

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

ANTONIO SOFO & SON
IMPORTING CO.
d/b/a Sofo Foods
253 Waggoner Blvd.
Toledo, Ohio 43623

and

A&M CHEESE CO.
d/b/a Sofo Foods
253 Waggoner Blvd.
Toledo, Ohio 43623

vs.

MARCO'S FRANCHISING, LLC
5252 Monroe Street, Floor 2
Toledo, Ohio 43623

c/o FBT Ohio, Inc., Statutory Agent
2200 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202-4182

and

CASE NO.

JUDGE:

COMPLAINT WITH JURY DEMAND

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*Counsel For Plaintiffs Antonio Sofo & Son
Importing Co. and A&M Cheese, Co.*

MARCO'S PIZZA DISTRIBUTION, LLC
5252 Monroe Street, Floor 2
Toledo, Ohio 43623

c/o Todd J. Kuhn, Statutory Agent
One SeaGate, #1645
Toledo, Ohio 43604

and

JACK BUTORAC, individually,
President MARCO'S FRANCHISING,
LLC
5252 Monroe Street, Floor 2
Toledo, Ohio 43623

560 Sunset Road
Louisville, KY 40206-2927

and

KENNETH SWITZER, individually,
CFO MARCO'S FRANCHISING, LLC
5252 Monroe Street, Floor 2
Toledo, Ohio 43623

and

DON VLCEK, individually,
Vice President
MARCO'S FRANCHISING, LLC &
President MARCO'S PIZZA
DISTRIBUTION, LLC
5252 Monroe Street, Floor 2
Toledo, Ohio 43623

and

personal profit and gain. This wrongful conduct, and the damage resulting from it, continues unabated to the present time.

PARTIES

2. Plaintiff Antonio Sofo & Son Importing, Co (“Sofo”) is an Ohio corporation with its principal place of business located at 253 Waggoner Blvd., Toledo, Lucas County, Ohio 43612.

3. Plaintiff A&M Cheese, Co (“A &M”) is an Ohio Corporation with its principal place of business located at 253 Waggoner Blvd., Toledo, Lucas County, Ohio 43612.

4. Defendant Marco’s Franchising, LLC (“Marco’s”) is an Ohio limited liability company with its principal place of business located at 5252 Monroe Street, Toledo, Lucas County, Ohio.

5. Defendant Marco’s Pizza Distribution, LLC (“MPD”) is an Ohio limited liability company with its principal place of business located at 5252 Monroe Street, Toledo, Lucas County, Ohio.

6. Upon information and belief, Defendant Jack Butorac is a Kentucky resident with his principal residence located at 560 Sunset Road, Louisville KY 40206-2927 and principal work address located at 5252 Monroe Street, Toledo, Lucas County, Ohio.

7. Upon information and belief, Defendant Kenneth Switzer is an Michigan resident with his principal work address located at 5252 Monroe Street, Toledo, Lucas County, Ohio.

8. Upon information and belief, Defendant Don Vlcek is a Michigan resident with his principal work address located at 5252 Monroe Street, Toledo, Lucas County, Ohio.

9. Upon information and belief, Defendant Stephens is a Kentucky resident with his principal residence located at 815 Normans Lane, Sumerset, KY 42503 and principal work address located at 5252 Monroe Street, Toledo, Lucas County, Ohio.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331 since Plaintiffs have alleged a federal statutory claim under the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §1961 *et seq.* This Court also has supplemental jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C. §1367.

11. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) in that the corporate Defendants reside in this district and all or a substantial part of the claims arose in this district. Venue is also proper pursuant to 28 U.S.C. §1391 (c).

OPERATIVE FACTS

12. Sofo is one of the largest food distributors in northwest Ohio, and together with its affiliated companies offers food products and distribution to a wide variety of franchisees nationwide affecting interstate commerce.

13. A&M has been and is in the business of shredding, processing and manufacturing various cheese blends, since 1976.

14. Sofo has performed purchasing, marketing, warehousing, quality control, product research and development, transportation and distribution services for Marco’s Pizza stores as an Approved Supplier for more than 25 years.

15. To date, Sofo remains an Approved Supplier for Marco’s Pizza franchisees.

16. Sofo contracted with Bellissimo to expand it’s distribution network and provide distribution services for Marco’s Pizza stores in distant states.

17. Sofo contracted with A&M Cheese for the processing of the Marco’s Pizza proprietary blend of cheeses.

18. Defendant Marco’s was formed in 2004 as an assignee of Marco’s Franchise Acquisition, LLC, an Ohio limited liability company, and acquired the rights to the Marco’s

Pizza brand from Marco's, Inc., an Ohio corporation, wholly owned by Pasquale Giammarco, President and Founder of Marco's Pizza.

19. Marco's is a pizza franchising operation that sells Marco's Pizza franchises in numerous states whereby franchisees purchase rights to operate Marco's Pizza franchise locations. Included in the franchise agreement is the requirement that franchisees purchase food product from an Approved Supplier.

20. Sofo has been an Approved Supplier for Marco's since its inception in 1978. This relationship continued in 2004 following the acquisition of the brand by defendant Marco's Franchising, LLC to present.

