DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO Denver City & County Building 1437 Bannock Street, Room 256 Denver, Colorado 80202	
Plaintiffs: COLORADO COFFEE BEAN, LLC, a Colorado limited liability company; DOUBLE R COFFEE, LLC, a Colorado limited liability company; MLT TAYLOR, LLC, a Colorado limited liability company, PEAK JAVA COMPANY, a Colorado corporation; JKF, LLC, a Colorado limited liability company; CZ-DM, INC., a Colorado corporation; JKKR, LLC, a Colorado limited liability company; PEAK MOUNTAIN COFFEE, INC., a Colorado corporation; KING SOOPERS JM, INC., a Colorado corporation; and, ABC SALES INC., a Colorado corporation. **Defendants:** PEABERRY COFFEE, INC., a Colorado corporation; PEABERRY COFFEE FRANCHISE, INC., a Colorado corporation; WILLIAM I. TOINTON; JAMES T. ORR, and PERKINS COIE, LLP. **Counterclaim Plaintiff:** PEABERRY COFFEE FRANCHISE, INC., a Colorado corporation. **Counterclaim Defendants:** COLORADO COFFEE BEAN, LLC, a Colorado limited liability company; JKKR, LLC, a Colorado limited liability company; DOUBLE R COFFEE, LLC, a Colorado limited liability company; CZ-DM, INC., a Colorado corporation; and JM, Inc., a/k/a KING SOOPERS JM, INC., a Colorado corporation.	▲ COURT USE ONLY ▲ Case Number: 2006CV4514 Div.: Ctrm: 7
Richard B. Podoll, Atty. Reg. #8775 Dustin J. Priebe, Atty. Reg. #36850 Podoll & Podoll, P.C. TERRACE TOWER II 5619 DTC Parkway, Suite 1100 Greenwood Village, Colorado 80111 Telephone: (303) 861-4000 Facsimile: (303) 861-4004	

SECOND AMENDED COMPLAINT

COME NOW the Plaintiffs, Colorado Coffee Bean, LLC; Double R Coffee, LLC; MLT Taylor, LLC; Peak Java Company; JKF, LLC; CZ-DM, Inc.; JKKR, LLC; Peak Mountain Coffee, Inc.; King Soopers JM, Inc.; and ABC Sales, Inc.; by and through their attorneys, Podoll & Podoll, P.C., and for their Second Amended Complaint against the above-named Defendants, state and allege as follows:

PARTIES AND VENUE

1. Plaintiffs are the owners of the ten existing Peaberry franchise stores. Each Plaintiff owns one franchise store. The individual Plaintiffs are listed below.

2. Plaintiff, Colorado Coffee Bean, LLC, is a Colorado limited liability company. Its principal place of business was located at 7335 North Academy Boulevard, Colorado Springs, Colorado 80920. However, Colorado Coffee Bean, LLC, has closed its store.

3. Plaintiff, Double R Coffee LLC, is a Colorado limited liability company. Its principal place of business was located at 2623 East Second Avenue, Denver, Colorado 80211. However, Double R Coffee has closed its store.

4. Plaintiff, Peak Java Company, is a Colorado corporation, with its principal place of business located at 2721 Arapahoe Avenue, Boulder, Colorado 80301.

5. Plaintiff, Peak Mountain Coffee, Inc., is a Colorado corporation, with its principal place of business located at 8283 South Akron Street, Suite 170, Centennial, Colorado 80112.

6. Plaintiff, CZ-DM, Inc., is a Colorado corporation, with its principal place of business located at 5322 DTC Boulevard, Suite 400, Greenwood Village, Colorado, 80111.

7. Plaintiff, JKF, LLC, is a Colorado limited liability company, with its principal place of business located at 5771 North Washington Street, Denver, Colorado 80216.

8. Plaintiff, JKKR, LLC, is a Colorado limited liability company. Its principal place of business was located at 2315 Clover Basin Drive, Longmont, Colorado 80503. However, JKKR, LLC, has closed its store.

9. Plaintiff, ABC Sales, Inc., is a Colorado corporation, with its principal place of business located at 9602 East Arapahoe Road, Englewood, Colorado 80112.

10. Plaintiff, MLT Taylor, LLC, is a Colorado limited liability company, with its principal place of business located at 14255 W. Colfax Drive, Unit B, Lakewood, Colorado 80211.

11. Plaintiff, King Soopers JM, Inc., is a Colorado corporation, with its principal place of business located at 7901 South Broadway, Littleton, Colorado 80122.[1]

12. Defendant, Peaberry Coffee, Inc. ("PCI"), is a Colorado corporation with its principal office located at 1299 East 58th Avenue, Denver, Colorado 80216.

13. Defendant, Peaberry Coffee Franchise, Inc. ("PCFI"), is a Colorado corporation with its principal office located at 1299 East 58th Avenue, Denver, Colorado 80216.

14. Defendant, William I. Tointon ("Tointon"), is a natural person and a resident of the State of Colorado, with an office address of 822 7th Street, Suite 700, Greeley, Colorado 80631.

15. Defendant, James T. Orr ("Orr"), is a natural person and a resident of the State of Colorado with an office address of 1299 East 58th Avenue, Denver, Colorado 80216.

16. Defendant, Perkins Coie, LLP ("Perkins Coie"), is a Washington limited liability partnership, registered to conduct business in Colorado, with a principle office address of 1201 Third Ave., Suite 4800, Seattle, Washington 98101.[2]

17. Venue is proper in the District Court for the City and County of Denver because the acts and conduct that form the subject matter of the Complaint occurred in the City and County of Denver.

GENERAL ALLEGATIONS

18. On or about August 21, 1990, PCI was formed by Tointon to conduct the business of establishing and operating retail stores that sell espresso drinks and gourmet coffee, and other related consumable and non-consumable products, using the Peaberry Coffee name.

19. Between 1990 and 2002, PCI opened and operated approximately 18 Peaberry Coffee stores (the "PCI stores").

20. By 2002, PCI had lost substantial money in each of its last five years, and many PCI stores were not profitable.

---

[1]Hereafter, Plaintiffs will be collectively referred to as "Plaintiffs" or "Franchisees," or by their individual names when so required.

[2]Hereafter, PCI, PCFI, Tointon and Orr will be collectively referred to as "Defendants." Defendant Perkins Coie will be referred to as "Perkins Coie."

21. In or around 2002, PCI began investigating selling Peaberry Coffee franchises to the public.

22. When considering franchising sometime in early 2002, Defendants PCI and Tointon retained attorney Kim McCullough and the law firm of Perkins Coie.

23. Perkins Coie advertises itself as a law firm that "counsels businesses just embarking on a franchise program or exploring alternatives to franchising as a method of expanding," and also that its "in-depth, personal approach encompasses a thorough understanding of its clients' businesses" so it can "offer the best solutions to protect their businesses."

24. Kim McCullough is quoted in the firm's brochure as representing that, "the value we [Perkins Coie] bring is a mastery of the franchise regulatory system, combined with business sense and experience to help clients make good business decisions."

25. Perkins Coie served as both attorneys and business advisors.

26. PCI had approximately ten meetings with Ms. McCullough between April and November of 2002. In these meetings, the parties discussed the required financial disclosures for purposes of the Uniform Franchise Offering Circular (UFOC), including the need to disclose PCI's financials in the UFOC, the viability of franchising the Peaberry business concept, the formation of a new franchising company, PCFI, for the purposes of complying with the financial disclosure requirement of the UFOC, and the amount of royalty to charge.

27. In the course of this representation, Perkins Coie became aware of at least the following facts:

a. PCI had not had a profitable year since at least 1998, and had lost considerable amounts of money in each of the last five years;

b. Many of PCI's retail stores failed to operate at a break-even level;

c. PCI's operating history established the Peaberry model was not viable for franchising, and failed to meet even minimal franchising benchmarks;

d. The majority of PCI's retail stores would have lost money in 2002 and 2003 if they had been burdened with a 6% royalty and the expense of debt service, costs any franchisee would plainly incur.

