**IN THE CIRCUIT COURT OF THE**

**17th JUDICIAL CIRCUIT IN AND**

**FOR BROWARD COUNTY, FLORIDA**

**Case No.**

**Judge**

**NUNO INC, 2, a Florida corporation a/k/a NUNO II, INC, NUNO IV, INC., a Florida corporation, PEMBROKE GARDENS RESTAURANT, INC., a Florida corporation, SOUTHLAND RESTAURANT, INC., a Florida corporation, WHITWORTH FARMS RESTAURANT, INC., a Florida corporation, CSV CONCEPTS V, LLC, a Florida limited liability company, VINGIANO ITALIAN RESTAURANT, INCORPORATED, a Florida corporation, EDDIE BEIRA, NUNO BEIRA, and CHRISTOPHER S. VINGIANO,**

 **Plaintiffs,**

**vs.**

**SAL’S ITALIAN RISTORANTE, INC., a Florida corporation, DIFFERENT CONCEPTS, INC., a Florida corporation,**

**SALVATORE STELLINO, CHENEY BROS., INC, a Florida corporation, and THE OPICI COMPANY, a Florida corporation,**

 **Defendants**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/**

**VERIFIED COMPLAINT FOR MONETARY DAMAGES, INJUNCTIVE, DECLARATORY, AND OTHER EQUITABLE RELIEF, AND DEMAND FOR JURY TRIAL**

The Plaintiffs **NUNO INC., 2** a/k/a Nuno II, Inc. (“Nuno 2”)**,** a Florida corporation, **NUNO IV, INC.** (“Nuno IV”), a Florida corporation, **PEMBROKE GARDENS RESTAURANT, INC.** (“Pembroke”), a Florida corporation, **SOUTHLAND RESTAURANT INC.** (“Southland”), a Florida corporation, **WHITWORTH FARMS RESTAURANT, INC.** (“Whitworth Farms”), a Florida corporation, **CSV CONCEPTS V, LLC** (“CSV”), a Florida limited liability company, **VINGIANO ITALIAN RESTAURANT, INCORPORATED.** (“Vingiano Inc.”), a Florida corporation, **EDDIE BEIRA** (“E. Beira”), **NUNO BEIRA** (“N. Beira”), and **CHRISTOPHER S. VINGIANO** (“Vingiano”) (collectively “Plaintiffs”), sue the Defendants **SAL’S ITALIAN RESTAURANT, INC.** (“Sal’s”), a Florida corporation, **DIFFERENT CONCEPTS INC.,** (“DCI”), a Florida corporation, and **SALVATORE STELLINO** (“Stellino”), (Sal’s, DCI and Stellino are collectively referred to as the “Sal’s Defendants”), and **CHENEY BROS., INC.** (Cheney”), a Florida corporation, and **THE OPICI COMPANY** (“Opici”), a Florida corporationdoing business in Palm Beach County, Florida (Cheney and Opici are collectively referred to as the “Designated Supplier Defendants”) allege as follows:

**NATURE OF THE ACTION AGAINST THE SAL’S DEFENDANTS**

1. This case involves franchise fraud and the violation of both Florida statutory law and Federal Trade Commission franchise disclosure regulations through the sale of a business “with improper strings attached”. More strikingly, it involves taking advantage of young, unsophisticated “sauce and flour” restaurant workers by the Defendant Stellino who not only induced them to grossly overpay for the purchase of his undisclosed franchise restaurants before he went to jail for tax evasion, but also overpay **to this day** for restaurant food and supplies from the Designated Supplier Defendants herein and other suppliers who charge inflated prices to the Plaintiffs because these suppliers pay undisclosed rebates and other kickbacks to the Sal’s Defendants.

The Defendant, Stellino, induced Plaintiffs N. Beira and Vingano (who were his restaurant employees at the time) and later Plaintiff Eddie Beira to believe that they were being given an “opportunity of a lifetime” because the Defendant Stellino would be providing all the financing the Plaintiffs needed to buy the restaurants. As a direct, proximate, and intended result of materially false statements and omissions of material facts made by the Sal’s Defendants regarding the true nature of the franchise and/or business opportunity offered, the Plaintiffs were fraudulently induced to collectively pay in excess of $10,000,000 to the Sal’s Defendants for these franchises and/or business opportunities.

Thereafter, and continuing to this day, the Sal’s Defendants and the Designated Supplier Defendants conspired to deprive the Plaintiffs of hundreds of thousands of dollars in vendor rebates based on the Plaintiffs’ purchases of certain products for their Restaurants from the Designated Supplier Defendants and other designated suppliers. The Asset Purchase Agreement required the purchaser of the assets of the Restaurant to agree to purchase certain products utilized in the operation of the restaurant only from suppliers designated by the Sal’s Defendants including the Designated Supplier Defendants. However, the Sal’s Defendants failed to disclose to the purchaser before the purchase of the fact that the Sal’s Defendants would receive a cash rebate, fee, commission, or kick back based on the purchaser’s ongoing purchases from the Designated Suppliers. These undisclosed rebates total tens of thousands of dollar per restaurant per year.

Moreover, to evade compliance with the statutorily mandated disclosure obligations of sellers of a franchise and/or business opportunity under the FTC Franchise Rule, 16 C.F.R. Part 436, the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), Fla. Stat. § 501.204(1), the Florida Franchise Act, Fla. Stat. § 817.416, and the Florida Business Opportunities Act, Fla. Stat. § 559.803, the Sal’s Defendants formed and caused the Asset Purchase Agreements for the assets of each Restaurant to be drafted in a manner that was designed to conceal the illegal nature of the franchises and/or business opportunities it offered and sold to the Plaintiffs.

Under the FTC Franchise Rule, the asset purchase agreement arrangement offered and sold by the Sal’s Defendants clearly meets the three elements of the definition of a “franchise”, that is, (1) the distribution of goods or services identified by a trademark or trade name; (2) significant control over the franchisee; and (3) a required payment of at least $500 within six months of signing of an agreement. The Sal’s Defendants also had a statutory duty to disclose the rebate arrangement, but failed to do so.

This illegal arrangement has continued for years with the cooperation of the Designated Supplier Defendants who never disclosed to their customers (the Plaintiffs) that they were paying the Sal’s Defendants significant cash compensation based on the Plaintiffs’ purchases rather than giving them a reduction in the purchase price for the products they sold to the Plaintiffs. As a result of the illegal and fraudulent actions of the Sal’s Defendants, the Plaintiffs respectfully request this Court to, *inter alia*: (a) Refund all improper royalty and “administrative fees” charged Plaintiffs; (b) Refund all improper rebates and kickbacks that were withheld from the Plaintiffs;(c) Enjoin the Sal’s Defendants from enforcing improper royalty, administrative fee or operational requirements of such agreements against the Plaintiffs; and (d) Award the Plaintiffs appropriate actual and statutory damages in accordance with the proof adduced at trial, plus attorney’s fees, costs, and pre- and post-judgment interest.

**JURISDICTION AND VENUE**

2. The monetary claims asserted in this Complaint seek damages in excess of $15,000.00, exclusive of interest and costs.

3. This Complaint also asserts claims seeking injunctive, declaratory, and other equitable relief that are within the subject matter jurisdiction of this Court.

 4. A substantial part of the acts, events, transactions, practices, courses of business, occurrences, and circumstances giving rise to the claims asserted herein arose in Broward County, Florida, and the acts complained of herein were perpetrated upon the Plaintiffs by the Defendants within Broward County, Florida, and elsewhere within the State of Florida. Accordingly, venue is proper before this Court in Broward County, Florida.