21. On or about April 24, 2004, Sofo and Marco's executed a three-year exclusive Food Distribution Agreement ("Distribution Agreement") whereby Sofo would be the primary distributor for foodservice products at all locations where Sofo desired to perform services. A true and accurate copy of the Distribution Agreement is attached hereto as Exhibit "1."

22. Under the Distribution Agreement, Sofo was the only recommended and Approved Supplier of food products authorized by Marco's for all Marco's Pizza locations.

23. The Distribution Agreement also permitted Marco's to physically inspect the facilities at any Sofo warehouse for "cleanliness of equipment, warehouse, surrounding areas, proper rotation of products, rodent and insect control, safety procedures etc. In addition to the physical inspection, financial audits of all vendor invoices and purchase orders relating to Marco's proprietary products, as well as individual franchise invoices, credit and debit memos, and financial statements relating to the Marco's Pizza account will be permitted twice per calendar year." See Ex. 1, Section 6.

24. On or about May 19, 2004, Marco's, through Switzer, instituted a price increase on the food products supplied by Sofo and also asked for execution of the Trademark and Product Standards Maintenance Agreement. A true and accurate copy of the May 19, 2004 correspondence is attached hereto as Exhibit "2."

25. On or about May 27, 2004, Sofo and Marco's executed the Trademark and Product Standards Maintenance Agreement ("Trademark Agreement"). A true and accurate copy of the Trademark Agreement is attached hereto as Exhibit "3."

26. In the Trademark Agreement, Marco's acknowledged that Sofo performed "purchasing, marking, warehousing, quality control, product research and development, transportation and distribution services for Marco's Pizza stores in a wide geographical area." See Ex. 3.

27. Also, under the Trademark Agreement, Sofo agreed to pay a 1% Trademark Maintenance Fee. Sofo, has continued and remains current, on the payment of the 1% Trademark Maintenance Fee to MDL. See Ex. 3.

28. By 2006, Marco's owed Sofo One Hundred Fifty Thousand Dollars and no/100 (\$150,000.00) for outstanding food product invoices associated with the Grand Slam Pizza Stores, a Marco's Franchisee, "Grand Slam."

29. In May 2007, the Distribution and Trademark Agreements expired by their own terms.

30. However, Sofo and Marco's continued to operate as if both the Distribution and Trademark Agreements were still in force since Marco's continued to promise Sofo a four year renewal of both agreements.

31. In June 2008, Butorac, personally and on behalf of Marco's, promised repayment of One Hundred Thousand Dollars and no/100 (\$100,000.00) if Sofo discounted the amount due for the Grand Slam 2006 debt. Sofo did discount the amount due to \$100,000.00, but the amount was never repaid, by Grand Slam or Butorac.

32. In July 2008, franchise store #1010 and #1060 were severely late on payments to Sofo for food product and Sofo changed both locations to COD locations with a mandatory payment toward the arrears. Butorac, personally and on behalf of Marco's, repeatedly guaranteed the outstanding indebtedness for these two stores which currently have arrears in excess of Fifty-Four Thousand Six Hundred Forty-Six and 36/100 (\$54,646.36).

33. Defendant Butorac personally guaranteed the \$100,000.00 to keep the Grand Slam Stores in operation.

34. To further secure payment from franchise stores #1010 and #1060, the store owner, Stephens, Vice President of Business Development for defendant Marco's Franchising, LLC, had executed a personal guaranty in 2006. A true and accurate copy of the personal guaranty is attached hereto as Exhibit "4." Also, Butorac directly contacted Plaintiff Sofo to give his personal guarantee to secure continued food distribution to stores #1010 and #1060 communicating a desire to keep the stores open for development purposes.

35. Sofo with A&M have formed lasting relationships with multiple Marco's Pizza Franchisees.

36. Sofo with Bellissimo Foods, a California limited liability company with its principal place of business in Walnut Creek, California, have formed lasting relationships with multiple Marco's Pizza Franchisees, currently servicing more than 130 Marco's Pizza locations across the United States.

37. By June 2009, Marco's finally identified the terms for execution of the long promised four-year Food Distribution Agreement and accompanying documents. Specifically, Sofo offered the four-year Food Distribution Agreement, commencing in 2009, on the same financial terms as the 2004 Food Distribution Agreement.

38. Sofo accepted Marco's offer to continue the relationship on identical terms.

39. In reliance on the four-year promised contract, Sofo continued and increased business relationships with suppliers and manufacturers to continue to provide the quality distribution services provided to Marco's.

40. Additionally, Sofo purchased and generated infrastructure in Georgia at a cost of nearly Five Million Dollars (\$5,000,000.00) to service the Marco's Pizza franchisees in different geographic locations within the United States.

41. The financial terms of the four-year promised contract were indeed the same, but, to date, Marco's has refused to execute the documents that would have provided written verification of Sofo's status despite promises since 2007 to do so.

42. Also, after expiration of the original contract in 2007 and during the repeated promises by Butorac and Marco's, Sofo continued to rely on the 25 plus year relationship with Marco's and representations that the contract would be forthcoming under the same financial terms, and extended to Bellissimo Foods and other parties more than \$500,000.00 in credit.

