

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Northern Division**

CHORLEY ENTERPRISES, INC.
a Maryland corporation,

**706 Brookridge Drive
Boonsboro, MD 21713**

MATTHEW and CARLA CHORLEY,

**706 Brookridge Drive
Boonsboro, MD 21713**

Plaintiffs,

v.

DICKEY'S BARBECUE RESTAURANTS, INC.
a Texas corporation,

**Serve: Roland Dickey, Jr., Registered Agent
801 E. Plano Parkway
Suite 135
Plano, TX 75074**

ROLAND DICKEY, JR.

**Serve: Roland Dickey, Jr.
4514 Cole Avenue
Suite 1100
Dallas, TX 75205**

JERREL DENTON

**Serve: Jerrel Denton
4514 Cole Avenue
Suite 1100
Dallas, TX 75205**

Defendants

Case No. 14-cv-1650

COMPLAINT
For Violation of the Maryland Franchise Registration and Disclosure Law;
Declaratory Judgment and Injunctive Relief

Plaintiffs Matthew and Carla Chorley, and Chorley Enterprises, Inc., by counsel, state for their Complaint against Dickey's Barbecue Restaurants, Inc., Roland Dickey, Jr., and Jerrel Denton, as follows:

PARTIES AND JURISDICTION

1. Plaintiffs Matthew and Carla Chorley (collectively "the Chorleys") are individuals and citizens of the State of Maryland.
2. Plaintiff Chorley Enterprises, Inc. ("CEI") is a Maryland corporation that has its principal place of business in Boonsboro, Maryland. CEI is owned entirely by the Chorleys.
3. Defendant Dickey's Barbecue Restaurants, Inc. ("Dickey's") is a Texas corporation that has its principal place of business in Plano, Texas.
4. Defendant Roland R. Dickey, Jr. ("Roland") is a citizen of the State of Texas. At all times relevant to the transactions and occurrences described herein, Roland was president and CEO of Dickey's.
5. On information and belief, Defendant Jerrel L. Denton ("Denton") is a citizen of the State of Texas. At all times to the transactions and occurrences described herein, Denton was Director of Business Development for Dickey's.
6. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1), in that there is complete diversity of citizenship between all of the Plaintiffs and all of the Defendants, and the amount in controversy exceeds \$75,000.

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

FACTS COMMON TO ALL COUNTS

8. Dickey's has been in the business of selling franchised restaurants under the trademark "Dickey's Barbecue Pit" since approximately 1994. Dickey's markets its restaurants as "quick service fast casual dining." Dickey's sells its restaurants to individuals with little or no restaurant experience and induces them to purchase the franchise in part by promising a comprehensive training program, known as Barbecue University.¹ Dickey's also boasts "one of the lowest initial investments in the quick serve industry."²

9. Between June and August 2012, Matthew Chorley began researching franchise opportunities in the quick service restaurant market. In August 2012, Chorley formed CEI with the intention that it be used for operating a franchised restaurant business.

10. In July 2012, Chorley discovered Dickey's on the internet and spoke briefly with Jerrel Denton about Dickey's franchise opportunities. Dickey's primary appeal to Chorley was its low initial investment requirement and that no prior restaurant experience was needed. These features of the Dickey's system seemed well suited to Chorley's modest investment budget and lack of restaurant experience.

11. In early October 2012, after having researched several franchise opportunities, Chorley emailed Denton to express interest in becoming a Dickey's franchisee.

¹ <http://www.dickeysfranchising.com/nutshell.php> (last visited 5/15/2014)

² <http://www.dickeysfranchising.com/financials.php> (last visited 5/15/2014).

12. On or about October 4, 2012, Chorley had an extended phone conversation with Denton, during which he explained his interest in a quick service restaurant franchise, and stated that his investment budget was no more than about \$150,000, of which roughly \$89,000 was cash.

13. During that phone conversation Denton made express financial performance representations regarding Chorley's potential earnings from the operation of the franchise.

Specifically, Denton represented that:

- a. depending on size, Dickey's restaurants averaged between \$800,000 and \$1,200,000 per store in annual revenues;
- b. "the worst operators are making 10% net profit in each store"; and
- c. based on the particular market in which Chorley was looking to operate, he should be able to do over \$1,000,000 in annual revenues with one store.