 5. All conditions precedent to commencing this action have occurred, been satisfied, or have been waived.

**THE PARTIES**

1. The Plaintiff, **NUNO 2**, was incorporated initially by the Plaintiff, N. Beira, for the purpose of purchasing and operating the Sal’s franchise/and or business opportunity venture described herein. He later transferred his shares in **Nuno 2** to his brother, E. Beira. E. Beira is the sole shareholder of **Nuno 2**.
2. The Plaintiff, **Nuno IV**, was incorporated initially by the Plaintiff, N. Beira, for the purpose of purchasing and operating the Sal’s franchise/and or business opportunity venture described herein. He later transferred his shares in **Nuno IV** to his brother, E. Beira. E. Beira is the sole shareholder of **Nuno IV**.
3. The Plaintiff, **Pembroke**, was incorporated by the Plaintiff, N. Beira, for the purpose of purchasing and operating the Sal’s franchise/and or business opportunity venture described herein. N. Beira is the sole shareholder of **Pembroke**.
4. The Plaintiff, **Southland**,was incorporated by the Plaintiff, N. Beira, for the purpose of purchasing and operating the Sal’s franchise/and or business opportunity venture described herein. N. Beira is the sole shareholder of **Southland**.
5. The Plaintiff, **Whitworth Farms**, was incorporated by the Plaintiff, Vingiano, for the purpose of purchasing and operating the Sal’s franchise/and or business opportunity venture described herein. Vingiano is the sole shareholder of **Whitworth Farms**.
6. The Plaintiff, **CSV**, was organized by the Plaintiff, Vingiano, for the purpose of operating the Sal’s franchise/and or business opportunity venture described herein. Vingiano is the sole member of **CSV**.
7. The Plaintiff, **Vingiano Inc.**, was incorporated by the Plaintiff, Vingiano, for the purpose of purchasing and operating the Sal’s franchise/and or business opportunity venture described herein. Vingiano is the sole shareholder of **Vingiano Inc**.
8. The Plaintiff, **E. Beira**, is over the age of twenty-one years of age, and resided in Palm Beach County, Florida from 1998 to 2005, the time the contracts were entered into for the purchase of the initial five restaurants involved in this matter.
9. The Plaintiff, **N. Beira**, is over the age of twenty-one years of age, and resided in Palm Beach County, Florida at all relevant times herein.
10. The Plaintiff, **Vingiano**, is over the age of twenty-one years of age, and resided in Palm Beach County Florida at all relevant times herein.
11. The Defendant, **Sal’s**, is a Florida corporation that maintained its principal place of business in Broward County, Florida, at all relevant times herein. As described below in the General Allegations, Sal’s is engaged in the business of offering and selling undisclosed franchises and/or business opportunities in Broward County, Florida, and elsewhere in the State of Florida. Upon information and belief, Sal’s is controlled and operated, directly and/or indirectly by Stellino.
12. The Defendant, **DCI**,is a Florida corporation that maintained its principal place of business in Broward County, Florida, at all relevant times herein. As described below in the General Allegations, DCI is engaged in the business of offering and selling undisclosed franchises and/or business opportunities in Broward County, Florida, and elsewhere in the State of Florida. Upon information and belief, DCI is controlled and operated, directly and/or indirectly by the Defendant Stellino. DCI is the owner and licensee of some of the various “Sal’s Italian Ristorante” trademarks as part of the franchise and/or business opportunities.
13. The Defendant, **Stellino**, upon information and belief resided in Broward County, Florida, at all relevant times herein. At all relevant times, Stellino acted as an agent, representative, or officer of the Defendants, DCI and Sal’s, and acted within the course and scope of his authority as an agent, representative, or officer with the permission, consent and/or approval of the Defendants, Sal’s and DCI, during the existence of the relationship between the parties in this matter.
14. The Defendant, **Cheney**, is a Florida corporation that maintained its principal place of business in Palm Beach County, Florida, at all relevant times herein. As described below in the General Allegations, Cheney participated in the conspiracy with the Sal’s Defendants to deprive the Plaintiffs of hundreds of thousands of dollars in vendor rebates based on the Plaintiffs’ purchases of certain products for their Restaurants from the Designated Supplier Defendants and other designated suppliers.
15. The Defendant, **Opici**, is a Florida corporation that maintained its principal place of business at 1425 Watertower Rd, Lake Park, Florida, 33403. Opici is authorized to conduct and in fact does conduct business throughout the State of Florida. As described below in the General Allegations, Opici participated in the conspiracy with the Sal’s Defendants to deprive the Plaintiffs of hundreds of thousands of dollars in vendor rebates based on the Plaintiffs’ purchases of certain products for their Restaurants from the Designated Supplier Defendants and other designated suppliers.

**GENERAL ALLEGATIONS**

1. Sal’s operates a chain of dine-in, take-out and delivery Italian food restaurants that offer a variety of specialty and custom-made pizzas, pastas, salads, and other hot dish specials, all doing business under the name “Sal’s Italian Ristorante.”
2. In addition to owning and operating corporate stores, the Sal’s Defendants also offer for sale what they purported to be ‘asset purchase agreements” for the purchase of certain existing Sal’s Italian Ristorante restaurants located throughout Southern Florida, including those Restaurants purchased by the Plaintiffs.
3. In reality, however, the Plaintiffs were actually buying an undisclosed franchise as the business arrangement reflected in the asset purchase agreements included the license of a mark, the payment of a fee and the retention by the Sal’s Defendants of significant control over the operation of the Restaurant and/or significant assistance to the purchaser.
4. Pursuant to the various asset purchase agreements the Plaintiffs entered into with the Sal’s Defendants, Plaintiffs were required to pay a monthly $400 administrative (license) fee for the right to use the “Sal’s Italian Ristorante” trade name. Moreover, the Plaintiffs were required to operate their Sal’s franchises pursuant to the policies and procedures established by the Sal’s Defendants.
5. In addition to executing the asset purchase agreements, the Plaintiffs typically executed a promissory note, security agreement, and lease assignment in favor of the Sal’s Defendants. Pursuant to the asset purchase agreements, once the Plaintiffs paid off the promissory note, they could elect to remain as a Sal’s Italian Ristorante, provided that the Plaintiffs pay a monthly royalty fee of between 2.25% to 3% of the Restaurant’s gross revenues. The Plaintiffs were also required to continue to operate the Restaurant under the policies and procedures established by the Sal’s Defendants for the operation of a Sal’s Italian Ristorante. This includes the license to continue to use the Sal’s Italian Ristorante logos and trademarks, along with preparing foods pursuant to the Sal’s Defendants’ menu and procedures established by the Sal’s Defendants.
6. Moreover, the Plaintiffs were required to purchase supplies and materials from vendors designated by the Sal’s Defendants that the Sal’s Defendants approved for providing the specific quality and quantity of supplies and ingredients that had to be incorporated into the Sal’s menu. These vendors include the Designated Supplier Defendants.
7. The Sal’s Defendants also fraudulently concealed the fact that they received large kickbacks and rebates from the Designated Supplier Defendants and other “food show” vendors who sold products to the Sal’s Defendants, based on the volume of supplies and materials that the Plaintiffs purchased from the Designated Supplier Defendants and other designated suppliers.
8. The Sal’s Defendants not only receive undisclosed kickbacks on individual items such as pizza boxes and pizza sauce, but they also receive kickbacks on the overall purchases Plaintiffs make from suppliers and distributors such as Defendant Cheney.
9. As an example, the Plaintiffs are required to purchase hundreds of items for their restaurants from Defendant Cheney at prices well-above the fair market rate. Indeed, the prices charged by Defendant Cheney are well-above the price Plaintiffs could purchase from another supply distributor such as Roma, as more fully described below. For example:

a. The Plaintiffs can purchase Italian plum tomatoes from Roma for $18.00 a case, but instead are required to purchase the same plum tomatoes from the Defendant Cheney for $20.67 a case, which is a $2.67 (over 14%) increase for each case of plum tomatoes. Plaintiffs order approximately 6,000 cases of plum tomatoes a year, resulting in overage charges of over $16,020 per year just for plum tomatoes for all seven (7) restaurants currently owned by the Plaintiffs herein.