43. While Butorac and Marco's repeatedly promised Sofo that a new four-year contract would be executed, Butorac and Switzer were actually in the process of developing Marco's Pizza Distribution, LLC ("MPD") which was organized as a limited liability company in the state of Ohio on or about March 2009.

44. Simultaneous with the promise that a contract was going to be signed, Butorac, Switzer and Vlcek proceeded to issue statements and make false representations to franchisees regarding the quality of product received from Sofo Foods and A&M. For example, Butorac, Switzer and Vlcek untruthfully indicated that Sofo and A&M were providing cheese products that did not have the specified weight; that Sofo and A&M's pricing was unauditible, unfair and convoluted; and that their pricing was too high. All of these self-serving statements were made by Butorac, Switzer and Vlcek in an attempt to eliminate Sofo as an Approved Supplier while increasing utilization of their own company, MPD.

45. On or about February 26, 2009, Dean Sommer, ("Sommer Audit") on behalf of Marco's conducted an audit of Sofo and A&M.

46. The Sommer Audit delved into issues that went well beyond the scope of any relationship between Marco's and Sofo. Specifically the Sommer Audit directly delved into detailed issues related to reproduction of the entire process and procedures associated with processing, lending and packaging of cheese to the Marco's Pizza franchisees and went well beyond the scope contemplated for in the parties original agreements.

47. Continuously though 2009, Defendant Butorac, individually and on behalf of Marco's, represented that the four-year food distribution contract would be signed with Sofo, even though he was intricately involved in the development of MPD that would replace Sofo.

48. Sofo continued to negotiate in good faith and provide product throughout the continued discussions based upon the express representations of Butorac and Marco's.

49. In addition to providing food product, Sofo continued to extend credit and food product to franchisees that were behind in payments to Sofo, after being encouraged to do so and receiving further representation by Butorac, individually and on behalf of Marco's. Currently,

franchisees, secured by the promises of Butorac, individually and on behalf of Marco's, owe Sofo in excess of One Hundred Eighty-Four Thousand Four Hundred Forty-Six and 33/100 (\$184,446.33).

50. In furtherance of the relationship with Marco's and in reliance upon the representations of Butorac, Switzer and Vlcek, individually and on behalf of Marco's, Sofo continued distribution relationships and entered into additional contracts to service the Marco's Pizza franchisees.

51. On or about November 20, 2009, Vlcek, on behalf of MARCO'S issued a "Major Announcement from Marco's Pizza to franchisees that unilaterally changed the Approved Distributor for Marco's Pizza stores to MPD and thanked Sofo Foods for 30 years of service. A true and accurate copy of the "Major Announcement" is attached hereto as Exhibit "5."

52. MPD began taking orders and directly servicing franchisees as an Approved Supplier in January 2010.

53. No independent notification of the Approved Supplier change was provided to Sofo as Sofo had been promised a renewed four year contract under the same financial terms.

54. On or about March 4, 2010, Butorac again assumed personal responsibility for the debt of Stephens and promised full payment of Fifty-Four Thousand Six Hundred Forty-Six and 36/100 (\$54,646.36) no later than March 15, 2010. That payment was never received. A true and accurate copy of the correspondence evidencing these personal representations is attached hereto as Exhibit "6."

55. In March 2010, Defendant Vlcek directly interfered with the ongoing business relationship established by Sofo with SCA (the manufacturer of Marco's Pizza proprietary napkins) and WALCO (the broker for Marco's Pizza proprietary napkins). Specifically

Defendant Vlcek instructed SCA that Sofo no longer had a PO number and was not authorized to take delivery of Marco's Pizza proprietary napkins. As a result, order #396043 was not delivered on March 16, 2010 as was the arrangement between Sofo and SCA. True and accurate correspondence documenting this interference is attached hereto as Exhibit "7."

56. As of January 2010, MDL owed Sofo One Hundred Thirty-Eight Thousand Four Hundred Nineteen and 43/100 (\$138,419.43). This amount is comprised of the prior One Hundred Thousand and 00/100 Dollars (\$100,000.00) Grand Slam debt plus Thirty-Eight Thousand Four Hundred Nineteen and 43/100 Dollars (\$38,419.43) for shipments to Las Vegas Marco's Pizza stores.

57. Pursuant to Marco's request, Sofo credited the fourth quarter 1% Trademark Maintenance Fee, plus the quarter item rebate for the fourth quarter 2009, leaving a balance owed to Sofo of Sixty Thousand Two Hundred Twenty-Four and 46/100 Dollars (\$60,224.46). To date, this amount remains outstanding.

58. Since MPD commenced production and distribution of product to Marco's Pizza franchisees, Sofo, who previously distributed product to 200 stores, now only delivers product to 142 and production of product to these stores appears further threatened by MPD.

59. In fact on March 31, 2010, fifteen stores (Store #33, #52, #55, #61, #64, #68, #87, #92, #99, #1128, #1137, #1142, #127, #2002 and #5004) terminated the services of Sofo to utilize the services of MPD. As of March 31, 2010, Sofo had extended credit to these fifteen stores in the amount of Two Hundred Thirty-Nine Thousand and 00/100 Dollars (\$239,000.00).