14. During the same phone conversation, Denton made express representations regarding the low initial investment required to open a Dickey's franchise. Specifically, Denton represented that:

- a. Dickey's was able to keep its initial investment low was because Dickey's encouraged franchisees to open in second generation restaurants, where "there isn't really any changes required besides the Dickey's look";
- b. Dickey's not only permitted but encouraged its franchisees to purchase used restaurant equipment, which cost significantly less than new equipment;
- c. Dickey's had a "network of used equipment dealers" as well as a "team to help owners source used equipment";

d. the cost to equip a restaurant with used equipment was as low as \$10,000 to \$20,000;

e. Dickey's franchisees were routinely converting pre-existing food service or restaurant locations to Dickey's franchises for \$30,000 or less. As an example, he cited a Connecticut franchise that converted a space previously occupied by a Quiznos brand restaurant for \$15,000; and

f. \$89,000 was enough to open three Dickey's restaurants.

15. After considering this information, Chorley asked Denton for a franchise application. On or about October 4, 2012, Denton provided Chorley with a Franchise Disclosure Document dated September 1, 2011 ("2011 FDD") by email. A copy of the 2011 FDD is attached as **Exhibit A**.

The Franchise Disclosure Document

16. The 2011 FDD did not contain any financial performance representations or earnings claims from the operation of the franchise.

17. The 2011 FDD did contain information regarding the estimated initial investment required to open a restaurant that was generally consistent with the figures Denton had represented to Chorley over the telephone. Specifically, Item 7 provided four different estimates of the initial cost to open a restaurant based on the type of property being developed, which Dickey's identified as "Non-Traditional Conversion", "Restaurant Conversion", "Retail Space Conversion", and "Shell Building Finish-Out". Exh. A at 13-16.

18. The FDD stated that the information provided in Item 7 was based on Dickey's "experience [] acquired in the barbecue restaurant business since 1941." *Id.* at 22 n.17.

19. The 2011 FDD defined the four property types as follows:

a. a “Non-Traditional Conversion” was defined as “a conversion of a prior food service facility located within a convenience store, food court or other

‘nontraditional’ setting and typically containing approximately 400 square feet”;

b. a “Restaurant Conversion” was defined as “a conversion of a prior food service facility located within a convenience store, food court or other ‘nontraditional’ setting and typically containing approximately 400 square feet”;

c. a “Retail Space Conversion” was defined as “the conversion of previously finished out commercial retail space not equipped with restaurant facilities and containing approximately 1,800 square feet”; and

d. a “Shell Building Finish-Out” was defined as “unfinished commercial space in a “shell” condition, typically located within a commercial retail center and containing approximately 1,800 square feet”. *Id.* at 23 n. 20-23.

20. The estimates were arranged in order from lowest initial investment to highest:

a. “Non-Traditional Conversion” was the least expensive type of property with an estimated initial investment of \$63,556 - \$117,556;

b. “Restaurant Conversion” was the next lowest with an estimated investment range of \$108,438 - \$162,438;

c. “Retail Space Conversion” was the second most expensive option, with an estimated initial investment of \$255,882 - \$309,882; and

d. “Shell Building Finish-Out” was the most expensive type of property, with an estimated initial investment of \$342,576 - \$396,576. *Id.* at 13-16.

21. Although the total investment figures listed in Item 7 were higher than the numbers given to Chorley by Denton during their phone conversation, they were generally

consistent with respect to the line items Denton and Chorley had discussed — namely, the cost of leasehold improvements and equipment. According to Item 7, the combined cost of improvements and equipment for a “Non-Traditional Conversion” and “Restaurant Conversion” — the specific property types Denton had used in his examples — were between \$14,901 and \$59,783. *Id.* at 13-14.

22. However, unknown to Chorley, on September 1, 2012, over a month before Denton gave the 2011 FDD to Chorley, Dickey’s had issued an updated version of its FDD (“2012 FDD”). A copy of the 2012 FDD is attached as **Exhibit B**. In fact, Dickey’s submitted the 2012 FDD to the Securities Division of the Office of the Maryland Attorney General for approval on October 4, 2012, the same day Denton provided Chorley with the 2011 FDD. Thus, Denton knew, or through the exercise of reasonable care should have known, that the 2011 FDD he sent to Chorley was outdated and incorrect.

23. The 2012 FDD made significant and material changes to the information provided in the 2011 FDD with respect to the estimated initial investment for the “Non-Traditional Conversion” and “Restaurant Conversion” properties. Specifically, the estimated initial investment for those particular property types increased as follows:

- a. “Non-Traditional Conversion” jumped from \$63,556 - \$117,556 to \$68,986 - \$148,958 (a maximum 27% increase); and
- b. “Restaurant Conversion” increased from \$108,438 - \$162,438 to \$127,560 - \$208,560 (a maximum 28% increase).

