

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Other Civil

JASON ANSARI, an individual; JBJL,)
LLC, a Minnesota limited liability)
company; FREDRIK BORJESSON, an)
individual; TERESA BORJESSON, an)
individual; FRANGIPANI LLC, a)
Minnesota limited liability company;)
SCOTT CARLSON, an individual;)
JACQUELYN CARLSON, an)
individual; SKC CONCEPTS, INC., a)
Minnesota corporation; JASON LINK,)
an individual; LINK JAS, INC., a)
Minnesota corporation; CHAD)
SCHWINGHAMMER, an individual;)
ANDREA WOODLEY)
SCHWINGHAMMER, an individual;)
SCHWINGS CENTENNIAL LAKES,)
INC., a Minnesota corporation; KEVIN)
WATERS, an individual; SALON)
WATERS, INC., a Minnesota)
corporation; DAVID WILLIAMS, an)
individual; SHELLEY WILLIAMS, an)
individual; and LOOK SHARP, LLC, a)
Minnesota limited liability company,)

Plaintiffs,)

vs.)

REGIS CORPORATION, a Minnesota)
Corporation ; and RPC)
ACQUISITION CORP., a Minnesota)
corporation,)

Defendants.)

Case No. 27-CV-15-11659

FIRST AMENDED COMPLAINT

Plaintiffs, Jason Ansari and JBJL, LLC (“Ansari”); Fredrik Borjesson, Teresa Borjesson and Frangipani LLC (“Borjesson”); Scott Carlson, Jacquelyn Carlson and SKC Concepts, Inc. (“Carlson”); Jason Link and Link JAS, Inc. (“Link”); Chad Schwinghammer, Andrea Woodley

Schwinghammer and Schwings Centennial Lakes, Inc. (“Schwinghammer”); Kevin Waters and Salon Waters, Inc. (“Waters”); and David Williams, Shelley Williams and Look Sharp, LLC (“Williams”) (collectively referred to as “Franchisees”), for their Complaint against Defendants Regis Corporation (“Regis”), and RPC Acquisition Corp. (“Pro-Cuts”) (collectively referred to as “Defendants”) state and allege as follows:

INTRODUCTION

1. Defendant Pro-Cuts, which is a wholly owned subsidiary of Defendant Regis, operates, and franchises others to operate, sports-themed hair care and product salons under the Pro-Cuts Sports brand. As a wholly owned subsidiary of Regis, many of the activities of Pro-Cuts are carried out by employees of Regis.

2. The Franchisees each entered into a franchise agreement with Pro-Cuts (collectively “Franchise Agreements”), between April 2012 and January 2014, which granted the Franchisees the right to operate Pro-Cuts Sports salons in the Twin Cities area.

3. In the course of selling the Pro-Cuts Sports franchises to the Franchisees, Pro-Cuts violated the Minnesota Franchise Act, and committed common law fraud and negligent misrepresentation, through making illegal financial performance representations and otherwise misrepresenting the franchise opportunity. Most shockingly, Pro-Cuts provided to all of the Franchisees, except Borjesson, a Supercuts Franchise Disclosure Document (“Supercuts FDD”) before these Franchisees signed their Franchise Agreements, and told these Franchisees to refer to Item 19 of the Supercuts FDD, which contained data on the financial performance of Supercuts brand salons, to see the financial performance the Franchisees could expect if they signed up as Pro-Cuts Sports franchises. Additionally, Pro-Cuts (1) provided certain Franchisees

with a document titled Supplemental Financial Performance Representation to Item 19 of the Pro-Cuts Sports Franchise Disclosure Document dated January 9, 2012 (the “Supplemental Disclosure”), which contained further financial performance representations regarding their prospective Pro-Cuts Sports franchises; and (2) provided Pro-Cuts Sports Franchise Disclosure Documents (“Pro-Cuts Sports FDD”) with misleading Item 19 financial performance representations. Not only was the provision of the Supercuts FDD and Supplemental Disclosure illegal, because they were financial performance representations outside of Item 19 of the Pro-Cuts FDD, the financial performance representations were also misleading, as the Franchisees’ salons have failed to achieve financial performances anywhere near that represented by Pro-Cuts. Indeed, on a January 8, 2015, conference call between the Franchisees and Pro-Cuts representatives, Paul Plate, Regis’ Senior Vice President and Chief Financial Officer for the Franchise Division, recognized that the Franchisees were financially struggling and stated that the corporate-owned Pro-Cuts Sports salons were experiencing similar struggles. The Franchisees relied on the false and illegal financial performance representations, and other misrepresentations detailed below, in deciding to enter into their Pro-Cuts Sports Franchise Agreements.

4. Further, as an inducement to signing the Franchise Agreements, Pro-Cuts represented that the Pro-Cuts Sports brand would be Regis’ number one priority, and that the Pro-Cuts Sports brand would experience “rapid growth,” with 30 salons in the Twin Cities by 2013, and 900 Salons in the United States and Canada within 10 years.

5. Not only did this rapid growth never materialize, the Pro-Cuts brand has effectively been abandoned, resulting in the *de facto* termination of the Franchisees’ franchises.

Indeed, on the January 8, 2015, conference call, Pro-Cuts announced that (1) additional company-owned Pro-Cuts Sports salons would not be added; (2) the current company-owned Pro-Cuts Sports salons would be sold to new franchisees for conversion to the Supercuts brand, and the Franchisees were advised that their best chance to climb out of their financial sinkhole was to convert their stores to a “different concept” – *i.e.*, Supercuts, a brand that has previously failed in the Twin Cities market; and (3) Regis would not be actively trying to sell Pro-Cuts Sports franchises to prospective franchisees. Regis *de facto* abandoned the brand, such that, any chance for the brand, or the Franchisees, to succeed disappeared.

6. Additionally, Pro-Cuts misrepresented the marketing and advertising it would conduct. Pro-Cuts represented that it would aggressively advertise and market the Franchisees’ salons, and represented that it had proven advertising ideas and strategies “that only Regis Corporation [could] provide.” Indeed, Pro-Cuts stated in late 2012 that, in 2013, it would engage in a \$300,000 two phased marketing plan, in the Twin Cities market, that would be in addition to the marketing already provided by the brand’s advertising fund. However, only the \$80,000 Phase I marketing was completed, in early 2013. From that point on, no brand advertising was carried out by Pro-Cuts until late 2014, and then only after the Franchisees had pleaded for marketing help from Pro-Cuts. Unfortunately, the late 2014 advertising proved to be too little, too late, as it did not produce any measurable increase in traffic to the Franchisees’ salons. The Franchisees were left with a failing brand, with little public awareness and with a lack of advertising support from Pro-Cuts to reverse the death spiral.

7. Also, Pro-Cuts misrepresented the operational, advertising, and financial services support that the Franchisees would receive, by telling the Franchisees that they would receive

extensive support in the operation of their salons, that Regis' marketing team would provide the Franchisees with marketing plans and support in carrying those plans out, and that Regis' financial services team would monitor the Franchisees' financial data and provide advice on improving financial performance. In reality, the Franchisees received little to no support from Pro-Cuts for advertising, operations, and financial services.

8. Pro-Cuts' violations of the Minnesota Franchise Act, violation of the Wisconsin Fair Dealership Act, and its common law fraud and common law negligent misrepresentation, entitle the Franchisees to rescind the Franchise Agreements and receive restitution in an amount to put them in the position they occupied before entering into the Franchise Agreements. Alternatively, Franchisees seek damages based upon Pro-Cuts' wrongful *de facto* termination.

9. In addition to Pro-Cuts, Regis, as a statutory control person, is jointly and severally liable for Pro-Cuts' violation of the Minnesota Franchise Act.

10. Franchisees also seek a judgment from the Court declaring that the Franchise Agreements do not contain a valid, enforceable agreement to arbitrate and the Franchisees are not required to arbitrate their claims against Defendants because the purported requirement to arbitrate, contained in Article 23 of the Franchise Agreements, is unconscionable, illusory, lacking in mutuality of obligation, and void under the Minnesota Franchise Act.

PARTIES, JURISDICTION, AND VENUE

11. Jason Ansari is an individual and a resident of Minnesota. Mr. Ansari is a member of JBJL, LLC.

12. JBJL, LLC is a limited liability company organized under the laws of Minnesota, and has its principal place of business in Savage, Minnesota.

13. Fredrik Borjesson is an individual and a resident of Minnesota. Mr. Borjesson is a member of Frangipani LLC.

14. Teresa Borjesson is an individual and a resident of Minnesota. Ms. Borjesson is a member of Frangipani LLC.

15. Frangipani LLC is a limited liability company organized under the laws of Minnesota, and has its principal place of business in Eden Prairie, Minnesota.

16. Scott Carlson is an individual and a resident of Minnesota. Mr. Carlson is a trustee and beneficiary of the 401(k) profit sharing plan that owns of SKC Concepts, Inc.

17. Jacquelyn Carlson is an individual and a resident of Minnesota. Ms. Carlson is a trustee and beneficiary of the 401(k) profit sharing plan that owns SKC Concepts, Inc.

18. SKC Concepts, Inc. is a corporation organized under the laws of Minnesota, and has its principal place of business in Eden Prairie, Minnesota.

19. Jason Link is an individual and a resident of Minnesota. Mr. Link is an owner of Link JAS, Inc.

20. Link JAS, Inc. is a corporation organized under the laws of Minnesota, and has its principal place of business in Plymouth, Minnesota.

21. Chad Schwinghammer is an individual and a resident of Minnesota. Mr. Schwinghammer is an owner of Schwings Centennial Lakes, Inc.

22. Andrea Woodley Schwinghammer is an individual and a resident of Minnesota. Ms. Schwinghammer is an owner of Schwings Centennial Lakes, Inc.

23. Schwings Centennial Lakes, Inc. is a corporation organized under the laws of Minnesota, and has its principal place of business in Edina, Minnesota.

24. Kevin Waters is an individual and a resident of Minnesota. Mr. Waters is an owner of Salon Waters, Inc.

25. Salon Waters, Inc. is a corporation organized under the laws of Minnesota, and has its principal place of business in Shoreview, Minnesota.

26. David Williams is an individual and a resident of Minnesota. Mr. Williams is a member of Look Sharp, LLC.

27. Shelley Williams is an individual and a resident of Minnesota. Ms. Williams is a member of Look Sharp, LLC.

28. Look Sharp, LLC is a limited liability company organized under the laws of Minnesota, and had its principal place of business in Hudson, Wisconsin.

29. Upon information and belief, RPC Acquisition Corp. is a corporation organized under the laws of Minnesota, and has its principal place of business at 7201 Metro Boulevard, Minneapolis, Minnesota.