b. The Plaintiffs can purchase tubed squid from Roma for $2.90 per pound, but instead are required to purchase the same tubed squid from the Defendant Cheney for $3.87 per pound, which is a $0.97 (over 31%) increase for each pound of tubed squid. Plaintiffs order approximately 9,100 pounds of tubed squid per year, resulting in overage charges of $8,827 per year just for tubed squid for all seven (7) restaurants currently owned by the Plaintiffs herein.

c. The Plaintiffs can purchase sliced pepperoni from Roma for $2.54 per pound, but instead are required to purchase the same pepperoni from the Defendant Cheney for $2.79 per pound, which is a $.25 (nearly 10%) increase for each pound of pepperoni. Plaintiffs order approximately 210 pounds of pepperoni per week, resulting in overage charges of $2,730 per year just for pepperoni for all seven (7) restaurants currently owned by the Plaintiffs herein.

d. The Plaintiffs can purchase Grade A solid butter in 36-pound cases from Roma for $62.89 per case, but instead are required to purchase the same butter from the Defendant Cheney for $65.52 per case, which is a $2.63 (over 4%) increase for each case of butter. Plaintiffs order approximately one case of butter per week, resulting in overage charges of $957.32 per year just for butter for all seven (7) restaurants currently owned by the Plaintiffs herein.

e. The Plaintiffs can purchase 16 x 16 inch Kraft B Flute pizza boxes from Roma for a negotiated price of $13.94 per case, but instead are required to purchase their pizza boxes from the Defendant Cheney for $16.98 per case, which is a $3.03 (nearly 22%) increase for each case of pizza boxes. Plaintiffs order approximately 105 cases of pizza boxes per week, resulting in overage charges of $16,543 per year just for pizza boxes for all seven (7) restaurants currently owned by the Plaintiffs herein.

f. The Plaintiffs can purchase pizza sauce super heavy with basil from Roma for $22.38 per case, but instead are required to purchase the same pizza sauce from the Defendant Cheney for $34.46 per case, which is a $12.08 (over 54%) increase for each case of pizza sauce. Plaintiffs order approximately 800 cases of pizza sauce a year, resulting in overage charges of $9,664 per year just for pizza sauce. Attached hereto as **Exhibit A** are true and correct copies of the purchase prices for the various products Plaintiffs could purchase for their Restaurants from Roma. Also attached hereto as **Exhibit B** are true and correct copies of the purchase prices for the various products Plaintiffs are required to produce from Defendant Cheney.

1. As a result of having to purchase their supplies from the Defendant Cheney, the Plaintiffs over pay approximately $61,442.76 per year for just these six (6) items. The Plaintiffs are required to purchase scores of additional items well above market price, in addition to the 6 items described above.
2. Upon information and belief, the Sal’s Defendants receive rebates on each of these individual items purchased by the Plaintiffs, as well as receiving an overall distribution rebate for the total dollar amount the Plaintiffs purchase from the Defendant Cheney.
3. Upon information and belief, the Sal’s Defendants receive a 3.5% rebate on the total amount of gross sales made by the Defendant Cheney to the Plaintiffs, which is approximately $2,000,000 per year, resulting in an overall distribution rebate of approximately $70,000 for the Sal’s Defendants.
4. Upon information and belief, the Sal’s Defendants collect between $80,000 to $100,000 in rebates and kickbacks per restaurant from the Defendant Cheney per year. Upon further information and belief, this means the Sal’s Defendants earn approximately $560,000 to $700,000 in rebates and kickbacks per year from the Plaintiffs’ existing Restaurants through the Defendant Cheney.
5. In addition to collecting rebates from the Designated Supplier Defendants, the Sal’s Defendants receive kickbacks and rebates from certain Food Vendor Suppliers that the Sal’s Defendants would meet at various food shows and expositions.
6. By entering into these purchase contracts with certain Food Vendor Suppliers, the Plaintiffs were required to purchase pepperoni, sausage, cheese, and fish (in particular from Regal and Penapesci) at inflated prices. Moreover, the Sal’s Defendants received rebates from these Food Vendor Suppliers for the food products Plaintiffs were required to purchase.
7. Additionally, in and around February 2010, the Plaintiffs learned that the Sal’s Defendants received quarterly kickbacks from their beverage distributor PepsiCo, when the Plaintiff, Nuno II, mistakenly received a rebate check for $18,280.39 from PepsiCo that was intended for the Sal’s Defendants. Upon information and belief, this rebate check was for the 2009 fourth quarter purchases made by the Plaintiffs for their restaurants. Attached hereto as **Exhibit C** is a true and correct copy of the February 12, 2010 check.
8. Rather than reducing the purchase prices for the products purchased and not paying any money to the Sal’s Defendants, or paying these rebates to the Plaintiffs, either of which would significantly reduce the cost of goods purchased for their Restaurants and increase their net profit, the Designated Supplier Defendants paid the money to the Sal’s Defendants. The Sal’s Defendants have kept this money for themselves. Neither the Sal’s Defendants nor the Designated Supplier Defendants ever notified the Plaintiffs of these rebates.
9. In addition to improperly disguising the franchise relationship as asset purchase agreements, the Sal’s Defendants also violated the FTC Franchise Rule by failing to provide each Plaintiff with a Uniform Franchise Offering Circular (“UFOC”) or Franchise Disclosure Document (“FDD”) before the Plaintiffs purchased the Restaurants that, in ITEM 8, would have specifically disclosed any rebates the Sal’s Defendants had received or would receive in the future from any supplier.

**Plaintiff E. Beira, as Assignee of N. Beira**

1. Prior to acquiring the asset purchase agreements from his brother N. Beira for Nuno 2 and Nuno IV, the Plaintiff, E. Beira, spoke with the Defendant, Stellino, from the Sal’s Defendants regarding the acquisition of certain Sal’s Italian Ristorantes, in and around 2000 to 2002. During these discussions, the Defendant, Stellino, never mentioned the fact that the Plaintiff, E. Beira, would actually be acquiring a franchise, nor the fact that the Sal’s Defendants would be receiving kickbacks and rebates from certain vendors from whom the purchaser must purchase certain products in connection with the operation of the Restaurant as part of the purchase of the assets including the Designated Supplier Defendants.
2. Pursuant to the Asset Purchase Agreement dated February 1, 2000 (the “Nuno II Agreement”), the Plaintiff, Nuno 2, purchased the assets comprising the Sal’s Italian Ristorante located at 4749 North Congress Avenue, Lantana Florida. Attached hereto as **Exhibit D** is a true and correct copy of the Nuno II Agreement.
3. In addition to executing the Nuno II Agreement, the Plaintiff, N. Beira, executed a promissory note in connection with the sale of the franchise (“Lantana Promissory Note”).
4. The Plaintiff, E. Beira, as assignee of N. Beira, has fully paid off the Lantana Promissory Note.
5. Pursuant to the terms of the Nuno II Agreement, the Plaintiff, Nuno 2, began to pay a $400 a month administrative fee for the right to use the “Sal’s Italian Ristorante” trade name until the Lantana Promissory Note was paid.
6. Moreover, Sections 14 and 15 of the Nuno II Agreement required the Plaintiff, Nuno 2, to operate its business pursuant to the policies and procedures established by the Sal’s Defendants.
7. Additionally, once the Plaintiff, Nuno 2, fully paid off the Lantana Promissory Note, it started to pay the Sal’s Defendants a royalty fee of 2¼% of the Restaurant’s gross revenue. The Plaintiff, Nuno 2, is also required to continue to operate the Restaurant under the policies and procedures established by the Sal’s Defendants, including the preparation of food for the menu. The Plaintiff, Nuno 2, is also required to purchase supplies and materials from vendors designated by the Sal’s Defendants including the Designated Supplier Defendants.
8. The Sal’s Defendants failed to advise the Plaintiff, E. Beira, that they would be receiving ongoing kickbacks and rebates from certain vendors including the Designated Supplier Defendants for products the Plaintiffs, E. Beira and Nuno 2, were required to purchase for their Sal’s Italian Ristorante Restaurant.
9. Furthermore, on June 29, 2001, the Plaintiff, Nuno IV, entered into an Asset Purchase Agreement for the assets comprising the Sal’s Italian Ristorante located at 4956 Le Chalet Boulevard, Boynton Beach, Florida 33436 (the “Nuno IV Agreement”). Attached hereto as **Exhibit E** is a true and correct copy of the Nuno IV Agreement.
10. In addition to executing the Nuno IV Agreement, the Plaintiff, Nuno IV, also executed a promissory note in connection with the sale of the franchise. (“Nuno IV Promissory Note”).
11. Pursuant to the terms of the Nuno IV Agreement, the Plaintiff, Nuno IV, began to pay a $400 a month administrative fee for the right to use the “Sal’s Italian Ristorante” trade name until the Nuno IV Promissory Note was paid.
12. Moreover, Sections 14 and 15 of the APA II Agreement required the Plaintiff, Nuno IV, to operate its business pursuant to the policies and procedures established by the Sal’s Defendants.
13. The Nuno IV Promissory Note has been satisfied, in part, in 2010 by an increase in the royalty from 2¼% to 3% of gross revenues per week.
14. Additionally, once the Plaintiff, Nuno IV, fully paid off the Nuno IV Promissory Note, it started to pay the Sal’s Defendants a royalty fee of 3% of the Restaurant’s gross revenue in lieu of the administrative fee. The Plaintiff, Nuno IV, is also required to continue to operate the restaurant under the policies and procedures established by the Sal’s Defendants, including the preparation of food for the menu. The Plaintiff, Nuno IV, is also required to purchase supplies and materials from vendors designated by the Sal’s Defendants including the Designated Supplier Defendants.
15. The Sal’s Defendants failed to advise the Plaintiff, E. Beira, that they were receiving kickbacks and rebates from certain vendors including the Designated Supplier Defendants for products the Plaintiffs, E. Beira and Nuno IV, were required to purchase for their Sal’s Italian Ristorante Restaurant.