60. In addition to the stores that suddenly ceased business relations with Sofo, numerous other stores have stopped payment to Sofo after interference by MPD ordering franchisees to cease payments to Sofo.

61. In fact, as a result of the relationship with Marco's and recent developments, Sofo currently has accounts receivable of nearly Nine Hundred Fifty Thousand Dollars and no/100 (\$950,000.00).

62. Additionally, Sofo has over One Million Dollars (\$1,000,000.00) in inventory to service Marco's Pizza franchisees.

63. On or about April 12, 2010, Marco's tendered correspondence to Sofo asking for execution of a New Trademark and Product Standards Maintenance Agreement. A true and accurate copy of this correspondence is attached hereto as Exhibit "8."

64. Also, on or about April 12, 2010, Marco's tendered a Confidentiality Agreement, executed by Switzer, to Sofo.

65. On or about May 3, 2010, Mike Jaynes, VP of Product Integrity for Defendant Marco's Distribution advised Sofo that an audit of the Sofo facility would take place on Monday, May 10, 2010 at 9:00 a.m. A true and accurate copy of this correspondence is attached hereto as Exhibit "9." This audit did not take place at the appointed time and place cancelled by Marco's.

66. In addition to the base audit, the following items were also to be checked: shredding operating, tracking of product; how Sofo knows that they get the right percentage of cheese varieties in the Marco's blend; how Sofo approves, monitors and inspects their cheese suppliers; how Sofo checks the analytical(s) on the COA's on incoming cheese; bake performance testing done on cheese blends for Marco's Pizza; leaker checks; carbon dioxide and/or nitrogen testing of the modified atmosphere packaging gases in the shred bags; micro testing done on the shreds to ensure good sanitary practices and absence of pathogens; weight checks and other questions relating to bake performance. See Ex. 9.

67. Also on May 3, 2010, Sofo and Bellissimo were advised that the Marco's Pizza franchisees were advised that Bellissimo would no longer be providing any product and Roma Food would be taking over distribution in some markets as of May 17, 2010. A true and accurate copy of the notice to franchisees is attached hereto as Exhibit "10."

68. The unilateral decision to make Roma Foods an Approved Supplier and remove Bellissimo, which was contracted for distribution to Marco's by Sofo, was contrary to Marco's Pizza's repeated promises for a written four year contract that would document Sofo's and Bellissimo status as an Approved Supplier.

69. On or about May 4, 2010, Marco's accused Sofo of refusing to sign a new Confidentiality Agreement and ordered Sofo to sign a Confidentiality Agreement to receive new standards related to Approved Suppliers or cease distribution to the franchisees on May 31, 2010. A true and accurate copy of the May 4, 2010 correspondence is attached hereto as Exhibit "11."

70. In a May 7, 2010 correspondence Defendant John Butorac, President, reaffirmed to Sofo that Marco's believes their "Standards and Specs" qualifies as proprietary information necessarily protected by a confidentiality agreement. A true and accurate copy of this correspondence is attached hereto as Exhibit "12."

71. In the 30 plus years of servicing the Marco's Brand, "Standards and Specification" were never at issue, nor was there ever been an allegation that Sofo failed to meet any of the Marco's Pizza standards and specifications.

72. In the many months and years of continuous promises that a four-year agreement would be executed, Marco's never mentioned the existence of "Standards and Specifications".

73. On or about May 7, 2010, Sofo hand delivered the fully executed Confidentiality Agreement previously executed on or about April 12, 2010 by defendant Ken Switzer, CFO, and

signed by Sofo President, Mike Sofo. A true and accurate copy is attached hereto as Exhibit “13.”

74. With the delivery of the fully executed confidentiality agreement, on May 7, 2010 Sofo again demanded a copy of the “Standards and Specification”. A true and accurate copy of the demand for “Standards and Specification” is attached hereto as Exhibit “13.”

75. On May 10, 2010, Sofo again requested the standards and specs from Marco’s, but were told that the standards and specs were in “draft” form and currently were being reviewed by Marco’s.

76. Sofo never refused to sign the Confidentiality Agreement and did in fact execute and deliver the Confidentiality Agreement to Marco’s on May 7, 2010. The delay in returning the executed Confidentiality Agreement was caused by Marco’s self serving attempt to characterize Sofo as a “Proposed Supplier” when it is understood and stipulated that Sofo’s is, was and continues to be an Approved Supplier within the Marco’s System.

77. Marco’s has failed to tender the Standards and Specifications that it now requires be met by Sofo.

78. Marco’s has transferred significant portions of Sofo’s business to MPD and its distributor Roma Foods. Absent the existence of Standards and Specifications as required within the Marco’s franchise system and withheld from Sofo’s.

79. Marco’s had threatened to eliminate Sofo as an Approved Supplier on May 31, 2010 for failure to meet and abide by standards and specifications that it has not provided.

COUNT ONE
BREACH OF PERSONAL GUARANTY
(STEPHENS)

80. Plaintiffs incorporate the averments the forth in Paragraphs 1 through 79, as if fully restated herein.

81. Stephens is in default of his obligations under the personal guaranty attached hereto as Exhibit 4, for failure to make timely payments.