30. Upon information and belief, Regis Corporation is a corporation organized under the laws of Minnesota, and has its principal place of business at 7201 Metro Boulevard, Minneapolis, Minnesota.

31. Jurisdiction is proper in this Court as Defendants are Minnesota corporations, with primary places of business in Minnesota, and Defendants conduct a substantial amount of business in Minnesota. Venue is proper in this Court because Defendants' principal places of business are located in Hennepin County, and the events giving rise to this litigation primarily occurred in Hennepin County.

LAWS REGULATING THE SALE OF FRANCHISES

32. In the 1950s and 1960s, modern franchising took off as a method of doing business, but was unregulated and subject to widespread abuse. State and federal regulators began to study the situation in the late 1960s and concluded that the sale of franchises was similar to the unregulated sale of securities in the 1920s. Accordingly, in 1979, the Federal Trade Commission (“FTC”) adopted a trade regulation rule governing the sale of franchises that is roughly modeled on the SEC Act. 16 CFR Part 436.

33. On January 22, 2007, the FTC amended its requirements related to disclosure (the “Amended FTC Franchise Rule”). While the Amended FTC Franchise Rule does not, itself, provide franchisees with a private right of action, certain states, including Minnesota, have parallel legislation and provide franchisees with the right to rescind the franchise agreement and the right to civil remedies if a franchisor, or its statutory control persons, fail to make the required disclosures, or make misleading statements or omissions in connection with a franchise sale.

34. The Amended FTC Franchise Rule requires a franchisor to make disclosure with respect to 23 different “Items” of information, including the nature of the franchise, the principals who own and run it, the costs of obtaining or operating the franchise, the existence of litigation in which the franchisor has been involved, the material terms of the contract, the existence of other franchisees and their locations, and, if the franchisor chooses to provide information on the financial performance of its outlets or projections of the franchisee’s performance, a fair presentation of those figures and the factual bases therefore.

35. A franchisor's Item 19 disclosure, which relates to financial performance representations, "is one of the most important sections [of the FDD] to franchisees" because it deals with the question most frequently posed by prospective franchisees—i.e., "How much money can I make?" Dave Thomas & Michael Seid, *Franchising For Dummies* 90 (2000). Because this question is so important, the way in which a franchisor can lawfully answer the question is the most heavily regulated part of the franchise sales process. The Amended FTC Franchise Rule broadly defines "financial performance representation" as:

"Financial performance representation" means any representation, including any oral, written, or visual representation, to a prospective franchisee, including a representation in the general media, that states, expressly or by implication, a specific level or range of actual or potential sales, income, gross profits, or net profits. The term includes a chart, table, or mathematical calculation that shows possible results based on a combination of variables.

16 CFR 436.1(e).

36. Financial performance representations include both "formal" representations of revenues or profits in dollar figures, such as pro-formas, and indirect representations, such as a hotel's occupancy rate, and informal statements, such as "You'll make enough to buy a Porsche." *Commercial Prop. Invs. v. Quality Inns Int'l, Inc.*, 938 F.2d 870, 872 (8th Cir. 1991); Promulgation of Final Interpretive Guidelines, 44 Fed. Reg. 49,982 (August 24, 1979).

37. As an initial matter, a franchisor is under no obligation to make a "financial performance representation" for purposes of its FDD. 16 C.F.R. § 436.5(s)(1). Because Pro-Cuts affirmatively elected to make a financial performance representation, Pro-Cuts was obligated to prepare the Item 19 financial performance representation according to the precise requirements of the Amended FTC Franchise Rule, and make any financial performance representation in Item 19 of the Pro-Cuts Sports FDD.

38. The Amended FTC Franchise Rule for Item 19 requires that: “If the franchisor makes any financial performance representation to prospective franchisees, the franchisor must have a reasonable basis and written substantiation for the representation at the time the representation is made and must state the representation in the Item 19 disclosure.” 16 CFR 436.1(s)(3). As reflected in the FTC’s “Interpretive Guides” for Item 19, in order to conclude that a franchisor has a “reasonable basis” for its financial performance representation:

The data must reasonably support the claim as it is likely to be understood by a reasonable prospective franchisee. For example, a representation that franchisees earn a net profit of \$30,000 per year implies that such figure is representative of the usual experience of the system’s franchisees. The claim would not have a reasonable basis if, in fact, only a small minority of the franchisees earn such amount or if profits were due to nonrecurring conditions or if the franchisees used inconsistent systems for reporting profit. Moreover, the franchisor would not have a reasonable basis for the claim if the only facts to support it were the income statements of a disproportionately small percentage of the system’s franchisees.

See Bus. Franchise Guide (CCH) ¶ 6255 (emphasis added).

39. The Amended FTC Franchise Rule provides that, if a franchisor makes a financial performance representation, it must make certain disclosures. The representation must state whether historical performance data or projections are utilized for the representation and differing disclosure must be made depending on this basis.

40. If historical performance data is the basis, the representation must include: (1) whether all existing outlets or a subset of outlets are utilized for the representation; (2) if a subset is used, information on these outlets (*i.e.*, type of location, length of operation, franchise or company store, etc.); (3) the reporting dates of the achieved levels; (4) total number of outlets and the number of outlets with the described characteristics; (5) the number of outlets used for representation; (6) the number and percent of reported outlets that achieved or surpassed the

represented results; and (7) characteristics of the included outlets that may differ from the outlet that may be offered to the prospective franchisee. If the representation is a forecast, the representation must include the material bases and assumptions underlying the projection upon which the forecast is expected to depend, including, but not limited to, economic and market conditions basic to the franchisee's operation and matters affecting the franchisee's sales, cost of goods or services sold, and operating expenses. All representations must include a "clear and conspicuous" admonition that the franchisee's results may differ and that written substantiation of the representation is available upon reasonable request. 16 CFR 436(s).

41. A franchisor has a duty to notify the prospective franchisee of any material changes that the franchisor knows or should have known occurred in the information contained in a financial performance representation. 16 C.F.R. § 436.7(d).

FACTUAL BACKGROUND

42. Although the Franchisees purchased their Pro-Cuts Sports franchises over a period of time, the process by which Pro-Cuts sold the franchises, and the misrepresentations Pro-Cuts made to the Franchisees, were strikingly similar.

Pro-Cuts' Financial Misrepresentations

43. Pro-Cuts made various misrepresentations regarding the financial performance the Franchisees could expect from their Pro-Cuts Sports franchises.

The Supercuts FDDs

44. All of the Franchisees, except Borjesson, received a Supercuts FDD from Pro-Cuts, even though Supercuts is a different franchise system operated by Pro-Cuts' parent

company, Regis. Additionally, these Franchisees all received the Supercuts FDD even though they interacted with various representatives of Pro-Cuts during the pre-sale process.

45. Each of these Franchisees was told that because Pro-Cuts Sports was a relatively new concept, Item 19 of the Pro-Cuts Sports FDD would not provide them with much information. Accordingly, these Franchisees were instructed to look at Item 19 of the Supercuts FDD for the financial performance they could expect to receive from their Pro-Cuts Sports franchises.

46. Williams receive the Supercuts FDD on December 13, 2011, while considering the purchase of a Supercuts franchise. (Item 19 of the Supercuts FDD received by Williams is attached hereto as **Exhibit A.**)¹ However, in early February 2012, before purchasing the Supercuts franchise, Williams was informed, by Kurt Landwehr, Regis' Vice President of Franchise Development, that Supercuts franchises were no longer being offered in the Twin Cities. Instead, Mr. Landwehr urged Williams to consider the purchase of a Pro-Cuts Sports franchise.

47. During conversations in February 2012, Mr. Landwehr frequently referred to Item 19 of the Supercuts FDD, telling Williams to expect that the financial performance of its prospective Pro-Cuts Sports franchise would be similar to that set forth in Item 19 of the Supercuts FDD. Mr. Landwehr explained that Item 19 of the Supercuts FDD was being referenced because the sales and customer count data in the Pro-Cuts Sports FDD was limited due to the newness of the Pro-Cuts Sports brand. Mr. Landwehr's mantra during these calls was that the financial performance representation in Item 19 of the Supercuts FDD was the financial performance Williams could expect from a Pro-Cuts Sports franchise. In addition to the

¹ Carlson and Link received the same form of Supercuts FDD as Williams.

representations regarding the Supercuts FDD that Mr. Landwehr made to the Williams, Mr. Landwehr also referred John Williams, Dave Williams' father, to the Supercuts FDD as a source of additional "earnings information to get a sense for what the Regis salon business model is designed to produce," in a February 24, 2012, email.

48. Similar to Williams, Carlson received the Supercuts FDD while considering the purchase of a Supercuts franchise, in January 2012. Also similar to Williams, before Carlson went forward with a purchase of a Supercuts franchise, Mr. Landwehr told Carlson that Regis had decided to withdraw the Supercuts brand from the Twin Cities. After this, Carlson began considering the purchase of a Pro-Cuts Sports franchise.

49. On a late January 2012 call between the Carlson and Mr. Landwehr, Mr. Landwehr referred Carlson to Item 19 in the Supercuts FDD, telling Carlson that, if Carlson decided to buy a Pro-Cuts Sports franchise for the Twin Cities area, Carlson could expect that the financial performance of its Pro-Cuts Sports franchise would be comparable to the financial performance of the Supercuts franchises set forth in Item 19. During this call, Mr. Landwehr also told Carlson that franchisee-owned salons had financial performance that was 30% better than corporate owned salons, which was relied upon by Carlson when Carlson estimated the likely performance of Carlson's prospective Pro-Cuts Sports salons. Mr. Landwehr also explained that he was referring Carlson to this Supercuts financial performance information because Regis only had limited Pro-Cuts Sports financial information available to it. Mr. Landwehr repeatedly made these representations to Carlson in subsequent conversations. Further, during one of these conversations, Mr. Landwehr told Carlson that Carlson could expect to reach break-even in six to nine months. Additionally, not only did Mr. Landwehr repeatedly

direct Carlson to rely on the financial performance representation in Item 19 of the Supercuts FDD, in February 2012, Mr. Landwehr provided Carlson with the names of several Roosters² franchisees, and instructed Carlson to call these Roosters franchisees to get a reasonable approximation of the financial performance Carlson could expect from the prospective Pro-Cuts Sports franchise. When Carlson contacted these Roosters franchisees, Carlson was told that break-even would be reached in six months.