**Plaintiff N. Beira**

1. Prior to signing the asset purchase agreements, the Plaintiff, N. Beira, on behalf of Pembroke and Southland, spoke with the Defendant, Stellino, from the Sal’s Defendants regarding the purchase of a Sal’s Italian Ristorante, beginning in 1998.
2. During these discussions, the representatives from the Sal’s Defendants never mentioned the fact that N. Beira would actually be purchasing a franchise, nor the fact that the Sal’s Defendants would be receiving kickbacks and rebates from certain vendors from whom the purchaser must purchase certain products in connection with the operation of the Restaurants as part of the purchase of the assets including the Designated Supplier Defendants.
3. The Plaintiff, N. Beira, purchased several Sal’s Italian Ristorante Restaurants beginning in and around 1998 through 2000, but has since sold or assigned these Restaurants to other third-parties.
4. Pursuant to the Agreement dated September 7, 2010 (the “Equity Ownership Agreement”), the Plaintiff, N. Beira, obtained sole equity ownership rights to Pembroke, which included the assets comprising the Sal’s Italian Ristorante located at 14535 SW 5th Street, Pembroke Pines, Florida 33027. Attached hereto as **Exhibit F** is a true and correct copy of the Equity Ownership Agreement.
5. Pursuant to the terms of the Equity Ownership Agreement, the Plaintiff, Pembroke, began to pay a $425 a month administrative fee for the right to use the “Sal’s Italian Ristorante” trade name.
6. Moreover, the Equity Ownership Agreement required the Plaintiff, Pembroke, to operate its business pursuant to the policies and procedures established by the Sal’s Defendants.
7. Additionally, the Equity Ownership Agreement requires the Plaintiff, Pembroke, to pay the Sal’s Defendants a royalty fee of 1.5% of the Restaurant’s gross revenues for years 3 through 5 and 2.25% of the Restaurant’s gross revenue for all years thereafter. The Plaintiff, Pembroke, was not required to pay a royalty fee to the Sal’s Defendants for the first 2 years of the Equity Ownership Agreement. The Plaintiff, Pembroke, is also required to continue to operate the Restaurant under the policies and procedures established by the Sal’s Defendants, including the preparation of food for the menu. The Plaintiff, Pembroke, is also required to purchase supplies and materials from vendors designated by the Sal’s Defendants including the Designated Supplier Defendants.
8. The Sal’s Defendants failed to advise the Plaintiff, N. Beira, that they would be receiving ongoing kickbacks and rebates from certain vendors including the Designated Supplier Defendants for products the Plaintiffs, N. Beira and Pembroke, were required to purchase for their Sal’s Italian Ristorante Restaurants.
9. Pursuant to the Equity Ownership Agreement, the Plaintiff, N. Beira, obtained sole equity ownership rights to the Plaintiff, Southland, which included the assets comprising the Sal’s Italian Ristorante located at 20505 S. Dixie Hwy #1245 Miami, Florida 33189. Attached hereto as **Exhibit F** is a true and correct copy of the Equity Ownership Agreement.
10. Pursuant to the terms of the Equity Ownership Agreement, the Plaintiff, Southland, began to pay a $425 a month administrative fee for the right to use the “Sal’s Italian Ristorante” trade name.
11. Moreover, the Equity Ownership Agreement required the Plaintiff, Southland, to operate its business pursuant to the policies and procedures established by the Sal’s Defendants.
12. Additionally, the Equity Ownership Agreement requires the Plaintiff, Southland, to pay the Sal’s Defendants a royalty fee of 1.5% of the Restaurant’s gross revenue for years 3 through 5 and 2.25% of the Restaurant’s gross revenue for all years thereafter. The Plaintiff, Southland, was not required to pay a royalty fee to the Sal’s Defendants for the first 2 years of the Equity Ownership Agreement. The Plaintiff, Southland, is also required to continue to operate the Restaurant under the policies and procedures established by the Sal’s Defendants, including the preparation of food for the menu. The Plaintiff, Southland, is also required to purchase supplies and materials from vendors designated by the Sal’s Defendants including the Designated Supplier Defendants.
13. The Sal’s Defendants failed to advise the Plaintiff, N. Beira, that they would be receiving ongoing kickbacks and rebates from certain vendors including the Designated Supplier Defendants for products the Plaintiffs, N. Beira and Southland, were required to purchase for their Sal’s Italian Ristorante Restaurant.

