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6 Attorneys for Plaintiffs Amy Meadows, Dawn Toff,  
7 Donna Schiano, Alfred Pena, James Domsic, Charyl Hart,  
George Jones and GJones3 Ventures LLC, individually and as class  
8 representatives

9 **IN THE UNITED STATES DISTRICT COURT**  
10 **NORTHERN DISTRICT OF CALIFORNIA**

11  
12 Amy Meadows, Dawn Toff, Donna  
Schiano, Alfred Pena, Christy Bagby,  
13 James Domsic, Charyl Hart, George  
Jones and GJones3 Ventures LLC,  
14 individually and as class  
representatives,

15 Plaintiffs,

16 v.

17 Dickey's Barbecue Restaurants, Inc.,

18 Defendants.  
19  
20  
21  
22

Case No.: 3:15-CV-02139-MEJ

**[CLASS ACTION]**

**FIRST AMENDED COMPLAINT**

**[DEMAND FOR JURY TRIAL]**

23 Plaintiffs allege as follows under information and belief:

24 **PARTIES**

25 1. Plaintiff Amy Meadows is, and at all times relevant herein was, a resident  
26 of the State of California. Ms. Meadows obtained a Dickey's Franchise Disclosure  
27 Document and subsequently purchased a Dickey's franchise in Pleasant Hill,  
28 California.

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1 10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) in that  
2 a substantial part of the events or omissions giving rise to the claims occurred in the  
3 judicial district.

4 **FACTS**

5 **Defendants:**

6 11. Defendant Dickey's was formed in 1994 for the purpose of selling  
7 Dickey's Barbecue Pit franchises. Dickey's has affiliated companies, Dickey's  
8 Barbecue Pit, Inc., Restaurant Growth, Inc. and Pitmaster Team, Inc., that operates  
9 corporate Dickey's Barbecue Pit restaurants in Texas and South Dakota. The first  
10 Dickey's Barbecue Pit opened in 1941.

11 12. Dickey's Barbecue Pit is a combination quick service/fast casual dining  
12 experience. Customers place protein orders at the beginning of the service counter,  
13 then move down cafeteria-style picking side dishes. When they reach the cash  
14 register, their protein order is waiting, allowing them to pay and immediately eat.

15 **THE FRANCHISES**

16 13. The Dickey's FDD provided to each Plaintiff contained the following  
17 representations:

- 18 a. It would cost approximately \$60,000 to build out a restaurant  
19 conversion franchise location;
- 20 b. Dickey's would allow a franchise to request an alternate supplier,  
21 which request would be granted upon evaluation of objective and reasonable criteria.
- 22 c. Dickey's would protect Plaintiffs' territory, which territory was to  
23 be selected by Plaintiffs.
- 24 d. Dickey's would provide on-site evaluation to assist in the  
25 establishment of the franchise.
- 26 e. Dickey's would provide an initial training prior to the opening of  
27 the franchise.

28 ///

1 f. Dickey's would allow a franchise to request menu changes, which  
2 request would be granted upon evaluation of objective and reasonable criteria.

3 g. Plaintiffs owed a total of 9% of net sales to Dickey's to cover its  
4 royalty and marketing fund.

5 14. Outside of the FDD, Dickey's employees made the following  
6 representations to Plaintiffs:

7 a. Dickey's employees represented to the Plaintiffs that Dickey's was  
8 experiencing "tremendous growth" with store revenues increasing at a rate of 5% each  
9 year, that Dickey's was the fastest growing barbecue concept in the country and that  
10 they were beating their "record low build out costs" at just under \$60,000 including  
11 the franchise fee and purchase of initial inventory;

12 b. Dickey's would provide everything that a bank would need to  
13 approve a loan to open the franchise;

14 c. Dickey's had never had a franchise that ever had trouble finding  
15 financing once they saw Dickey's business plan;

16 d. Dickey's would only sell one franchise in each northern California  
17 city;

18 e. If Plaintiffs did not accept the locations chosen by Dickey's, they  
19 would lose their deposit and not be given another opportunity to open a franchise store  
20 in that city;

21 f. Plaintiffs did not need to have prior restaurant experience because  
22 they would be trained completely by Dickey's;

23 g. Each store would make at least \$800,000 in the first year and it  
24 would only go up from there. Plaintiffs would make so much money that they would  
25 want a second and then a third restaurant, at which point they could retire and just  
26 collect the income;

27 h. Plaintiffs should get a secondary, not a prime, location because a  
28 Dickey's will draw as a destination restaurant;

- 1 i. Plaintiffs needed to use an architect referred by Dickey’s for the
- 2 build out;
- 3 j. Dickey’s provided national advertising for the franchisees out of
- 4 the marketing fund;
- 5 k. Plaintiffs were required to buy a dedicated van to support the
- 6 catering business;
- 7 l. Dickey’s would provide accountings showing how it used the
- 8 marketing fund;
- 9 m. Franchisees could purchase used equipment;
- 10 n. Dickey’s required the stores to purchase from US Foods at a price
- 11 that Dickey’s negotiated for the benefit of its stores; and
- 12 o. A franchise could be sold, including transfer of all store
- 13 obligations.

**CLASS ALLEGATIONS**

15 15. The joinder of all class members as parties is impracticable. The  
16 disposition of these claims in a class action will provide substantial benefits to both  
17 the parties and the Court. The class is ascertainable and maintains a sufficient  
18 community of interest. The rights of each class member were violated in a similar  
19 fashion upon Defendants’ wrongful conduct. The remedy requested will involve all  
20 class members.

21 16. The class representatives’ claims are typical of the claims of the members  
22 of the class because of class representatives and all other members of the class were  
23 damaged by the same wrongful conduct committed by Defendants as alleged more  
24 fully above and below.

25 17. Plaintiffs will fairly and adequately protect the interests of the class. The  
26 interests of the class representatives are coincident with, and not antagonistic to, the  
27 interests of the other members of the class.

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1 18. The class representatives have retained competent class counsel who are  
2 experienced in the prosecution of class-action litigation.

3 19. Questions of law and fact common to the members of the class are  
4 central here and predominate over questions which may affect only individual  
5 members.

6 20. Plaintiffs bring this lawsuit individually and on behalf of those similarly  
7 situated. The class is defined as follow: All companies and individuals who own or  
8 have owned some portion of a Dickey’s Barbecue Pit franchise restaurant in the State  
9 of California.

10 21. Common issues amongst class members include:

- 11 a. They were sold a franchise based on a false FDD.
- 12 b. They were misled about the cost of opening the restaurant.
- 13 c. They were not provided with appropriate marketing and  
14 promotional support.
- 15 d. They were not provided a protected territory.
- 16 e. They were forced to purchase goods at above-market prices.
- 17 f. They were subjected to excessive expenses.
- 18 g. They were not provided adequate training.

19 **FIRST CAUSE OF ACTION**

20 **Fraud**

21 22. All preceding allegations are incorporated by reference.

22 23. Defendants made the following representations to Plaintiffs:

- 23 a. Conversion of a restaurant space into a Dickey’s, including  
24 payment of all opening inventory, permit fees, franchise and training fees, would total  
25 approximately \$60,000.
- 26 b. Dickey’s was selling franchises in Northern California pursuant to  
27 a lawful FDD.
- 28 c. Dickey’s would provide a protected territory.

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- 1           d.     Dickey’s would provide an on-site evaluation prior to lease
- 2 execution.
- 3           e.     Dickey’s would provide pre-opening training.
- 4           f.     Royalties and marketing fees would be based on the “net” sales.
- 5           g.     Dickey’s provided a valid basis for estimating anticipated
- 6 restaurant revenues.
- 7           h.     Franchisees could use alternate suppliers so long as they suggested
- 8 sources that could be objectively evaluated as reliable.
- 9           i.     Franchisees could add new menu items so long as they could
- 10 demonstrate that they were conducive to the Dickey’s image and standards.
- 11           j.     Dickey’s operated a national marketing program and conducted
- 12 promotions.
- 13           k.     Dickey’s would provide accountings related to its marketing
- 14 program.
- 15           l.     The franchisees could purchase used equipment.
- 16           m.     A senior member of Dickey’s would be present for the restaurant
- 17 opening.
- 18           n.     Dickey’s negotiated competitive prices at group discount rates.
- 19        24.    Those representations were false as follows:
- 20           a.     The cost of the build-out alone exceeded specific and written
- 21 representations. This did not include opening inventory, permit fees, franchise fees or
- 22 training costs.
- 23           b.     The FDD contained material falsities.
- 24           c.     Dickey’s did not provide a protected territory.
- 25           d.     Dickey’s did not provide a pre-opening evaluation of the
- 26 restaurants.
- 27           e.     Dickey’s did not provide pre-opening training. Instead, they made
- 28 the franchisees travel to Texas to wash dishes in their affiliates’ corporate stores.

1 f. Royalties and marketing fees were not calculated based on the net  
2 sales. Rather, they were calculated based on gross sales. Had they been calculated  
3 based on net sales, no royalties would ever have been due because store was never  
4 profitable.

5 g. Pre-contract representations created an unreasonable expectation of  
6 how much the stores would earn.

7 h. The Franchisees repeatedly requested a change in vendors to  
8 decrease costs and improve product quality. Each time the new vendor was either  
9 superior or equal to the existing vendor but no approval was forthcoming.

10 i. Plaintiffs repeatedly requested permission to offer new menu items  
11 such as BBQ chicken salad or breakfast items, all of which are offered by other  
12 Dickey's stores. However, Dickey's refused each request.

13 j. Dickey's did not offer a marketing program in Northern California.  
14 Those dollars were spent in Texas where they provided no benefit to the California  
15 restaurants. Dickey's also did not provide promotions. The franchisees were on their  
16 own to come up with their own promotions on a case by case basis.

17 k. The franchises never received any marketing fund accountings.

18 l. Dickey's required the franchisees to purchase expensive oversized  
19 and new equipment.

20 m. A senior member of Dickey's did not attend the store openings.

21 n. Dickey's franchisees were forced to purchase product at over-  
22 market prices and were not permitted to source cheaper equivalent quality  
23 replacements.

24 25. At the time each of the above misrepresentations was made, Defendants  
25 knew or should have known of the falsity.

26 26. Plaintiffs relied on the representations in deciding to pay the application  
27 fee and open a Dickey's Barbecue Pit.

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1 27. As a result of Defendants' bad conduct, Plaintiffs suffered injury in an  
2 amount to be proven at the time of trial.

3 28. Defendants committed the above-described conduct with oppression,  
4 fraud, and malice, entitling Plaintiffs to an award of punitive damages.

5 **SECOND CAUSE OF ACTION**

6 **Violation of California Franchise Investment Law**

7 29. All preceding allegations are incorporated by reference.

8 30. California Corporations Code §§ 31200 and 31201 prohibits  
9 misrepresentation or material omission in a Franchise Disclosure Document.

10 31. California Corporations Code § 31302 provides that anyone who  
11 participates in the violation of the California Franchise Investment Law is jointly and  
12 severally liable for all damages awarded.

13 32. Defendants violated each of the above-referenced laws.

14 33. Defendants' violation of the Franchise Investment Laws caused damage  
15 to Plaintiff in an amount to be proven at the time of trial.

16 34. Plaintiffs will also seek an award of attorneys' fees, declaratory relief and  
17 injunctive relief as provided by California Corporations Code § 31302.5.

18 **THIRD CAUSE OF ACTION**

19 **Violation of Unfair Competition Laws**

20 35. All preceding allegations are incorporated by reference.

21 36. Defendants engaged in unfair conduct as is set forth above.

22 37. Defendants engaged in fraudulent conduct as is set forth above.

23 38. Defendants engaged in unlawful conduct as is set forth above.

24 39. Plaintiffs were proximately harmed as the result of Defendants' unfair,  
25 fraudulent and/or unlawful conduct.

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**FOURTH CAUSE OF ACTION**

**Declaratory Relief**

40. All preceding allegations are incorporated by reference.

41. Section 27 of the franchise agreement purports to require all disputes between Plaintiffs and Dickey’s to be resolved by AAA arbitration. This provision is unenforceable and Plaintiffs seek a judicial declaration to that end and, if necessary, an injunction to prevent Dickey’s from enforcing the provision unlawfully.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury, on all issues triable by a jury, in the above-entitled action.

**PRAAYER FOR RELIEF**

Wherefore, Plaintiffs pray for relief as follows:

On the First Cause of Action:

- 1. For damages according to proof;
- 2. For punitive damages;
- 3. For costs of suit;
- 4. For such and other relief as the Court deems appropriate.

On the Second Cause of Action:

- 1. For damages according to proof;
- 2. For an award of attorneys’ fees;
- 3. For costs of suit; and
- 4. For such and other relief as the Court deems appropriate.

On the Third Cause of Action:

- 1. For declaratory relief;
- 2. For injunctive relief;
- 3. For restitution and disgorgement.
- 4. For costs of suit; and
- 5. For such and other relief as the Court deems appropriate.

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On the Fourth Cause of Action:

- 1. For declaratory relief;
- 2. For injunctive relief;
- 3. For costs of suit; and
- 4. For such and other relief as the Court deems appropriate.

Dated: July 2, 2015

THORSNES BARTOLOTTA McGUIRE LLP

Bv: /s/Karen R. Frostrom

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