82. Based upon that default, Sofo has exercised its options under the Promissory Note to declare the entire amount of principal and interest accrued on the Promissory Note immediately due and payable and to proceed to enforce collection thereof.

83. The principal amount now due and payable under the Promissory Note is Fifty-Four Thousand Six Hundred Forty-Six and 36/100 (\$54,646.36), plus interest and costs.

COUNT TWO
BREACH OF CONTRACT
(BUTORAC)

84. Plaintiffs incorporate the averments the forth in Paragraphs 1 through 83, as if fully restated herein.

85. Stephens is in default of his personal guaranty to Sofo in the amount of Fifty-Four Thousand Six Hundred Forty-Six and 36/100 (\$54,646.36).

86. Butorac personally guaranteed payment of Stephens' outstanding obligation to Sofo in the amount of Fifty-Four Thousand Six Hundred Forty-Six and 36/100 (\$54,646.36).

87. In exchange for Butorac's personal guarantee, Sofo did not commence collection proceedings against Stephens and continued to deliver product to Stephens' Marco's Pizza franchises despite the financial deficiency.

88. Butorac promised full and complete payment by March 15, 2010.

89. No payment has been received.

90. Sofo has been damaged Fifty-Four Thousand Six Hundred Forty-Six and 36/100 (\$54,646.36) by non-payment of this obligation.

COUNT THREE
TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIPS
(BUTORAC, SWITZER, VLCEK, MIFF, MPD)

91. Plaintiffs incorporate the averments the forth in Paragraphs 1 through 90, as if fully restated herein.

92. At all times relevant to this action, Sofo had business relationships with Marco's Pizza franchise owners.

93. At all times relevant to this action, Sofo had business relationships with other produce distributors to service the Marco's Pizza franchise owners, including, but not limited to Bellissimo Foods and A&M.

94. On or before March 2009, Butorac, Switzer, Vlcek, MLF and MPD knew of these business relationships.

95. Butorac, Switzer, Vlcek, MLF and MPD have intentionally interfered with Sofo's business relationships.

96. Based upon information and belief, Butorac, Switzer, Vlcek, MIFF and MPD, without privilege to do so have induced or otherwise purposefully caused Marco's Pizza franchise owners to challenge Sofo and A&M product quality, cost and ability to provide product.

97. Sofo and A&M have been damaged as a direct and proximate result of the conduct of Butorac, Switzer, Vlcek, MIFF and MPD.

COUNT FOUR
DEFAMATION/BUSINESS DISPARAGEMENT
(BUTORAC, SWITZER, VLCEK, MARCO'S)

98. Plaintiffs incorporate the averments the forth in Paragraphs 1 through 97, as if fully restated herein.

99. Defamation is the unprivileged publication of false and defamatory information about another.

100. Butorac, Switzer, Vlcek and Marco's made false and unsubstantiated representations to Marco's Pizza franchisees, including, but not limited to the fact that Sofo and A&M under-weighed its product, priced the product too high and provided unauditible, unfair and convoluted pricing.

101. These false and unsubstantiated written and oral representations injured Sofo and A&M and permanently harmed and/or destroyed Sofo and A&M's relationship with Marco's Pizza franchisees.

102. The false and unsubstantiated allegations are without basis in fact or law and clearly damage Sofo and A&M.

103. These intentionally published remarks were false, untrue and in derogation of Sofo and A&M's business reputations.

104. Butorac, Switzer, VLCEK and Marco's knew that the statements and/or publications were false at the times that the publications were made

105. The aforementioned communications were made with malicious intent and had as their purpose to cause damage to Sofo and A&M's good business reputation.

106. Publication of these false and unsubstantiated allegations has caused and will continue to cause damage to Sofo and A&M including injury to its good name and business reputation.

COUNT FIVE
MISAPPROPRIATION OF TRADE SECRETS
(BUTORAC, SWITZER, VLCEK, MARCO'S, MPD)

107. Plaintiffs incorporate the averments the forth in Paragraphs 1 through 106, as if fully restated herein.

108. While allegedly auditing Sofo and A&M, agents of Marco's and MPD were given access to confidential information concerning the cheese blending business of Sofo and A&M relating to the provision of product to Marco's Pizza franchisees.

109. The confidential information, processes, formulas, business models, suppliers, sales strategies, shredding, processing and packaging of proprietary items that are unique and private and trade secrets within the meaning of R.C. §1333.61 et seq.

110. Utilization of the trade secret information gives Butorac, Sitzer, VLCEK, Marco's and MPD a competitive advantage.

111. Reasonable steps, including, but not limited to providing information to employees on a need to know basis; eliminating exposure to third parties of the secrets; have been taken to protect the trade secret information.

112. The information gained during the audit has been provided by Sommer (the agent conducting the audit) to and since utilized by Butorac, Switzer, Vlcek, Marco's, MPD for their own benefit and for the benefit of persons other than Sofo and A&M, and by doing so misappropriated the same in violation of R.C. §1333.61 et seq.

113. As a result of the foregoing misappropriation of trade secrets, Sofo and A&M have suffered damages in an amount that cannot be determined with certainty at this time.