50. In late April 2012, Karleen Bolin,³ Regis' Director of Franchise Development, advised Link that it would be difficult to "get a handle" on the financial performance of a prospective Pro-Cuts Sports franchise because only two salons were open, resulting in limited financial information. Accordingly, Ms. Bolin stated that Item 19 of the Supercuts FDD could be used as a proxy for the financial performance to be expected at a Pro-Cuts Sports salon. Ms. Bolin said that Supercuts had been a very successful brand, as Link could confirm by looking at the Item 19 Supercuts financial performance information, and that Link could expect similar financial performance from a Pro-Cuts Sports franchise. At this meeting, Ms. Bolin informed Link that she would send Link both the Pro-Cuts Sports FDD and Supercuts FDD to use as a basis for deciding whether to move forward with the purchase of a Pro-Cuts Sports franchise. The day after this meeting Ms. Bolin sent Link a Pro-Cuts Sports FDD and the Supercuts FDD. In an August 2012 conversation with Mr. Link, Mr. Landwehr reaffirmed the financial performance representations previously made by Ms. Bolin, stating that the financial performance of Supercuts salons could be used as a reference for what Link could expect from its prospective Pro-Cuts Sports salon.

² Roosters is another brand in the Regis family of brands.

³ At various times relevant to this dispute, Ms. Bolin was also known as Karleen Hawkinson. For simplicity, she will be referred to in this Complaint as Ms. Bolin.

51. During a conversation in July 2012, after learning that Schwinghammer was not familiar with Supercuts, Ms. Bolin went into great detail regarding the similarities between Supercuts and Pro-Cuts Sports. After this conversation, Ms. Bolin provided Schwinghammer with the Supercuts FDD. (Item 19 of the Supercuts FDD received by Schwinghammer is attached hereto as **Exhibit B**.) Ms. Bolin also told Schwinghammer that she was providing them with the Supercuts FDD because (1) there was inadequate information about Pro-Cuts Sports' financial performance due to the fact that only a few Pro-Cuts Sports salons had been opened to date; and (2) the Supercuts demographic target, pricing, and tools, "right down to the chairs," were very similar to the Pro-Cuts Sports brand, and, therefore, Item 19 of the Supercuts FDD would provide a good representation as to the financial performance Schwinghammer could expect from their prospective Pro-Cuts Sports franchise.

52. Additionally, Ms. Bolin, in August 2012, sent Schwinghammer a list of Supercuts franchisees, who were not located in Minnesota, for Schwinghammer to contact for further information on the Pro-Cuts Sports franchise opportunity. Although Schwinghammer had requested this information, based on a recommendation from Mike Welch, the FranNet franchise consultant with whom Schwinghammer was working, Ms. Bolin did not question why Schwinghammer would be contacting Supercuts franchisees. Not surprisingly, these Supercuts franchisees painted a strong picture of their financial experience with the Supercuts brand, including short break-even periods.

53. While reviewing the Pro-Cuts Sports FDD, in a late October 2012 telephone conference between Mr. Waters and Ms. Bolin, Ms. Bolin continually referred to information related to Supercuts, especially the financial performance of Supercuts salons. Ms. Bolin stated

during this call that Waters should look at the financial performance information in Item 19 of the Supercuts FDD for what Waters could expect from the prospective Pro-Cuts Sports franchise. Also, rather than discussing any difference between the two systems or business concepts, Ms. Bolin told Waters that Item 19 of the Supercuts FDD better reflected the financial results Waters could expect from a prospective Pro-Cuts Sports franchise, specifically directing Waters to review the middle performing stores in Item 19 of the Supercuts FDD, and stating that this would be the likely result Waters would achieve in the operation of a Pro-Cuts Sports franchise. During this conversation, Ms. Bolin also told Waters that franchisee-owned stores perform much better than corporate-owned stores, that Waters could expect year over year growth of 30%, and that Waters could expect to reach break-even in eight to twelve months. Shortly after this telephone conversation, Ms. Bolin sent Waters the Supercuts FDD. (Item 19 of the Supercuts FDD received by Waters is attached hereto as **Exhibit C.**)⁴ Throughout the remainder of the pre-sale process, Ms. Bolin always referred back to Item 19 of the Supercuts FDD for the financial performance that Waters could expect for the prospective Pro-Cuts Sports franchise.

54. Ansari received the Supercuts FDD from Matt Dillon, Regis' Director of Franchise Development, in December 2012. Through conversations with Mr. Dillon in December 2012 and January 2013, Ansari was told that it was receiving the Supercuts FDD because (1) the Pro-Cuts Sports brand was new; (2) there was a lack of substantial information available on Pro-Cuts Sports salons; and (3) the Pro-Cuts Sports business model was built on the Supercuts business model, which had a very high success rate. Additionally, Mr. Dillon told Ansari that Ansari should expect to reach break-even within six months. During this same time period, Mr. Landwehr reaffirmed to Ansari that the Pro-Cuts Sports brand was very comparable

⁴ Ansari received the same form of Supercuts FDD as Waters.

to the Supercuts brand, and that Ansari could expect that its prospective Pro-Cuts Sports salon's financial performance would be similar to the financial performance of Supercuts salons, as set forth in the Supercuts FDD.

55. The similarity of the experience of these Franchisees illustrates that it was standard practice within Pro-Cuts during this time to represent to prospective Pro-Cuts Sports franchisees that the financial performance presented in Item 19 of the Supercuts FDD was the financial performance they could expect from their prospective Pro-Cuts Sports franchise.

56. Not only were these financial performance representations illegal because they were outside the Pro-Cuts Sports FDD, and in relation to a different concept, they proved to be wildly inaccurate, as none of these Franchisees has experienced financial performance at their salons anywhere close to that represented in the Supercuts FDDs provided to them by Pro-Cuts. Indeed, out of these Franchisees, only Ansari has recently reached the break-even point and likely will sink back into sustaining operating losses soon.

57. It is not surprising that these Franchisees did not experience the financial success experienced by Supercuts salons considering (1) Supercuts is a well-established franchise system which has repeatedly been named the number one hair care franchise in the country and the fifth best franchise opportunity overall by Entrepreneur magazine; (2) the Supercuts brand is based upon a different model than the Pro-Cuts Sports brand – *i.e.*, Supercuts serves men, women, and children, while Pro-Cuts Sports is focused on male sports enthusiasts; and (3) while the Supercuts brand is successful nationally, it was not successful in the Twin Cities area, as evidenced by nine Twin Cities Supercuts salons being reacquired by Regis during 2011, and Regis withdrawing the Supercuts brand from the Twin Cities market in January 2012.

The Supplemental Disclosure

58. In addition to being provided with Supercuts FDDs, Ansari, Carlson, Link, Schwinghammer, and Williams were provided with a the Supplemental Disclosure, which purported to provide weekly sales information and customer counts for the company-owned Maple Grove and Dinkytown Pro-Cuts Sports salons. (The Supplemental Disclosure is attached hereto as **Exhibit D.**) Additionally, although Waters did not receive the Supplemental Disclosure document, Waters received the information contained in the Supplement Disclosure before signing a Franchise Agreement.

59. The sharing of the Supplemental Disclosure with these Franchisees was accompanied by oral representations that the Supplemental Disclosure would give these Franchisees a good picture of what they could expect to realize in customer counts if they became Pro-Cuts Sports franchisees, since the customer counts painted a more realistic picture of what these Franchisees could expect, rather than the weekly sales of the salons that were reported in Item 19 of the Pro-Cuts Sports FDD.

60. Carlson received the Supplemental Disclosure in early February 2012, at approximately the same time that Carlson received the Pro-Cuts Sports FDD. In conversations with Mr. Landwehr, during this same time period, Mr. Landwehr told Carlson to focus on the customer counts in the Supplemental Disclosure and the additional financial information in Item 19 of the Supercuts FDD for the performance Carlson could expect from the prospective Pro-Cuts Sports franchise. Mr. Landwehr also stated that the performance of franchisee-owned salons within the Regis collection of brands, which included both Pro-Cuts Sports and Supercuts, was 30% better than corporate-owned salons in the same system, meaning that Carlson should

expect the performance of their prospective franchised Pro-Cuts Sports salon to be 30% better than the data contained in the Supplemental Disclosure, which related to corporate-owned Pro-Cuts Sports salons.

61. Williams received the Supplemental Disclosure in early February 2012, at approximately the same time that Williams received the Pro-Cuts Sports FDD. In conversations with Mr. Landwehr, during this same time period, Mr. Landwehr frequently told Williams to focus on the customer counts in the Supplemental Disclosure and the additional financial information in Item 19 of the Supercuts FDD for the performance Williams could expect from the prospective Pro-Cuts Sports franchise. Mr. Landwehr also stated that the performance of franchisee-owned salons within the Regis collection of brands was 30% better than corporate-owned salons in the same system, meaning that Williams should expect the performance of their prospective franchised Pro-Cuts Sports salon to be 30% better than the data contained in the Supplemental Disclosure, which related to corporate-owned Pro-Cuts Sports salons.

62. Ms. Bolin provided Link with the Supplemental Disclosure in late April 2012, at the same time she provided Link the Pro-Cuts Sports FDD. During the discussion Link had with Ms. Bolin relating to the Pro-Cuts Sports FDD, the Supplemental Disclosure was also discussed. Ms. Bolin somewhat discounted the data in the Supplemental Disclosure because the Supplemental Disclosure contained data on corporate-owned salons, and, Ms. Bolin stated that, within the Regis collection of brands, the franchisee-owned salons performed 30% better than the corporate-owned salons within in the same system. Additionally, Ms. Bolin discounted the data in the Supplemental Disclosure because, as she stated, Pro-Cuts was still learning how to

open Pro-Cuts Sports salons during the time in which the data in the Supplemental Disclosure was collected.

63. Schwinghammer received the Supplemental Disclosure, via email, from Ms. Bolin in July 2012. Ms. Bolin informed Schwinghammer that the Supplemental Disclosure was being provided to give Schwinghammer an updated picture of how the first two Pro-Cuts Sports salons were performing. Schwinghammer was told, during July, August, and September 2012, by both Mr. Landwehr and Ms. Bolin, that Schwinghammer's prospective Pro-Cuts Sports franchise should experience financial performance that was 25% to 30% better than the corporate-owned Pro-Cuts Sports salons. In conversations during this time period, Ms. Bolin and Mr. Landwehr also told Schwinghammer to expect to reach break-even in twelve months.

64. Ansari received the Supplemental Disclosure at the same time Ansari received the Pro-Cuts Sports FDD. During a conversation in December 2012, Mr. Dillon told the Ansaris to expect to break-even within six months, and that the Supplemental Disclosure was being provided because there was limited financial performance data in the Pro-Cuts Sports FDD as a result of the Pro-Cuts Sports brand being so new. Additionally, Mr. Landwehr stated, during discovery day, that the numbers in the Supplemental Disclosure were very promising.

