

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

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ILENE SIEMER, et al.,

INDIVIDUALLY AND ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED,

Plaintiffs,

Case No. 07-CV-2170

vs.

THE QUIZNO'S FRANCHISE COMPANY LLC F/K/A THE  
QUIZNO'S CORPORATION, et al.,

Defendants.

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**DECLARATION OF MARK M. LEITNER**

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Mark M. Leitner states under penalty of perjury as follows:

1. I am a shareholder in Kravit, Hovel & Krawczyk S.C. ("KHK"), a law firm in Milwaukee, Wisconsin. I am also one of the attorneys representing the plaintiffs in this action. I have personal knowledge of the facts stated in this Declaration and documents attached to it. This Declaration is submitted in support of plaintiffs' motion for preliminary approval of class action settlement and other relief specified in the motion and supporting brief.

2. KHK is qualified, experienced, and able to conduct the proposed class action fairly, vigorously and competently on behalf of the class.

3. Since 1985, KHK has been Wisconsin's leading litigation boutique, concentrating in complex business litigation and civil and white-collar criminal trial work. The firm's 11 attorneys (along with its 3 paralegals) are experienced practitioners in state and federal courts

around the United States. We try cases before judges, juries, arbitrators and hearing boards and are well credentialed. Our lawyers attended respected law schools, including Harvard, Stanford, Wisconsin, Syracuse and Marquette. All of the attorneys in KHK have backgrounds of outstanding achievement in their professional endeavors, having engaged in such things as clerking for federal and state trial and appellate judges, serving as a federal prosecutor and editing law review. The firm promotes “doing” and “teaching.” We go to trial and know how to try cases; we also teach these skills. KHK’s lawyers regularly publish articles, teach classes at Marquette University and sit on panels in legal education seminars.

4. I am a 1980 graduate of Marquette University where I obtained a degree in political science, with honors. In 1985, I graduated with honors from the University of Wisconsin Law School where I served as the Senior Articles Editor of the Wisconsin Law Review and was selected for the Order of the Coif (top 10% of class). I am a member in good standing of the State Bar of Wisconsin and the Illinois State Bar and am licensed to practice in the state and federal courts of both states. I am also a member of the trial bar of the United States District Court for the Northern District of Illinois and admitted to practice before the United States District Court for the District of Colorado and the United States District Court for the Eastern District of Michigan. I am also admitted to practice before the United States Court of Appeals for the Seventh Circuit. I have been named a “Super Lawyer” by *Milwaukee Magazine* for five consecutive years and I am listed in *Best Lawyers In America* (2010 ed.) for appellate practice.

5. In 1989, my partner Joseph Goode graduated from the University of Wisconsin with a B.A. in History. In 1994, he graduated with honors from Syracuse University College of Law. That same year, he received a Master’s in Public Administration from the Maxwell School

of Citizenship and Public Affairs at Syracuse University. While in law school, Mr. Goode served as Associate Editor of the Syracuse Law Review and on the Executive Committee of the Moot Court Board. He is a member in good standing of the State Bar of Wisconsin and is licensed to practice in its state and federal courts. Mr. Goode is also admitted to practice before the United States District Court for the District of Colorado, and before the United States District Court for the Northern District of Illinois where he is a member in good standing of that court's trial bar. Finally, Mr. Goode is admitted to practice before the United States District Court for the Eastern District of Michigan and the United States Court of Appeals for the Seventh and Federal Circuits. Mr. Goode has been named a "Super Lawyer" and a "Rising Star" by *Milwaukee Magazine* for three out of the last four years.

6. Both Mr. Goode and I have published articles in various areas of the law and each of us have spent time teaching trial advocacy and related topics to our peers. We have collectively tried more than two dozen cases to verdict (some in the 7-figure range) and have extensive experience in franchise and dealership litigation as well as intellectual property disputes. Mr. Goode and I have worked many complex matters together over the years since we first became associated in June 1994, including at least a dozen cases involving dealership, franchise and distribution disputes. In addition to this substantive area of the law, he and I have collectively litigated hundreds of commercial disputes in areas such as fraud, consumer protection, patent infringement, RICO, antitrust, trademark infringement, civil rights, insurance coverage, shareholder oppression, fiduciary contests and products liability. We have both argued appeals before the United States Court of Appeals for the Seventh Circuit as well as the Wisconsin Supreme Court.

7. Collectively, KHK's lawyers have spent thousands of hours investigating the legal claims, reviewing documents, taking depositions, and interviewing potential plaintiffs throughout the United States. Since February 2006 (when we were associated with a different law firm), Mr. Goode and I have worked with the Red Bank, New Jersey law firm of Marks & Klein LLP ("M&K") in relation to analyzing Quiznos' conduct in relation to its franchisees. KHK has been actively involved in taking and defending depositions around the country in relation to this matter and the related class actions, some 80 in all at this time.

8. To the best of my knowledge and upon an examination of the facts, neither KHK nor M&K has any conflict of interest or association of any kind that has or has the potential to become antagonistic to the class members or to the claims asserted as class allegations in this action. During the negotiation of the settlement in this case, the parties reached agreement on substantive terms of the settlement before turning to discussions concerning attorney fees.