114. The damages sustained by Sofo and A&M are, in fact, irreparable; hence they have no adequate remedy at law.

115. Butorac, Switzer, VLCEK, Marco's and MPD will continue to engage in the above described misconduct unless they are restrained from doing so by order from this Court.

COUNT SIX
(BUTORAC, SWITZER, VLCEK, MARCO'S AND MPD)
NEGLIGENCE

116. Plaintiffs incorporate the averments the forth in Paragraphs 1 through 115, as if fully restated herein.

117. In engaging in the foregoing misconduct, Butorac, Switzer, VLCEK, Marco's and MPD have acted with negligence toward Plaintiffs.

118. As a result of the foregoing negligence, Plaintiffs have suffered damages in an amount that cannot be determined with certainty at this time.

COUNT SEVEN
(BUTORAC, SWITZER, VLCEK, MARCO'S AND MPD)
FRAUD

119. Plaintiffs incorporate the averments the forth in Paragraphs 1 through 118, as if fully restated herein.

120. The misrepresentations made by Butorac, Switzer, VLCEK and Marco's after expiration of the 2004 agreement regarding re-execution of an agreement with Approved Supplier Sofo were material to Sofo's continued production, distribution, extension of credit, extension of infrastructure, entering into contracts for the provision of continued services to Marco's Pizza franchisees.

121. Sofo did not know of the falsity of Butorac, Switzer, VLCEK and Marco's intent to enter into an additional agreement whereby Sofo would be eliminated as an Approved Supplier and prohibited from distributing product through A&M and Bellissimo to franchisees.

122. Sofo and A&M did not know of Butorac, Switzer, VLCEK and Marco's intention to allegedly "audit" the Sofo and A&M facility to obtain, convert and utilize trade secret

information to construct and build an entity – MPD – to directly compete with and ultimately alienate Sofo, A&M and Bellissimo from the Marco’s Pizza franchisees.

123. Sofo reasonably relied upon the representations made by Butorac, Switzer and Marco’s by continuing production, distribution, extending credit, extending infrastructure, entering into contracts for the provision of continued services to Marco’s Pizza franchisees.

124. As a result of the foregoing, Butorac, Switzer, VLCEK and Marco’s fraudulently induced Sofo to enter into a business relationship when Butorac, Switzer, VLCEK and Marco’s had no intention of entering into the promised contract and, instead, planned to start a competing Supplier business for Marco’s Pizza franchisees and eliminating Sofo.

125. Sofo has suffered damages in an amount that cannot be determined with certainty at this time.

COUNT EIGHT
(BUTORAC, SWITZER, VLCEK, MARCO’S, MPD)
UNJUST ENRICHMENT

126. Plaintiffs incorporate the averments the forth in Paragraphs 1 through 125, as if fully restated herein.

127. Defendants Butorac, Switzer, VLCEK, Marco’s and MPD have utilized the confidential proprietary business information and trade secrets of Sofo and A&M for their financial benefit and to the detriment of Sofo and A&M.

128. By the actions described above, Butorac, Switzer, VLCEK, Marco’s and MPD knowingly received the benefits of Sofo and A&M’s confidential, proprietary, business information and trade secrets to which they were not entitled.

129. The retention of the benefit of Sofo and A&M’s confidential, proprietary, business information and trade secrets without compensation therefore would be unjust, and

Butorac, Switzer, VLCEK, Marco's and MPD should not be allowed to profit or be enriched inequitably at the expense of Sofo and A&M.

130. As a result of all of said unjust enrichment, Sofo and A&M will suffer substantial monetary losses and Butorac, Switzer, VLCEK, Marco's and MPD will earn profits to which they are not entitled.

131. Sofo and A&M have been damaged by Butorac, Switzer, VLCEK, Marco's and MPD and Butorac, Switzer, VLCEK, Marco's and MPD have been unjustly enriched in an amount to be more fully determined at trial.

COUNT NINE
(BUTORAC, SWITZER, VLCEK, MARCO'S AND MPD)
DECEPTIVE TRADE PRACTICES [R.C. §4165.02(A)(10)]

132. Plaintiffs incorporate the averments the forth in Paragraphs 1 through 131, as if fully restated herein.

133. Ohio Revised Code §4165.02(A)(10) prohibits any person from engaging in deceptive trade practices by disparaging the goods, services or business of another by false representation of fact.

134. From at least March 2009 to present, Butorac, Switzer, VLCEK, Marco's and MPD have communicated with Marco's Pizza franchisees regarding Sofo's provision of product.

135. Upon information and belief, during the course of making said communications, Butorac, Switzer, VLCEK, Marco's and MPD intentionally made disparaging and false statements of fact about Sofo and A&M's service and business practices.

136. The statements of Defendants Butorac, Switzer, VLCEK, Marco's and MPD were false and made with malicious intent and purpose to cause substantial injury to Sofo and A&M's business, goodwill and reputation.

137. As a direct and proximate result of Butorac, Switzer, VLCEK, Marco's and MPD's false and disparaging statements, Sofu and A&M suffered injury and are entitled to all of the remedies set forth in Ohio Revised Code §4165.03, including but not limited to preliminary and permanent injunctive relief, compensatory and punitive damages and an award of attorneys fees.