65. A supplemental financial performance representation, presented outside of Item 19 of the FDD, can be given only if (1) the prospective franchisee is considering buying the subject location, or (2) the supplement provides information about possible performance at a particular location or under particular circumstances. *See* 16 CFR 436.5(s)(1).

66. Ansari, Carlson, Link, Schwinghammer, Waters, and William, however, were not considering buying the Maple Grove or Dinkytown salons, and the Supplemental Disclosure states that the numbers provided are actual numbers, not possible performance numbers.

The Misleading Pro-Cuts FDD Item 19s

67. Pro-Cuts, as required by state and federal law, provided each of the Franchisees with a Pro-Cuts Sports FDD. Although the Franchisees received varying Pro-Cuts Sports FDDs based on when they were in the pre-sale process, the Pro-Cuts Sports FDDs contained only two variants of Item 19.

68. Item 19 of the Pro-Cuts Sports FDD provided to Carlson, Link, Williams, and Schwinghammer provides an explanatory note on the differentiation factors between franchisee-owned and corporate-owned Pro-Cuts Sports salons. Although eight factors are listed, no mention is made of the fees that franchisees pay to Pro-Cuts (*e.g.* royalties) but corporate-owned stores do not. This effectively ignores a significant expense these Franchisees incurred, resulting in Item 19 of the Pro-Cuts Sports FDD provided to Carlson, Link, Williams, and Schwinghammer presenting a misleading financial performance representation. (Item 19 of the Pro-Cuts Sports FDD provided to Carlson, Link, and Williams is attached hereto as **Exhibit E**. Item 19 of the Pro-Cuts Sports FDD provided to Link and Schwinghammer is attached hereto as **Exhibit F**.)

69. Item 19 of the Pro-Cuts Sports FDD provided to Ansari, Borjesson, and Waters provides the guest count for the first five months of the operation of certain Pro-Cuts Sports salons that were in operation at the time. However, what this Item 19 does not disclose, and Ansari, Borjesson, and Waters did not know at the time, is the number of these “sales” that were

free or deeply discounted haircuts provided as part of a grand opening campaign. Because of the information on average ticket price is not included, this Item 19 gives the false and misleading impression that the guest count numbers provided were in line with the number of full paying customers. (Item 19 of the Pro-Cuts Sports FDD provided to Ansari, Borjesson, and Waters is attached hereto as **Exhibit G.**)

The Franchisees Prepare Pro-Formas

70. Based on the financial performance representations of Pro-Cuts, the Franchisees prepared pro-formas, which, in certain instances, Pro-Cuts representatives reviewed and affirmed as reasonable projections.

71. Link prepared a pro-forma based upon the financial information from the Supercuts FDD that Pro-Cuts had supplied. In August 2012, before Link signed a Franchise Agreement, Link sent the pro-forma to Julie Fisher, Regis' Senior Financial Analyst, to refine the numbers in the pro-forma. After Ms. Fisher's review, and the refinement of the data in the pro-forma, Ms. Fisher told Link that the financial data in the pro-forma was "directionally correct," meaning that the pro-forma was reasonable.

72. Schwinghammer created a pro-forma utilizing the financial performance representations contained in the Supercuts FDD provided by Pro-Cuts. After signing the Franchise Agreement, but before signing a sublease and purchasing a salon, Ms. Fisher provided substantial assistance to Schwinghammer in revising this pro-forma. Indeed, in March and April 2013, when Schwinghammer was having difficulties securing financing, Ms. Fisher, on multiple occasions, made progressively upward revisions to the revenue numbers in the pro-forma by

increasing customer counts, increasing average ticket prices, and increasing the pace of growth of these two variables. Further, Ms. Fisher represented that these increases were reasonable.

73. Before signing the Franchise Agreement, Williams created a pro-forma based upon the information in the Supercuts FDD provided by Pro-Cuts and the representations made by Mr. Landwehr. After signing the Franchise Agreement, but before securing financing, signing a sublease, and purchasing a salon, Williams had many conversations with Mr. Landwehr and Ms. Fisher to discuss the pro-forma. During these conversations, Mr. Landwehr and Ms. Fisher made suggestions for slight changes to the pro-forma. However, Mr. Landwehr and Ms. Fisher did not significantly change the projected revenue contained in the pro-forma.

74. Carlson created a pro-forma, in early March 2012, based on the financial information in Item 19 of the Supercuts FDD provided to Carlson by Pro-Cuts, and the representations by Landwehr that franchisee-owned salons perform 30% better than corporate owned salons and that Carlson should plan on reaching break-even six to nine months after opening. Carlson also relied on representations by Mr. Landwehr that Carlson's investment to get the salon to break-even would be \$200,000 to \$225,000. Whenever possible, Carlson utilized conservative estimates for the input data on the pro-forma template that had been provided by Pro-Cuts. With the assistance of Ms. Fisher, Carlson, after signing the Franchise Agreement but before signing a sublease and purchasing a salon, further refined the pro-forma.

75. Borjesson prepared a pro-forma based on the misleading information provided in the Pro-Cuts FDD Borjesson received. This pro-forma utilized a six month ramp up in customer counts and assumed average ticket prices would start at 60% of full price and grow over the course of eight months. In several discussion during November 2013, after Borjesson signed a

Franchise Agreement but before deciding to purchase two salons and which salons to purchase, Ms. Fisher confirmed that the financial projections in the pro-forma were reasonable.

76. Waters, before signing the Franchise Agreement, created a pro-forma utilizing the Supercuts FDD provided by Pro-Cuts and the representations by Ms. Bolin that Waters should use the financial data from middle third performing salons in the Supercuts FDD, that performance of franchisee-owned salons was much better than company-owned salons, that Waters could expect year over year revenue growth of 30%, and that Waters could expect to break-even in eight to twelve months. Waters took a conservative approach when creating the pro-forma, estimating 18% growth in the first year and break-even at twelve months, the end of the range provided by Ms. Bolin.

77. In addition to the above financial performance misrepresentations, several of the Franchisees received, and relied upon, other misrepresentations they received from Pro-Cuts.

78. Ansari, Carlson, Link, Schwinghammer and Williams, when they purchased their franchises, were also relying on the pre-sale representations made by Pro-Cuts representatives, including Mr. Landwehr and Ms. Bolin, that Pro-Cuts would buy back these Franchisees' salons if they were not financially successful. This representation was strongly relied upon by these Franchisees because it reduced the potential downside risk associated with purchasing a franchise in a relatively new system.

79. The buy-back representation was made to Ansari by Mr. Landwehr during the discovery day attended by Ansari.

80. The buy-back representation was made to Carlson by Mr. Landwehr on a telephone call with Carlson on or around January 31, 2012. Mr. Landwehr also told Carlson that

Regis had previously bought back Supercuts salons in the Twin Cities as evidence of that Regis would do the same for Carlson.

81. The buy-back representation was made to Link by Ms. Bolin during a conversation on or around April 26, 2012.

82. The buy-back representation was made to Schwinghammer by Mike Welch of FranNet, who was at the time acting as an agent of Pro-Cuts, during a phone conversation with Schwinghammer shortly before Schwinghammer signed the Franchise Agreement.

83. The buy-back representation was made to Williams by Mr. Landwehr during the Supercuts discovery day attended by Williams. When Williams was later considering purchasing a Pro-Cuts Sports franchise, Mr. Landwehr told Williams that the discovery days for the Supercuts brand and the Pro-Cuts Sports brand were materially the same.

84. The buy-back representations were heavily relied on by these Franchisees when entering into the Franchise Agreements because it reduced the potential downside of purchasing a franchise that did not financially work out.

85. Sam Mani, Regis' Vice President of Finance, told Borjesson, during a conversation on or around November 15, 2013, that franchisee-owned salons have revenues that are 25% greater than corporate-owned salons. Mr. Mani made this representation in relation to the corporate-owned salons Borjesson was considering purchasing. During a meeting the same day, Mark Norman, Regis' Director of Real Estate, also told Borjesson that the Chanhassen salon would generate \$16,000 to \$18,000 in revenue per month. Borjesson, however, never came close to this revenue level while operating the Chanhassen salon.

Brand Growth Misrepresentations

86. In addition to providing wildly inaccurate and misleading representations to the Franchisees regarding the financial performance they could expect from their Pro-Cuts Sports franchises, Pro-Cuts misrepresented the growth that the Pro-Cuts Sports brand would experience.

87. In various pre-sale conversations, the Franchisees were consistently told that Pro-Cuts would rapidly grow the Pro-Cuts Sports brand by adding salons in both the Twin Cities and throughout the United States and Canada.

88. Pro-Cuts representatives stated in individual conversations with Franchisees, in pre-sale webinars attended by Franchisees, and in Discovery Day presentations, that Pro-Cuts Sports would be Regis' number one priority and that failure of the Pro-Cuts Sports brand was not an option for Regis, especially in Regis' own back yard – *i.e.*, the Twin Cities metro area. Indeed, the Franchisees were told that Pro-Cuts Sports would grow to 30 Twin Cities salons by 2013. Additionally, the Franchisees were told that there would be 900 salons in the United States and Canada within ten years. Further, the Franchisees were provided with a Pro-Cuts Concept Overview, which stated that “Pro-Cuts [was] poised for tremendous growth” (these representations are collectively referred to herein as the “Brand Growth Representations”).

89. In late January, when Carlson first discussed the potential of purchasing a Pro-Cuts Sports franchise, Mr. Landwehr told Carlson that Regis would be focusing on Pro-Cuts, and that Carlson had the opportunity to get in on the ground floor of what would become a national brand. In late January 2012, Mr. Landwehr told Carlson that there would be twelve Pro-Cuts Sports open by July 2012. Additionally, Carlson was sent the Pro-Cuts Concept Overview in early February 2012 by Mr. Landwehr. During the marketing webinar Carlson attended on or

around February 24, 2012, the Pro-Cuts representatives stated that the Pro-Cuts Sports brand would grow to ten to thirty salons in the Twin Cities by 2013 and 900 locations nationwide within ten years. This representation was again made during the discovery day marketing and real estate presentations Carlson attended on or around March 20, 2012.

90. After informing Williams that Supercuts was being withdrawn from the Twin Cities market, Mr. Landwehr began to sell Williams on the idea of purchasing a Pro-Cuts Sports franchise. As part of this sales pitch, Mr. Landwehr, in early February 2012, sent Williams the Pro-Cuts Concept Overview, which states that the Pro-Cuts Sports brand was poised for tremendous growth. During this same time period, Mr. Landwehr told Williams that the Pro-Cuts Sports brand would be Regis' number one focus, and that Pro-Cuts would aggressively grow the Pro-Cuts Sports brand. Further, Mr. Landwehr told Williams that there would be over 30 Pro-Cuts Sports salons in the Twin Cities by 2013 and that there would be 900 salons nationwide within ten years.