9. I have known Justin M. Klein since 2006, when Mr. Goode and I were associated with a different law firm and we began working with Mr. Klein and his firm on various matters relating to Quiznos and its franchisees. Through this work, I have gained personal knowledge about Mr. Klein, his credentials and those of his firm. Mr. Klein is an attorney licensed to practice law in the States of New Jersey and New York. He is also admitted to practice law in the United States District Court for the Northern District of Illinois, as well as numerous other United States District Courts. He is a partner in M&K, one of the law firms representing plaintiffs in this action.

10. M&K is qualified, experienced, and able to conduct the proposed class action fairly, vigorously and competently on behalf of the class.

11. In a case recently prosecuted by M&K, Mr. Klein's partner Gerald A. Marks and Mr. Klein were designated as lead class counsel of a national class of Snap-on Tools franchisees (the "Desantis Action"). The Desantis class consisted of more than 2,900 former Snap-on Tools franchisees and almost 3,200 current franchisees. The settlement in the Desantis Action was valued at more than \$125 million and was approved by the United States District Court for the District of New Jersey on October 27, 2006. *See Desantis v. Snap-On Tools Co., LLC*, 2006 U.S. Dist. LEXIS 78362 (D.N.J. Oct. 27, 2006). The Desantis Action was litigated and arbitrated for over a three (3) year period. The settlement agreement in the Desantis Action provided both monetary and non-monetary benefits to the class members, including the forgiveness of approximately \$61.5 million in debt owed by former franchisees.

12. M&K currently consists of five attorneys and three paralegal/legal assistants, all of whom are prepared and able to assist with this matter. Collectively, the attorneys at M&K are licensed to practice in the state courts of New Jersey, New York and Pennsylvania, several federal courts and the United States Supreme Court. M&K has knowledge of the applicable law pertaining to the claims in this action. The firm's attorneys have extensive experience handling complex litigation, including class actions, in state and federal courts throughout the United States and in Canada. M&K has also represented parties in numerous arbitrations on both an individual and class basis.

13. Over the past several years, M&K has performed a considerable amount of work on this lawsuit and other actions including Quiznos, spending thousands of hours investigating the legal claims, reviewing documents, and interviewing potential plaintiffs throughout the United States, and working on discovery, depositions and briefing in the various cases.

14. M&K has been involved in matters relating to Quiznos since before February 16, 2006 when the firm first began investigating the claims ultimately filed in these putative class action lawsuits. Over the months that ensued, M&K interviewed Quiznos franchisees from around the United States.

15. M&K and KHK have a strong working relationship with each of the proposed class representatives. In fact, we have kept the representative plaintiffs continuously apprised of all significant developments in this litigation through regular contact by telephone as well as U.S. and electronic mail or in-person meetings. We have advised each of the proposed representative plaintiffs of their duties as class representatives. These plaintiffs have indicated their willingness to accept those responsibilities.

16. Each of the proposed class representatives has stated that he or she is devoted to obtaining a fair resolution of the class allegations contained in plaintiffs' Amended Complaint. Each has further stated that he or she prioritizes his or her responsibilities to the entire potential class higher than the pursuit of his or her own individual issues.

17. Prior to the execution of the Settlement Agreement, each of the proposed class representatives was presented with a full and complete copy of the Settlement Agreement, had ample time to review its contents, provide commentary and/or ask questions. Each representative plaintiff has endorsed the settlement agreement.

18. Based on the professional relationship that my firm along with M&K has built with each of the representative plaintiffs during the pendency of this litigation, I believe that they each have the personal attributes and integrity necessary to fulfill the fiduciary role of a class representative.

19. The SNO Class Action was originally brought in the United States District Court for the District of New Jersey on February 16, 2006, captioned *Bonanno, et al. v. The Quizno's Franchise Company LLC, et al.*, and was subsequently transferred to the United States District Court for the District of Colorado, where it remains pending as Case No. 06-CV-02358-CMA-KLM.

20. The complaint in the SNO Class Action, as amended on August 1, 2007, asserts claims for violation of the Colorado Consumer Protection Act, fraudulent inducement, breach of contract, violations of the covenant of good faith and fair dealing, unjust enrichment, common law conspiracy, economic duress and declaratory judgment. Quiznos moved to dismiss all of the claims in the SNO Class Action, which motion was denied in its entirety on March 5, 2008. The defendants then answered the complaint and asserted counterclaims against the SNO Representative Plaintiffs on September 30, 2008, and the SNO Representative Plaintiffs moved to dismiss the counterclaims on November 3, 2008. That motion remains pending.

21. On September 30, 2008, the SNO Representative Plaintiffs moved pursuant to Fed. Civ. P. 23 for class certification. Defendants opposed the motion, and filed materials in opposition. After significant briefing and supplemental briefing, the Court heard oral argument and then issued a written decision denying the motion for class certification on April 20, 2009. The SNO Representative Plaintiffs sought leave to immediately appeal the order denying class certification, and their request for leave was denied by the Court of Appeals for the Tenth Circuit on June 29, 2009. Since the denial of the request for leave to appeal, the SNO Class Action has been stayed by stipulation of the parties and an order implementing that stipulation.