COUNT TEN
(BUTORAC, SWITZER, VLCEK, MARCO'S AND MPD)
UNFAIR COMPETITION

138. Plaintiffs incorporate the averments the forth in Paragraphs 1 through 137, as if fully restated herein.

139. Defendants Butorac, Switzer, VLCEK, Marco's and MPD are utilizing Sofu's confidential, proprietary and/or trade secret information to solicit Sofu's customers.

140. As a direct and proximate result, said Defendants are unfairly and unlawfully competing with Sofu by using converted and/or misappropriated, confidential, proprietary and/or trade secret information to their own person advantage to ensure that MPD swiftly, and unlawfully, acquires a profitable foothold in supplying and distributing product to Marco's Pizza franchisees.

141. Butorac, Switzer, VLCEK, Marco's and MPD have also engaged in unfair competition by wrongfully defaming an disparaging the business services and reputation of Sofu through false representations of fact. Such conduct was taken with malicious intent and for the purpose of damaging Sofu's good business reputation.

142. As a direct and proximate result of this unfair competition, Sofu has sustained substantial damages in an amount to be proven at trial.

143. The actions of Butorac, Switzer, VLCEK, Marco's and MPD constituting unlawful and unfair competition were willful, wanton and malicious and were taken with

reckless disregard for the rights of Sofo so as to warrant an award of punitive damages and attorneys' fees.

COUNT ELEVEN
(BUTORAC, SWITZER, VLCEK, MARCO'S AND MPD)
CIVIL CONSPIRACY

144. Plaintiffs incorporate the averments the forth in Paragraphs 1 through 143, as if fully restated herein.

145. The intentional, malicious and wrongful conduct of Butorac, Switzer, VLCEK, Marco's and MPD as described above was intended to injure Sofo and A&M's business and related interests and resulted in actual damages to Sofo and A&M.

146. Butorac, Switzer, VLCEK, Marco's and MPD's wrongful conduct represents a malicious combination to injure Sofo and A&M business in a way not competent for any one Defendant alone.

147. In carrying out the malicious combination to injure Sofo and A&M's business and other interests, Butorac, Switzer, VLCEK, Marco's and MPD had a common understanding and design to commit the wrongful acts described above.

148. As a direct and proximate result of the conspiracy of Butorac, Switzer, VLCEK, Marco's and MPD, Sofo and A&M have incurred and suffered actual damages.

COUNT TWELVE
(BUTORAC, SWITZER)
ALTER EGO

149. Plaintiffs incorporate the averments the forth in Paragraphs 1 through 148, as if fully restated herein.

150. Upon information and belief, Butorac and Switzer are the controlling members of MPD and Marco's.

151. At all relevant times, Butorac and Switzer's control over MPD and Marco's was so complete that MPD and Marco's did not have a separate mind, will or existence of its own.

152. Defendants Butorac and Switzer's exercise of control over MPD and Marco's caused Defendants Butorac and Switzer, as controlling members of MPD and Marco's, to be indistinguishable from Defendants MPD and Marco's.

153. Defendants Butorac and Switzer's control over MPD and Marco's was exercised in such a manner as to cause damage to Sofo and A&M, as described above.

154. As a result of such control and wrongful conduct, Sofo and A&M have suffered injury, damage and loss.

155. By virtue of the above facts, Sofo and A&M have been damaged and Butorac and Switzer are personally liable to Sofo and A&M for all claims alleged against MPD and Marco's in this Complaint.

COUNT THIRTEEN
(BUTORAC, SWITZER, VLCEK, MARCO'S AND MPD)
VIOLATION OF RICO, 18 U.S.C. §1962(C)

156. Plaintiffs incorporate the averments the forth in Paragraphs 1 through 155, as if fully restated herein.

157. Under 18 U.S.C. §1962(c), it is unlawful for "any person employed by or associated with any enterprise engaged in, or the activities which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt. "

158. Since 2009, Butorac, Switzer, Vlcek and Marco's have established an enterprise for the purpose of actively conspiring to develop and carry out a scheme to defraud Sofo and A&M and to cause irreparable injury to the business of Sofo and A&M, while at the same time creating a separate "Approved Supplier" business, to be known as Marco's Pizza Distribution,

LLC, that would assume Sofo's place as an Approved Supplier, steal Sofo and A&M's method of business, steal Sofo's customers, disparage Sofo and A&M and take, misappropriate and use the trade secrets and confidential information from Sofo and A&M.

159. This enterprise was formed under the direction and supervision of Butorac and Switzer who recruited Vlcek and other employees of Marco's to participate in a pattern of racketeering activity and other wrongful acts that were designed to advance the enterprise's illegal purpose and goals. Among other things, Butorac and Switzer recruited Vlcek and others to make false and disparaging representations about Sofo and A&M for the purpose of destroying the business relationships with the franchisees so that MPD could commence operation with a solid customer base taken from Sofo and A&M.

160. Defendants Butorac and Switzer, intentionally and knowingly made false and misleading representations to Marco's Pizza franchisees causing them to leave Sofo.

161. Defendant Butorac intentionally and knowingly made representations to Sofo regarding slow pay franchisees causing Sofo to extend additional credit to delinquent accounts.