28. Perkins Coie drafted franchise disclosure documents in a manner intentionally designed to withhold and conceal these material facts from prospective purchasers of Peaberry franchises.

29. Knowing the UFOC required disclosure of the franchisor's audited financials for the two years prior to franchising, Perkins Coie created a separate franchise company, Peaberry Coffee Franchise, Inc. (PCFI).

30. PCFI was created for the express purpose of avoiding the necessity of disclosing two years of PCI's audited financials to Plaintiffs and prospective purchasers of Peaberry franchises.

31. PCFI has no identity separate and apart from PCI and Tointon.

32. The capitalization of PCFI is less than $100.00.

33. PCI is the sole shareholder in PCFI.

34. PCFI is operated out of the same corporate office as PCI.

35. PCFI is operated by the same officers as PCI.

36. The cost of regulatory compliance including the preparation of the franchise agreement and the formation of PCFI, in the approximate amount of $80,000.00, was paid to Perkins Coie by PCI.

37. In 2003, Tointon, PCI and PCFI retained Orr to promote the sale of Peaberry franchises to the general public. Defendants advertised franchise stores in the public media, including *The Denver Post*, various radio stations, and the internet.

38. PCFI, as well as the franchise agreements, were used by PCI, Tointon and Orr as instrumentalities of fraud.

39. The financials for PCI were not disclosed in the UFOC. However, Perkins Coie did include a chart of gross sales information for the PCI retail stores. The chart lists the sales of PCI's retail stores, breaking them into three ranges: "high," "mid," and "low."

40. The Perkins Coie chart omits costs of goods and operating expenses and fails to provide the profitability of the PCI stores. The categories were also intentionally designed to provide a misleading depiction of the performance of Peaberry retail stores.

41. In fact, approximately half of the stores in the "mid" range lost money, and all but one of the stores in the "low" range lost considerable amounts of money.

42. When Perkins Coie decided to exclude PCI's financial information from disclosure, it was aware that PCI and PCFI had made representations in the media that it was "profitable."

43. PCFI, PCI, Tointon and Orr affirmatively mislead Plaintiffs and other members of the public in regard to the strength and stability of PCI retail stores, the sales generated by PCI retail stores, and the profitability of PCI retail stores.

44. At various times between 2003 and 2005, Defendants presented Plaintiffs with franchise information through PCFI. Included with this information was the Peaberry UFOC. The UFOC contained specific factual information, including representations regarding the past performance of stores operated by PCI.

45. The financial information provided by PCFI in the UFOC was false or misleading, and was known by PCFI, PCI, Tointon and Orr to be false or misleading, at the time such financial information was provided to the Plaintiffs.

46. The false or misleading financial information was intended to induce the Plaintiffs to enter into franchise agreements and retail lease agreements, and also to commit hundreds of thousands of dollars to operating a Peaberry Coffee franchise, which included building out a franchise location, staffing it, and purchasing furniture, fixtures, equipment and inventory exclusively from the Defendants or suppliers approved by the Defendants.

47. PCFI, PCI, Tointon and Orr also made material misrepresentations, or omitted to disclose material information, in regard to: market research PCFI had allegedly conducted; that PCFI had a time-tested demographic model for selecting store locations; the intent of PCI to not open additional corporate stores; PCI's financial strength and stability; that PCI and PCFI had no source of financing; that PCI and PCFI planned to market existing PCI stores for sale; the cost of equipment; PCFI's and PCI's willingness and ability to provide operational support, marketing support and training; and PCI's and PCFI's long-term commitment to establish, promote and operate gourmet retail coffee stores.

48. Defendants omitted to advise the Plaintiffs that at the same time it was offering franchises for sale to the public, PCI was in the process of changing its business model towards the end of eliminating or drastically reducing the number of retail coffee stores operated by PCI.

49. Defendants represented to the general public that Peaberry had launched a franchise plan to add 500 stores in Colorado and California by 2011.

50. Tointon and Orr represented to a number of the Plaintiffs that the goal of the franchise plan was to make Peaberry a "strong number two" to Starbucks in the Denver area.

51. Defendants also omitted to advise Plaintiffs that they were being used as guinea pigs to test the viability of the franchise concept.

52. In reliance on the misrepresentations and omissions, Plaintiffs entered into written franchise agreements ("franchise agreements") with PCFI between late 2003 and 2005.

53. In connection with signing the franchise agreements, each Plaintiff paid to PCFI franchise fees in the amount of $35,000.00, and an additional $100,000.00 for initial equipment/fixture packages.

54. In reliance on these misrepresentations and omissions, and specifically on the representation that PCI and PCFI were concentrating on growing and expanding Peaberry, certain Plaintiffs paid additional amounts to acquire exclusive Peaberry franchise rights in other counties.

55. Plaintiff Colorado Coffee Bean, LLC, paid PCFI $10,000.00 to obtain exclusive Peaberry franchise rights in El Paso County, Colorado, and $10,000.00 to obtain exclusive Peaberry franchise rights in Larimer County, Colorado.

56. Plaintiff Peak Java Company purchased an existing Peaberry store from the Defendants. In addition to the $35,000.00 franchise fee, Peak Java paid $400,000.00 to purchase the existing store, $283,000.00 of which was for the "goodwill" of the Peaberry name and market penetration. Peak Java also paid an additional $20,000.00 for the right to open two additional stores in the city of Boulder.

57. The essential benefit for which Plaintiffs bargained, and reasonably expected, in entering into their franchise agreements, paying additional fees for franchise rights in other counties, and making substantial contractual and capital commitments, was to own a business based upon an established, proven, and highly successful retail operation, to avoid the risk of a start-up operation, and to benefit from the market presence, substantial good will, reputation, advertising strength and name recognition of Peaberry gourmet retail coffee stores in Colorado.

58. Had Plaintiffs been aware of PCI's financial distress and of the poor financial performance of Peaberry retail stores, that PCI and PCFI had no source of financing, that Peaberry had no viable concept to franchise, that they were being used as guinea pigs to test the viability of Peaberry's franchising, that PCI intended to change its business model by eliminating or greatly reducing the number of gourmet retail coffee stores it operated in Colorado, or that PCI would sell most of its corporate stores to its largest competitor shortly after they began operating their franchise

stores, Plaintiffs would not have entered into their franchise agreements with PCFI, and would not have made the contractual and financial commitments described above.

59. When Defendants induced Plaintiffs to make their franchise commitments, Defendants knew and understood that Peaberry Coffee stores faced significant competition.

60. Defendants also knew that the primary competitor for Peaberry was Starbucks, the industry giant.

61. Defendants knew and understood that the success of Starbucks was based, in substantial part, upon Starbucks' name recognition, presence, and strength in the marketplace.

62. Defendants knew, when soliciting franchisees, that the success of Peaberry franchise stores would depend on maintaining and increasing Peaberry's market presence, good will, reputation, advertising strength and name recognition.

63. Despite this knowledge, Defendants sold 13 of the 18 of PCI corporate retail stores to Starbucks.

64. After entering into negotiations with Starbucks, Defendants intentionally withheld and concealed the fact of its negotiations with Starbucks, and its intent to sell most of its retail stores to Starbucks, from all Plaintiffs (even those with whom PCFI had not yet signed franchise agreements) and other potential franchisees, until the afternoon before it publicly announced the sale on January 16, 2006.

65. Even then, despite Plaintiffs' demands, Peaberry failed and refused to disclose the specifics of its negotiations and transaction with Starbucks until initial disclosures in this litigation.