91. From the earliest contact Link had with Pro-Cuts, Pro-Cuts representatives were touting the growth that the Pro-Cuts Sports brand would be experiencing. In a meeting with Ms. Bolin, on or around April 26, 2012, Ms. Bolin told Link that there would soon be over thirty Pro-Cuts Sports salons in the Twin cities market, with 900 Pro-Cuts Sports salons nationwide within 10 years. Further, in the spring and early summer of 2012, Ms. Bolin pressured Link to purchase a franchise so that Link could get in on the ground floor of a brand that would be quickly growing. In an August 2012 lunch with Mr. Landwehr, Mr. Landwehr told Link that Regis was going to aggressively grow the Pro-Cuts Sports brand both nationally and locally. Mr. Landwehr

also stated that there would soon be over 30 salons in the Twin Cities market and 900 salons nationwide within ten years.

92. Schwinghammer received the Pro-Cuts Concept Overview, which stated that the Pro-Cuts Sports brand was poised for tremendous growth, from Ms. Bolin on or around July 9, 2012. Additionally, the Brand Growth Representations were made to Schwinghammer during webinars Schwinghammer attended and conversation Schwinghammer had with Mr. Landwehr and Ms. Bolin before purchasing the Pro-Cuts Sports franchise. During these webinars and conversations, it was specifically represented to Schwinghammer that the Pro-Cuts Sports brand would be Regis' primary focus and that Pro-Cuts Sports would be grown into a national brand. Indeed, Ms. Bolin and Mr. Landwehr made frequent comments about the enthusiasm Regis and Pro-Cuts had for the Pro-Cuts Sports brand, and assured Schwinghammer that it was going to be a national brand.

93. The initial email Waters received from Ms. Bolin, in the middle of October 2012, contained the Pro-Cuts Concept Overview, with its representation that the Pro-Cuts Sports brand was poised for tremendous growth. During a conversation on or around October 23, 2012, Ms. Bolin told Waters that Pro-Cuts was expanding the brand across the United States, and that there would soon be 30 salons in the Twin Cities and 900 salons nationwide.

94. The Brand Growth Representations were made to Ansari during webinars Ansari attended, and conversations Ansari had with Mr. Dillon, from November 2012 through February 2013. During these webinars and conversations, Ansari was expressly told that failure was not an option for Pro-Cuts, especially in Regis' own backyard. The Brand Growth Representations

were also made to Ansari when Ansari attended discovery day in December 2012. Additionally, Ansari received the Pro-Cuts Concept Overview at discovery day.

95. In early 2013, Pro-Cuts halted national growth, and, at that time, represented to the Franchisees that growth would still occur in the Twin Cities. Pro-Cuts further represented that after growing the Pro-Cuts Sports brand in the Twin Cities market, national growth would be resumed. Additionally, Pro-Cuts represented to the Franchisees that pausing national growth was beneficial to the Franchisees because Pro-Cuts could then focus its resources on the Franchisees, who were all located in the Twin Cities metro area.

96. Just before Ansari signed the Franchise Agreement, Mr. Dillon informed Ansari that Pro-Cuts was putting national growth on hold for a period of time but would begin national growth again when the Twin Cities market was developed. However, Mr. Dillon emphasized that the pros outweighed the cons because Pro-Cuts would now be focusing on the Twin Cities market. Mr. Dillon and Ansari had significant discussion related to this topic, with Mr. Dillon ensuring Ansari that a Pro-Cuts Sports franchise was still a great opportunity and that the pause in national growth would have no impact on Ansari's franchise.

97. Borjesson received the Pro-Cuts Concept Overview from Mr. Dillon in August 2013. However, in early September 2013, Borjesson was told by Mr. Dillon that national expansion had been paused and that Pro-Cuts Sports franchises were, at that time, only being sold in the Twin Cities area. Mr. Dillon also represented to Borjesson that this was beneficial to Borjesson because Pro-Cuts would be focusing its resources on the franchisees that were in the Twin Cities market, such as Borjesson.

98. In addition to the above representations related to system growth, Item 20 of the Pro-Cuts Sports FDD provided to the Franchisees misrepresented the growth that would occur. Item 20 of the Pro-Cuts Sports FDDs provided to the Franchisees projected significant growth in the number of franchisee-owned and corporate-owned Pro-Cuts Sports salons. Further, Item 20 of the Pro-Cuts Sports FDDs provided to Ansari, Borjesson, Link, Schwinghammer, and Waters, in addition to projecting significant growth in the number of Pro-Cuts Sports salons, also included information on the number of Pro-Cuts Classic salons and contact information for Pro-Cuts Classic franchisees, which made it appear as though the Pro-Cuts Sports system was larger than it was in actuality. (Item 20 of the Pro-Cuts Sports FDD received by Carlson, Link, and Williams is attached hereto as **Exhibit H**. Item 20 of the Pro-Cuts Sports FDD received by Link and Schwinghammer is attached hereto as **Exhibit I**. Item 20 of the Pro-Cuts Sports FDD received by Ansari, Borjesson, and Waters is attached hereto as **Exhibit J**.)

99. Brand growth was especially important to the Franchisees considering Pro-Cuts Sports was a relatively new concept, and given the statement in Item 19 of the Pro-Cuts Sports FDD warning the Franchisees that goodwill and public recognition of the brand are likely to impact sales, and be driven by the number of Pro-Cuts Sports salons in the area. Accordingly, the Franchisees were relying on Pro-Cuts' representations that it would grow the Pro-Cuts Sports brand when the Franchisees entered into their Franchise Agreements.

100. In addition to the national growth of the Pro-Cuts Sports brand never occurring, the growth of the brand in the Twin Cities never materialized.

101. After Pro-Cuts Sports told the Franchisees that national growth would be paused, Pro-Cuts represented that it would focus on brand growth in the Twin Cities. However, rather

than growing the number of Pro-Cuts Sports salons in the Twin Cities, Pro-Cuts attempted to sell the existing corporate-owned Pro-Cuts Sports salons to the Franchisees. This strategy merely resulted in a change of ownership of the salons, rather than growth of the Pro-Cuts Sports brand.

Advertising and Support Misrepresentations

102. In addition to Pro-Cuts' financial performance representations and misrepresentations related to brand growth, Pro-Cuts represented to the Franchisees that Pro-Cuts would aggressively advertise and promote the Franchisees' salons and provide substantial support to the Franchisees.

103. Pro-Cuts represented to the Franchisees that they would receive (1) extensive marketing support; (2) ideas and strategies that were proven to be successful; and (3) in the Pro-Cuts Concept Overview, "marketing that only Regis Corporation can provide." Further, Pro-Cuts made various representations to the Franchisees regarding the support that Pro-Cuts would provide in relation to operational support and financial services support.

104. During various conversations, webinars, and discovery day, Ansari was told that Pro-Cuts' marketing, finance, real estate, and construction teams would ensure the success of Ansari's Pro-Cuts Sports franchise. Specifically, during discovery day, on or around January 11, 2013, Ansari was told by Pro-Cuts' marketing team, Brian Thomas and Elizabeth Festin, that there would be ongoing marketing support with local and system-wide advertising that would include social media, brand imaging, the media builder site, and ongoing support with brand and marketing strategies. Also on discovery day, it was represented to Ansari that the finance department would continually be looking for red flags and monitoring sales trends in order to alert Ansari to any issues.

105. On or around August 12, 2013, Borjesson was provided with the Pro-Cuts Concept Overview which stated franchisees would benefit from systems, processes, technology, training, and marketing that only Pro-Cuts could provide. More specifics were provided during the operations and marketing webinars, which Borjesson attended in September 2013, and the discovery day presentations, which the Borjesson attended on or around October 14-15, 2013. During these webinars and discovery day, it was represented to Borjesson that Borjesson would receive extensive marketing support, ideas, and strategies that were proven to be successful. Further, it was represented to Borjesson that Borjesson would receive an operations manual that would provide the techniques Borjesson needed to successfully operate their salon. Additionally, it was represented to Borjesson that Borjesson would receive operational assistance from a knowledgeable franchise consultant and financial services support from a financial analyst that would regularly review the salon's finances for warning signs.

106. Mr. Landwehr sent Carlson the Pro-Cuts Concept Overview on or around February 1, 2012, which stated that franchisees benefit from the systems, processes, technology, training, and marketing that only Pro-Cuts could provide. Additionally, marketing and operational support were discussed on the pre-sale webinars Carlson attended and during discovery day on or around March 19, 2012. More specifically, the substantial marketing support, operational support, and financial services support that Carlson would receive was discussed during the marketing webinar and discovery day. Mr. Landwehr also told Carlson, during a telephone conversation on or around January 31, 2012, that the Pro-Cuts Sports brand would be receiving extensive marketing support. Carlson was also told that a senior financial

analyst would regularly review the salon's finances and bring areas of concern to the attention of Carlson, with a recommended course of action to improve performance.

107. During a telephone conversation with Ms. Bolin on or around April 26, 2012, Link was told that Pro-Cuts would be aggressively marketing the Pro-Cuts Sports brand and supporting it with additional marketing plans and spending to the tune of \$300,000. Ms. Bolin also told Link that Regis, Pro-Cuts' parent company, owned Empire Beauty Schools, which would be a great resource to hire stylists for Link's salon. From May through July 2012, Link participated in numerous conference calls regarding the marketing and operational support Link would receive as a Pro-Cuts Sports franchisee, with the Pro-Cuts representatives stating that Pro-Cuts had a proven system for operations and hiring, and for marketing the Pro-Cuts Sports brand.

108. During an introductory telephone call on or around July 19, 2012, Ms. Bolin represented that purchasing a Pro-Cuts Sports franchise would benefit Schwinghammer because of the extensive marketing, education, salon services, and finance services Pro-Cuts could provide as a Regis brand. More specific representations were made to Schwinghammer during the discovery day presentations on or around September 13-14, 2012. Mr. Mani discussed the financial support Schwinghammer would receive, including, benchmarking tools, a 52 week financial performance comparison, profit and loss statement comparisons, break-even analyses, and financial audits/business reviews. Further, Mr. Mani told Schwinghammer that Schwinghammer would receive additional support such as budgeting and goal setting assistance, sales analysis, cost control analysis, inventory analysis, and price surveys.