**Plaintiff Vingiano**

1. Prior to signing the asset purchase agreements, the Plaintiff, Vigniano, on behalf of Whitworth Farms, CSV, and Vingiano Inc., spoke with Salvatore Sellino from the Sal’s Defendants regarding the purchase of a Sal’s Italian Ristorante, beginning in 1998.
2. During these discussions, the representatives from the Sal’s Defendants never mentioned the fact that the Plaintiff, Vingiano, would actually be purchasing a franchise, nor the fact that the Sal’s Defendants would be receiving kickbacks and rebates from certain vendors from whom the purchaser must purchase certain products in connection with the operation of the Restaurants as part of the purchase of the assets including the Designated Supplier Defendants.
3. Pursuant to the Equity Ownership Agreement, the Plaintiff, Vingiano, obtained sole ownership rights to Whitworth Farms on May 1, 2010, which included the assets comprising the Sal’s Italian Ristorante located at 12355 Hagen Ranch Rd. #607 Boynton Beach, Florida 33437. Attached hereto as **Exhibit F** is a true and correct copy of the Equity Ownership Agreement.
4. Pursuant to the terms of the Equity Ownership Agreement, the Plaintiff, Whitworth Farms, began to pay a $425 a month administrative fee for the right to use the “Sal’s Italian Ristorante” trade name. In addition to still paying the $425 a month administration fee, the Plaintiff, Whitworth Farms, will begin to pay a 1.25% royalty fee beginning on May 1, 2012.
5. Moreover, the Equity Ownership Agreement required the Plaintiff, Whitworth Farms, to operate its business pursuant to the policies and procedures established by the Sal’s Defendants.
6. Additionally, the Equity Ownership Agreement required the Plaintiff, Whitworth Farms, to pay the Sal’s Defendants a royalty fee of 1.5% of the Restaurant’s gross revenue for years three through five and 2.25% of the Restaurant’s gross revenue for all later years,. The Plaintiff, Whitworth Farms, was not required to pay a royalty fee to the Sal’s Defendants for the first two years of the Equity Ownership Agreement. The Plaintiff, Whitworth Farms, is also required to continue to operate the Restaurant under the policies and procedures established by the Sal’s Defendants, including the preparation of food for the menu. The Plaintiff, Whitworth Farms, is also required to purchase supplies and materials from vendors designated by the Sal’s Defendants including the Designated Supplier Defendants.
7. The Sal’s Defendants failed to advise the Plaintiff, Vingiano, that they would be receiving ongoing kickbacks and rebates from certain vendors including the Designated Supplier Defendants for products the Plaintiffs, Vingiano and Whitworth Farms, were required to purchase for their Sal’s Italian Ristorante Restaurant.
8. Pursuant to the Asset Purchase Agreement dated October 8, 2007 (the “CSV Agreement”), the Plaintiff, CSV, purchased the assets comprising the Sal’s Italian Ristorante located at 2525 Military Trail, Suite 111, Jupiter, Florida 33458. Attached hereto as **Exhibit G** is a true and correct copy of the CSV Agreement.
9. In addition to executing the CSV Agreement, the Plaintiff, CSV, executed a promissory note in connection with the sale of the franchise (“CSV Promissory Note”).
10. Pursuant to the terms of the CSV Agreement, the Plaintiff, CSV, began to pay a $425 a month administrative fee for the right to use the “Sal’s Italian Ristorante” trade name until the CSV Promissory Note is paid.
11. Moreover, Sections 13 and 14 of the CSV Agreement required the Plaintiff, CSV, to operate its business pursuant to the policies and procedures established by the Sal’s Defendants.
12. Additionally, the Plaintiff, CSV, will begin to pay the Sal’s Defendants a royalty fee of 3% beginning in 2014 and must purchase supplies and materials from vendors designated by the Sal’s Defendants including the Designated Supplier Defendants.
13. The Sal’s Defendants failed to advise the Plaintiff, Vingiano, that they would be receiving ongoing kickbacks and rebates from certain vendors including the Designated Supplier Defendants for products the Plaintiffs, Vingiano and CSV, were required to purchase for their Sal’s Italian Ristorante Restaurant.
14. Pursuant to the Asset Purchase Agreement dated April 1, 1998 (the “Vingiano Inc. Agreement”), the Plaintiff, Vingiano Inc., purchased the assets comprising the Sal’s Italian Ristorante located at 4801 Linton Boulevard, Delray Beach, Florida 33445. Attached hereto as **Exhibit H** is a true and correct copy of the Vingiano Inc. Agreement.
15. In addition to executing the Vingiano Inc. Agreement, the Plaintiff, Vingiano Inc., executed a promissory note in connection with the sale of the franchise (“Vingiano Inc. Promissory Note”).
16. Pursuant to the terms of the Vingiano Inc. Agreement, the Plaintiff, Vingiano Inc., began to pay a $400 a month administrative fee for the right to use the “Sal’s Italian Ristorante” trade name until the Vingiano Inc. Promissory Note is paid.
17. Moreover, Sections 17 and 18 of the Vingiano Inc. Agreement required the Plaintiff, Vingiano Inc., to operate its business pursuant to the policies and procedures established by the Sal’s Defendants.
18. The Plaintiff, Vingiano Inc., fully paid off the Vingiano Inc. Promissory Note in April 2008.
19. Additionally, once the Plaintiff, Vingiano Inc., fully paid off the Vingiano Inc. Promissory Note, it started to pay the Sal’s Defendants a royalty fee of 2.25% of the Restaurant’s gross revenue and continued to pay an administrative fee of $400 a month. The Plaintiff, Vingiano Inc. is also required to continue to operate the restaurant under the policies and procedures established by the Sal’s Defendants, including the preparation of food for the menu. The Plaintiff, Vingiano Inc., is also required to purchase supplies and materials from vendors designated by the Sal’s Defendants including the Designated Supplier Defendants.
20. The Sal’s Defendants failed to advise the Plaintiff, Vingiano, that they would be receiving ongoing kickbacks and rebates from certain vendors including the Designated Supplier Defendants for products the Plaintiffs, Vingiano and Vingiano Inc., were required to purchase for their Sal’s Italian Ristorante Restaurant.
21. The business arrangement reflected by the terms of each of these Asset Purchase Agreements constituted the offer and sale of a “franchise” under the FTC Franchise Rule as the Asset Purchase Agreement coupled with the policies and procedures established by the Sal’s Defendants contain the three elements of a franchise: (1) the right to use a trademark; (2) the payment of $500 on or before 6 months of operation; and (3) significant assistance to the licensee and/or significant control over the licensee’s method of operation. All three of these elements are clearly present in the business relationship between the Plaintiffs and the Sal’s Defendants.
22. The Sal’s Defendants further violated the FTC Franchise Rule by failing to deliver a complete and current UFOC or FDD to the Plaintiffs that would have included information regarding vendor rebates before the sale of the assets.