24. By contrast, the cost increase for the two other properties types was more modest:

a. “Retail Space Conversion” rose from \$255,882 - \$309,882 to \$269,406 - \$350,406 (a maximum 13% increase); and

b. “Shell Building Finish-Out” climbed from \$342,576 - \$396,576 to \$348,651 - \$429,651 (a maximum 8% increase).

25. In addition to the increased initial investment estimates, the 2012 FDD materially changed the definition of “Restaurant Conversion” from the definition in the 2011 FDD Dickey’s provided Chorley. Specifically, the 2012 FDD changed the definition of “Restaurant Conversion” to “the conversion of a previously finished out, equipped restaurant facility containing approximately 1,800 square feet.”

26. Dickey’s did not give Chorley the 2012 FDD, nor was he otherwise advised by Dickey’s of the material changes it made to the 2011 FDD, prior to his purchase of a Dickey’s franchise.

The Franchise Agreement

27. On or about October 5, 2012, the Chorleys submitted to Dickey’s an application for CEI to be a franchisee, together with supporting documentation.

28. On or about October 8, 2012, Sheri Karp, Dickey’s Legal Administrator, notified the Chorleys that CEI had been approved as a potential franchisee.

29. On October 9, 2012, Karp, sent Chorley a franchise agreement to be executed with an effective date of October 19, 2012 (“Franchise Agreement”).

30. That same day, Chorley had a second phone meeting with Denton, during which he expressed his desire to sign the Franchise Agreement and purchase a Dickey’s franchise provided he could find a second generation restaurant space and equip it with used equipment. Chorley explained that he believed those conditions would be necessary in order to keep the initial investment within his budget.

31. During that meeting, Denton assured Chorley that his conditions could be met, and made express representations regarding the nature of the support that Dickey's would provide if Chorley purchased a franchise. Specifically, Denton represented that:

- a. Dickey's "real estate team" would find Chorley a location that had previously been used as a restaurant or food service facility;
- b. Dickey's would facilitate his sourcing of used equipment; and
- c. Dickey's would assist him with development of a business plan to facilitate his ability to obtain financing, should the need arise.

Denton did not disclose whether Dickey's was obligated to provide any of those support obligations under the terms of the Franchise Agreement.

32. The next day, relying on the express representations Denton made on October 4 with respect to the potential earnings and initial investment, the information contained in the 2011 FDD, the express representations Denton made on October 9 with respect to Dickey's franchisee support, and without knowledge of the information contained in the 2012 FDD, Chorley executed the Franchise Agreement as president of CEI, and both Matthew and Carla Chorley executed the Franchise Agreement individually as guarantors. A copy of the executed Franchise Agreement is attached as **Exhibit C**.

33. Soon after Chorley sent his executed Franchise Agreement and check for the initial franchise fee, and before the effective date on the agreement, Chorley was contacted by members of Dickey's corporate teams to begin developing his restaurant. He began his in-home training with Dickey's almost immediately.

34. Over the course of the following six months, Chorley discovered that the information he was told by Denton and that was included in the 2011 FDD with respect to the initial investment were materially false and untrue.

Revelation of Materially Understated Lease Rates

35. On or about October 17, 2012, Chorley was contacted by Rick Ellis, a member of Dickey's real estate team, regarding a location for Chorley's restaurant. Chorley advised Ellis that, given his budget, he was primarily interested in a second-generation restaurant that he could convert for \$30,000, as he had been told by Denton. Ellis told Chorley that \$30,000 would be "tough to do" but possible if he found the "right space."

36. Using an internet real estate search tool, Dickey's identified at least two properties in Frederick, Maryland, including a property located at 1700 Kingfisher Drive, Frederick, Maryland 21701 ("Frederick Property"). The Frederick Property had formerly been a Quiznos restaurant, was located in a commercial retail setting, and contained up to 2,750 square feet. The Frederick Property could have been split so that Chorley's restaurant was only about 1,400 square feet; however, Dickey's strongly recommended Chorley take the entire space.

37. On or about October 24, 2012, Dickey's sent Chorley a draft letter of intent ("LOI") with respect to the Frederick Property. The monthly rental amount Dickey's proposed in the LOI was approximately \$7,800 per month, which was significantly higher than what had been listed in Item 7 of the 2011 FDD. Rick Ellis and Anthony Fedele told Chorley that he did not need to retain an attorney because they handled lease negotiations on behalf of franchisees all the time. Chorley felt pressured by Dickey's real estate team to sign the LOI and move forward. On or about November 8, 2012, Ellis told Chorley that if he did not sign the LOI, the timeline for opening his restaurant would be delayed, resulting in a default under the Franchise Agreement.