109. Also during discovery day, Mr. Thomas and Ms. Festin gave a presentation on the marketing Schwinghammer could expect from Pro-Cuts. They represented that Schwinghammer

could expect to receive ongoing marketing support, which included, local advertising with brand and marketing strategies, six month marketing plans, and various avenues for advertising. Mr. Thomas and Ms. Festin additionally represented that there would be system-wide advertising through websites, social media, brand images, and the media builder site. Mr. Thomas and Ms. Festin also represented that Schwinghammer would receive additional marketing support with agencies and vendors such as the Haworth Advertising Agency, Evans Larson Public Relations Agency, Graphic Source, and Qittle.

110. Additionally, Nancy Preston, Regis' Director of Franchise Salon Services, gave a presentation during discovery day on the operational support Schwinghammer could expect to receive from Pro-Cuts. Ms. Preston represented that Schwinghammer would receive store opening training, a 45 day visit, and ongoing assessments. Further, Schwinghammer was also to receive ongoing market training and store training. Also, Ms. Preston represented that Schwinghammer would have a franchise consultant, who would identify the needs of Schwinghammer's salon, identify the salon's strengths and weaknesses, identify challenges, and provide education. This franchise consultant would also make market and store visits, and provide support through individual phone calls and conference calls. In addition to the representations made by Ms. Bolin and during discovery day, Schwinghammer was told by Pro-Cuts representatives that the Pro-Cuts brand was going to be aggressively marketed, including a multi-phase \$300,000 campaign that would begin in January 2013. Additionally, Jamie Brudos, Schwinghammer's franchise consultant, was introduced as someone who would become Schwinghammer's best friend, and would guide Schwinghammer through the process of the opening the salon, training staff, and ensuring the success of Schwinghammer's salon. Further,

Mr. Mani and Ms. Fisher told Schwinghammer, in July 2012, that Schwinghammer's financial reports would be reviewed monthly and that Pro-Cuts' financial services office may notice that Schwinghammer was off track before Schwinghammer did. Additionally, Mr. Mani and Ms. Fisher told Schwinghammer that they would be in contact with the pertinent people at Regis when Schwinghammer needed help and provide Schwinghammer with assistance in getting back on track.

111. On or around October 23, 2012, while reviewing the Pro-Cuts Concept Overview, Ms. Bolin told Waters that Waters could expect the backing and support of the world leader in the hair care industry. Ms. Bolin also told Waters that there would be dedicated resources assigned to Waters to ensure that Waters' salon had the best trained, quality stylists. Ms. Bolin further stated that the finance team would review the salon's financial progress on a regular basis to ensure the utmost performance. Ms. Bolin summed up these representations by stating that Waters could expect to benefit from the systems, processes, technology, training, and extensive marketing that only Pro-Cuts could provide. On or around November 6, 2012, Waters had another telephone discussion with Ms. Bolin. During this conversation, Ms. Bolin stressed that Pro-Cuts would provide dedicated marketing and advertising resources and personnel from pre-opening to grand opening, and the development of a marketing plan going forward. Waters attended discovery day on or around January 11, 2013. During discovery day, Pro-Cuts representatives represented that the support provided to Pro-Cuts Sports franchisees in the areas of finance, marketing, and training support was unmatched in the hair care industry. Waters was told to expect regular monthly reviews of the salon's financial performance. Indeed, Ms. Fisher specifically told Waters that she would analyze his salon's financial performance monthly to

ensure that Waters reached the initial break-even goal. In relation to marketing, it was repeatedly stated, including during discovery day, that the strength and size of Regis resulted in the finest marketing in the hair care industry.

112. Williams received the Pro-Cuts Concept Overview from Mr. Landwehr on or around February 2, 2012. This document stated that Pro-Cuts Sports franchisees would benefit from systems, processes, technology, training, and marketing that only Pro-Cuts could provide. During discovery day,⁵ it was represented to Williams that Williams would receive support from Pro-Cuts in operations, marketing, and financial services. More specifically, it was represented that Williams would receive operational support that included support in opening the salon and ongoing support through the provision of coaching and training. Further, it was represented to Williams that a franchise consultant would assist Williams with daily operations and stylist recruitment. Additionally, it was represented to Williams, during discovery day, that Williams would receive extensive marketing support that would include advertising development, website support, and social media marketing. Further, Pro-Cuts represented that there would be a sustained marketing effort to increase brand awareness and drive customer traffic. Also during discovery day, Mr. Mani stated that the financial services office would provide various benchmarking tools, a 52 week comparison, profit and loss statement comparisons, a break-even analysis, and financial audits and business reviews. Further, Mr. Mani represented that Williams would be provided with budgeting and goal setting services, sales analysis, cost control analysis, and inventory analysis. It was also represented that the financial services office would be reviewing Williams' financial numbers, and provide assistance if necessary.

⁵ As stated above Williams attended the Supercuts discovery day. However, when Williams was considering purchasing a Pro-Cuts Sports franchise, Mr. Landwehr told Williams that the discovery days for the Supercuts brand and the Pro-Cuts Sports brand were materially the same.

113. Contrary to Pro-Cuts representations, Pro-Cuts has not aggressively marketed the Pro-Cuts Sports brand, nor provided the Franchisees with the marketing, advertising, operational and financial services assistance it represented it would.

114. The Franchisees received only minimal marketing and advertising support, which was essentially limited to Pro-Cuts providing advertising copy and coupons that could be distributed by the Franchisees. This resulted in the requirement that the Franchisees initiate their own strategies to advertise and market their salons, rather than rely on Pro-Cuts for the support that had been promised. Further, in the spring of 2013, the marketing team for the Pro-Cuts brand was replaced. The new marketing team often missed scheduled calls with the Franchisees, and, initially, informed the Franchisees that they were trying to catch up and learn more about the brand. This was indicative of the type of responsiveness, or lack thereof, the Franchisees received from the new marketing team. Such support is hardly extensive marketing support that only Pro-Cuts could provide.

115. Additionally, Pro-Cuts has failed to provide the advertising for the Pro-Cuts Sports brand it represented it would. In late 2012, it was represented to the Franchisees that Pro-Cuts would be engaging in a two phase marketing plan, in addition to the expenditures from the brand advertising fund. Phase I would be an early 2013 radio campaign on local sports radio stations, costing \$80,000. Phase II would involve “high impact” exposure at the state high school sports tournaments and cost \$220,000. Phase I was completed, but Phase II never materialized. The next time Pro-Cuts conducted any advertising was a short-duration advertising spend in late 2014, which did not result in any measurable increase in salon traffic. This limited

advertising spend was only made by Pro-Cuts after the Franchisees approached Pro-Cuts, in November 2014, with a detailed marketing and advertising plan to increase brand awareness.

116. Pro-Cuts has also not provided the operational support it represented it would. Ms. Brudos, the franchise consultant assigned to the Franchisees, failed to provide the operational support as was represented by Pro-Cuts. For example, the Franchisees have struggled with hiring stylists, in spite of the fact that Regis, Pro-Cuts' parent company, is a majority owner of Empire Beauty Schools. When the Franchisees contacted Ms. Brudos for help with this issue, her response was to refer the Franchisees to the Operations Manual, which merely contains strategies that have failed in the past, rather than work with the Franchisees to find ways to solve the problem. Further, Regis has provided virtually no assistance in organizing a brand level strategy to interface with beauty schools and recruit stylists. Additionally, the operations manual provided by Pro-Cuts did not provide any significant information beyond the obvious procedures needed to operate any business.

117. The financial services support provided to the Franchisees has not met the representations made by Pro-Cuts. It was represented to the Franchisees that their financial analyst would regularly review their financial numbers, and may notice the numbers were getting off track before the Franchisees did. However, beyond assistance with developing an initial budget, the Franchisees have been provided almost no assistance. Indeed, when the Franchisees do have some communication with their financial analyst, it is almost always initiated by the Franchisees, often occurs a substantial time after the request for assistance is made, and typically provides little useful information on how to correct the salon's poor performance, but instead is "everything looks correct, keep doing what you are doing." The lack of support provided to the

Franchisees has compounded the difficulties the Franchisees have experienced from Pro-Cuts' failure to market the salons and grow the brand.

The Franchisees Learn the Falsity of Pro-Cuts' Representations

118. Based upon the financial performance representations by Pro-Cuts detailed above, the pro-formas the Franchisees created based on Pro-Cuts' financial performance representations, Pro-Cuts' representations related to system growth, and Pro-Cuts' representations related to the support the Franchisees would receive, the Franchisees executed their Franchise Agreements, signed subleases, purchased or constructed salons, and began operating their Pro-Cuts Sports salons.

119. Williams executed its franchise agreement on April 4, 2012, and subsequently operated the Hudson, Wisconsin Pro-Cuts Sports franchise, which was opened in November 2012.

120. Carlson executed its franchise agreement on April 13, 2012, and subsequently operated the Minnetonka, Minnesota Pro-Cuts Sports franchise, which was opened in July 2012.

121. Link executed its franchise agreement on September 11, 2012, and subsequently operated the Plymouth, Minnesota Pro-Cuts Sports franchise, which was opened in February 2013.

122. Schwinghammer executed its franchise agreement on September 27, 2012, and subsequently operated the Edina, Minnesota Pro-Cuts Sports franchise, which was opened in May 2013.

123. Ansari executed its franchise agreement on February 1, 2012, and subsequently operated the Shakopee, Minnesota Pro-Cuts Sports franchise, which opened in April 2013.

124. Waters executed its franchise agreement on February 19, 2013, and subsequently operated the Roseville and Maple Grove, Minnesota Pro-Cuts Sports franchises. The Roseville salon was opened in August 2013, and the Maple Grove salon was opened in June 2013.

125. Borjesson executed its franchise agreements on October 25, 2013, and January 8, 2014, and subsequently operated the Chanhassen and St. Louis Park, Minnesota Pro-Cuts Sports franchises. The Chanhassen salon was opened in May 2014, and the St. Louis Park salon was opened in February 2014.

126. The Franchisees each entered into their Franchise Agreements in reliance on the representations of Pro-Cuts detailed above.

127. However, once the Franchisees began operating their salons, they learned that Pro-Cuts had misrepresented the financial performance they would have, the growth that the Pro-Cuts Sports brand would experience, and the support that they would receive from Pro-Cuts, all as detailed above.

128. Because of Pro-Cuts misrepresentations, none of the Franchisees has been able to experience financial success in operating their salons, something that has been mirrored in the company-owned Pro-Cuts Sports salons. Indeed, although in operation for significant periods of time, none of the Franchisees, except Ansari, have been able to reach the break-even point. Even Ansari has only reached the break-even point in the last several months and is likely to slip back into sustaining operating losses in the coming months.

129. Pro-Cuts has essentially admitted that the Pro-Cuts Sports salons cannot be profitably operated, and has abandoned the Pro-Cuts Sports brand.