I. Performance Deficiencies

66. In addition to the impact of the Starbucks' sale, Defendant PCFI has failed to deal with Plaintiffs in a reasonable manner, and has failed to provide them with even the most basic necessities for successfully running franchise stores.

67. PCFI requires Plaintiffs to purchase Peaberry product at quantities well in excess of what Plaintiffs are able to sell before expiration of the product. PCFI routinely delivers product only days away from expiration. With the exception of a program only recently implemented, PCFI failed to provide Plaintiffs with any credit for this unusable product, forcing Plaintiffs to incur these costs.

68. PCFI required Plaintiffs to purchase point of sale (POS) systems at a significant cost. The POS systems are inadequate, provide no financial records for the Franchisees, and, upon

information and belief, the printers that accompanied the systems were over two years old at the time they were sold to Plaintiffs.

69. Defendant PCFI effectively controls the selling prices of product through the POS systems and required Peaberry signage.

70. Plaintiffs were not provided ongoing updates with regard to numerous different issues, as promised in their franchisee agreements. Also, although Defendants ran comprehensive marketing campaigns when they were inducing franchisees to sign franchise agreements, no similar marketing has occurred since.

II. Specific Franchisee Experiences

71. Although Plaintiffs all experienced the above-listed operating deficiencies, and have all been severely impacted by the Starbucks' sale, a few notable individual Franchisee interactions are discussed below.

72. The principals of JKF, LLC, Jerry and Kathleen Frohlich, had considered purchasing a "Saxbys" coffee franchise. However, Plaintiffs believed that to survive in the coffee business they needed an established name with a number of existing stores and corresponding market presence. Therefore, they elected to open a Peaberry Coffee franchise store despite the fact it cost between $150,000.00 - $200,000.00 more then opening a Saxbys store.

73. JKF, LLC, selected several possible locations for its stores. Each was flatly rejected by Defendants. JKF, LLC, was told by Defendant Orr that there had been a specific site that Peaberry was very confident about. Defendants indicated they were so confident about the location, they were currently in negotiations with the landlord, so as not to lose the site.

74. Subsequently, Peaberry sold the majority of its corporate stores to its major competitor, conceding its market presence. JKF, LLC, has also learned the same location they are occupying has been the site of numerous failed businesses, that Peaberry did little or no research on the location, and, on information and belief, was in lease negotiations with the landlord of the premises, and had been stalling finalizing the lease until JKF, LLC, signed its franchise agreement

75. The principals of Plaintiff ABC Sales, Inc., Annie and Stan Johns, were at first skeptical about the future status of Peaberry, knowing Starbucks' reputation for purchasing competitors. Aware that such a sale would be devastating to a franchisee, at an initial meeting, Annie Johns specifically asked Defendant Orr if Peaberry would ever sell to Starbucks. Defendant Orr looked directly at Defendant Tointon, and after a short pause, responded that "no, no," they would never sell to Starbucks. Defendant Tointon and Defendant Orr further stated that it was their goal to be a strong number two to Starbucks in the Denver area. Based, in part, on these representations, Plaintiff ABC Sales purchased a franchise store.

76. The principals of Plaintiff Peak Java Company, Dave and Michele Harris, seeking to avoid construction, equipment, and other costs, purchased an existing Peaberry store. Peak Java Company initially asked Defendants if it could purchase store 7. Tointon replied that they could not sell store 7, because Tointon had promised the landlord he would not sell, move or lease that location. Peak Java Company then purchased a different existing store. Shortly after this, Peak Java Company learned of the Starbucks sale and discovered store 7 was one of the stores subject to the sale.

77. Defendants also informed Peak Java Company that they believed Peaberry was going to be a strong number two competitor to Starbucks, and that Peaberry was not afraid to go head-to-head against Starbucks for customers.

78. Shortly after Peak Java Company signed its franchise agreement, Defendant PCI sold the majority of its existing corporate stores to Starbucks.

79. Plaintiff Colorado Coffee Bean, LLC, opened its franchise store in early 2005, on Academy Boulevard in Colorado Springs, Colorado. In its initial meeting with Defendants, Colorado Coffee Bean, LLC, was told by Defendants that there was only a single good site left on Academy Boulevard in Colorado Springs to open a Peaberry Coffee Store. Colorado Coffee Bean, LLC, expressed concern, because the site was sandwiched between two Starbucks stores, one a half mile to the north, and one a half mile to the south. However, Defendants assured that this was not a problem, as Peaberry had never been afraid to go head-to-head with Starbucks.

80. Shortly thereafter, Colorado Coffee Bean, LLC, learned of the Starbucks sale. Colorado Coffee Bean was unprepared for the news, and did not even have time to notify its employees before its employees were notified by customers.

III. Remedies Sought

81. Defendants successfully induced ten franchisees to sign a franchise agreement. All ten of these franchisees have joined in this lawsuit. These ten franchisees were used by the Defendants as guinea pigs to test the viability of franchising Peaberry stores.

82. All ten Franchisees are asserting claims based on Defendants' fraud, negligence, breaches of contract, bad faith breaches of contract, and consumer fraud.

83. Three of the Franchisees, Colorado Coffee Bean, LLC; Double R Coffee, LLC; and JKKR, LLC, have elected to rescind their franchise agreements, and have tendered back to Defendants all benefits received as a result of their franchise agreements and any related agreements. The remaining seven Franchisees have not yet elected to rescind their franchise agreements.

84. The actions of Defendants PCFI, PCI, Tointon, Orr and Perkins Coie was attended by circumstances of fraud, malice, or willful and wanton conduct sufficient to sustain an award of exemplary damages under C.R.S. 13-21-102.

FIRST CLAIM FOR RELIEF - Frustration of Purpose[3]
(*Colorado Coffee Bean, LLC, Double R Coffee, LLC, and JKKR, LLC v. All Defendants*)

85. Plaintiffs incorporate herein by reference as if set forth with complete particularity, all previous paragraphs of their Complaint.

86. The Plaintiffs' principal purpose for entering into their franchise agreements with PCFI, and making the financial commitments, above described, was to profitably operate a Peaberry gourmet retail coffee store premised primarily upon the market presence, substantial good will, excellent reputation, advertising strength, and name recognition that had been generated and sustained by the significant number of Peaberry retail coffee stores in Colorado.

87. Plaintiffs paid significant franchise fees, entered into long term real estate leases (which in some cases were personally guaranteed), and made substantial capital commitments in order to take advantage of the Peaberry brand and the reputation, good will, name recognition, market exposure and advertising capability of Peaberry retail coffee stores in Colorado. Without receipt of these benefits, their transactions would have made little sense.

88. After Plaintiffs signed their franchise agreements with Defendant PCFI, Defendant PCI sold most of its retail stores to its major market competitor, Starbucks.

89. The non-occurrence of such a sale was a basic assumption on which the contracts were made.

90. Capitalizing on the exposure, good will, reputation of Peaberry Coffee and the wide spread presence of its stores, was the principal purpose for Plaintiffs in entering into their franchise agreements.

91. By selling its retail corporate stores to Starbucks, Defendant PCFI and Defendant PCI robbed Plaintiffs of the benefit for which Plaintiffs had bargained, and had reasonably expected, in entering into their franchise agreements, entering into their lease agreements, and investing substantial capital, and purchasing exclusive franchise rights.

---

[3]Plaintiffs acknowledge their First Claim for Relief was dismissed pursuant to the Court's Order of August 9, 2006. Plaintiffs re-assert the claim here only for the purpose of preserving their appellate rights.

92. Plaintiffs would not have entered into their franchise agreements or lease agreements, nor would they have invested hundreds of thousands of dollars each, had they been aware that PCI would divest itself of most of its retail stores, especially by selling said retail stores to its largest competitor, and the recognized industry giant, Starbucks.

93. The sale of most of the Peaberry retail stores substantially frustrated the principal purpose and objective of the franchise agreements.

94. By selling their retail stores, Defendants PCFI, PCI, Tointon and Orr have destroyed the benefit for which Plaintiffs bargained and reasonably expected.

95. At all relevant times, Defendants Tointon and Orr were officers and directors of Defendant PCFI.

96. Defendants Tointon and Orr affirmatively made, approved of, directed, actively participated in, or cooperated in the frustration of the principal purpose of Plaintiffs' franchise agreements, alleged herein.

97. Accordingly, Defendants Tointon and Orr are personally liable to Plaintiffs.

98. Because the principal purpose of Plaintiffs' franchise agreements has been frustrated, Plaintiffs are entitled to rescind their franchise agreements and to receive further compensation sufficient to restore them to the positions they occupied prior to entering into their franchise agreements and making the other commitments and expenditures referenced herein.

WHEREFORE, Plaintiffs, pray for judgment in their favor and against Defendants PCFI, PCI, Tointon and Orr, jointly and severally, on their First Claim for Relief, rescinding their franchise agreements, and awarding damages sufficient to restore Plaintiffs to the positions they occupied prior to entering into their franchise agreements and making the capital expenditures and commitments incident and necessary to their franchise agreements.

SECOND CLAIM FOR RELIEF - False Representation
(*All Plaintiffs v. Defendants PCI, PCFI, Tointon, and Orr*)

99. Plaintiffs incorporate herein by reference as if set forth with complete particularity, all previous paragraphs of their Complaint.

100. Prior to, and at the time Plaintiffs signed their franchise agreements, Defendants PCFI, PCI, Tointon and Orr made at least the following affirmative false representations to Plaintiffs or omitted to apprise Plaintiffs of the following past or present material facts:

a. Defendants represented they intended to expand the market share and name recognition of Peaberry Coffee.

b. Defendants represented that Plaintiffs were getting in on the ground floor, when in truth, Defendants were using Plaintiffs as guinea pigs to test the viability of their franchise program.

c. Defendants represented that Defendant PCI was committed to the continued growth of Peaberry Coffee and intended to open new corporate stores to gain increased market share, name recognition and exposure.

d. Defendants represented that PCI intended to keep its corporate stores in existence.

e. Defendants misrepresented PCI's present intention to change the focus of its business plan by selling or closing the majority of its stores.

f. Defendants misrepresented the strength and stability of PCI and its retail stores.

g. Defendants misrepresented the sales and profitability of PCI's retail stores.

h. Defendants misrepresented the cost of equipment necessary to run a Peaberry store.

i. Defendants misrepresented its ability and willingness to provide operational support.

j. Defendants misrepresented its present intentions to support the ten-year lease commitments into which it induced Plaintiffs to enter.

k. Defendants misrepresented that Peaberry had a time tested demographic approach to selecting store locations.

101. Defendants made the above representations knowing them to be false or with the present intent not to honor them.

102. Defendants made the above false representations with the intent that Plaintiffs would rely on them.

103. The above false representations were material to Plaintiffs' decisions to enter into their franchise agreements, enter into ten-year lease commitments for retail premises, enter into

development agreements, invest substantial capital in build-out, furniture, fixtures, equipment and inventory, and purchase exclusive franchise rights.

104. Plaintiffs relied upon Defendants' false representations in making the above-referenced commitments.

105. Plaintiffs' reliance on the Defendants' false representations was justified and reasonable.

106. Plaintiffs have been damaged as a result of their reasonable reliance upon Defendants' false representations.

107. At all relevant times, Defendants Tointon and Orr were corporate officers and directors of Defendant PCFI.

108. Defendants Tointon and Orr affirmatively made, approved of, directed, actively participated in, or cooperated in the false representations, stated above.

109. Accordingly, Defendants Tointon and Orr are personally liable to Plaintiffs.

110. As a result of the above-stated false representations, Plaintiffs are entitled to rescind their franchise agreements and to receive further compensation sufficient to restore Plaintiffs to the positions they occupied prior to entering into their franchise agreements and making the other commitments and expenditures referenced herein.

111. In the alternative, any Plaintiff who elects to affirm its franchise agreement is entitled to recover damages sufficient to compensate it for losses it sustained as the result of Defendants' false representations.

WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants PCFI, PCI, Tointon and Orr, jointly and severally, on their Second Claim for Relief, either: (1) rescinding their franchise agreements and awarding damages sufficient to restore Plaintiffs to the positions they occupied prior to entering into their franchise agreements and making the capital expenditures and commitments incident and necessary to their franchise agreement; or in the alternative, (2) awarding damages sufficient to compensate them for losses they sustained as the result of Defendants' false representations, together with exemplary damages as appropriate, pre-judgment interest, costs and attorney fees, and such other and further relief as the Court deems just.

THIRD CLAIM FOR RELIEF - Nondisclosure or Concealment
(*All Plaintiffs v. Defendants PCI, PCFI, Tointon and Orr*)

112. Plaintiffs incorporate herein by reference as if set forth with complete particularity, all previous paragraphs of their Complaint.

113. Upon information and belief, prior to, and at the time Plaintiffs signed their franchise agreements, Defendants PCFI, PCI, Tointon and Orr, concealed or failed to disclose the following past or present material facts which they had a duty to disclose:

a. PCI had not had a profitable year since at least 1998, and had lost considerable amounts of money in each of these years.

b. Approximately half of PCI's retail stores failed to operate at a break-even level.

c. That PCI's operating history established the Peaberry model was not viable for franchising and failed to meet even minimal benchmarks for franchising.

d. Approximately 70% of PCI's retail stores would have lost money in 2002 and 2003 had they been burdened with a 6% royalty and additional cost of debt service, costs any franchisee would have incurred.

e. That over half of the PCI retail stores listed in the "mid" range of the gross sales chart actually lost money.

f. That PCI's historic operating performance indicated all of the stores in the "mid" and "low" ranges and some of the stores in the "high" range of the gross sales chart would have lost money had they been burdened with a 6% royalty and debt service on a $400,000 loan.

g. That PCI had no access to finances and lacked the ability to support the infrastructure required for a franchise system.

h. That PCI's present financial state made it questionable it would be able to continue operations to support the ten-year lease commitments Plaintiffs and other potential franchisees were required to enter.

i. That the initial ten Franchisees were being used as guinea pigs to test whether franchising Peaberry retail stores was viable.

j. Plans to close certain Peaberry retail stores.

k. That Defendant PCI was using Defendant PCFI to increase the number of Peaberry Coffee stores in an effort to make PCI an attractive buy-out target for Starbucks or another market competitor.

l. A purpose in creating PCFI was to increase Peaberry Coffee's market share to a level that would induce other market competitors to make an offer to purchase the Peaberry corporate stores.

m. Defendant PCI was planning to significantly change its business model by selling most of its corporate retail stores.

n. Defendant PCI intended to sell its corporate stores to a market competitor.

o. Defendant PCI had no intention of growing its corporate retail store network to increase Peaberry Coffee's market share and exposure.

p. Defendant Tointon intended to abandon and sell most of the retail coffee stores and continue the Peaberry Coffee business on a franchise basis through Defendant PCFI.

114. Defendants PCFI, PCI, Toiton and Orr concealed or failed to disclose the above facts with the intent of creating a false impression of the actual facts in the mind of the Plaintiffs.

115. The above facts were material to Plaintiffs' decisions to enter into their franchise agreements.

116. Defendants PCFI, PCI, Tointon and Orr concealed or failed to disclose the above facts with the intent that the Plaintiffs act in ignorance of the above facts and enter into their franchise agreements, commit to retail leases, make substantial capital investments in furniture, fixtures equipment and inventory, and purchase exclusive franchise rights.