22. The Franchise Operator Class Actions have been pursued in three courts. The first of those was filed in the United States District Court for the Eastern District of Wisconsin,

Green Bay Division, on November 20, 2006, captioned *Westerfield, et al. v. The Quizno's Franchising Company, LLC, et al.*, Case No. 06-C-1210 (the "*Westerfield Action*"). The representative plaintiffs in the *Westerfield Action* sought to represent a class of all Quiznos franchisees in the State of Wisconsin.

23. On April 19, 2007, a group of plaintiffs filed suit in the United States District Court for the Northern District of Illinois, Eastern Division, captioned *Siemer, et al. v. The Quizno's Franchising Company, LLC, et al.*, Case No. 07-C-2170 (the "*Siemer Action*"). The *Siemer* representative plaintiffs sought to represent a class of all Quiznos franchisees in the State of Illinois.

24. On August 14, 2007, a number of representative plaintiffs brought suit in the United States District Court for the District of Colorado, captioned *Brunet, et al. v. The Quizno's Franchising Company, LLC, et al.*, Case No. 07-CV-01717-PAB-KLT (the "*Brunet Action*"). The representative plaintiffs in the *Brunet Action* sought to represent a class of all Quiznos franchisees in the United States, excepting those in Wisconsin and Illinois.

25. Each of the Franchise Operator Class Actions—the *Westerfield Action*, the *Siemer Action*, and the *Brunet Action*—alleged claims for violations of the Racketeer Influenced and Corrupt Organization Act ("RICO"), fraud in the inducement, breach of contract, breach of the implied covenant of good faith and fair dealing, economic duress, breach of fiduciary duty, and declaratory judgment. Each of the cases also asserted various claims based on specific statutes of the forum state—Wisconsin in the *Westerfield Action*, Illinois in the *Siemer Action*, and Colorado in the *Brunet Action*.

26. On October 15, 2008, the defendants moved to dismiss amended complaints in each of three Franchise Operator cases. Those motions are fully briefed and remain pending as

of today. In addition, on February 9, 2009, the representative plaintiffs in the *Brunet Action* filed a motion for class certification, which motion remains pending as well. Like the SNO Class Action, each of the Franchise Operator Class Actions has been stayed by stipulation and order since the Tenth Circuit's denial of the SNO Representative Plaintiffs' request for leave to appeal the district court's April 20, 2009 decision denying their motion for class certification.

27. All cases in which KHK and M&K have prepared claims against Quiznos have been vigorously and thoroughly litigated. The defendants moved to dismiss all of the claims in all of the cases, both as originally pled and in amended complaints, and those motions were fully and extensively briefed (albeit never decided as to the amended complaints in the three Franchise Operator cases). The defendants in the SNO Class Action moved for summary judgment on March 9, 2009, and that motion likewise remains pending. The parties engaged in extensive discovery throughout 2006, 2007 and 2008. Quiznos has produced millions of pages of documents, most in electronic form and stored by plaintiffs in a searchable database which was used extensively by plaintiffs' counsel to prepare for depositions and briefing on motion practice. Each of the representative plaintiffs in the SNO Class Action and dozens of the representative plaintiffs in the Franchise Operator cases were deposed, and all of the representative plaintiffs in all cases produced documents and participated extensively in propounding and responding to written discovery.

28. Plaintiffs took the depositions of dozens of current and former executives of Quiznos. In addition, there were numerous depositions of third parties not employed by either plaintiffs or defendants. There has been a total of 80 depositions taken in all of the cases. In addition, there was extensive motion practice concerning discovery, including motions to compel discovery and motions for protective orders involving not only defendants, but third parties who

had been served with subpoenas duces tecum. Plaintiffs also issued 67 document subpoenas to non-parties.

29. Counsel for the parties initially met in Chicago, Illinois in early April, 2008 to discuss the possibility of using mediation to discuss settlement. After negotiations to establish terms and to choose the Honorable Dickran M. Tevrizian, Jr., a retired federal judge from Los Angeles, California as mediator, counsel for both sides and representative plaintiffs as well as key Quiznos personnel met with Judge Tevrizian on August 11, 12 and 13, 2008 at Judge Tevrizian's offices in Los Angeles, and then held another session, this time with counsel only present, in Los Angeles on August 28, 2008. These sessions did not result in resolution of any of the cases, but the negotiations over this period at the mediation helped lay the groundwork for the renewed negotiations of Summer 2009.

30. During June 2009, counsel for the parties renewed settlement discussion and mediation efforts. This time, the lawyers selected Attorney Michael L. O'Donnell of the Denver, Colorado firm Wheeler Trigg O'Donnell LLP. Counsel met with Mr. O'Donnell in person in Denver for all-day sessions on July 2, 2009 and August 7, 2009. We continued negotiations over the telephone and using electronic mail, often with the involvement of Mr. O'Donnell, until the Settlement Agreement was finalized on or about October 27, 2009.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 18, 2009

*s/ Mark M. Leitner*  
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Mark M. Leitner