130. On a January 8, 2015, conference call attended by the Franchisees and Mr. Plate, Mr. Plate recognized that the Franchisees were financially struggling, and stated that the corporate-owned Pro-Cuts Sports salons were experiencing similar struggles.

131. In the same call, Mr. Plate announced that (1) additional company-owned Pro-Cuts Sports salons would not be added; (2) the current company-owned Pro-Cuts Sports salons would be sold to new franchisees for conversion to the Supercuts brand, and a Pro-Cuts Sports franchisees' best chance for avoiding financial ruin was to convert to the "different" Supercuts brand; (3) Regis would not be actively trying to sell Pro-Cuts Sports franchises to prospective franchisees; and (4) neither Regis nor Pro-Cuts was willing to buy-back the Franchisees' salons.

132. This left the Franchisees stuck in a franchise system that had been abandoned by its franchisor.

133. The Franchisees were also given the option, during the January 8, 2015, conference, to convert their salons to the Supercuts brand. However, the Franchisees decided they would not be able to sustain the on-going losses they were experiencing while Regis attempted to re-establish the Supercuts brand in the Twin Cities. Further, the Franchisees did not want to go through the same growing pains they experienced with Pro-Cuts and have the uncertainty that they would be in same position in two years as they are now: in a system that has not produced results, has little to no brand recognition, and has been abandon by its franchisor. Simply put, as stated by Mr. Plate in the January 8, 2015, conference call, the Franchisees did not want to continue losing money and needed an exit strategy.

134. Had the Franchisees known that Pro-Cuts would first desert any plans for brand growth, leaving the Franchisees in a system that was unknown to much of the public, and then

abandon the brand all together, the Franchisees would never have entered into the Franchise Agreements.

135. Since the January 8, 2015, conference call, Pro-Cuts has suggested to the Franchisees that, if they do not want to remain Franchisees, they should attempt to sell their salons to new Supercuts franchisees for conversion to the Supercuts brand.

136. Because the Franchisees continued to suffer operating losses, they all made attempts to sell their salons to new Supercuts franchisees.

137. To date, Williams and Carlson have been able to sell their Hudson salons. Additionally, Waters was able to sell its Maple Grove salon. The sale prices of these salons have been drastically lower than these Franchisees paid for the purchase and construction of the salons.

138. The remaining salons, with the exception of Ansari's salon, have all sustained operating losses to the point that they were forced to close with Schwinghammer closing its doors on or around February 23, 2015; Borjesson closing its two salons on or around July 26, 2015; Link closing its salon on or around July 26, 2015; and Waters closing its Roseville salon on or around July 26, 2015.

139. Ansari continues to operate its salon. However, because Ansari's salon is hovering at the break-even point, and likely will drop below the break-even point again in the near future, it is likely only a matter of time before Ansari is forced to close its doors.

Arbitration Provision

140. Article 23 of the Franchise Agreements purports to contain a requirement to arbitrate disputes between Franchisees and Defendants. However, the provisions of Article 23

are invalid and unenforceable because they are unconscionable, illusory, lacking in mutuality of obligation, and void under the Minnesota Franchise Act.

141. Section 23.1 of the Franchise Agreements states:

23.1 **DISPUTES SUBJECT TO ARBITRATION.** Except as expressly provided to the contrary in this Agreement, all disputes and controversies between the parties, including allegations of fraud, misrepresentation or violation of any state or federal laws or regulation, arising under, as a result of, or in connection with this Agreement, the Franchised Location or the FRANCHISEE'S Pro-Cuts Business will be resolved and determined exclusively by arbitration in accordance with the Commercial Rules and Regulations of the American Arbitration Association.

Franchise Agreements § 23.1. (Waters' Franchise Agreement is attached hereto as **Exhibit K.**)

142. Article 23 is unconscionable because section 23.5 eliminates the ability of the arbitrator to provide a remedy to Franchisees on their fraud based claims by limiting any power the arbitrator has to a determination on breach of contract claims. Section 23.5 of the Franchise Agreements states:

23.5 **POWERS OF ARBITRATOR.** The authority of the Arbitrator will be limited to making a finding, judgment, decision and award relating to the interpretation of or adherence to the written provisions of this Agreement. ...

Franchise Agreements § 23.5.

143. The agreement to arbitrate is also illusory and lacking in mutuality, as a party held liable in the arbitration can, under section 23.8 of the Franchise Agreements, disregard the arbitrator's award and file a court action on the same issues. Section 23.8 of the Franchise Agreements state:

23.8 **DE NOVO HEARING ON MERITS.** If the Arbitrator awards either PRO-CUTS or the FRANCHISEE damages (including actual damages, costs and attorneys' fees) in excess of One Hundred Thousand Dollars (\$100,000) in any arbitration proceeding commenced pursuant to this

Agreement, then **the party who has been held liable by the Arbitrator will have the right to a de novo hearing on the merits by commencing an action in a court of competent jurisdiction** in accordance with the provisions of this Agreement. If the party held liable by the Arbitrator commences a court action as provided for herein, then neither party will have the right to introduce the Arbitrator's decision or findings in any such court action and the Arbitrator's decision and findings will be of no force and effect and will not be final or binding on either PRO-CUTS or the FRANCHISEE. If the party who has been held liable by the Arbitrator for over One Hundred Thousand Dollars (\$100,000) in damages fails to commence a court action within thirty (30) days after the Arbitrator issues his or her award in writing, then the Arbitrator's findings, judgments, decisions and awards will be final and binding on PRO-CUTS and the FRANCHISEE.

Franchise Agreements § 23.8 (emphasis added).

144. Section 23.8 effectively allows Pro-Cuts to act as if there was no agreement to arbitrate by first fully arbitrate the substantive issues of this case; then, if Pro-Cuts does not like the result, ignore the arbitrator's determination and litigate the substantive issues in court, without the arbitrator's decision and findings even being referenced.

COUNT I
Violation of the Minnesota Franchise Act
Minn. Stat. § 80C.01 et seq.
(All Plaintiffs against All Defendants)

145. Plaintiffs reallege and incorporate by reference the preceding paragraphs as if fully set forth herein.

146. The Minnesota Franchise Act ("MFA") governs the relationship between the Franchisees and Pro-Cuts because the Franchisees operated salons located in Minnesota, and the sales of the franchises to all of the Franchisees were made in Minnesota. Minn. Stat. § 80C.19. Furthermore, the MFA contains an anti-waiver provision, which precludes a franchisor from utilizing a choice-of-law clause to avoid compliance with the MFA. Minn. Stat. § 80C.21; see

also *Randall v. Lady of America*, No. 04-CV-3394(PJS/RLE), 2007 WL 2128180 (D. Minn. 2007).

147. Pro-Cuts violated the Amended FTC Franchise Rule and, accordingly, the MFA by, including, but not limited to:

- Providing to all of the Franchisees, except Borjesson, the Supercuts FDD and instructing these Franchisees to refer to the financial performance representations contained in Item 19 of the Supercuts FDD for the financial performance these Franchisees could expect from their Pro-Cuts Sports franchises, which constitutes a financial performance representation outside of Item 19 of the Pro-Cuts Sports FDD, and is in blatant violation of the most fundamental franchise laws regarding financial performance representations;
- Providing Ansari, Carlson, Link, Schwinghammer, and Williams the Supplemental Disclosure, and providing Waters with the information contained in the Supplemental Disclosure, which constitute financial performance representations outside of Item 19 of the Pro-Cuts Sports FDD;
- Making oral representations to the Franchisees regarding the financial performance they could expect to have with their Pro-Cuts Sports franchises, including representations relating to time to break-even, and that franchisee-owned stores have financial performance that is 30% better than corporate-owned stores, which constitute financial performance representations outside of Item 19 of the Pro-Cuts Sports FDD;
- Providing misleading Item 19 disclosures in the Pro-Cuts Sports FDDs, some of which provided differentiating factors between corporate-owned and franchisee-owned salons, but did not mention fees that only franchisees pay to Pro-Cuts, and some of which misrepresented the number of paying customers; and
- Lacking a reasonable basis for its financial performance representations that the Franchisees would experience financial performance at their Pro-Cuts Sports salons that was the same as the financial performance stated in the Supercuts FDDs.

148. Under the Minnesota Franchise Act:

No person may make or cause to be made any untrue statement of a material fact in any application, notice, report, or other document filed with the commissioner under sections 80C.01 to 80C.22, or omit to state in any such application, notice, report or other document any material fact which is required to be stated therein....

No person may offer or sell a franchise in this state by means of any written or oral communication which includes an untrue statement of a material fact or which omits to state a material fact necessary in order to make the statement made, in light of the circumstances under which they were made, not misleading.

Minn. Stat. § 80C.13, subds. 1 & 2.

149. Pro-Cuts made oral and written untrue statements of material fact, both inside and outside of the Pro-Cuts Sports FDD, as well as material omissions, including, but not limited to:

- Misrepresentations regarding the revenue the Franchisees would generate in the operation of their Pro-Cuts Sports franchises;
- Misrepresentations regarding the growth of the Pro-Cuts Sports system: first by stating that there would be over thirty Pro-Cuts Sports salons in the Twin Cities by 2013 and 900 in the United States and Canada within 10 years, then representing that, while national growth was paused, Pro-Cuts would focus on brand growth in the Twin Cities;
- Misrepresentations, in Item 20 of the Pro-Cuts Sports FDD, regarding the number of salons in the Pro-Cuts Sports system;
- Misrepresentations regarding the advertising and marketing that would be provided by Pro-Cuts; and
- Misrepresentations regarding the advertising, operational, and financial services support the Franchisees would receive from Pro-Cuts.

150. Had Pro-Cuts not made these misrepresentations and omissions of material fact, the Franchisees would not have entered into the Franchise Agreements, nor expended the significant amount of time and effort in establishing and operating their Pro-Cuts Sports salons.

151. In addition to prohibiting the sale of franchises in a fraudulent manner, the MFA provides that a franchisor may not terminate or cancel a franchise without good cause, notice and an opportunity to cure. Minn. Stat. § 80C.14, subd. 3 (a), (b). Minnesota courts have suggested that a *de facto* termination is actionable under the MFA in situations “where the conduct of a franchisor causes a substantial decline in the value of a franchise” or where the franchisor

attempts or threatens to put the franchisee out of business. *See Klosek v. American Express Co.*, 2008 WL 4057534 at *23 (D. Minn. Aug. 28, 2008).