162. Defendants Butorac and Switzer intentionally and knowingly told Marco's Pizza franchisees to cease payment to Sofo.

163. Defendants Butorac and Switzer intentionally and knowingly promised Sofo a guaranteed four-year contract that would result in distribution to Marco's Pizza franchisees nationwide as was the practice for over 25 years.

164. As a result of Butorac and Switzer's wrongful conduct, Sofo extended additional credit, assumed additional financial responsibilities to service the Marco's Pizza franchisees and entered into contracts with third parties to support its obligations as an Approved Supplier to the Marco's Pizza franchisees.

165. Unbeknownst to Sofo, Butorac and Switzer were developing an entity – MPD - to directly compete with Sofo.

166. In February 2009, Marco's conducted a detailed and expansive audit of Sofo and A&M. The detailed and expansive audit exceeded the scope of any past audit.

167. MPD commenced as an Ohio limited liability company in March 2009 and the original agent was "Todd J. Kuhn."

168. In November 2009, Sofo became aware that Marco's Pizza franchisees had been told that MPD would be providing distribution of product commencing in January 2010 instead of Sofo.

169. Butorac, Switzer, Marco's and others misappropriated and converted to their own and improper use information obtained from the Sofo and A&M audit.

170. To accomplish this act, Butorac, Switzer and Marco's hired Sommer to conduct the detailed and expansive audit.

171. Defendants Marco's Butorac and Switzer constitute an enterprise under the meaning of 18 U.S.C. §1961(4). Defendants actions affected and continue to affect interstate commerce.

172. As set forth above, Defendants, through use of information obtained from Sommer and Defendant Butorac and Vlcek and in furtherance of their scheme and conspiracy to defraud and to damage Plaintiffs, utilized the United States mail in violation of 18 U.S.C. §1341.

173. The use of mail were part and parcel of said Defendants' conspiracy and scheme to defraud and to damage Plaintiffs, and constitutes a "pattern of racketeering activity" as defined in 18 U.S.C. §§1961 (1) and (5).

174. The pattern of racketeering activity of said Defendants has caused Sofo and A&M to incur substantial damages and injury to its business and property. As a result, Plaintiffs are entitled to the civil remedies set forth in 18 U.S.C. §1964, including but not limited to recovery of treble damages and costs of the suit, including reasonable attorneys fees.

WHEREFORE, Sofo Foods prays for judgment as follows:

A. As to Count I, judgment against defendant Stephens for breach of the personal guaranty in the amount of Fifty-Four Thousand Six Hundred Forty-Six and 36/100 (\$54,646.36), plus interest and costs;

B. As to Count II, judgment against defendant Butorac for breach of contract in the amount of Fifty-Four Thousand Six Hundred Forty-Six and 36/100 (\$54,646.36), plus interest and costs;

C. As to Count III, judgment against Defendants Butorac, Switzer, Vlcek and Marco's for defamation and business disparagement in an amount to be proven at trial plus punitive damages and attorneys fees;

D. As to Count IV, judgment against Defendants Butorac, Switzer, Vlcek, Marco's and MPD for misappropriation of trade secrets including injunctive relief and damages, including punitive and attorneys fees, to be proven at trial;

E. As to Count V, judgment against Defendants Butorac, Switzer, Vlcek, Marco's and MPD for negligence in an amount to be proven at trial;

F. As to Count VII, judgment against Defendants Butorac, Switzer, Vlcek, Marco's and MPD for fraud in an amount to be proven at trial to include punitive damages and attorneys' fees;

G. As to Count VIII, judgment against Defendants Butorac, Switzer, Vlcek, Marco's and MPD for unjust enrichment, in an amount to be proven at trial;

H. As to Count IX, judgment against Defendants Butorac, Switzer, Vlcek, Marco's and MPD for deceptive trade practices in violation of R.C. §4165.02(A)(10) in an amount to be proven at trial including punitive damages and attorneys' fees;

I. As to Count X, judgment against Defendants Butorac, Switzer, Vlcek, Marco's and MPD for unfair competition in an amount to be proven at trial, including punitive damages and attorneys' fees;

J. As to Count XI, judgment against Defendants Butorac, Switzer, Vlcek, Marco's and MPD in an amount to be proven at trial;

K. As to Count XII, judgment against Defendants Butorac and Switzer for damages in the amount proven at trial;

L. As to Count XIII, judgment against Defendants Butorac, Switzer, Vlcek and Marco's in an amount to be proven at trial to include punitive and attorneys' fees; and

M. Any further relief that this Court deems just and equitable.

Respectfully submitted,

/s/ Anthony J. Calamunci
Anthony J. Calamunci, Esq. (0063937)
Amy L. Butler (0075714)
Counsel for Plaintiffs
Antonio Sofo & Son Importing Co., A&M
Cheese, Co., and Bellissimo Foods

JURY DEMAND

Plaintiffs demand a trial by jury.

Respectfully submitted,

/s/ Anthony J. Calamunci
Anthony J. Calamunci, Esq. (0063937)
Amy L. Butler (0075714)
Counsel for Plaintiffs
*Antonio Sofo & Son Importing Co., A&M
Cheese, Co., and Bellissimo Foods*