**COUNT I - VIOLATIONS OF FLORIDA DECEPTIVE AND UNFAIR TRADE**

**PRACTICES ACT - Fla. Stat. § 501.204**

**(Against the Sal’s Defendants)**

1. The Plaintiffs re-allege and incorporate by reference the allegations set forth above in paragraphs 1 through 88 as if fully set forth herein.
2. In the conduct of trade or commerce, the Sal’s Defendants did engage in unconscionable acts or practices and unfair or deceptive acts or practices in violation of the Florida Deceptive and Unfair Trade Practices Act (the “FDUTPA” or “Little FTC Act”), Section 501.204(1) of the Florida Statutes.
3. Pursuant to Section 501.203 of the Florida Statutes, a violation of the FDUTPA may be based upon: (a) any rules promulgated pursuant to the Federal Trade Commission Act; (b) standards of unfairness and deception set forth and interpreted by the Federal Trade Commission (the “FTC”) or the federal courts; or (c) any law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.
4. As described more fully herein, the Sal’s Defendants failed to comply with the Trade Regulation Rules promulgated by the FTC relating to “Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures,” set forth at 16 C.F.R. Part 436.
5. The Plaintiffs had never previously been engaged in the Sal’s restaurant concept and were not knowledgeable about the asset purchase arrangement being offered by the Sal’s Defendants.
6. The Asset Purchase Agreements entered into between Defendant Sal’s and/or DCI and the Plaintiffs, while not designated as such, were clearly franchises in substance. A “franchise” is defined by the FTC to mean “any continuing commercial relationship” which also satisfies the following three elements: (1) the distribution of goods or services identified by a trademark or trade name; (2) significant control over the franchisee; and (3) a required payment of at least $500 within six months of signing of an agreement. 16 C.F.R. § 436.2.
7. The relationship between the Sal’s Defendants and the Plaintiffs was certainly a “continuing commercial relationship,” since by means of its adhesion contracts, as alleged more fully above, the Sal’s Defendants intended to obligate the Plaintiffs to pay certain expenses to the Sal’s Defendants for years to come.
8. The asset purchase agreement arrangement between the Sal’s Defendants and the Plaintiffs involved the distribution of services identified by the trade name “Sal’s Italian Ristorante.”
9. Further, pursuant to the arrangement between the Sal’s Defendants and the Plaintiffs, the Sal’s Defendants both maintained significant control over, and offered significant assistance to, the Plaintiffs. As discussed more fully above in the General Allegations, the Plaintiffs were required to operate their Restaurants pursuant to the policies and procedures established by the Sal’s Defendants for the operation of a Sal’s Italian Ristorante. Additionally, the Plaintiffs were required to purchase inventory, equipment and materials to the types and vendors specified by the Sal’s Defendants to operate their Sal’s restaurants. Also, the Plaintiffs were required to prepare food pursuant to the menu and procedures set out by the Sal’s Defendants. Furthermore, Plaintiffs were required to display the various signs, insignia and other identifying devices that contained the Sal’s name. Attached hereto as **Exhibit I** is a true and correct copy of the Sal’s Italian Ristorante Manual.
10. Finally, the Plaintiffs were obligated to pay the Sal’s Defendants a $400 monthly administrative fee during the term of the asset purchase agreement. Moreover, should the Plaintiffs pay-off the Promissory Notes entered into by and between the parties and remain a Sal’s franchise, Plaintiffs were required to pay a monthly royalty fee of 2.25%. to 3.25% of each Restaurants’ gross revenues.
11. While the substance of the Asset Purchase Agreements between the Sal’s Defendants and the Plaintiffs clearly falls within the definition of a “franchise” as set forth in the FTC Franchise Rule, the Sal’s Defendants totally failed to comply with that Rule in every respect. The FTC Franchise Disclosure Rule, is designed to protect prospective franchisees and mandates the disclosure of a broad range of information including, *inter alia*, the business experience of the franchisor, its litigation and bankruptcy history, a description of the franchise, initial funds required, recurring funds required, affiliated persons the franchisee is required or advised to do business with by the franchisor, obligations to purchase, revenues received by the franchisor in consideration of purchases by a franchisee, financing arrangements, restriction of sales, personal participation required of the franchisee in the operation of the franchise, termination, cancellation, and renewal of the franchise, statistical information concerning the number of franchises, and training programs. 16 C.F.R. § 436. The Sal’s Defendants failed to make any of the federally mandated disclosures. Upon information and belief, the Sal’s Defendants also failed to file the State of Florida’s Franchise Exemption Application pursuant to Section 559.802 of the Florida Statutes, which requires the applicant to acknowledge that it “is in substantial compliance” with the FTC Rule.
12. **The Sal’s Defendants’ violation of the foregoing FTC Rule constitutes a *per se* violation of the FDUTPA.**
13. In addition to the *per se* violation of the FDUTPA set forth above, the Sal’s Defendants also engaged in “unconscionable acts or practices, and unfair or deceptive acts or practices” by structuring the asset purchase agreements with the Plaintiffs so as to evade required compliance with both federal and state franchise statutes and so as to offer the Plaintiffs the illusion that they were receiving an actual tangible property rights in exchange for their purchase price while in reality, as alleged more fully above, they actually received a franchise.
14. Consequently, any contracts between the Defendants and the Plaintiffs are void and illegal and will not be enforced by Florida courts. *See, e.g., Harris v. Gonzalez*, 789 So.2d 405, 409 (Fla. 4th DCA 2001) (“A contract which violates a . . . statute is void and illegal, and, will not be enforced in our courts[]”).
15. As a direct and proximate result of the Sal’s Defendants’ violations of the FDUTPA, Plaintiffs have been damaged in excess of $1 million.
16. The Sal’s Defendants’ violations of the FDUTPA as described herein have required Plaintiffs to retain the undersigned counsel to represent them in this proceeding, and they are required to pay the undersigned counsel reasonable attorneys’ fees and costs in connection herewith. Plaintiffs are seeking the recovery of reasonable attorneys’ fees and costs incurred in connection with prosecuting this action pursuant to Section 501.211(2) of the Florida Statutes for their claims that arise under the FDUTPA.

**WHEREFORE**, the Plaintiffs respectfully request that this Court enter a judgment in favor of the Plaintiffs, and against the Sal’s Defendants, and which:

A. Declares that the Sal’s Defendants’ violations of the FDUTPA render all contracts entered into with the Plaintiffs null and void as to the collection of royalties, administrative fees or the adherence to any operational requirements and enjoin the Sal’s Defendants from any further violations of the FDUTPA;

B. Orders that the Sal’s Defendants pay actual damages to the Plaintiffs pursuant to Section 501.211(2) in accordance with the evidence adduced at trial;

C. Orders that the Sal’s Defendants pay all reasonable attorneys’ fees and costs incurred by the Plaintiffs in prosecuting this action pursuant to Subsection 501.211(2) of the Florida Statutes;

D. Orders that the Sal’s Defendants pay to the Plaintiffs pre- and post-judgment interest on the total amount of the judgment at the legal rate of interest pursuant to Sections 687.01 and 55.03 of the Florida Statutes; and

E. Awards the Plaintiffs such other and further relief as the Court deems just and proper.

**COUNT II - VIOLATIONS OF THE FLORIDA FRANCHISE ACT**

**Fla. Stat. § 817.416**

**(Against the Sal’s Defendants)**

1. The Plaintiffs re-allege and incorporate by reference the allegations set forth above in paragraphs 1 through 104 as if fully set forth herein.
2. The foregoing business relationship between the Sal’s Defendants and Plaintiffs, as described above more fully in the General Allegations, constituted a “franchise or distributorship” pursuant to the Franchise Act, Subsection 817.416(b), since it involved a “commercial relationship of definite duration or continuing indefinite duration . . . .” wherein the Plaintiffs “were granted the right to offer, sell, and distribute goods or services manufactured, processed, distributed or, in the case of services, organized and directed by another party,” the Plaintiffs were engaged in an independent business that constituted “a component of franchisor’s distribution system,” and “the operation of the franchisee’s business franchise is substantially reliant on franchisors for the basic supply of goods.”
3. When selling or establishing the franchise or distributorship described above, the Sal’s Defendants intentionally misrepresented the nature of the relationship as being an “asset purchase agreement” when, in fact, it was a undisclosed franchise or distributorship sold in violation of the both FTC Regulations and the Florida Franchise Act (the “Franchise Act”), Section 817.416 of the Florida Statutes, as set forth above more fully in the General Allegations.
4. The Sal’s Defendants’ violations of the Franchise Act as described herein have required the Plaintiffs to retain the undersigned counsel to represent them in this proceeding, and they are required to pay the undersigned counsel reasonable attorneys’ fees and costs in connection herewith. The Plaintiffs are seeking the recovery of reasonable attorneys’ fees and costs incurred in connection with prosecuting this action pursuant to Subsection 817.416(3) of the Florida Statutes for their claims that arise under the Franchise Act.

**WHEREFORE**, the Plaintiffs respectfully request that this Court enter a judgment in favor of the Plaintiffs, and against the Sal’s Defendants, and which:

A. Declares that the Sal’s Defendants’ violations of the Florida Franchise Act render all contracts entered into with the Plaintiffs null and void as to the collection of royalties, administrative fees or the adherence to any operational requirements;

B. Orders that the Sal’s Defendants pay to the Plaintiffs pursuant to Subsection 817.416(3) a judgment for all moneys invested by Plaintiffs in the foregoing franchise or distributorship;

C. Orders that the Sal’s Defendants pay all reasonable attorneys’ fees and costs incurred by the Plaintiffs in bringing this action pursuant to Subsection 817.416(3) of the Florida Statutes;

D. Orders that the Sal’s Defendants pay to the Plaintiffs pre- and post-judgment interest on the total amount of the judgment at the legal rate of interest pursuant to Sections 687.01 and 55.03 of the Florida Statutes; and