38. In December 2012, the owner of the Frederick Property provided Chorley with a draft 10-year lease based on the LOI. Again, Chorley expressed his misgivings to Dickey's about the lease due to the high rent; however, Chorley was told by Fedele on or about December 4, 2012, that he did not have a choice—the LOI had gone out in good faith and pulling out now was simply not an option. Believing he had no choice, and not wanting to risk defaulting on the Franchise Agreement, Chorley signed a 10-year lease for the Frederick Property.

39. Although the lease payments were higher than Chorley had wanted, he was still optimistic because the location had previously been a Quiznos, which had been the exact brand of restaurant that Denton told Chorley had been converted to a Dickey's in Connecticut for \$15,000. In addition, it met the 2011 FDD definition of a "Non-Traditional Conversion" or "Restaurant Conversion" with more square footage. Based on Denton's express representations regarding the cost of converting such properties, Chorley reasonably believed he could equip and convert his property to a Dickey's at a low cost within his budget.

Revelation of Materially Understated Equipment Costs

40. During November 2012, Chorley made several requests to Dickey's for information on equipment costs. Dickey's repeatedly told Chorley that he would be provided with the equipment lists "in due time."

41. In January 2013, only after the lease on the Frederick Property was ratified, did Dickey's reveal that the cost of the required equipment would far exceed everything Chorley had been told by Denton or what was listed in the 2011 FDD.

42. Dickey's sent Chorley financing documents for the equipment he would be required to have in his restaurant, the cost of which was projected to be in excess of \$100,000.

43. The projected equipment costs were 5 to 10 times greater than the \$10,000 and \$20,000 figure Denton represented to Chorley in October 2012, several multiples greater than the

\$13,701 figure listed in Item 7 for a “Non-Traditional Conversion”, and well more than double the \$37,633 listed in Item 7 for a “Restaurant Conversion”.

44. On information and belief, Chorley alleges that Dickey’s intentionally withheld the equipment cost information from Chorley until after he had executed the lease because the lease obligation would make it less likely that Chorley would seek to terminate the Franchise Agreement once the huge discrepancy between the actual equipment costs and the costs stated in the 2011 FDD was revealed.

45. Confronted with projected equipment costs that more than doubled the highest estimate provided in the 2011 FDD, Chorley told Dickey’s that he wanted to acquire used equipment, which was one of the key features and selling points of the Dickey’s system as represented by Denton and on which Chorley had relied on in making his decision to purchase the franchise. Chorley explained that he was expressly told by Denton that Dickey’s had a “team” whose sole purpose was helping a franchisee source used equipment. Despite the fact that there was nothing in the 2011 FDD that contradicted Denton’s representations, Dickey’s responded that Chorley would not be allowed to equip his restaurant with used equipment because Dickey’s experience was that the time required to search for and obtain viable used equipment was causing its franchisees’ openings to be delayed.

46. In March 2013, Chorley received final equipment bids from Central Restaurant Products, a wholesale restaurant supplier. The total equipment costs exceeded \$90,000. When Chorley again told Dickey’s he wanted to source used equipment, Lauren Parker, Dickey’s Associate Director of Development, flatly told Chorley that he was “not allowed to source used equipment.” Although Central Restaurant Products was not listed in the Operations Manual as a

required vendor, Parker also told Chorley that he was not allowed to obtain equipment from any other supplier.

47. As a result, Chorley was compelled to finance the equipment through several equipment leases that carried very high interest rates. Dickey's pressured Chorley into accepting the equipment lease terms by again telling him he risked defaulting on his Franchise Agreement if he did not agree to the equipment leases.

Revelation of Materially Understated Construction Costs

48. In February 2013, Chorley began working with Dickey's construction team on converting his property to a Dickey's Barbecue Pit. Chorley sought several bids for the construction work that was required by Dickey's to make the Frederick Property compliant with its system, including, at Dickey's direction, from CCI Builders and Developers ("CCI"). Dickey's strongly recommended CCI and told Chorley that it had extensive prior experience building out Dickey's franchises and could meet the required timelines for opening at a low cost.

49. The lowest bid received was from CCI; however, at \$57,000, it was nearly double the amount for conversion of the prior restaurant space that Chorley had been told by Denton, and several multiples higher than the amounts listed for "leasehold improvements" in Item 7 of the 2011 FDD for either the "Non-Traditional Conversion" or "Restaurant Conversion". Still, Dickey's strongly encouraged Chorley to use CCI.

50. Chorley ultimately selected CCI to perform the construction work because of Dickey's representations regarding its experience and because it was the lowest priced bid. However, on information and belief, CCI knowingly underrepresented the actual cost of the work, which totaled over \$92,000 when all the required work was completed. The final cost of construction to convert the Frederick Property into a Dickey's Barbecue Pit was more than triple the cost Chorley had been told by Denton, and several multiples higher than the amounts listed

for “leasehold improvements” in Item 7 of the 2011 FDD for either the “Non-Traditional Conversion” or “Restaurant Conversion”.

Revelation of the Materially False Earnings Claims

51. In or about February 2012, faced with growing costs and a limited budget, Chorley asked Dickey’s to provide him with a sample profit and loss statement (“P&L”) that would be representative of his restaurant, and that he could use to obtain financing. Dickey’s provided Chorley a sample P&L showing gross monthly sales of \$162,634, with a net monthly profit of over \$63,000 — more than 43%. These numbers were consistent with or exceeded the financial performance representations Denton had previously made to Chorley.

52. On or about May 16, 2013, Chorley officially opened the restaurant for business. Despite Dickey’s representations in the 2011 FDD that it would provide its franchisees with qualified on-site training in connection with the opening of the restaurant, Dickey’s provided Chorley with only 2 and one-half days of on-site training by an unqualified individual who attended Barbecue University at the same time as Chorley.

53. In total, Chorley expended more than \$300,000 to open his Dickey’s franchise, nearly twice as much as the highest estimated initial investment for either the “Non-Traditional Conversion” or “Restaurant Conversion” as stated in the 2011 FDD.

54. Since opening in May 2013, Chorley’s restaurant has never recognized a profit, even though it has consistently hit Dickey’s recommended targets for costs of food and labor. To the contrary, the restaurant has recorded a loss in each month it has operated.

The Development Agreement

55. In or about April 8, 2013, prior to the opening of Chorley’s first restaurant, Denton contacted Chorley by phone and advised him that there was “tons of activity in [his] area” and that Dickey’s was about to sell a franchise to another operator near Chorley’s

restaurant in Frederick, Maryland. Denton did not disclose the source of the information or the identities of the other parties he claimed were interested and ready to enter into a franchise agreement with Dickey's.

56. Denton told Chorley that the only way he could protect his store from direct competition from another local franchisee was to purchase the territory through a development agreement.

57. Chorley told Denton that due to the excessive cost he had incurred in connection with the opening of the one store, he was not in a position to enter a development agreement. In response to this, Denton made express representations regarding the cost of opening a second restaurant and the potential earnings Chorley could expect make from the operation of a second restaurant. Specifically, Denton represented that:

- a. the costs to open a second restaurant were lower than the costs to open one; and
- b. in Chorley's market he could expect his second store to generate \$1,000,000 in revenue with 10% profit.

58. Denton used the financial performance representations to persuade Chorley that the additional income from the second store would enable him to recover the costs of opening his first franchise store even faster.

59. Denton further represented to Chorley that Dickey's would not rush Chorley to open the second store before he was ready, and that Dickey's would willingly agree to modify the development schedule as needed so that Chorley's first store could get up and running.

60. On or about April 17, 2013, Denton provided Chorley with a copy of the 2012 FDD, which contained no financial performance representations or earnings claims.

61. Having already spent or committed to spend more than double his original investment budget, Chorley was particularly sensitive to the threat competition posed to that investment. Further, since Chorley had not yet opened his first restaurant, he still believed the financial performance representations that Denton had made to him, which were reinforced by the sample P&L Dickey's had provided him in February 2013. As a result, Chorley executed a developer agreement as president of CEI, and both Matthew and Carla executed the developer agreement individually as guarantors on April 30, 2013 ("Development Agreement"). A copy of the Development Agreement is attached as **Exhibit D**. Chorley also paid Dickey's a development fee of \$15,000.

62. Pursuant to the Development Agreement, Chorley was required to open a second Dickey's restaurant by October 19, 2014. Exh. D at 4, § 3.B.

63. In October 2013, a representative from Dickey's real estate group contacted Chorley and advised him that in order to meet his development schedule, he needed to execute a second franchise agreement and begin looking at properties for his second store.

64. By this time, Chorley had been operating his first store at a loss for five months, and was now aware that the financial performance representations made by Denton were completely false. Having yet to make a dollar from his investment, and having spent more than double to open the restaurant than he was told, Chorley was very apprehensive about going forward. As a result, Chorley and Dickey's agreed to amend the Development Agreement, extending the commencement of the development period of his second restaurant until 90 days after the start of 2014.

65. In March 2014, having yet to make a dollar from his first store and with Dickey's pressuring him to open yet another, Chorley sought legal counsel.

Events Precipitating The Lawsuit

66. On March 31, 2014, Chorley, by counsel, advised Dickey's of Chorley's claims of multiple violations of the Maryland Franchise Registration and Disclosure Law, Md. Code, Bus. Reg. § 14-201 *et seq.* ("MFRDL" or the "Act") in connection with the sale of the franchise in October 2012, and the Development Agreement in May 2013. Chorley demanded rescission of both agreements pursuant to the Act.

67. Subsequently, pursuant to Article 27 of the Franchise Agreement and Article 14 of the Development Agreement, Chorley, by counsel, requested mediation in a good faith attempt to settle and resolve his claims.

68. On May 1, 2014, at approximately 10:30 a.m. (EDT), the parties tentatively agreed to mediate in Atlanta, and were proceeding to schedule a mutually agreeable date as well as to identify potential mediators.

69. However, on May 1 at approximately 4:30 p.m. (EDT), Chorley's counsel received a demand for arbitration that had been filed by Dickey's with the American Arbitration Association, designated as Case Number 01-14-0000-2105, and styled as *Dickey's Barbecue Restaurants, Inc. -vs- Chorley Enterprises, Inc.* ("Pending Arbitration"). The Pending Arbitration alleged numerous material violations of both the Franchise Agreement and Development Agreement by CEI, and sought to terminate both agreements. In addition, Dickey's asserted a claim for breach of contract and requested over \$600,000 in damages. A copy of the Demand for Arbitration (without exhibits) is attached as **Exhibit E**.

70. On May 7, 2014, Chorley's counsel sent a letter to Dickey's counsel demanding that the Arbitration be withdrawn on grounds that it was premature under the Franchise and Development Agreements, and further that the arbitration agreement was unenforceable in light

of Chorley's claims under the Act. On May 16, 2014, Dickey's responded to the letter, refusing to withdraw the arbitration.

71. Plaintiffs now bring this action.

COUNT I – EARNINGS CLAIM
Damages and Rescission of Franchise Agreement
for Violation of Maryland Franchise Registration and Disclosure Law

72. Plaintiffs repeat and incorporate by reference the allegations in Paragraphs 1-71, above, as if fully set forth.

73. In connection with the sale of a Dickey's Barbecue Pit franchise to Plaintiffs in October 2012, Dickey's, by and through its authorized agent Jerrel Denton, made numerous representations of, or from which could be ascertained, specific levels or ranges of actual or potential sales, income, or profit from Dickey's franchised units, which earnings claims were not included in the 2011 FDD. This conduct was in violation of Md. CODE REGS. (COMAR) 02.02.08.16(D)(3) and, by operation of law, Section 14-229(a)(3) of the Act.

74. Defendants Denton and Roland are jointly and severally liable with Dickey's pursuant to Sections 14-227(d)(iii) and (v) of the Act.

75. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs were induced to purchase a Dickey's Barbecue Pit franchise and suffered financial loss in excess of \$300,000.

76. Pursuant to Sections 14-227(a) and (b) of the Act Defendants are civilly liable to Plaintiffs for the damages sustained as a result of the grant of the franchise.

77. Pursuant to Section 14-227(c) of the Act the Court may order Dickey's to rescind the franchise and make restitution to plaintiffs.

COUNT II – FRAUD
Damages and Rescission of Franchise Agreement
for Violation of Maryland Franchise Registration and Disclosure Law

78. Plaintiffs repeat and incorporate by reference the allegations in Paragraphs 1-71, above, as if fully set forth.

79. In connection with the sale of a Dickey's Barbecue Pit franchise to Plaintiffs in October 2012, Dickey's, as well as the individual Defendants, and each of them, made multiple untrue statements of material fact, and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

80. The untrue statements of material fact and omissions of material fact were made by Defendants during the period of October 4 – 9, 2012, by and through the express representations of Jerrel Denton and the superseded and inaccurate 2011 FDD.

81. Specifically, the statements made by Denton on October 4 and the information contained in Item 7 of the 2011 FDD materially misrepresented the initial investment amount required to open a Dickey's franchise. Denton represented to Chorley that a prior food service facility could be converted to a Dickey's restaurant for \$30,000 or less, and that \$89,000 was sufficient funds to open 3 such restaurants. The 2011 FDD stated that the total initial investment required to open a Dickey's restaurant from a prior food service facility was between \$63,556 and \$162,438. Chorley's actual initial investment was more than \$300,000.

