinners Defendants promised and used as inducements to get Plaintiffs to invest in
14 the franchise that they would provide, among other things: site selection assistance, lease
15 negotiation assistance, pre-opening inspections, pre-opening on-site training, on-site training
16 during first week of operations, grand opening assistance, field visits, advertising and public
17 relations campaigns, local advertising assistance, promotional methods and materials, and
18 advertising, marketing and public relations programs. As to each of these items, Dream
19 Dinners Defendants either failed entirely to provide the things promised or did such a partial
20 and amateurish job that it amounted to non-performance.
- 21 17. Dream Dinners Defendants’ knew or reasonably should have known at the time they made
22 the promises described in the foregoing paragraphs that they did not have the infrastructure
23 and personnel experience and resources to perform on those promises. Nevertheless, they
24 made the promises (or failed to disclose the truth about their inability to perform), fully
25 intending that Plaintiffs would rely upon such promises and invest in a franchise. Plaintiffs

1 did rely and did so reasonably. Plaintiffs invested in a franchise and, on account of Dream
2 Dinners Defendant's misrepresentations and omissions suffered damages, including but not
3 limited to the payment of initial fees in the amount of \$35,000.

4 18. Dream Dinners Defendants' failure to perform on the promises identified in the foregoing
5 paragraphs constituted material breaches of the franchise agreement.

6 19. Dream Dinners Defendants' actions and omissions described herein and the actions and
7 omissions of Defendant Bender constitute violations of and are "unlawful" under the
8 Washington Franchise Investment Protection Act, Chapter 19.100 R.C.W.

9 20. Because Dream Dinners Defendants and Defendant Bender induced Plaintiffs to invest in the
10 Dream Dinners franchise by violating the Washington Franchise Investment Protection Act,
11 the franchise and other agreements so induced are illegal and unenforceable under
12 Washington law.

13 21. Dream Dinners Defendants' offer and sale of the Dream Dinners franchise to Plaintiffs
14 violated the Ohio Business Opportunity Purchasers Protection Act, OHIO REV. CODE ANN. §
15 1334.01 et. seq. Dream Dinners Defendants did not qualify for an exemption from the Ohio
16 Business Opportunity Purchasers Protection Act.

17 22. The offer of the Dream Dinners franchise originated in the State of Washington and Plaintiffs
18 accepted it in the State of Ohio.

19 23. Defendant John A Bender is an attorney at law, licensed to practice law in the State of
20 Washington. His Washington State Bar Association Number is 19540.

21 24. During relevant times, Defendant Bender was retained by Dream Dinner Defendants as
22 franchise counsel. Dream Dinners Defendants retained Defendant Bender because they
23 understood him to be experienced in franchise law.
24
25

- 1 25. Defendant Bender drafted or approved the Dream Dinners Franchise Agreement, Uniform
2 Franchise Offering Circular, and all other contracts, agreements and documents used by
3 Dream Dinners Defendants in offering and selling the Dream Dinners franchise to Plaintiffs.
- 4 26. Defendant Bender approved the procedure used by Dreams Dinners Defendants by which
5 they required Plaintiffs to sign a binding contract before they could receive the UFOC or
6 other information.
- 7 27. Defendant Bender reviewed and approved the use of the PowerPoint slides used by Dream
8 Dinners Defendants at the Discovery Day which contained illegal earnings claims.
- 9 28. Defendant Bender participated with Dream Dinners Defendants and their accountant in
10 including illegal earnings claims in the Uniform Franchise Offering Circular by disguising
11 them as being part of the audited financial statements.
- 12 29. At least by February 28, 2005, Defendant Bender knew or reasonably should have known that
13 Dream Dinners Defendants' two company-owned outlets were no longer doing as well as
14 represented in the Uniform Franchise Offering Circular and the PowerPoint presentation.
- 15 30. At least by February 28, 2005, Defendant Bender knew or reasonably should have known that
16 Dream Dinners Defendants' franchisees were materially less profitable than the actual and/or
17 hypothetical earnings claims provided in the Uniform Franchise Offering Circular and
18 PowerPoint presentation.
- 19 31. At relevant times, Defendant Bender was a member of Dream Dinners Inc.'s defacto board of
20 directors. At relevant times, Defendant Bender maintained a desk in the offices of Dream
21 Dinners Defendants, sharing an office space with Defendants Allen and Kuna. He spent
22 approximately two days per week in that location.
- 23 32. At relevant times, Defendant Bender actively participated in discussions and decisions
24 involving business decisions that were not subject to attorney-client privilege. At relevant
25 times, Defendant Bender informally dispensed business and legal advice to Dream Dinners

1 Defendants and their employees. At relevant times, neither Dream Dinners Defendants nor
2 Defendant Bender made any reasonable effort to segregate privileged conversations from
3 non-privileged communications.