117. Plaintiffs, in fact, took the above actions, and would not have taken them had they known the actual facts.

118. Plaintiffs were ignorant of the actual facts and entered into franchise agreements and ten-year lease commitments, made substantial long term and capital commitments, and purchased exclusive franchise rights, relying on the assumption that the concealed or undisclosed facts did not exist or were different from what they actually were.

119. Plaintiffs' reliance was reasonable and justified.

120. This reliance caused damage to Plaintiffs.

121. At all relevant times, Defendants Tointon and Orr were corporate directors and officers of Defendant PCFI.

122. Defendants Tointon and Orr affirmatively made, approved of, directed, actively participated in, and/or cooperated in the above-stated nondisclosure and concealment.

123. As a result of the nondisclosure and concealment, Plaintiffs are entitled to rescind their franchise agreements and to receive further compensation sufficient to restore Plaintiffs to the position they occupied prior to entering into their franchise agreements and making the other commitments and expenditures referenced herein.

124. In the alternative, any Plaintiff who elects to affirm its franchise agreement is entitled to recover damages sufficient to compensate it for losses it sustained as the result of the nondisclosure and concealment.

WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants PCFI, PCI, Tointon and Orr, jointly and severally, on their Third Claim for Relief, either: (1) rescinding their franchise agreements, and awarding damages sufficient to restore Plaintiffs to the positions they occupied prior to entering into their franchise agreements and making the capital expenditures and commitments incident and necessary to their franchise agreement; or in the alternative, (2) awarding damages sufficient to compensate them for losses they sustained as the result of the nondisclosure and concealment, together with exemplary damages as appropriate, pre-judgment interest, costs and attorney fees, and such other and further relief as the Court deems just.

FOURTH CLAIM FOR RELIEF - Negligent Misrepresentation
(*All Plaintiffs v. Defendants PCI, PCFI, Tointon and Orr*)

125. Plaintiffs incorporate herein by reference as if set forth with complete particularity, all previous paragraphs of their Complaint.

126. Defendants PCFI, PCI, Tointon and Orr negligently gave Plaintiffs false information regarding Defendants' present intentions for the future growth of PCI and its corporate stores as well as PCI's future business plans. Specifically, through words or conduct, Defendants expressed to Plaintiffs the following false information:

a. That at least 14 of 18 PCI retail stores were operating profitably.

b. That the Peaberry concept was viable for franchising.

c. That PCI was a financially strong corporation able to support a start-up franchise company.

d. Defendant PCI and Defendant PCFI intended to expand the market share and exposure of Peaberry Coffee.

e. Defendant PCI was committed to the continued growth of Peaberry Coffee by opening new corporate stores to gain increased market share, name recognition and exposure.

f. Defendant PCI intended to remain in existence and its corporate stores would compliment the franchise stores Plaintiff was purchasing.

g. Defendant PCI intended to take no actions to dilute the market share or decrease the exposure or presence of Peaberry Coffee or the number of Peaberry Coffee stores.

127. Defendants PCFI, PCI, Tointon and Orr were negligent in obtaining and/or communicating this information.

128. Defendants PCFI, PCI, Tointon and Orr gave this false information to Plaintiffs during the course of their business relationship and with the intent that Plaintiffs rely on the information in making business decisions. Specifically, this false information was given prior to and during franchise negotiations with Plaintiffs.

129. The above representations were material to Plaintiffs' decisions to enter into their franchise agreements, enter into ten-year lease commitments for retail premises, invest substantial capital in build-out, equipment and inventory, and purchase exclusive franchise rights.

130. Plaintiffs relied upon this information in taking the above actions.

131. Plaintiffs' reliance was reasonable and justified.

132. Plaintiffs have been damaged as a result of this reliance.

133. At all relevant times, Defendants Tointon and Orr were corporate directors and officers of Defendant PCFI.

134. Upon information and belief, Defendants Tointon and Orr approved of, directed, actively participated in, and/or cooperated in the negligent misrepresentations.

135. As a result of these negligent misrepresentations, Plaintiffs are entitled to rescind their franchise agreements and to receive further compensation sufficient to restore Plaintiffs to the positions they occupied prior to entering into their franchise agreements and making the other commitments and expenditures referenced herein.

136. In the alternative, any Plaintiff who elects to affirm its franchise agreement is entitled to recover damages sufficient to compensate it for losses it sustained as the result of Defendants' negligent misrepresentations.

WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants PCFI, PCI, Tointon and Orr, jointly and severally, on their Fourth Claim for Relief, either: (1) rescinding their franchise agreements and awarding damages sufficient to restore Plaintiffs to the positions they occupied prior to entering into their franchise agreements and making the capital expenditures and commitments incident and necessary to their franchise agreement; or in the alternative, (2) awarding damages sufficient to compensate them for losses they sustained as the result of Defendants' negligent misrepresentations, together with exemplary damages as appropriate, pre-judgment interest, costs and attorney fees, and such other and further relief as the Court deems just.

FIFTH CLAIM FOR RELIEF- Breach of Contract
(*All Plaintiffs v. Defendant PCFI*)

137. Plaintiffs incorporate herein by reference as if set forth with complete particularity, all previous paragraphs of their Complaint.

138. The franchise agreements contain an "Operating Assistance" section wherein Defendant PCFI expressly agreed to provide a number of services to Plaintiffs.

139. However, Defendant PCFI was undercapitalized and understaffed, and failed to perform the promised services. PCFI failed to meet even its most basic obligations under the franchise agreements. It failed to provide on-going updates of information and programs regarding coffee and coffee preparation techniques, marketing and promotional programs, the competition (and in fact sold corporate stores directly to its major competitor, Starbucks), the industry, the Peaberry Coffee concept and the licensed methods.

140. Defendant PCFI failed to provide meaningful training, marketing, assistance and advertising.

141. Defendant PCFI's above-referenced breaches of contract were material.

142. Plaintiffs have been damaged by Defendant PCFI's breaches of contract.

143. Defendant PCFI's breaches are substantial, and the damage caused by them is irreparable and would be inadequate and difficult or impossible to assess.

144. As a direct and proximate result of Defendant PCFI's breaches of contract, Plaintiffs are entitled to rescind their franchise agreements and to receive further compensation sufficient to restore Plaintiffs to the position they occupied prior to entering into their franchise agreements and making the other commitments and expenditures referenced herein.

145. In the alternative, any Plaintiff who elects to affirm its franchise agreement is entitled to recover damages sufficient to compensate it for losses it sustained as the result of Defendant PCFI's breach of contract.

WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendant PCFI on their Fifth Claim for Relief, either: (1) rescinding their franchise agreements, and awarding damages sufficient to restore Plaintiffs to the positions they occupied prior to entering into their franchise agreements and making the capital expenditures and commitments incident and necessary to their franchise agreement; or in the alternative, (2) awarding damages sufficient to compensate them for losses they sustained as the result of Defendant PCFI's breach of contract, together with pre-judgment interest, costs and attorney fees, and such other and further relief as the Court deems just.

SIXTH CLAIM FOR RELIEF - Breach of Implied Covenant of Good Faith and Fair Dealing
(All Plaintiffs v. Defendant PCFI)

146. Plaintiffs incorporate herein by reference as if set forth with complete particularity, all previous paragraphs of their Complaint.

147. Plaintiffs paid Defendant PCFI franchise fees in exchange for the right to take advantage of the national and local name recognition generated and sustained by the Peaberry Coffee corporate stores, and also the market exposure, advertising and good will generated by the widespread presence of Peaberry stores.

148. The number of Peaberry stores and the corresponding name recognition allowed Plaintiffs to compete with the major coffee retailers in the marketplace.

149. After Plaintiffs signed their franchise agreements with Defendant PCFI, Defendant PCI sold a majority of its corporate stores to its major market competitor, Starbucks.