E. Awards the Plaintiffs such other and further relief as the Court deems just and proper.

**COUNT III - VIOLATIONS OF THE FLORIDA BUSINESS OPPORTUNITIES ACT**

 **Fla. Stat. §§ 559.80-559.815**

**(Against the Sal’s Defendants)**

1. The Plaintiffs re-allege and incorporate by reference the allegations set forth above I paragraphs 1 through 108 as if fully set forth herein.
2. Upon information and belief, the Sal’s Defendants failed to file the “Business Opportunity Disclosure Filing Package” required by the BOA, nor did they file, in lieu of that Package, a Business Opportunity Disclosure Statement required under Section 559.803 of the Florida Statutes.
3. Pursuant to the BOA, at least three working days prior to the time the purchaser signs a business opportunity contract or prior to the receipt of any consideration by the seller, whichever comes first, the seller must provide the prospective purchaser a written document that complies with the detailed requirements set forth in Section 559.803 of the Florida Statutes. The Sal’s Defendants have never provided Plaintiffs with the mandated written disclosure document or with much of the information that would have been contained therein, including, *inter alia*, the length of time the seller has sold business opportunities, a “full and detailed description of the actual services that the business opportunity seller undertakes to perform for the purchaser,” a copy of a current financial statement of the seller, a complete description of any training to be provided by the seller or the full nature of the services promised by the seller to be performed in connection with the placement of the product at a location.
4. Section 559.809 of the BOA contains a list of “Prohibited Acts” and states that, among other things, business opportunity sellers shall not misrepresent “a material fact or create a false or misleading impression in the sale of a business opportunity.” The Sal’s Defendants, as described more fully above in the General Allegations, are in violation of the BOA as they misrepresented the true nature of the asset purchase agreements since Plaintiffs were actually purchasing a franchise.
5. In nearly every respect, the Sal’s Defendants failed to comply with the requirements of the BOA, including the required filings as well as engaging in Prohibited Acts as set forth in Section 559.809 by the BOA. Pursuant to Section 559.815, any person who fails to file the required filing with the Department or who commits any of the Prohibited Acts is “guilty of a felony of the third degree . . . .”
6. The Sal’s Defendants’ violations of the BOA as described herein have required Plaintiffs to retain the undersigned counsel to represent them in this proceeding, and they are required to pay the undersigned counsel reasonable attorneys’ fees and costs in connection herewith. Plaintiffs are seeking the recovery of reasonable attorneys’ fees and costs incurred in connection with prosecuting this action pursuant to Section 559.813 of the Florida Statutes for their claims that arise under the BOA.

**WHEREFORE**, the Plaintiffs respectfully request that this Court enter a judgment in favor of Plaintiffs, and against the Sal’s Defendants, and which:

A. Enjoins the Sal’s Defendants from any further violations of the BOA;

B. Orders that the Sal’s Defendants pay compensatory damages to the Plaintiffs pursuant to Subsection 559.813(3) in accordance with the evidence adduced at trial;

C. Orders that the Sal’s Defendants pay all reasonable attorneys’ fees and costs incurred by the Plaintiffs in prosecuting this action pursuant to Subsection 559.813(3) of the Florida Statutes;

D. Orders that the Sal’s Defendants pay to the Plaintiffs pre- and post-judgment interest on the total amount of the judgment at the legal rate of interest pursuant to Sections 687.01 and 55.03 of the Florida Statutes; and

E. Awards the Plaintiffs such other and further relief as the Court deems just and proper.

**COUNT IV – NEGLIGENT MISREPRESENTATION**

**(Against the Sal’s Defendants)**

1. The Plaintiffs re-allege and incorporate by reference the allegations set forth above in paragraphs 1 through 114 as if fully set forth herein.
2. The Sal’s Defendants have negligently made false statements, misrepresentations and omissions of material fact to the Plaintiffs without regard for how those statements or omissions would affect the Plaintiffs.
3. Those negligent misrepresentations and omissions concern the Sal’s Defendants’ failure to notify the Plaintiffs of the kickbacks or rebates the Sal’s Defendants would receive from certain vendors the Sal’s Defendants mandated the Plaintiffs to use in operation of their Sal’s Restaurants.
4. Indeed, pursuant to the “asset purchase agreements” the Plaintiffs entered into with the Sal’s Defendants, the Plaintiffs were required to purchase products from certain vendors that were pre-approved by the Sal’s Defendants.
5. The Sal’s Defendants, by receiving the kickbacks and rebates, kept the purchase price for these products at an artificially inflated number, thereby reducing the Plaintiffs’ net profit for each Sal’s restaurant.
6. The Plaintiffs justifiably relied upon these false statements, misrepresentations and omissions of fact regarding the Sals’ Defendants receipt of kickbacks and rebates in deciding to purchase and continue to operate their Sal’s franchises.
7. As a direct and proximate result of the reasonable reliance of the Plaintiffs on the false statements, misrepresentations, and omissions of material fact made by the Sal’s Defendants, the Plaintiffs have suffered damages.

 **WHEREFORE**, the Plaintiffs respectfully request that this Court enter a judgment in favor of Plaintiffs and against the Sal’s Defendants, and which:

A. Orders the Sal’s Defendants to pay to the Plaintiffs compensatory damages in accordance with the proof adduced at trial

B. Orders that the Sal’s Defendants pay to the Plaintiffs pre- and post-judgment interest on such compensatory damages pursuant to Section 55.03 of the Florida Statutes; and

C. Awards the Plaintiffs such other and further relief as the Court deems just and proper.

**COUNT V – INTENTIONAL MISREPRESENTATION**

**(Against the Sal’s Defendants)**

1. The Plaintiffs re-allege and incorporate by reference the allegations set forth above in paragraph 1 through 121 as fully set forth herein.
2. The Sal’s Defendants have knowingly and intentionally made false statements, misrepresentations, and omissions of material fact to the Plaintiffs without regard for how those statements would affect the Plaintiffs.
3. Those intentional misrepresentations have been more particularly described herein.
4. Specifically, the Sal’s Defendants knowingly and intentionally failed to disclose to Plaintiffs the fact that the Sal’s Defendants would receive tens of thousands of dollars each year in rebates and kickbacks for purchases made by the Plaintiffs to certain mandated vendors pursuant to the terms of the asset purchase agreements.
5. The Plaintiffs justifiably relied upon these false statements, misrepresentations and omissions of material fact made by the Sal’s Defendants in deciding to purchase and continue to operate their Sal’s franchises.
6. As a direct and proximate result of the reasonable reliance of the Plaintiffs on the false statements, misrepresentations and omissions of material fact made by the Sal’s Defendants, the Plaintiffs have suffered damages.

**WHEREFORE**, the Plaintiffs respectfully request that this Court enter a judgment in favor of Plaintiffs and against the Sal’s Defendants, and which:

A. Orders the Sal’s Defendants pay to the Plaintiffs compensatory damages in accordance with the proof adduced at trial

B. Orders that the Sal’s Defendants pay to the Plaintiffs pre- and post-judgment interest on such compensatory damages pursuant to Section 55.03 of the Florida Statutes; and

C. Awards the Plaintiffs such other and further relief as the Court deems just and proper.

**COUNT VI – BREACH OF CONTRACT**

**(Against Defendants Sal’s and DCI)**

1. The Plaintiffs re-allege and incorporate by reference the allegations set forth above in paragraphs 1 through 127 as if fully set forth herein.
2. The Plaintiffs signed asset purchase agreements, which in actuality where franchise agreements with the Defendants Sal’s and DCI.
3. Defendants DCI and Sal’s breached the franchise agreements with the Plaintiffs by failing to disclose to Plaintiffs that Defendants DCI and Sal’s would receive tens of thousands of dollars in kickbacks and rebates from preferred vendors that Defendants DCI and Sal’s required Plaintiffs to purchase products from for the Sal’s franchises.
4. Pursuant to each “asset purchase agreement” entered into between the Plaintiffs and the Defendant, DCI or the Defendant, Sal’s, the Plaintiffs were required to purchase certain products and supplies from certain vendors at Defendants DCI and Sal’s sole discretion.
5. The Defendants, DCI and Sal’s, breached the franchise agreements by failing to disclose the kickbacks they would receive while still requiring Plaintiffs to purchase certain products from the preapproved vendors.
6. The Defendants, DCI and Sal’s, breach of the franchise agreements was a substantial factor in causing Plaintiffs damages.
7. The breach of the franchise agreements has resulted in the Plaintiffs sustaining damages in amounts to be proven at trial.