82. In addition, the statements made by Denton on October 4 and 9, 2012, and the information contained in Item 8 of the 2011 FDD, materially misrepresented, or materially failed to state, Dickey's policy regarding used equipment. Denton told Chorley that Dickey's encouraged its franchisees to obtain used equipment and had a dedicated team whose sole purpose was to help its franchisees source used equipment. Item 8 of the 2011 FDD provided no

information that contradicted or was inconsistent with Denton's statements. However, when Chorley actually tried to obtain used equipment, Dickey's prohibited it.

83. On September 1, 2012, more than a month before Chorley received the 2011 FDD, Dickey's issued an updated FDD, which reflected an estimated initial investment for a "Non-Traditional Conversion" or "Restaurant Conversion" that was 27 and 28 percent higher, respectively, than what contained in the 2011 FDD. The 2012 FDD was submitted to the Securities Division of the Maryland Office of the Attorney General for renewed registration under the Act on October 4, 2012, the same day Dickey's disclosed Chorley with the 2011 FDD.

84. The material inaccuracy Denton's statements and the information provided in the 2011 FDD with regard to the estimated initial investment and Dickey's policy regarding used equipment were known to Defendants or should have been known through the exercise of reasonable care prior to October 4, 2012.

85. Plaintiffs did not know, and in the exercise of reasonable care could not have known, of the untruths and omissions.

86. Dickey's conduct was in violation of Section 14-229(a)(3) of the Act.

87. Defendants Denton and Roland are jointly and severally liable with Dickey's pursuant to Sections 14-227(d)(iii) and (v) of the Act.

88. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs were induced to purchase a Dickey's Barbecue Pit franchise and suffered financial loss in excess of \$300,000.

89. Pursuant to Sections 14-227(a) and (b) of the Act Defendants are civilly liable to Plaintiffs for the damages sustained as a result of the grant of the franchise.

90. Pursuant to Section 14-227(c) of the Act the Court may order Dickey's to rescind the agreement and make restitution to Plaintiffs.

COUNT III – EARNINGS CLAIM
Damages and Rescission of Franchise Agreement
for Violation of Maryland Franchise Registration and Disclosure Law

91. Plaintiffs repeat and incorporate by reference the allegations in Paragraphs 1-71, above, as if fully set forth.

92. In connection with the sale of a Dickey's Barbecue Pit development agreement to Plaintiffs in April 2013, Dickey's, by and through its authorized agent Jerrel Denton, made numerous representations of, or from which could be ascertained, specific levels or ranges of actual or potential sales, income, or profit from Dickey's franchised units, which earnings claims were not included in the 2012 FDD.

93. This conduct was in violation of COMAR 02.02.08.16(D)(3) and, by operation of law, Section 14-229(a)(3) of the Act.

94. Defendants Denton and Roland are jointly and severally liable with Dickey's pursuant to Sections 14-227(d)(iii) and (v) of the Act.

95. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs were induced to purchase a Dickey's Barbecue Pit development agreement and suffered financial loss of \$15,000.

96. Pursuant to Sections 14-227(a) and (b) of the Act Defendants are civilly liable to Plaintiffs for the damages sustained as a result of the grant of the development right.

97. Pursuant to Section 14-227(c) of the Act the Court may order Dickey's to rescind the agreement and make restitution to Plaintiffs.

COUNT IV – FRAUD
Damages and Rescission of Franchise Agreement
for Violation of Maryland Franchise Registration and Disclosure Law

98. Plaintiffs repeat and incorporate by reference the allegations in Paragraphs 1-71, above, as if fully set forth.

99. In connection with the sale of a Dickey's Barbecue Pit development agreement to Plaintiffs in April 2013, Dickey's, by and through its authorized agent Jerrel Denton, made oral statements concerning the interest or readiness of other persons to enter into a franchise agreement substantially similar to that being offered to Chorley without disclosing the source of this information and the identities, including names and addresses, of those persons.

100. This conduct was in violation of COMAR 02.02.08.16(C)(3) and, by operation of law, Section 14-229(a)(3) of the Act.

101. Defendants Denton and Roland are jointly and severally liable with Dickey's pursuant to Sections 14-227(d)(iii) and (v) of the Act.

102. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs were induced to purchase a Dickey's Barbecue Pit development agreement and suffered financial loss of \$15,000.

103. Pursuant to Sections 14-227(a) and (b) of the Act Defendants are civilly liable to Plaintiffs for the damages sustained as a result of the grant of the development right.

104. Pursuant to Section 14-227(c) of the Act the Court may order Dickey's to rescind the agreement and make restitution to plaintiffs.