4 33. At relevant times, Defendant Bender attended social and sales events that included
5 franchisees and prospective franchisees.

6 34. At all relevant times Defendant Bender knew or reasonably should have known that the
7 documents he was preparing and approving and the advice he gave or failed to give to Dream
8 Dinners Defendants would result in prospective Dream Dinners Franchisees (a class of which
9 Plaintiffs were foreseeable members) receiving materially false, incomplete and misleading
10 information regarding the Dream Dinners franchise opportunity.

11 35. At all relevant times, Defendant Bender knew or should have known that prospective
12 franchisees would be damaged by investing in Dream Dinners franchises based upon
13 materially false, incomplete and misleading information regarding the Dream Dinners
14 franchise opportunity.

15 36. At all relevant times, Defendant Bender knew of and approved Dream Dinners Defendants'
16 franchise sales process. At relevant times, Defendant Bender could have intervened to
17 prevent the relevant violations of the Washington Franchise Investment Protection Act by his
18 clients, Dream Dinners Defendants.

19 37. At all relevant times, Defendant Bender knew or reasonably should have known that the
20 information being provided by his clients, Dream Dinners Defendants to Plaintiffs and other
21 prospective franchisees was materially false, incomplete and misleading (or omitted material
22 facts) and he knew or reasonably should have known that Plaintiffs and other prospective
23 franchisees had no reasonable means to uncover the truth that he knew—although his clients,
24 Dream Dinners Defendants, had an affirmative duty to delivery true, complete and non-
25 misleading information to Plaintiffs and other prospective franchisees and Defendant Bender,

1 Defendant Kim and Defendant Holland & Knight LLP had been specifically retained by
2 Dream Dinners Defendants to assist them in complying with the requirements of applicable
3 franchise laws and regulations.

4 38. At relevant times, Defendant Bender knew or reasonably should have known that the practice
5 of Dream Dinners Defendants of requiring Plaintiffs and other prospective franchisees to sign
6 a binding contract before obtaining a Uniform Franchise Offering Circular was a violation of
7 the Washington Franchise Investment Protection Act and of the Federal Trade Commission
8 Franchise and Business Opportunity Rule.

9 39. At all relevant times, Defendant Bender was a "person" as defined by RCW 19.100.010 (13).
10 At all relevant times, Defendant Bender was a "person in act of control of the activities" of
11 Defendant Dream Dinners, Inc.

12 40. At all relevant times before approximately March 26, 2004, Defendant Bender was an
13 employee, partner, and/or agent of Defendant Holland & Knight LLP. At all relevant times
14 after approximately March 26, 2004, Defendant Bender was an employee, partner and/or
15 agent of Defendant Ryan Swanson & Cleveland PLLC.

16 41. Defendant Joanie Y Kim is an attorney at law, licensed to practice law in the State of
17 Washington. Her Washington State Bar Association Number is 27289.

18 42. Defendant Kim assisted Defendant Bender in carrying out many of his actions and omissions
19 described herein.

20 43. Defendant Kim had direct knowledge of the activities of Defendant Bender and actively
21 participated with Defendant Bender in preparing documents that contained information that
22 was materially false, misleading or that omitted to state material information.

23 44. Defendant Kim caused her assistant to execute letters to the Washington Department of
24 Financial Institutions, transmitting Uniform Franchise Offering Circulars which she knew or
25

1 reasonably should have known contained material false and misleading information or failed
2 to disclose material information.

3 45. Even after Defendant Bender left Defendant Holland & Knight LLP, and continuing up until
4 at least the time that the form of Uniform Franchise Offering Circular received by Plaintiffs
5 was submitted to the State of Washington Department of Financial Institutions, Defendant
6 Kim continued to materially participate in the preparation, review, approval and submission
7 of the Uniform Franchise Offering Circular and other franchise documents subject to this
8 action.

9 46. At relevant times, Defendant Kim knew or reasonably should have known that the franchise
10 disclosure documents she was preparing contained material false or misleading statements or
11 omitted to state material facts.

12 47. At relevant times, Defendant Kim knew or reasonably should have known that the subject
13 franchise disclosure documents and other materials would be used by Dream Dinners
14 Defendants to offer and sell Dream Dinner franchises.

15 48. At relevant times, Defendant Kim knew or reasonably should have known that Plaintiffs and
16 other prospective franchisees would rely upon (and had a legal right to rely upon) the
17 franchise sales materials subject to this action.

18 49. At relevant times, Defendant Kim knew or reasonably should have known that Plaintiffs and
19 other prospective franchisees would be damaged on account of investing in Dream Dinners
20 franchises in reliance upon materially false and misleading information and upon omitted
21 material information.

22 50. At relevant times, Defendant Kim knew of Dream Dinners Defendants' franchise sales
23 process. At relevant times, Defendant Kim could have intervened to prevent the relevant
24 violations of the Washington Franchise Investment Protection Act by her clients, Dream
25 Dinners Defendants.

1 51. At relevant times, Defendant Kim knew or reasonably should have known that the
2 information being provided by her clients, Dream Dinners Defendants to Plaintiffs and other
3 prospective franchisees was materially false, incomplete and misleading (or omitted material
4 information) and she knew or reasonably should have known that Plaintiffs and other
5 prospective franchisees had no reasonable means to uncover the truth that she knew—
6 although her clients, Dream Dinners Defendants, had an affirmative duty to delivery true,
7 complete and non-misleading information to Plaintiffs and other prospective franchisees and
8 Defendant Kim, together with Defendant Bender and Defendant Holland & Knight LLP, had
9 been specifically retained by Dream Dinners Defendants to assist them in complying with the
10 requirements of applicable franchise laws and regulations.

11 52. At all relevant times before approximately February, 2006, Defendant Kim was employee,
12 partner, and/or agent of Defendant Holland & Knight LLP.

13 53. Defendant Kevin J Collette is an attorney at law, licensed to practice law in the State of
14 Washington. His Washington State Bar Association Number is 10998.

15 54. Defendant Collette assisted Defendant Bender in carrying out many of his actions and
16 omissions described herein.

17 55. Defendant Collette had direct knowledge of the activities of Defendant Bender and actively
18 participated with Defendant Bender in preparing documents that he knew or reasonably
19 should have known contained information that was materially false, misleading or that
20 omitted to state material information.

21 56. Defendant Collette executed letters to the Washington Department of Financial Institutions,
22 transmitting Uniform Franchise Offering Circulars which he knew or reasonably should have
23 known contained material false and misleading information or failed to disclose material
24 information.
25

- 1 57. At relevant times, Defendant Collette knew or reasonably should have known that the
2 franchise disclosure documents he was reviewing and submitting contained material false or
3 misleading statements or omitted to state material facts.
- 4 58. At relevant times, Defendant Collette knew or reasonably should have known that the subject
5 franchise disclosure documents and other materials would be used by Dream Dinners
6 Defendants to offer and sell Dream Dinner franchises.
- 7 59. At relevant times, Defendant Collette knew or reasonably should have known that Plaintiffs
8 and other prospective franchisees would rely upon (and had a legal right to rely upon) the
9 franchise sales materials subject to this action.
- 10 60. At relevant times, Defendant Collette knew or reasonably should have known that Plaintiffs
11 and other prospective franchisees would be damaged on account of investing in Dream
12 Dinners franchises in reliance upon materially false and misleading information and upon
13 omitted material information.
- 14 61. At relevant times, Defendant Collette knew of Dream Dinners Defendants' franchise sales
15 process. At relevant times, Defendant Collette could have intervened to prevent the relevant
16 violations of the Washington Franchise Investment Protection Act by his clients, Dream
17 Dinners Defendants.
- 18 62. At all relevant times, Defendant Collette knew or reasonably should have known that the
19 information being provided by his clients, Dream Dinners Defendants to Plaintiffs and other
20 prospective franchisees was materially false, incomplete and misleading (or omitted material
21 information) and he knew or reasonably should have known that Plaintiffs and other
22 prospective franchisees had no reasonable means to uncover the truth that he knew—although
23 his clients, Dream Dinners Defendants, had an affirmative duty to delivery true, complete and
24 non-misleading information to Plaintiffs and other prospective franchisees and Defendant
25 Collette, together with Defendant Bender and Defendant Ryan Swanson & Cleveland PLLC,