150. When Defendant PCI sold its corporate stores, Plaintiffs were robbed of the Peaberry corporate name recognition, market exposure, and advertising benefits which Plaintiffs justifiably expected.

151. Defendant PCFI failed to act in good faith in performing its contracts with Plaintiffs by undermining the primary benefit for which Plaintiffs paid their franchise fees. This conduct is especially egregious in that the stores were sold to market giant, Starbucks.

152. Further, the franchise agreements require Plaintiffs to purchase various supplies and product directly from Defendant PCFI or vendors designated by PCFI, and allow Defendant PCFI to vary the product inventory mix and minimum levels of product Franchisees must have on hand. Defendant PCFI acted in bad faith, and in derogation of Plaintiffs' rights in enforcing these provisions of the franchise agreements, by taking the following actions:

a. Purchasing supplies from a third-party supplier, and selling these same supplies to Plaintiffs at a substantial mark-up, not permitting Plaintiffs to purchase supplies directly from the same or other suppliers.

b. Requiring Plaintiffs to purchase coffee beans and other product from PCI, who unreasonably marked up the price of coffee beans and other product Plaintiffs were required to purchase.

c. Arbitrarily increasing inventory costs to commercially unreasonable levels.

d. Continually requiring Plaintiffs to have product on hand well in excess of any reasonable sale expectations. In some instances, over half of the inventory Plaintiffs purchased had to be discarded due to product expiration.

e. Providing Plaintiffs with product that had already expired, or that had only a matter of days before reaching expiration.

f. Failing to offer Plaintiffs any credit, or monetary compensation, for the excessive product Plaintiffs were required to purchase and were unable to sell.

g. Requiring Plaintiffs to purchase their point of sale (POS) systems directly from Defendant PCFI. The POS systems were insufficient to meet even basic requirements. Plaintiffs were also unable to efficiently control the prices of product they sold inside their own stores, as Defendant PCFI inhibited Plaintiffs' ability to change, and retain, POS settings. Further, although represented as new, upon information and belief, the POS were systems over two years old, and no longer covered under warranty.

153. As a direct and proximate result of Defendant PCFI's failure to perform its contracts in good faith, Plaintiffs are entitled to rescind their franchise agreements and to receive further compensation sufficient to restore Plaintiffs to the positions they occupied prior to entering into their franchise agreements and making the other commitments and expenditures referenced herein.

154. In the alternative, any Plaintiff who elects to affirm its franchise agreement is entitled to recover damages sufficient to compensate it for losses it sustained as the result of Defendant PCFI's breach of the implied covenant of good faith and fair dealing.

WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendant PCFI on their Sixth Claim for Relief, either: (1) rescinding their franchise agreements, and awarding damages sufficient to restore Plaintiffs to the positions they occupied prior to entering into their franchise agreements and making the capital expenditures and commitments incident and necessary to their franchise agreements, or in the alternative, (2) awarding damages sufficient to compensate them for losses they sustained as the result of Defendant PCFI's breach of the implied covenant of good faith and fair dealing, together with pre-judgment interest, costs and attorney fees, and such other and further relief as the Court deems just.

SEVENTH CLAIM FOR RELIEF - Violation of the Colorado Consumer Protection Act, C.R.S. § 6-1-101, et seq.
(*All Plaintiffs v. Defendants PCI, PCFI, Tointon and Orr*)

155. Plaintiffs incorporate herein by reference as if set forth with complete particularity, all previous paragraphs of their Complaint.

156. Defendants PCFI, PCI, Tointon and Orr made false representations as to the benefits of the franchises sold to Plaintiffs, and advertised to other members of the public, including, but not limited to:

a. Defendants represented they intended to expand the market share and name recognition of Peaberry Coffee.

b. Defendants represented that Defendant PCI was committed to the continued growth of Peaberry Coffee and intended to gain increased market share, name recognition and exposure.

c. Defendants represented that PCI intended to keep its corporate stores in existence.

d. Defendants misrepresented PCI's present intention to change the focus of its business plan by selling or closing the majority of its stores.

e. Defendants misrepresented the strength and stability of PCI and PCI's retail stores.

f. Defendants misrepresented the sales and profitability of PCI's retail stores.

g. Defendants misrepresented the cost of equipment necessary to run a Peaberry store.

h. Defendants misrepresented its ability and willingness to provide operational support.

i. Defendants misrepresented its present intentions to support the ten-year lease commitment into which it induced Plaintiffs to enter.

j. Defendants misrepresented that Plaintiffs were getting in on the ground floor, when, in truth, Defendants were using Plaintiffs as guinea pigs to test the viability of franchising Peaberry stores.

157. Defendants PCFI, PCI, Tointon and Orr also failed to disclose material information which it had a duty to disclose concerning the franchise agreements at the time of advertising to the public and sale to Plaintiffs, intending to induce Plaintiffs and other members of the public into entering into franchise agreements.

158. Defendants PCFI, PCI, Tointon and Orr failed to disclose, without limitation, the following information:

a. The stability and profitability of PCI and the PCI retail stores.

b. The true financial condition of existing PCI retail stores.

c. That PCI had lost substantial money in each of the five years prior to franchising.

d. That many of PCI retail stores were not profitable.

e. That the vast majority of PCI retail stores would have lost substantial money if saddled with a 6% royalty fee and debt service on a $400,000 cost of build-out, costs any franchise store would incur.

f. That PCFI and PCI had no line of credit or access to financing.

g. That the Peaberry business concept was not viable for franchising, and failed to meet even minimal franchising benchmarks.

h. That the initial franchisees were being used as guinea pigs to test the viability of franchising Peaberry stores.

i. That PCI had plans to close certain Peaberry retail stores.

j. Defendant PCI was using Defendant PCFI to increase the number of Peaberry Coffee stores in an effort to make PCI an attractive buy-out target for Starbucks or another market competitor.

k. A purpose in creating PCFI was to increase Peaberry Coffee's market share to a level that would induce other market competitors to make an offer to purchase the Peaberry corporate stores.

l. A purpose in creating PCFI was to shield PCI's poor financial performance from prospective purchasers of Peaberry franchises.

m. Defendant PCI was planning to significantly change its business model by selling most of its corporate retail stores.

n. Defendant PCI intended to sell its corporate stores to a market competitor.

o. Defendant PCI had no intention of growing its corporate retail store network to increase Peaberry's market share and exposure.

p. Defendant Tointon intended to abandon and sell most of the retail coffee stores and continue the Peaberry Coffee business on a franchise basis through Defendant PCFI, and to market coffee beans directly to consumers dramatically decreasing corporate support, name recognition and exposure of the Peaberry brand.

159. Defendants' false representations and failure to disclose material information constitute deceptive trade practices under C.R.S. § 6-1-105(1)(e) and C.R.S. § 6-1-105(1)(u).

160. Defendants' deceptive trade practices occurred in the course of their business.

161. The Peaberry franchises were advertised and offered for sale to the general public.

162. Defendants' deceptive trade practices significantly impacted the Plaintiffs as actual consumers of Defendants' property, and as members of the public.

163. As a result of Defendants' deceptive practices, Plaintiffs have suffered injury in fact to a legally protected interest.

164. Defendants Tointon and Orr engaged in, and caused PCFI and PCI to engage in, the deceptive trade practices alleged herein.

165. Defendants PCFI, PCI, Tointon and Orr engaged in the deceptive trade practices alleged herein, in bad faith.

166. Under C.R.S. § 6-1-13, Plaintiffs are entitled to treble damages, costs and attorney fees.

WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants PCFI, PCI, Tointon and Orr on their Seventh Claim for Relief in an amount to be determined at trial, which amount shall be trebled pursuant to C.R.S. § 6-1-13, together with pre-judgment interest, costs and attorney fees, and such other and further relief as the Court deems just.