COUNT V – DECLARATORY JUDGMENT
Declaratory Relief Pursuant to 28 U.S.C. § 2201

105. Plaintiffs repeat and incorporate by reference the allegations in Paragraphs 1-71, above, as if fully set forth.

106. 28 U.S.C. § 2201 confers upon the Court the power to determine within its District the rights of the parties to a contract where an actual controversy exists.

107. An actual controversy exists between Plaintiffs and Dickey's regarding the interpretation of Article 27 of the Franchise Agreement and Article 14 of the Development Agreement.

108. The controversy relates to whether the arbitration clauses in the Franchise Agreement and the Development Agreement are enforceable in light of the provisions of Article 29 of the Franchise Agreement and Attachment D to the Development Agreement, and the operative effect of COMAR 02.02.08.16(L)(3) and Section 14-229(a)(3) of the Act.

109. Specifically, Plaintiffs contend, and Defendant disputes, that:

a. pursuant to the provisions of Article 29 of the Franchise Agreement, COMAR 02.02.08.16(L)(3) and, by operation of law, Section 14-229(a)(3) of the Act, renders the arbitration agreement unenforceable because the language of Article 27.2 is materially inconsistent with the MFRDL and cannot be modified so as to make the provision enforceable;

b. pursuant to the provisions of Attachment D to the Development Agreement, COMAR 02.02.08.16(L)(3) and, by operation of law, Section 14-229(a)(3) of the Act, renders the arbitration agreement unenforceable because the language of Article 14.B is materially inconsistent with the MFRDL and cannot be modified to make the provision enforceable; and

c. the Pending Arbitration is void and without any effect as to Plaintiffs' rights and obligations under the Franchise Agreement or Development Agreement.

COUNT VI – INJUNCTIVE RELIEF

110. Plaintiffs repeat and incorporate by reference the allegations in Paragraphs 1-71, above, as if fully set forth.

111. Plaintiffs will suffer immediate and irreparable harm if they are compelled to arbitrate the pending dispute when neither the Franchise Agreement nor Development Agreement contains an enforceable arbitration agreement.

112. In the alternative, Plaintiffs will suffer immediate and irreparable harm if they are compelled to arbitrate Dickey's claims prior to a full and fair determination on the merits of their claims under the Act, which will determine the validity of the Franchise Agreement and the Development Agreement and, of necessity, determine whether Dickey's has any enforceable rights that may be asserted in the Pending Arbitration.

113. Plaintiffs have a likelihood of success on the merits in that the arbitration agreements are subject to other contractual provisions which render them void and inoperable to the extent they are in conflict with the MFRDL.

114. Plaintiffs have no adequate remedy at law; the balance of the equities favors Plaintiffs; and public policy supports the issuance of interim injunctive relief.

115. Plaintiffs are entitled to preliminary and permanent injunctive relief enjoining Dickey's from proceeding with the Pending Arbitration.

WHEREFORE, Plaintiffs pray that the Court enter judgment in their favor as follows:

A. As to Counts I and II, entering judgment against the Defendants, jointly and severally, in the amount of Three Hundred Thousand Dollars (\$300,000.00), or in accordance with proof at trial, as to Counts I and II;

B. As to Counts III and IV, entering judgment against the Defendants, jointly and severally, in the amount of Fifteen Thousand Dollars (\$15,000.00), or in accordance with proof

at trial;

C. As to Counts I-IV, ordering that Dickey's rescind both the Franchise Agreement and the Development Agreement and pay an amount in restitution sufficient to restore Chorley to its original position, including reasonable attorneys' fees expended in bringing this action, in accordance with Section 14-227(c) of the Maryland Franchise Registration and Disclosure Law;

D. As to Count V, declaring that the arbitration clauses in the Franchise Agreement and the Development Agreement are void and unenforceable because they are inconsistent with the provisions of the Maryland Franchise Registration and Disclosure Law and regulations issued thereunder;

E. As to Count VI, preliminarily and permanently enjoining the Defendants, and all persons in active concert with them, from maintaining or taking any action to prosecute Case Number 01-14-0000-2105, styled *Dickey's Barbecue Restaurants, Inc. -vs- Chorley Enterprises, Inc.*, now pending before the American Arbitration Association;

F. Awarding Plaintiffs both pre- and post-judgment interest on all damages awarded, as well as their costs of litigation; and

G. Granting Plaintiffs such other and further relief as justice and equity may require.

Respectfully submitted,

/s/ Andrew K. Wible

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JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b) Plaintiffs demand a trial by jury on all issues so triable.

/s/ Andrew K. Wible