1 had been specifically retained by Dream Dinners Defendants to assist them in complying with
2 the requirements of applicable franchise laws and regulations.

3 63. At all relevant times, Defendant Collette was an employee, partner, and/or agent of
4 Defendant Ryan Swanson & Cleveland PLLC.

5 64. At relevant times, Defendant Holland & Knight LLP was a foreign entity, a law firm and an
6 employer or principal of Defendants Bender and Kim. Defendant Holland & Knight, at
7 relevant times conducted business in the State of Washington and has a Washington
8 registered agent. Defendant Holland & Knight LLP is liable for the acts and omissions of its
9 partners, employees and agents. On information and belief, all acts and omissions that form
10 the basis for this complaint were performed within the scope of the employment or authority
11 of Defendants Bender and Kim.

12 65. At relevant times, Defendant Ryan Swanson & Cleveland PLLC was a Washington entity,
13 conducting business in the State of Washington. At relevant times, Defendant Ryan Swanson
14 & Cleveland PLLC was an employer or principal of Defendants Bender and Collette.
15 Defendant Ryan Swanson & Cleveland PLLC is liable for the acts and omissions of its
16 partners, employees and agents. On information and belief, all acts and omissions that form
17 the basis for this complaint were performed within the scope of the employment or authority
18 of Defendants Bender and Collette.

19 66. But for Defendants' wrongful actions and omissions described herein, Plaintiffs would not
20 have invested in the Dream Dinners franchise, paid the initial franchise fee and royalties and
21 advertising fees, purchased equipment, signed a real estate lease, and incurred debt to cover
22 operational losses.

23 67. But for the Defendants' wrongful actions described herein, Plaintiffs would not have invested
24 in a Dream Dinners franchise and would not have incurred the operational and other losses
25 and damages directly resulting from that investment.

1 68. Defendants' wrongful actions described herein have caused damages to Plaintiffs in an
2 amount not yet fully known but which are estimated to exceed \$300,000.00.

3 69. If the Court determines that rescission is an appropriate remedy for some of
4 Plaintiffs' claims herein, Plaintiffs hereby demand rescission and hereby
5 conditionally tender to Defendant Dream Dinners, Inc. all tangible items in their
6 possession and control received from Defendant Dream Dinners, Inc., conditioned
7 upon tender back from Defendant Dream Dinners, Inc. of all items and moneys
8 heretofore delivered to Defendant Dream Dinners, Inc.. In that circumstance,
9 Plaintiffs seek the Court's guidance as to how to accomplish rescission.
10

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs respectfully ask the Court for relief as follows:

13 1. For a declaration that Dream Dinners Defendants violated the Washington
14 Franchise Investment Protection Act ("the Act") by offering and selling a franchise to Plaintiffs
15 using a Uniform Franchise Offering Circular that did not comply with the Act and which
16 contained false representations of material facts or omitted to state facts necessary in order to
17 make statements made not misleading.

18 2. For a declaration that Defendant's violation of the disclosure requirements of the
19 Act was willful.

20 3. For a declaration that any agreements executed by the parties as a result of Dream
21 Dinners Defendant s' violations of the Act are unlawful, illegal, void and unenforceable in their
22 entirety by Dream Dinners Defendants.

23 4. For a judgment against all Defendants, jointly and severally, for Plaintiffs' damages
24 caused by or resulting from Defendants' wrongful acts and omissions and violations of the Act.

25 5. For a judgment against the Lawyer Defendants, jointly and severally, for all
damages caused to Plaintiffs by or resulting from the Lawyer Defendants' breach of duty.

