

1 David D. Schneider, #211498
2 Caroline M. Lutz #274836
3 **DOWLING AARON INCORPORATED**
4 8080 North Palm Avenue
5 Third Floor
6 Fresno, California 93711
7 Tel: (559) 432-4500 / Fax: (559) 432-4590
8 dschneider@dowlingaaron.com/
9 clutz@dowlingaaron.com

E-FILED
7/15/2020 4:10 PM
Superior Court of California
County of Fresno
By: A. Rodriguez, Deputy

6 Attorneys for Plaintiff
7 DELI DELICIOUS FRANCHISING, INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF FRESNO

11 DELI DELICIOUS FRANCHISING, INC.,

12 Plaintiff,

13 v.

14 SAM SIAMAK NAMDARIAN, AKOO, INC.,
15 and DOES 1 through 50, inclusive,

16 Defendants.

Case No. [20CECG02037](#)

**VERIFIED COMPLAINT FOR
PRELIMINARY AND PERMANENT
INJUNCTIONS**

18
19 Plaintiff, DELI DELICIOUS FRANCHISING, INC. (“Deli Delicious”) alleges as
20 follows:

21 **THE PARTIES**

22 1. At all times relevant to the allegations herein, Deli Delicious is and was a
23 California corporation doing business in the State of California, County of Fresno.

24 2. Deli Delicious is informed, believes, and based thereon alleges that at all
25 times relevant to the allegations herein, Defendant, SAM SIAMAK NAMDARIAN
26 (“Namdarian”), was an individual residing in Fresno County, California.

27 ///

28 ///

1 Delicious' beliefs: (a) that the Third Party Bakery failed to update and maintain the equipment
2 and facilities it utilized to bake the bread products used in the Deli Delicious franchises, (b) that
3 such failures resulted in such equipment and facilities becoming outdated and unable to keep pace
4 with the demands for high quality and innovative bread products needed by the Deli Delicious
5 franchises as more franchise locations came on-line, and (c) that Deli Delicious' operations were
6 outgrowing the capacities of the Third Party Bakery. Unfortunately, Deli Delicious' efforts to
7 resolve its frustrations with the Third Party Bakery were unsuccessful.

8 11. As a result, effective on or about February 8, 2019, Deli Delicious elected
9 to remove the Third Party Bakery as the designated vendor for bread products and designated
10 Deli Delicious' affiliate, D.D.'s Bakery, as the designated vendor of bread products to be used in
11 its franchises. D.D.'s Bakery is a Certified Organic Bakery that operates from a state-of-the art
12 facility with upgraded equipment.

13 12. D.D.'s Bakery's bread products were developed to be superior to the bread
14 products the Third Party Bakery was previously supplying.

15 13. D.D.'s Bakery's bread has natural ingredients and, unlike the bread being
16 supplied by the Third Party Bakery, is made with 100% organic flour.

17 14. Effective July 31, 2019, D.D.'s Bakery was certified organic by the
18 California Certified Organic Farmers (CCOF). A true and correct copy of the CCOF certification
19 is attached hereto as Exhibit "A."

20 15. D.D.'s Bakery's wheat bread is 100% whole wheat.

21 16. D.D.'s Bakery's Dutch Crunch bread recipes were developed under the
22 supervision of a third-generation Dutch baker.

23 17. D.D.'s Bakery's bakery products are made with proprietary flour that is
24 created specifically for Deli Delicious.

25 18. As a result of D.D.'s Bakery's bakery products' organic flour comprising
26 more than seventy percent (70%) of the product, Deli Delicious restaurants are lawfully permitted
27 to market and promote its products as being made with organic flour.

28 ///

1 19. Defendants Namdarian and Akoo, Inc. (hereinafter, Namdarian and Akoo
2 Inc. shall collectively be referred to as the “Franchisees”) are franchisees of Deli Delicious,
3 operating two restaurant locations in Fresno.

4 20. The Franchisees’ restaurants are respectively located at 550 S Clovis Ave
5 #108, Fresno, CA and 2042 E. Copper, Fresno, CA 93730 (individually, the “S. Clovis
6 Restaurant” and “E. Copper Restaurant”, and collectively, the “Restaurants”).

7 21. The Franchisees are parties to franchise agreements with Deli Delicious,
8 one dated December 3, 2010, the other dated April 11, 2012 (hereinafter, collectively the
9 “Franchise Agreements”). True and correct copies of the Franchise Agreements are attached
10 hereto as Exhibits “B” (the December 3, 2010 Agreement) and “C” (the April 11, 2012
11 Agreement), respectively.

12 22. Neiloufar Heidari was the original franchisee under the December 3, 2010
13 Franchise Agreement. On September 30, 2016, Deli Delicious consented to the assignment of
14 rights under the December 3, 2010 Franchise Agreement to Namdarian. A true and correct copy
15 of that Consent to Assignment is attached hereto as Exhibit “D.”

16 23. William Johnston was the original franchisee under the April 11, 2012
17 Franchise Agreement. On July 1, 2017, Deli Delicious consented to the assignment of rights
18 under the April 11, 2012 Franchise Agreement to Namdarian and Akoo, Inc. A true and correct
19 copy of that Consent to Assignment is attached hereto as Exhibit “E.”

20 24. Pursuant to the Franchise Agreements, Franchisees are required to
21 purchase products from vendors designated by Deli Delicious and to use required menu boards
22 for the Restaurants, which contain the updated menu items.

23 25. Section XII (GENERAL OBLIGATIONS OF FRANCHISEE) of the
24 Franchise Agreements provides, in relevant part:

25 A. Follow Operations Manual and Directives of Franchisor

26 Franchisee agrees that use of Franchisor’s System and
27 adherence to our Operations Manual (the “Manual”), and to
28 Franchisor’s standardized design and specifications for
 decor and uniformity of the Restaurant are essential to the
 Franchisor's trademarks and service marks, as well as the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

image and goodwill thereof.... In order to further protect the System, our trademarks, our service marks, and our goodwill, Franchisee shall:

1. Operate the Restaurant and use our Manual(s) solely in the manner prescribed by Franchisor;
3. Follow the methods of operation, food preparation, presentation of Products and Services so as to conform to the specifications and standards of Franchisor in effect from time to time;
4. Use only such amounts and types of products, ingredients and supplies so as to conform to Franchisor's specifications;
5. Sell from the Restaurant all Products and menu items specified by the Franchisor and not sell or offer for sale any other products or menu items of any kind or character without first obtaining the express written approval of the Franchisor, which shall be at the full discretion of the Franchisor who shall have the sole right of decision in regards to all products and menu items to be sold in the Restaurant. . . . Franchisor shall have the right to not approve any product or menu item for any reason whatsoever or for no reason whatsoever;
6. Discontinue selling or offering any product, menu item, program or service for sale and/or using any products or ingredients Franchisor may, in its absolute discretion, delete from its standards and specifications for any reason whatsoever or for no reason whatsoever;
7. Maintain in sufficient supply and use at all times, only such products, ingredients, beverages, supplies, kitchen equipment and methods of service as to conform to our standards and specifications; and to refrain from deviating by using non-conforming items or methods without our prior written consent;
8. Purchase products, ingredients, beverage items, packaging materials, supplies, retail items, furnishings, fixtures and kitchen equipment as may be required by us, for the appropriate handling and selling of any Product and/or Service that become(s) approved for offering in the System. Franchisees must obtain Franchisor's prior written approval of Franchisee's supply sources for products the Franchise Business intends to use or sell to customers . . . **Franchisee will be required to purchase bread . . . either from Franchisor, its affiliates or approved vendors or suppliers.** . . . (Emphasis Added);
15. Not engage in any services, programs, trade practice or other activity, offer or sell any menu item or product

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

which Franchisor determines to be inconsistent with the Franchisor's quality standards, harmful to the goodwill, or to reflect unfavorably on the reputation of Franchisee or us the Franchised Business, or the products and services sold thereof; or which constitutes deceptive or unfair competition, or otherwise is in violation of any applicable laws. The above limitations are closely related to our business image, purpose and marketing strategy, and therefore any change there from would fundamentally change the nature of the business;

18. Recognize that preservation of the System and the health of the Deli Delicious TM franchise network depend upon uniformity of all Product and Service offerings. . . . (Emphasis Added)

H. Operate Restaurant in Strict Conformity to Requirements

Franchisee shall operate the Restaurant in strict conformity with such quality standards, techniques, operational procedures, recipes, food preparation and menu offerings as Franchisor may from time to time prescribe in the Operations Manual, or otherwise in writing, and shall not deviate without Franchisor's prior written consent. Franchisee further agrees to offer its customers . . . only those Products, Services . . . which meet Franchisor's standards of quality and which Franchisor has approved in writing to be offered in connection with the Restaurant's operations. Franchisee agrees to discontinue offering any Products, menu items, Services . . . which Franchisor may, in its sole discretion, disapprove in writing at any time.