EIGHTH CLAIM FOR RELIEF - Civil Conspiracy
(All Plaintiffs v. All Defendants)

167. Plaintiffs incorporate herein by reference as if set forth with complete particularity, all previous paragraphs of their Complaint.

168. Upon information and belief, Defendants PCFI, PCI, Tointon, Orr and Perkins Coie agreed by words or conduct to accomplish a common objective: fraudulently inducing prospective purchasers to purchase Peaberry franchises and property rights.

169. There was a meeting of the minds between Defendants and Perkins Coie on the objective to be accomplished and/or the course of action to be undertaken in reaching this objective.

170. Without limitation, an unlawful act in which all Defendants engaged was a scheme to shield and withhold material adverse financial information, known to them at the time of advertising or sale, from Plaintiffs and potential consumers of Peaberry coffee franchises, with the intent of inducing Plaintiffs and others to purchase Peaberry coffee franchises in violation of C.R.S. 6-1-105(1)(u).

171. Plaintiffs suffered damages as a proximate result of Defendants' actions.

172. Defendants PCFI, PCI, Tointon, Orr and Perkins Coie are jointly and severally liable to Plaintiffs for damages incurred.

WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants PCFI, PCI, Tointon, Orr and Perkins Coie, jointly and severally, on their Eighth Claim for Relief in an amount to be determined at trial, together with exemplary damages as appropriate, pre-judgment interest, costs and attorneys fees, and such other and further relief as the Court deems just.

NINTH CLAIM FOR RELIEF - Alter Ego
(All Plaintiffs v. Defendants PCI, Tointon and Orr)

173. Plaintiffs incorporate herein by reference as if set forth with complete particularity, all previous paragraphs of their Complaint.

174. Defendant PCI is the sole shareholder of Defendant PCFI.

175. At all relevant times Defendant PCI, Defendant Tointon, and Defendant Orr managed and controlled the finances of Defendant PCFI.

176. Defendant PCFI was undercapitalized to undertake business operations as a franchisor, and was not capitalized to discharge its debts and obligations.

177. The majority of the initial capitalization of Defendant PCFI was used to create an elaborate and comprehensive boilerplate franchise agreement designed to shield material adverse financial information from Plaintiffs and to protect Defendants PCI and PCFI from the consequences of the wrongs it was about to commit against future franchisees.

178. Defendant PCI's inadequate capitalization of Defendant PCFI resulted in a constructive fraud on all persons who engaged in business with Defendant PCFI.

179. Defendant Tointon controls both Defendant PCI and Defendant PCFI, and dominates the finances, policies, and practices of both corporations so that both are essentially business conduits for Defendant Tointon.

180. Defendant PCI and Defendant PCFI also have identical officers and directors. The officers and directors are housed in the same office space and use the same desks for both companies.

181. Defendant PCFI does not have a separate corporate identity.

182. Defendants PCI, Tointon and Orr utilized Defendant PCFI to perpetrate a fraud upon Plaintiffs arising from the franchise relationships into which Defendants induced Plaintiffs to enter.

WHEREFORE, Plaintiffs pray for judgment against Defendants PCI, Tointon and Orr, on their Ninth Claim for Relief, in an amount to be determined at trial, together with pre-judgment interest, costs and attorney fees, and such other and further relief as the Court deems just.

TENTH CLAIM FOR RELIEF - Fraudulent Concealment
(*All Plaintiffs v. Defendant Perkins Coie*)

183. Plaintiffs incorporate herein by reference as if set forth with complete particularity, all previous paragraphs of their Complaint.

184. Perkins Coie represented themselves to be experienced franchise attorneys and business advisors.

185. Even a cursory review of PCI's financials would have demonstrated that PCI had lost substantial money in each of the five years before it investigated franchising, and that its business concept was not viable for franchising.

186. Perkins Coie designed disclosure documents to be used in conjunction with a newly formed franchise corporation to shield the material adverse financial performance of PCI, and its retail stores, from potential consumers of Peaberry franchises, and to give the false impression that Peaberry was franchising a viable business concept.

187. The purpose of these actions was to induce potential franchisees to enter into franchise agreements which they would not have done had they know the actual facts.

188. Perkins Coie took at least the following actions in furtherance of this goal:

a. Formed a new corporate entity, PCFI, to be the franchisor, for the express purpose of avoiding the obligation to disclose the prior two years of PCI audited financials, which would have reflected adverse financial information.

b. Designed a UFOC to be used in conjunction with the newly formed franchise corporation, which omitted material factual information but included a misleading earnings claim designed to imply success.

189. Through these actions, Perkins Coie concealed at least the following past or present material facts that in equity and good conscience should have been disclosed:

a. PCI had not had a profitable year since at least 1998, and had lost considerable amounts of money in each of the years since at least this time.

b. Many of PCI's retail stores failed to operate at a break-even level.

c. That PCI's operating history established the Peaberry model was not viable for franchising and failed to meet even minimal benchmarks for franchising.

d. That approximately 70% of PCI's retail stores would have lost money in 2002 and 2003 had they been burdened with only a 6% royalty and additional cost of debt service, costs any franchise store would have incurred.

e. That over half of the PCI retail stores listed in the "mid" range on the gross sales chart actually lost money.

f. That PCI's historic operating performance indicated all of the stores in the "mid" or "low" range and some of the stores in the "high" range of the gross sales chart would have lost money had they been burdened with a 6% royalty and debt service on a $400,000 loan.

g. That PCI had no access to finances and lacked the ability to support the infrastructure required for a franchise system.

h. That PCI's present financial state made it questionable it would be able to continue operations to support the ten-year lease commitments Plaintiffs and other potential franchisees were required to enter.

i. That the initial ten franchisees were being used as guinea pigs to test whether franchising Peaberry retail stores was viable.

190. Perkins Coie knew these facts were being concealed.

191. Plaintiffs were ignorant of these facts.

192. Perkins Coie intended the concealment be acted upon, and that the Plaintiffs act differently than they might have otherwise acted if the information had been disclosed.

193. Plaintiffs reasonably relied upon the concealment and were damaged as a result.

WHEREFORE, Plaintiffs pray for judgment in their favor, and against Defendant Perkins Coie, on their Tenth Claim for Relief, awarding damages sufficient to restore Plaintiffs to the positions they occupied prior to entering into their franchise agreements and making the capital expenditures and commitments incident and necessary to their franchise agreements, together with exemplary damages as appropriate, pre-judgment interest, costs and attorney fees, and such other and further relief as the Court deems just.

ELEVENTH CLAIM FOR RELIEF - Aiding and Abetting Fraudulent Concealment
(*All Plaintiffs v. Defendant Perkins Coie*)

194. Plaintiffs incorporate herein by reference as if set forth with complete particularity, all previous paragraphs of their Complaint.

195. Perkins Coie undertook the following actions:

a. Formed a new corporate entity, PCFI, to be the franchisor, for the express purpose of avoiding the obligation to disclose the prior two years of PCI audited financials.

b. Designed a UFOC to be used in conjunction with the newly formed franchise corporation which omitted material factual information but included a misleading earnings claim designed to imply success.

196. Through these actions, Perkins Coie knowingly and substantially assisted the remaining Defendants in concealing at least the following past or present material facts that in equity and good conscience should have been disclosed:

a. PCI had not had a profitable year since at least 1998, and had lost considerable amounts of money in each of the years since at least this time.

b. Many of PCI's retail stores failed to operate at a break-even level.

c. That the determination franchising was viable was premised on the assumption all franchise stores would operate at the level of the PCI retail stores listed on the "high" range of the gross sales chart, and would incur no cost for debt service.

d. That PCI's operating history established the Peaberry model was not viable for franchising and failed to meet even minimal benchmarks for franchising.

e. That approximately 70% of PCI's retail stores would have lost money in 2002 and 2003, had they been burdened with only a 6% royalty and additional cost of debt service, costs any franchise store would have incurred.

f. That over half of the PCI retail stores listed in the "mid" range on the gross sales chart actually lost money.

g. That PCI's historic operating performance indicated all of the stores in the "mid" and "low" ranges and some of the stores in the "high" range of the gross sales chart would have lost money had they been burdened with only a 6% royalty and debt service on a $400,000 loan.

h. That PCI had no access to finances and lacked the ability to support the infrastructure required for a franchise system.

i. That PCI's present financial state made it questionable it would be able to continue operations to support the ten-year lease commitments Plaintiffs and other potential franchisees were required to enter.