152. Here, Pro-Cuts caused a substantial decline in the value of the Franchisees' franchises when Pro-Cuts stopped its efforts to grow the Pro-Cuts Sports brand on a national level. Further, Pro-Cuts effectively abandoned the Pro-Cuts Sports system, including the Franchisees, when Pro-Cuts announced on the January 8, 2015, conference call that it would no longer be selling Pro-Cuts franchises and would be working to convert the existing corporate-owned Pro-Cuts Sports salons to Supercuts salons.

153. Pro-Cuts' actions of halting the national growth of the Pro-Cuts Sports, and subsequently abandoning the Pro-Cuts Sports system resulted in a *de facto* termination of the Franchisees' franchises.

154. As stated above, Pro-Cuts' conduct gives rise to at least two separate violations of the MFA—*i.e.*, violation of the anti-fraud provisions and effecting *de facto* termination without good cause. The MFA provides that:

A person who violates any provision of this chapter [Minn. Stat. §§ 80C.01 to 80C.22] or any rule or order thereunder shall be liable to the franchisee or subfranchisor who may sue for damages caused thereby, for rescission, or other relief as the court may deem appropriate.

Minn. Stat. § 80C.17, subd. 1.

155. The MFA also provides for “control person” liability. Under section 80C.17, subdivision 2 of the MFA, every person who directly or indirectly controls a franchisor liable under the MFA, principal executive officers of a franchisor, and franchisor employees who materially aid in the unlawful conduct of the franchisor may be held jointly and severally liable

for the franchisor's conduct. Regis qualifies as a statutory control person under the MFA, and, accordingly, is jointly and severally liable for Pro-Cuts' violations of the MFA.

156. Furthermore, Minn. Stat. § 80C.17, subdivision 3, provides for the recovery of actual damages together with costs, disbursements and reasonable attorneys' fees.

157. As a result of Pro-Cuts' violations of the MFA, the Franchisees are entitled to: (1) rescind the Franchise Agreements; and (2) receive restitution (also known as rescission damages) in order to put the Franchisees back in the positions they occupied prior to entering into the Franchise Agreements. Pursuant to the MFA, the Franchisees are entitled to recover these damages, as well as their costs, disbursements and reasonable attorneys' fees.

COUNT II
Violation of the Wisconsin Fair Dealership Law
Wis. Stat. § 135.01, *et seq.*
(Williams against Pro-Cuts)

158. Plaintiffs reallege and incorporate by reference the preceding paragraphs as if fully set forth herein.

159. The Wisconsin Fair Dealership Law ("WFDL") applies to the relationship between Pro-Cuts and Williams because Pro-Cuts is a "grantor," Williams is a "dealer," and the Franchise Agreement between them is a "dealership" as those terms are defined in the WFDL. See Wis. Stat. § 135.02.

160. The Franchise Agreement between the Williams and Pro-Cuts is a dealership because it is a "contract or agreement, either express or implied, whether oral or written" between Williams and Pro-Cuts whereby (1) Williams is granted the right to sell or distribute goods or services, and use Pro-Cuts' trade name, trademark, service mark, logotype, advertising

or other symbol; and (2) there is a community of interest between Williams and Pro-Cuts. *See* Wis. Stat. § 135.02(3).

161. The WFDL applies to the relationship between Williams and Pro-Cuts because the choice of law provision of Williams' Franchise Agreement calls for the application of the law of the state where the franchise is located, and the Williams' franchise was located in Wisconsin. *See* Franchise Agreement § 28.1.

162. The WFDL expressly states that no grantor, such as Pro-Cuts, may "directly or through any officer, agent or employee, terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealership agreement without good cause." Wis. Stat. § 135.03.

163. The burden of proving "good cause" is on the grantor. Wis. Stat. 135.03.

164. The WFDL defines "good cause" to mean "failure by a dealer to comply substantially with essential and reasonable requirements imposed upon him by the grantor, or sought to be imposed by the grantor, which requirements are not discriminatory as compared with requirements imposed on other similarly situated dealers by their terms or in the manner of their enforcement; or bad faith by the dealer in carrying out the terms of the dealership." Wis. Stat. § 135.02(4).

165. The WFDL also expressly requires a grantor, such as Pro-Cuts, to provide a dealer a written notice containing all of the reasons for the termination, cancellation, non-renewal or substantial change in competitive circumstances at least 90 days' prior to such termination, cancellation, non-renewal or substantial change in competitive circumstances. The

WFDL requires the grantor provide the dealer 60 days to rectify any claimed deficiency. Wis. Stat. 135.04.

166. Williams substantially complied with all of the essential and reasonable requirements that Pro-Cuts imposed upon Williams through the agreement between the parties, which are not different from the requirement Pro-Cuts imposed on other similarly situated dealers.

167. Williams has not acted in bad faith in carrying out the terms of the dealership.

168. Pro-Cuts' failure to grow the Pro-Cuts Sports brand nationally, and subsequent abandonment of the Pro-Cuts Sports franchise system, constitutes a *de facto* termination, cancellation, and/or substantial change in competitive circumstances in violation of the WFDL.

169. If a grantor violates the WFDL, the WFDL grants a dealer, such as Williams, the right to damages, and the actual costs of the action, including reasonable attorney fees. Wis. Stat. 135.06.

170. As a result of Pro-Cuts' violation of the WFDL, Williams is entitled to receive the damages it has sustained, in an amount to be proven at trial, plus the actual costs of the action and reasonable attorney fees.

COUNT III
Common Law Fraud
(All Plaintiffs against Pro-Cuts)

171. Plaintiffs reallege and incorporate by reference the preceding paragraphs as if fully set forth herein.

172. The aforementioned misrepresentations also constitute intentional fraud. Pro-Cuts falsely represented material facts (*e.g.*, the growth the Pro-Cuts Sports brand would

experience, and the financial performance that the Franchisees could expect from their Pro-Cuts Sports franchises) and omitted material facts that were necessary in order to make the representations not misleading (*e.g.*, that the difference between the Pro-Cuts Sports brand and the Supercuts brand rendered the financial performance information related to the Supercuts brand meaningless), with the intent to induce the Franchisees to act upon the information in purchasing the franchises.

173. Pro-Cuts made these misrepresentations and omissions of material fact with knowledge of their falsity, and the intent that the Franchisees rely on the misrepresentations and omissions of material fact when the Franchisees purchased their franchises.

174. Pro-Cuts' conduct of inducing the Franchisees to make substantial investments of time and money in reliance upon Pro-Cuts' unjustified representations to the Franchisees constitute fraud.

175. The Franchisees were damaged by their reliance on Pro-Cuts' misrepresentations and omissions of material fact, and are entitled to rescission of the Franchise Agreements and restitution, to put the Franchisees in the position they occupied before entering into the Franchise Agreements.

COUNT IV
Negligent Misrepresentation
(All Plaintiffs against Pro-Cuts)

176. Plaintiffs reallege and incorporate by reference the preceding paragraphs as if fully set forth herein.

177. Pro-Cuts owed the Franchisees a duty to use reasonable care in making representations that it knew the Franchisees were relying upon. Pro-Cuts owed this duty of care

because it was supplying information to the Franchisees for use in transactions in which Pro-Cuts had a pecuniary interest and in the course of Pro-Cuts' business.

178. Pro-Cuts breached its duty of reasonable care by negligently supplying false and misleading information (or omitting facts), which were reasonably relied upon by the Franchisees — *e.g.*, misrepresenting the growth in the number of Pro-Cuts Sports salons that would occur and misrepresenting the financial performance the Franchisees could expect from their Pro-Cuts Sports salons.

179. Due to Pro-Cuts' unlawful conduct, the Franchisees have been damaged and now seek rescission of the Franchise Agreements and restitution.

COUNT V
Declaratory Judgment
(All Plaintiffs against All Defendants)

180. Plaintiffs reallege and incorporate by reference the preceding paragraphs as if fully set forth herein.

181. The purported requirement to arbitrate in Article 23 of the Franchise Agreements is invalid and unenforceable because section 23.5 limits the arbitrator's power to such an extent that a remedy is not available to Franchisees, rendering the purported arbitration requirement of Article 23 unconscionable.

182. The purported requirement to arbitrate in Article 23 of the Franchise Agreements is also invalid and unenforceable because section 23.8, which allows for a liable party to ignore the arbitrator's ruling and commence a court action, renders the purported requirement to arbitrate illusory and lacking in mutuality.

183. Additionally, the purported requirement to arbitrate in Article 23 of the Franchise Agreements is rendered void by the MFA. Minnesota Rule 2860.4400(J) guarantees the right to a jury trial, except when the franchise agreement contains an exclusive arbitration clause. Section 23.8 of the Franchise Agreements, which allows for a party to ignore an arbitrator's ruling and commence a court action, makes the purported requirement to arbitrate in Article 23 non-exclusive, resulting in Article 23 being void under the Minnesota Franchise Act.

184. There is an actual, justiciable controversy between the parties, within and scope and meaning of the Minnesota Uniform Declaratory Judgments Act, Minn. Stat. §§ 555.01, *et seq.*, as to whether Article 23 of the Franchise Agreements contains a valid, enforceable agreement to arbitrate.

185. Pursuant to the Minnesota Uniform Declaratory Judgments Act, Franchisees are entitled to a declaration by this Court that the Franchise Agreements do not contain a valid, enforceable agreement to arbitrate, and Franchisees are not required to arbitrate their claims against Defendants.

JURY TRIAL DEMAND

186. Franchisees demand a jury trial on all claims so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

1. Rescission of the Franchise Agreements;
2. An award of restitution damages against Defendants Pro-Cuts and Regis, jointly and severally, based on Pro-Cut's violation of the Minnesota Franchise Act;
3. An award of Williams' full damages against Defendant Pro-Cuts based on Pro-Cuts violation of the Wisconsin Fair Dealership Law;

4. An award of restitution damages against Defendant Pro-Cuts based on Pro-Cuts' common law fraud and/or negligent misrepresentation;
5. A judgment declaring the Franchise Agreements do not contain a valid, enforceable agreement to arbitrate;
6. A judgment declaring Plaintiffs are not required to arbitrate their claims;
7. An award of cost, disbursements, interest (pre- and post-judgment), and reasonable attorneys' fees, to the extent authorized under applicable law; and
8. Such other and further relief as the Court deems justified.

Dated: This 21st day of August, 2015.

DADY & GARDNER, P.A.

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ACKNOWLEDGMENT

The undersigned party, by its attorney, hereby acknowledges that costs, disbursements, and reasonable attorneys' and witness fees may be awarded pursuant to Minn. Stat. § 549.21, Subdivision 2, to the party against whom the allegations in the pleading are asserted.

Dated: This 21st day of August, 2015.

s/Keith A. Marnholtz

Keith A. Marnholtz (#0392351)