Franchisee agrees that all food and menu items must be prepared in accordance with recipes . . . and processes developed by Franchisor. Franchisee acknowledges that such recipes . . . and processes are integral to the System and failure to adhere to such recipes . . . and processes shall be detrimental to the System. Franchisee must not deviate from Franchisor's recipes, . . . processes, standards and specifications by the use of non-conforming items . . . without first obtaining Franchisor's written consent.

I. Use of Approved Products, Vendors, Suppliers and Kitchen Equipment

. . . Currently the Franchisor and/or its affiliates are the only approved supplier for bread, seasoned meats (chicken and steak) and pickles. (Emphasis Added). . . . Franchisor will provide Franchisee with written notice that a product is available for use and at Franchisor's sole discretion, may determine that such product is an essential element of a Deli DeliciousTM restaurant.

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

. . . In addition Franchisee acknowledges that:

2. To insure the consistent high quality and uniformity of Product and Services provided by Deli Delicious™ franchised business, Franchisee must purchase all products, ingredients . . . for use in the operation of a Deli Delicious™ restaurant, from us and/or our affiliates or those approved vendors (including manufacturers, distributors and other sources) who demonstrate to Franchisor’s continuing satisfaction an ability to meet Franchisor’s standards and specifications.

5. Franchisee may be required to sell, or otherwise dispense, only “Deli Delicious™” products, menu items and services, which may, from time to time, be specified in writing, designated and approved for sale by Franchisor. **Such vendors may include or be limited to us and/or our affiliates.** (Emphasis Added). . . . The “Proprietary Products” bearing the Deli Delicious™ Names and Marks and/or as specified in the Operations Manual, must be purchased by the Franchisee directly from the Franchisor, affiliates or approved vendors and suppliers, unless the Franchisee has submitted and received written approval from the Franchisor to use an alternate supplier as specified below. . . .

6. Franchisee acknowledges and agrees that Franchisee's Restaurant will feature certain menu items and Products associated with a Deli Delicious™ restaurant and that Franchisor has and may continue to develop for use in the System certain menu items and Products that are prepared from Franchisor's proprietary recipes that bear the Marks. **Because of the importance of quality and uniformity of production and the significance of such menu items and Products in the System, it is to the mutual benefit of the parties that Franchisor closely controls the production and distribution of such Products. Accordingly, Franchisee agrees that with respect to such Products, whether or not such Products are proprietary, Franchisee shall use only Products manufactured by or on behalf of Franchisor and shall purchase solely from Franchisor and/or its affiliates.** (Emphasis Added).

7. Franchisor reserves the right to require Franchisee to purchase designated Proprietary Products, from Franchisor, its affiliates or sources designated and/or approved by [Franchisor] to the extent permitted by law. **This includes without limitation: Bread,** seasoned meats, pickles, ingredients, pre-packaged food items, beverages, apparel, packaging materials, retail items, paper items, promotional materials and display items (Franchisor does not currently have all such items, but may in the future). (Emphasis Added). . . . Franchisor has the right in its discretionary

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

determination of quality, accuracy of product claims, composition, value, appearance, customer service strength, prompt attention to complaints and other factors that may change periodically to disapprove any product Franchisee requests for approval in writing from Franchisor. . .

12. Notwithstanding anything to the contrary contained in this Agreement, Franchisee acknowledges and agrees that, at Franchisor's sole option, Franchisor may establish one or more . . . preferred vendor programs with one or more nationally or regionally-known suppliers who are willing to supply all or some Deli Delicious™ restaurants with some or all of the Products, ingredients, supplies . . . that Franchisor requires for use and/or sale in the development and/or operation of the Restaurant. In this event, Franchisor may limit the number of approved vendors with whom Franchisee may deal, designate sources that Franchisee must use for some or all products and other products . . ., and/or refuse any of Franchisee's requests if Franchisor believes that this action is in the best interests of the System. Franchisor shall have unlimited discretion to approve or disapprove the vendors or suppliers who may be permitted to sell products, ingredients, supplies . . . to Franchisee.

26. Section XII. Paragraph N of the Franchise Agreements require Franchisees to display updated menu boards in its Deli Delicious restaurants and provides in relevant part:

Franchisee understands and acknowledges that every detail of the design and operation of the Restaurant is important to the Franchisee, Franchisor and other franchisees in order to develop and maintain uniform operating standards, to increase the demand for the Products and Services sold by the Restaurant under our System, and to protect Franchisor's reputation and goodwill...Franchisee, therefore agrees that we may periodically and upon written notice, add to, modify or change the System, including without limitation the adoption and use of new or modified trademarks, service marks, menu items, recipes, ingredients, food preparation and techniques, Products, Services, restaurant supplies, uniforms, signs, menu boards, kitchen equipment....Franchisee promises to promptly accept, implement, use and display in the operation of the Restaurant, all such additions, modifications and changes at Franchisee's expense. (Emphasis Added.)

27. Franchisees' obligation to purchase and use in the Restaurants bread products from Deli Delicious' designated vendor is a material term of the Franchise Agreements.

28. On or about February 5, 2019, Deli Delicious designated its affiliate, D.D.'s Bakery, as the designated vendor of bread products to be used in its franchises.

1 29. Under the Franchise Agreements, Franchisees are compelled to purchase
2 bread products for use in the Restaurants only from D.D.'s Bakery, to the exclusion of any other
3 vendor of bread products.

4 30. Under the Franchise Agreements, Franchisees may only use those bread
5 products acquired from D.D.'s Bakery in the Restaurants.

6 31. Under the Franchise Agreements, Franchisees Franchisee must display the
7 required digital menu boards in the Restaurants. Currently, Deli Delicious requires menu boards
8 comprised of the following components be purchased from Technology Solutions of Fresno, Inc.
9 and installed and displayed in its franchised locations: ceiling mounted W Box Technologies 43”
10 LED 4K Commercial Display; signage player – Android- 4K; 3-TV menu mounting display –
11 ceiling mount/truss bolted; 6 outlet surge protector. As of the time this Complaint was filed, the
12 required menu boards, and installation of the components comprising same, cost approximately
13 \$2,332.40. A true and correct estimate for the required menu boards is attached hereto as Exhibit
14 “F.”

15 32. Beginning on or about February 5, 2019, and continuing to the present
16 time, Franchisees have wrongfully, and in breach of their obligations under the Franchisee
17 Agreements (a) refused to purchase bread from D.D.'s Bakery, (b) refused to use Deli Delicious
18 approved bread products in the Restaurants, (c) used bread products acquired from a non-Deli
19 Delicious approved vendor in the Restaurants, and (d) failed to display the required digital menu
20 boards in the S. Clovis Restaurant.

21 33. On February 19, 2020, Deli Delicious sent the Franchisees a notice of
22 default detailing both of continuing violations described in Paragraph 32 hereinabove. The
23 Franchisees refuse to remedy the violations. A true and correct copy of the notice of default is
24 attached hereto as Exhibit “G.”

25 34. Despite demands by Deli Delicious to operate in accordance with the
26 Franchisee Agreements, Franchisees have refused, and continue to refuse, to cease their breaches
27 and remedy those violations.

28 ///

FIRST CAUSE OF ACTION
(Preliminary and Permanent Injunction)

35. Deli Delicious refers to and incorporates by reference herein Paragraphs 1 through 34 of this Complaint as though the same were fully set forth herein.

36. Franchisees' failure to (1) purchase and use in the Restaurants bread products from Deli Delicious' affiliate, D.D.'s Bakery, and (2) use the required digital menu boards in the S. Clovis Restaurant are material breaches of the Franchise Agreements.

37. Despite demands by Deli Delicious to operate in accordance with the Franchise Agreement, Franchisees refuse to cease their breaches.

38. Franchisees' wrongful conduct, unless and until enjoined and restrained by order of this Court, will cause great and irreparable injury to Deli Delicious for reasons including, but not limited to the following:

(a) As a result of Franchisees' breaches of their obligations under the Franchise Agreements, Deli Delicious has had and continues to have to limit its advertising campaigns of the new bread products and customers of the Deli Delicious franchises are not able to experience the same product regardless of location due to, among other things, Franchisees' purchase and usage of non-conforming bread products from a source other than D.D.'s Bakery and inability to sell the full menu of Deli Delicious food selections due to Franchisees' refusal to purchase and use the required bread for such food selections from D.D.'s Bakery.

(b) Because Franchisees refuse to purchase and offer the new bread products in the Restaurant, Deli Delicious cannot announce that its bread is made with 100% organic flour or that its wheat bread is now made using 100% whole wheat.

(c) The other Deli Delicious franchisees who are using the new bread products from D.D.'s Bakery are also hindered because Deli Delicious is unable to

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

fully promote and market the advantages of its new bread products across all of its franchised locations.

(d) Because of Franchisees’ refusal to purchase the new bread products from D.D.’s Bakery, Franchisees cannot offer the same slate of menu items available at the other Deli Delicious franchise locations, which destroys the intended uniformity of products and services available at the restaurants regardless of location, which causes customer frustration and customer confusion, and is damaging the Deli Delicious brand to the detriment of Deli Delicious and its other franchisees.

(e) Much of the success of Deli Delicious, as with any franchised system, comes from the ability for customers to obtain the same product regardless of location. For this reason, Deli Delicious franchise agreements, and in this instance, the Franchise Agreements, do not permit a franchisee to substitute different ingredients, products or alter the menu items in any way or manner.

(f) By refusing to purchase the required bread products, Franchisees will not be able to offer their customers of the Restaurants the new menu items which Deli Delicious intends to market and advertise to the general public.

(g) Franchisees’ continuing refusal to display the required digital menu boards at the S. Clovis Restaurant result in an inconsistent interior image of the S. Clovis Restaurant and prevent updated menu items (including the products that use the new organic bread) from being properly displayed for sale at that restaurant.

(h) Franchisees’ continued breaches of the Franchise Agreements limit Deli Delicious’ ability to offer a uniform product throughout all of its franchised locations.

///
///

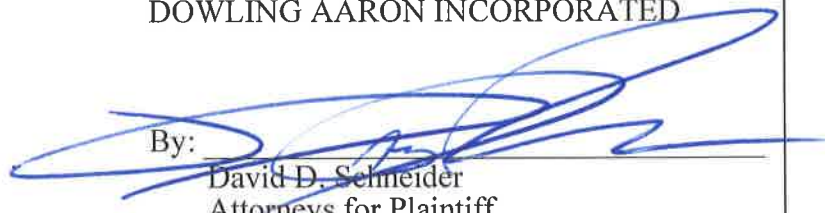
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- iii. To comply with the Franchise Agreements by purchasing bread from D.D's Bakery; and
- iv. To comply with the Franchise Agreement by acquiring, installing and displaying at the S. Clovis Restaurant the current required digital menu boards (i.e., menu boards comprised of the following components purchased from Technology Solutions of Fresno, Inc.: ceiling mounted W Box Technologies 43" LED 4K Commercial Display; signage player – Android- 4K; 3-TV menu mounting display – ceiling mount/truss bolted; 6 outlet surge protector) within 30 days after the date that the preliminary injunction issues;

- 3. For reasonable attorney's fees as provided under the Franchise Agreements;
- 4. For costs of suit; and
- 5. For such other relief as the Court deems just and proper.

Dated: July 15, 2020

DOWLING AARON INCORPORATED

By: 

David D. Schneider
Attorneys for Plaintiff
DELI DELICIOUS FRANCHISING, INC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

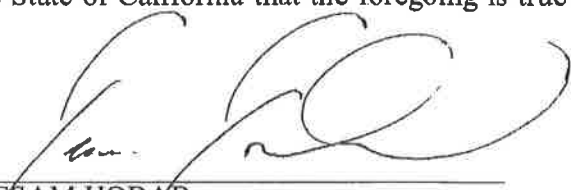
VERIFICATION

Hesam Hobab, do certify and say:

1. I am the President of Deli Delicious Franchising, Inc. ("Deli Delicious"). I have personal knowledge of the facts contained in the Verified Complaint. I am authorized to make this verification.

2. I have read the Verified Complaint and certify that all statements made therein are true and correct to the best of my knowledge except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 7/15/2020



HESAM HOBAB
President of Deli Delicious Franchising, Inc.

016866-000004-02900524-1

EXHIBIT A

CCOF

Certification Services, LLC

DD'S BAKERY, INC.

4383 North Knoll Ave.
Fresno, CA 93722 US

Certified to the USDA organic regulations, 7 CFR
Part 205 for the following scope(s)/categories:

Handling (07/31/2019)

Effective Date:
July 31, 2019

Once certified, a production or handling operation's organic certification continues in effect until surrendered, suspended or revoked. Anniversary Date: Certified operations are required to submit annual updates to CCOF by January 1 of each year.

Information regarding products, crops, parcels, etc., is available on the CCOF Client Profile.

Client Code: pr2852

CCOF certified since: 07/31/2019

Issue Date: 08/29/2019



A handwritten signature in blue ink that reads "April Crittenden".

April Crittenden
Chief Certification Officer

Additional information and a directory of certified operations available from CCOF at www.ccof.org.
Use MyCCOF: Supplier Management to track current certification status and access certificates directly.
Visit www.ccof.org/myccof to sign up.

CS-G-02, V4, 12/17/13

2019-140625-2263

2155 Delaware Avenue, Suite 150, Santa Cruz, CA 95060 • (831) 423-2263 • fax (831) 423-4528 • ccof@ccof.org • www.ccof.org