197. These facts were concealed with the intent of creating a false impression of the actual facts in the mind of the Plaintiffs.

198. These facts were material to Plaintiffs' decisions to enter into their franchise agreements.

199. Defendant Perkins Coie knowingly and substantially assisted the remaining Defendants in concealing or not disclosing the above facts with the intent that the concealment be acted upon, and that the Plaintiffs act differently than they might have otherwise acted if the information had been disclosed.

200. Plaintiffs relied upon the concealment and were damaged as a result.

201. Plaintiffs' reliance was reasonable and justified.

WHEREFORE, Plaintiffs, pray for judgment in their favor, and against Defendant Perkins Coie, on their Eleventh Claim for Relief, awarding damages sufficient to restore Plaintiffs to the positions they occupied prior to entering into their franchise agreements and making the capital expenditures and commitments incident and necessary to their franchise agreements, together with exemplary damages as appropriate, pre-judgment interest, costs and attorney fees, and such other and further relief as the Court deems just.

TWELFTH CLAIM FOR RELIEF - Violation of the Colorado Consumer Protection Act, C.R.S. § 6-1-101, et seq.
(All Plaintiffs v. Defendant Perkins Coie)

202. Plaintiffs incorporate herein by reference as if set forth with complete particularity, all previous paragraphs of their Complaint.

203. Through the UFOC and other disclosure materials, Defendant Perkins Coie failed to disclose, or caused the remaining Defendants to fail to disclose, material information which it had a duty to disclose, concerning the franchise agreements at the time of advertising to the public and sale to Plaintiffs, intending to induce Plaintiffs and other members of the public into entering into franchise agreements.

204. Defendant Perkins Coie failed to disclose, or caused the remaining Defendants to fail to disclose, without limitation, the following information which was known at the time of the advertisement or sale of franchise stores:

a. PCI had not had a profitable year since at least 1998, and had lost considerable amounts of money in each of the years since at least this time.

b. Many of PCI's retail stores failed to operate at a break-even level.

c. The determination franchising was viable was premised on the assumption all franchise stores would operate at the level of the PCI retail stores listed on the "high" range of the gross sales chart, and would incur no cost for debt service.

d. That PCI's operating history established the Peaberry model was not viable for franchising and failed to meet even minimal benchmarks for franchising.

e. That approximately 70% of PCI's retail stores would have lost money in 2002 and 2003, had they been burdened with only a 6% royalty and additional cost of debt service, costs any franchise store would have incurred.

f. That over half of the PCI retail stores listed in the "mid" range on the gross sales chart actually lost money.

g. That PCI's historic operating performance indicated all of the stores in the "mid" and "low" ranges and some of the stores in the "high" range of the gross sales chart would have lost money had they been burdened with only a 6% royalty and debt service on a $400,000 loan.

h. That PCI had no access to finances and lacked the ability to support the infrastructure required for a franchise system.

i. That PCI's present financial state made it questionable it would be able to continue operations to support the ten-year lease commitments Plaintiffs and other potential franchisees were required to enter.

j. That the initial ten franchisees were being used as guinea pigs to test whether franchising Peaberry retail stores was viable.

205. Defendant Perkins Coie's failure to disclose this information, which was known to it, was intended to induce Plaintiffs and other potential franchisees to enter into transactions with PCFI.

206. Defendant Perkins Coie's failure to disclose material information, constitutes a deceptive trade practice under C.R.S. § 6-1-105(1)(u).

207. Defendant Perkins Coie's deceptive trade practice occurred in the course of its business.

208. The Peaberry franchises were advertised, and offered for sale, to the general public.

209. Defendant Perkins Coie's deceptive trade practice significantly impacted the Plaintiffs as actual consumers of Defendant Perkins Coie's, or the remaining Defendants', property, and as members of the public.

210. As a result of Defendant Perkins Coie's deceptive practice, Plaintiffs have suffered injury in fact to a legally protected interest.

211. Under C.R.S. § 6-1-13, Plaintiffs are entitled to treble damages, costs and attorney fees.

WHEREFORE, Plaintiffs pray for judgment in their favor and against Perkins Coie on their Twelfth Claim for Relief in an amount to be determined at trial, which amount shall be trebled pursuant to C.R.S. § 6-1-13, together with pre-judgment interest, costs and attorney fees, and such other and further relief as the Court deems just.

THIRTEENTH CLAIM FOR RELIEF - Negligent Misrepresentation
(*All Plaintiffs v. Defendant Perkins Coie*)

212. Plaintiffs incorporate herein by reference as if set forth with complete particularity, all previous paragraphs of their Complaint.

213. Through the UFOC and other disclosure materials, Defendant Perkins Coie negligently supplied Plaintiffs with false and misleading information regarding the financial condition of PCI and its retail stores and the viability of the Peaberry model for franchising.

214. Specifically, Defendants conveyed to Plaintiffs the following false information regarding past or present facts:

a. That at least 14 of the 18 PCI retail stores were operating profitably.

b. That the Peaberry model was viable for franchising.

c. That PCI was a financially strong corporation able to support a startup franchise company.

215. Defendant Perkins Coie failed to exercise reasonable care or competence in obtaining or communicating this information.

216. Defendant Perkins Coie provided this false information during the course of its business or profession, or in a transaction in which it had a pecuniary interest.

217. This information was supplied to Plaintiffs and other potential franchisees for guidance in their business transaction in deciding whether to purchase a Peaberry franchise.

218. The Plaintiffs were members of a limited group of persons (potential franchisees) for whose benefit and guidance Perkins Coie intended to supply the information, or Perkins Coie knew the remaining Defendants intended to supply the information to Plaintiffs and other potential franchisees.

219. Through Plaintiffs' and other potential franchisees' reliance on this information, Perkins Coie intended the information to influence, or knew the remaining Defendants intended the information to influence, the Plaintiffs' decision to enter into franchise agreements.

220. The information was material to Plaintiffs' decisions to enter into their franchise agreements, enter into ten-year lease commitments for retail premises, invest substantial capital in build-out, equipment and inventory, and purchase exclusive franchise rights.

221. Plaintiffs relied upon this information in taking the above actions.

222. Plaintiffs' reliance was reasonable and justified.

223. Plaintiffs have been damaged as a result of this reliance.

224. Defendant Perkins Coie's actions were attended by circumstances of fraud, malice, or willful and wanton conduct sufficient to sustain an award of reasonable exemplary damages under C.R.S. 13-21-102.

WHEREFORE Plaintiffs pray for judgment in their favor, and against Defendant Perkins Coie, on their Thirteenth Claim for Relief, awarding damages sufficient to restore Plaintiffs to the positions they occupied prior to entering into their franchise agreements and making the capital expenditures and commitments incident and necessary to their franchise agreement, together with exemplary damages as appropriate, pre-judgment interest, costs and attorney fees, and such other and further relief as the Court deems just.

JURY DEMAND

Plaintiffs demand trial to a jury of 6 of all claims triable to a jury

DATED this 19th day of October, 2007.

Respectfully submitted,

PODOLL & PODOLL, P.C.

By: *s/ Richard B. Podoll*
Richard B. Podoll