**WHEREFORE**, the Plaintiffs respectfully request that this Court enter a judgment in favor of Plaintiffs and against the Defendants, DCI and Sal’s, and which:

A. Orders the Defendants pay to the Plaintiffs compensatory damages in accordance with the proof adduced at trial

B. Orders that the Defendants pay to the Plaintiffs pre- and post-judgment interest on such compensatory damages pursuant to Section 55.03 of the Florida Statutes; and

C. Awards the Plaintiffs such other and further relief as the Court deems just and proper.

**COUNT VII – FRAUD**

**(Against the Sal’s Defendants)**

1. The Plaintiffs re-allege and incorporate by reference the allegations set forth above in paragraphs 1 through 134 as if fully set forth herein.
2. The Sal’s Defendants engaged in a series of fraudulent misrepresentations and omissions of material fact designed to induce the Plaintiffs to enter into the Asset Purchase Agreements as described above in the General Allegations. The fraudulent misrepresentations and/or omissions of material fact are alleged with particularity in Paragraphs 1, 27-38, 46, 53, 61, 66, 73, 79, and 86 of the Complaint are incorporated herein by reference as if fully set forth herein.
3. These fraudulent statements and omissions relate to the Sal’s Defendants failure to inform Plaintiffs that the Sal’s Defendants would receive tens of thousands of dollars in kickbacks and rebates from certain vendors and suppliers the Sal’s Defendants required the Plaintiffs to purchase from in running their Sal’s franchises.
4. The Sal’s Defendants certainly knew at the time they made these misrepresentations, and/or failed to reveal material information, that the information they were conveying to the Plaintiffs was false and fraudulent when made and they acted with full intent that Plaintiffs would rely on their misrepresentations and omissions and would act on them by entering into the and renewing the asset purchase agreements described above and in paying money to the Sal’s Defendants to do so. Moreover, the fact that the Sal’s Defendants failed to supply the Plaintiffs with a UFOC or FDD franchise disclosure document constitutes *prima facie* fraud.
5. In justifiable reliance on the Sal’s Defendants’ promises and as a direct and proximate consequence of the Sal’s Defendants’ fraudulent inducements to enter into and renew the asset purchase agreements described above, the Plaintiffs have suffered substantial harm and injury.

**WHEREFORE**, the Plaintiffs respectfully request that this Court enter a judgment in favor of Plaintiffs and against the Sal’s Defendants, and which:

A. Orders the Sal’s Defendants to provide an accounting of all payments, rebates or kickbacks made by all vendors to Defendants or any other affiliated company of Defendants from whom the Plaintiffs have purchased products since the execution of the asset purchase agreements in question;

B. Orders the Sal’s Defendants to pay to the Plaintiffs compensatory damages in accordance with the proof adduced at trial;

C. Orders that the Sal’s Defendants pay to the Plaintiffs pre- and post-judgment interest on such compensatory damages pursuant to Section 55.03 of the Florida Statutes; and

D. Awards the Plaintiffs such other and further relief as the Court deems just and proper.

**COUNT VIII: UNJUST ENRICHMENT**

**(Against the Sal’s Defendants)**

1. The Plaintiffs re-allege and incorporate by reference the allegations set forth above in paragraphs 1 through 139 as if fully set forth herein.
2. The Sal’s Defendants have, by virtue of the Asset Purchase Agreements signed by the Plaintiffs, received tens of thousands of dollars in kickback and rebate payments from the Designated Supplier Defendants and other approved vendors that the Sal’s Defendants required the Plaintiffs to purchase from to run their Sal’s Restaurants.
3. Rather than reducing the prices the Plaintiffs paid for these products, or giving the rebates directly to Plaintiffs, both of which would have reduced the price of the goods for the Plaintiffs’ Restaurants and increased their net profits, the Designated Supplier Defendants instead directly paid the rebates and kickbacks to the Sal’s Defendants.
4. The Sal’s Defendants, by receiving the kickbacks and rebates, kept the purchase price for these products at an artificially inflated number, thereby reducing the Plaintiffs’ net profit for each Sal’s restaurant.
5. The Sal’s Defendants have, therefore received a benefit from the Plaintiffs, the receipt of which constitutes unjust enrichment to the Sal’s Defendants.

**WHEREFORE**, the Plaintiffs respectfully request that this Court enter a judgment in favor of Plaintiffs and against the Sal’s Defendants, and which:

A. Orders the Sal’s Defendants to pay to the Plaintiffs compensatory damages in accordance with the proof adduced at trial

B. Orders that the Sal’s Defendants pay to the Plaintiffs pre- and post-judgment interest on such compensatory damages pursuant to Section 55.03 of the Florida Statutes; and

C. Awards the Plaintiffs such other and further relief as the Court deems just and proper.

**COUNT IX: CIVIL CONSPIRACY**

**(Against the Sal’s Defendants and Designated Supplier Defendants)**

1. The Plaintiffs re-allege and incorporate by reference the allegations set forth above in paragraphs 1 through 144 as if fully set forth herein.
2. Upon information and belief, beginning in or around 1998 and continuing through to the present date, the Sal’s Defendants and the Designated Supplier Defendants, upon information and belief, knowingly, willfully, and maliciously conspired together to improperly and unlawfully deprive the Plaintiffs of the rebates and kickbacks the Designated Supplier Defendants offered to the Sal’s Defendants allowing both the Sal’s Defendants and Designated Supplier Defendants to reap the benefit of Plaintiffs’ business operations, assets, and revenue stream.
3. Upon information and belief, the common purpose and object of the conspiracy by the Sal’s Defendants and the Designated Supplier Defendants was to force the Plaintiffs to pay highly inflated prices for products that Plaintiffs were required to purchase in order to run their Sal’s Restaurants pursuant to the Asset Purchase Agreements (really franchise agreements) entered into between Plaintiffs and the Sal’s Defendants.
4. The Sal’s Defendants profited by receiving tens of thousands of dollars in kickbacks and rebates that should have went either to the Plaintiffs directly or should have been applied to future purchases in order to reduce their price and increase the Plaintiffs’ net profits.
5. The Designated Supplier Defendants profited as they continued to sell products to Plaintiffs’ Restaurants at prices above the regular market rate and reap huge profits since the Plaintiffs were required to purchase these products pursuant to the provisions in their Asset Purchase Agreements.
6. The Designated Supplier Defendants as sophisticated suppliers knew or should have known that the Plaintiffs were actually undisclosed franchisees and were entitled to the tens of thousands of dollars in rebates and kickbacks that the Sal’s Defendants earned during the life of the Asset Purchase Agreements.
7. As a direct and proximate result of the conspiratorial acts of the Sal’s Defendants and Designated Supplier Defendants, the Plaintiffs have been damaged in amount in excess of $15,000.00, exclusive of interest and costs.

**WHEREFORE,** the Plaintiffs respectfully request that this Court enter a judgment in favor of the Plaintiffs, and against the Sal’s Defendants and Designated Supplier Defendants, and which:

A. Orders the Sal’s Defendants and Vendor Defendants to pay to the Plaintiffs compensatory damages for the payment of undisclosed rebates and kickbacks in accordance with the proof adduced at trial.

B. Orders that the Sal’s Defendants and Designated Supplier Defendants pay to the Plaintiffs pre- and post-judgment interest on such compensatory damages pursuant to Section 55.03 of the Florida Statutes; and

 C. Awards the Plaintiffs such other and further relief as the Court deems just and proper.

**DEMAND FOR JURY TRIAL**

The Plaintiffs demand trial by jury on all issues triable by a jury as a matter of right.

Respectfully submitted:

Dated: March 30, 2012

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Keith J. Kanouse

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Attorneys for Defendants

**VERIFICATION**

 I hereby affirm and swear under oath that the forgoing averments are true and correct.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Christopher S. Vingiano

STATE OF FLORIDA )

 )

COUNTY OF )

 The foregoing instrument was acknowledged before me this 30th day of March, 2012, by Christopher S. Vingiano who is personally known to me or who produced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as identification.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Signature of Notary Public – State of Florida

 Printed Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Seal: