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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EDWARD L. BEERY, II,

Civil Action No. 2:16-CV-00042

Plaintiff,

- against -

TILDEN INTERNATIONAL, INC.,
ROBERT BASKIND and
JASON BASKIND,

Defendants.

**COMPLAINT FOR (1) VIOLATION OF
NEW YORK STATE FRANCHISE
SALES ACT, (2)
FRAUD, (3) NEGLIGENT
REPRESENTATION,
(4) BREACH OF CONTRACT AND
AND (5) UNJUST ENRICHMENT**

Plaintiff Edward L. Beery, II (hereinafter, the “Plaintiff”), by and through his attorneys, The Internicola Law Firm, P.C., as against Defendants Tilden International, Inc., Robert Baskind and Jason Baskind (hereinafter collectively, the “Defendants”), alleges as follows:

NATURE OF ACTION

1. This is an action by a franchisee against his franchisor, Defendant Tilden International, Inc., and its principals, Defendants Robert Baskind and Jason Baskind, for, *inter alia*, breach of contract, violation of the New York State Franchise Sales Act, common law fraud and common law negligent misrepresentation, in connection with the sale of a franchised business. Pursuant to a franchise agreement, Plaintiff is engaged in the operation of “Tilden®

Your Total Car Care Centers,” retail automotive care centers, in the State of Colorado. Defendant Tilden International, Inc. is the franchisor of the “Tilden Your Total Car Care Centers” franchise system (the “Tilden Franchise System”).

2. Through this action, Plaintiff seeks an award of compensatory damages, consequential damages, restitution, damages for loss of the benefit of the bargain, punitive damages and rescission of Plaintiff’s Tilden Franchise System franchise agreements as against the Defendants.

JURISDICTION AND VENUE

3. This Court possesses jurisdiction over this matter pursuant to 28 U.S.C. § 1332 in that all parties are of diverse citizenship and the amount in controversy exceeds \$75,000.00, exclusive of interest, costs and attorney’s fees.

4. Venue is proper in the Eastern District of New York, Nassau County, in that the franchise agreements between the parties specify this district as the only venue in which suit can be brought and because a substantial number of the acts and occurrences giving rise to these claims took place in this District pursuant to 28 U.S.C. §1391.

PARTIES

5. Plaintiff Edward L. Beery, II is an individual residing in the State of Colorado.

6. Upon information and belief, Defendant Tilden International, Inc. (hereinafter, “Tilden Inc.” or the “Franchisor”) is a corporation organized and existing under the laws of the State of Nevada.

7. Upon information and belief, Defendant Tilden Inc.’s principal place of business is located in the State of New York.

8. Upon information and belief, Defendant Robert Baskind is a citizen and

resident of the State of New York.

9. Upon information and belief, Defendant Robert Baskind was, at all times relevant to this Complaint, the Chief Executive Officer and Chairman of the Board of Tilden Inc.

10. Upon information and belief, Defendant Robert Baskind actively and knowingly participated in certain of the unlawful practices and misrepresentations set forth herein, including, among other things, swearing to the truth of and authorizing the Franchise Disclosure Document that was provided to the Plaintiff and that contained many of the misrepresentations complained of, and by signing the franchise agreements entered with Plaintiff on behalf of Tilden Inc.

11. Upon information and belief, Defendant Jason Baskind is a citizen and resident of the State of New York.

12. Upon information and belief, Defendant Jason Baskind is the Director of Franchise Development for Tilden Inc.

13. Upon information and belief, Defendant Jason Baskind actively and knowingly participated in certain of the unlawful practices and misrepresentations set forth herein including, among other things, swearing to the truth of and authorizing the Franchise Disclosure Document that was provided to the Plaintiff and that contained many of the misrepresentations set forth herein, and by signing the addendums to the franchise agreements entered with Plaintiff on behalf of Tilden Inc.

FACTS

14. Tilden Inc. is engaged in the business of franchising the right to establish and operate Tilden® Your Total Car Care Centers under the Tilden Franchise System, providing automobile and truck repair and service.

15. Tilden Inc.'s business is the franchising and purported design, development, supervision and support of franchisees for automobile and truck repair and service centers.

16. Plaintiff Edward L. Beery became interested in acquiring a Tilden Inc. franchised business in or about November 2012, when coming across an advertisement posted by Tilden Inc. on a business broker website.

17. Starting in or about November, 2012, to induce Plaintiff to purchase a Tilden Inc. franchised business and, in particular, to induce Plaintiff to enter into a franchise agreement with Tilden Inc., Defendants, by their agents and/or representatives, including Mr. Kyle Rawlings (hereinafter "Rawlings"), made the following representations and promises to Plaintiff:

- i. That Defendant Robert Baskind was the owner, director and CEO of Tilden Inc.;
- ii. That Defendant Jason Baskind was the director of franchise development of Tilden Inc.;
- iii. That Defendants have more than fifty (50) years of experience in operating the Tilden Inc. Franchise System, with Thirty-Six (36) profitable Tilden Inc. franchised business locations throughout the United States;
- iv. That the Tilden Franchise System had in place a large leadership team, including five (5) specifically named leadership team members, to assist and support franchisees with day-to-day operations and continuing business development;
- v. That the "TILDEN ® INTERNATIONAL, INC. TILDEN ® YOUR TOTAL CAR CARE CENTERS FRANCHISE DISCLOSURE

DOCUMENT”, with an issuance date of March 1, 2012 (hereinafter the “Tilden 2012 FDD”), contained a true, accurate and complete disclosure of all information material to the Tilden Franchise System, including Tilden Inc.’s leadership team, existing franchisees, prospective franchisees, financial disclosures, support structure and internal operations; and

- vi. That the statements, representations and disclosures made in the Tilden 2012 FDD are true, accurate and an exact indication of what Plaintiff could expect for purposes of owning and operating a Tilden Inc. franchised business.

(hereinafter collectively the “Tilden Representations”).

18. The Tilden Representations were made by Defendants on multiple occasions over the period of November, 2012 through May, 2013, during which time Defendants were soliciting Plaintiff’s purchase of a Tilden franchised business.

19. At all times, Plaintiff relied on the Tilden Representations.

20. Upon information and belief, at the time of making the Tilden Representations, Defendants knew such representations to be false and/or misleading.

21. Upon information and belief, at the time of making the Tilden Representations, Defendants should have known such representations to be false and/or misleading.

22. Upon information and belief, at the time of making the Tilden Representations, Defendants did not intend to perform in accordance with same.

23. Upon information and belief, at the time of making the Tilden Representations, and thereafter, Defendants intended to defraud Plaintiff, wherein Defendants made intentionally false representations and promises to induce Plaintiff to purchase a Tilden Inc. franchised business and enter into a franchise agreement.

24. In or about December, 2012, Defendants provided Plaintiff with a copy of the Tilden 2012 FDD, without the New York State Addendum.

25. The Tilden 2012 FDD contained, *inter alia*, the following information:

- i. ITEM 1: THE FRANCHISOR, AND ANY PARENTS, PREDECESSORS AND AFFILIATES: Item 1 alleges and represents, among other things, that the “*Tilden® Equipment Corp.*” is a subsidiary of Tilden Inc. and acts as an “*approved supplier to sell equipment which is used to operate a Tilden® Your Total Car Care Center.*”
- ii. ITEM 6: OTHER FEES: Item 6 alleges and represents, among other things, that Tilden Inc. franchisees pay a flat royalty fee of “*6% of weekly (Sunday to Saturday) gross revenues*”;
- iii. ITEM 8: RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES: Item 8 alleges and represents that Tilden Inc. has “*negotiated purchase arrangements, including price terms, with suppliers for the benefit of our franchisees. Franchise discounts range from 5% to 50% off standard retail prices. We also purchase certain tools and equipment at prices that we believe are lower than those available to Tilden® Franchisees, based on volume discounts. Since we, by purchasing in volume, are able to purchase, supplies, parts, and/or equipment at a reduced price, we are able to offer them to you at a price which may be lower than the price which you could obtain on the open market, and we may realize a profit from these sales*”.
- iv. ITEM 11: FRANCHISOR’S ASSISTANCE, ADVERTISING, COMPUTER SYSTEMS AND TRAINING: Item 11 alleges and represents, among other things, that Tilden Inc. (a) will make available additional training and refresher courses to all franchisees on a periodic basis, typically to review new developments in the automotive industry, and (b) will provide the franchisee with ongoing support, guidance and advice regarding operating issues concerning the Tilden franchised business.
- v. ITEM 20: OUTLETS AND FRANCHISEE INFORMATION: Items 20 outlines and represents the number of “Franchised” and “Company-Owned” Tilden franchised businesses within the Tilden Franchise System, organized by State, at the time of filing the Tilden 2012 FDD. Item 20 further outlines and represents that Seventeen (17) new franchised outlets were projected to enter the Tilden Inc. Franchise System in the next fiscal year.

- vi. ITEM 21: FINANCIAL STATEMENTS: Item 21 alleges and represents that “*Tilden Audited Financial Statements for the fiscal year ended December 31, 2009 and 2010*”, as well as “*unaudited statements as of December 31, 2011*” are attached to the Tilden 2012 FDD.

26. The Tilden 2012 FDD was provided to Plaintiff without the New York State Addendum.

27. At all times, Plaintiff relied on the information, representations and promises made in the Tilden 2012 FDD.

28. Upon information and belief, at the time of disclosing, delivering and making the Tilden 2012 FDD available to Plaintiff, Defendants knew that disclosures and representations contained in the Tilden 2012 FDD were false and/or misleading.

29. Upon information and belief, at the time of disclosing, delivering and making the Tilden 2012 FDD available to Plaintiff, Defendants did not intend to perform in accordance with same.

30. Upon information and belief, at the time of disclosing, delivering and making the Tilden 2012 FDD available to Plaintiff, Defendants knew that the Tilden 2012 FDD was not registered with the State of New York.

31. Upon information and belief, prior to and at the time of disclosing, delivering and making the Tilden 2012 FDD available to Plaintiff, Defendants intended to defraud Plaintiff, wherein Defendants made intentionally false representations and/or promises to induce Plaintiff to purchase a Tilden Inc. franchised business and enter into a franchise agreement. These false representations and promises include the Tilden Representations and the Tilden 2012 FDD.

32. Relying on the disclosures and representations made by Defendants and their agents and/or representatives, including the Tilden Representations and the Tilden 2012 FDD, in or about December, 2012 Plaintiff signed a Tilden FDD disclosure receipt (hereinafter the “2012 FDD Receipt”) stating that he was in “Receipt from Tilden® International, Inc., of the Franchise Disclosure Document for Tilden® Your Total Car Care Centers®.”

33. At the time of delivering the 2012 FDD Receipt to Plaintiff for signature, Defendants instructed Plaintiff to sign multiple “original” versions of the 2012 FDD Receipt.

34. At the time of delivering the 2012 FDD Receipt to Plaintiff for signature, Defendants provided Plaintiff with a version of the 2012 FDD Receipt with a missing “date” line.

35. At the time of delivering the 2012 FDD Receipt to Plaintiff for signature, Defendants provided Plaintiff with a version of the 2012 FDD Receipt containing an Issuance Date of “March 1, 2012.”

36. Upon information and belief, following Plaintiff’s execution of the 2012 FDD Receipt, Defendants, individually and/or jointly, intentionally, fraudulently and unlawfully copied Plaintiff’s signature from the 2012 FDD Receipt onto a new franchise disclosure document receipt page bearing a March 1, 2013 franchise disclosure document Issuance Date and further added a signature date line with a date of March 1, 2013.

37. Upon information and belief, following Plaintiff’s execution of the 2012 FDD Receipt, Defendants, individually and/or jointly, intentionally, fraudulently and unlawfully changed the “Issuance Date” on the 2012 FDD Receipt from March 1, 2012 to March 1, 2013.

38. Plaintiff was never provided with a validly issued Tilden Franchise System franchise disclosure document with an Issuance Date of March 1, 2013.

39. Upon information and belief, Defendants never registered a Tilden Franchise System franchise disclosure document with an Issuance Date of March 1, 2013.

40. Upon information and belief, Defendants are not in possession of a Tilden Franchise System franchise disclosure document with an Issuance Date of March 1, 2013.

41. Relying on the representations made by Defendants and their agents and/or representatives, including the Tilden Representations and the Tilden 2012 FDD, Plaintiff entered into two franchise agreements with Tilden Inc. for two individual Tilden Inc. franchised businesses, comprised of franchised locations in: Aurora, Colorado (the “Aurora Location”) and Englewood, Colorado (the “Englewood Location”).

42. On or about April 16, 2013, Plaintiff and Tilden Inc. entered into a Tilden Franchise System franchise agreement for the Aurora Location (hereinafter the “Aurora Franchise Agreement”).

43. The Aurora Franchise Agreement states, in pertinent part:

- i. WHEREAS CLAUSE: The distinguishing characteristics of the Tilden Systems include, without limitation, site selection guidelines; Tilden Center construction and layout; equipment selection; purchasing and inventory control methods; accounting methods; merchandising, advertising, sales, and promotional techniques; product and service guarantees; personnel training; distinctive interior and exterior design, fixtures, furnishings, and signage, and other features relating to the operation of Tilden Centers and the maintenance of high standards of quality; all of which may be changed, improved, and further developed by Tilden from time to time;
- ii. ARTICLE “4. CERTAIN SERVICES TO PROVIDED BY TILDEN”: Article 4 states, in pertinent part, that Tilden Inc. shall maintain a continuing advisory relationship with Plaintiff, including consultations in the areas of marketing, merchandising and general business operations; and
- iii. ARTICLE “29.4 REPRESENTATIONS”: Article “29.4” states that *“Franchisor represents that the prospectus accompanying this*

Agreement does not knowingly omit any material fact or contain any untrue statements of material fact.”

44. On or about May 21, 2013, Plaintiff and Tilden Inc. entered into a Tilden Franchise System franchise agreement for the Englewood Location (hereinafter the “Englewood Franchise Agreement”).

45. The Englewood Franchise Agreement states, in pertinent part:

- i. WHEREAS CLAUSE: The distinguishing characteristics of the Tilden Systems include, without limitation, site selection guidelines; Tilden Center construction and layout; equipment selection; purchasing and inventory control methods; accounting methods; merchandising, advertising, sales, and promotional techniques; product and service guarantees; personnel training; distinctive interior and exterior design, fixtures, furnishings, and signage, and other features relating to the operation of Tilden Centers and the maintenance of high standards of quality; all of which may be changed, improved, and further developed by Tilden from time to time;
- ii. ARTICLE “4. CERTAIN SERVICES TO PROVIDED BY TILDEN”: Article 4 states, in pertinent part, that Tilden Inc.: (a) will provide Plaintiff with training prior to the opening of the Tilden Center, and (b) shall maintain a continuing advisory relationship with Plaintiff, including consultations in the areas of marketing, merchandising and general business operations;
- iii. ARTICLE “29.4 REPRESENTATIONS”: Article “29.4” states that *“Franchisor represents that the prospectus accompanying this Agreement does not knowingly omit any material fact or contain any untrue statements of material fact.”*

46. At all times, Plaintiff relied on the representations made in the Aurora Franchise Agreement.

47. At all times, Plaintiff performed in accordance with the Aurora Franchise Agreement.

48. At all times, Plaintiff relied on the representations made in the Englewood Franchise Agreement.

49. At all times, Plaintiff performed in accordance with the Englewood Franchise Agreement.

50. Upon information and belief, at the time of entering the Aurora Franchise Agreement, Defendants knew the disclosures and representations made therein to be false and/or misleading.

51. Upon information and belief, at the time of entering the Aurora Franchise Agreement, Defendants did not intend to perform in accordance with same.

52. Upon information and belief, at the time of entering the Aurora Franchise Agreement and thereafter, Defendants intended to defraud Plaintiff, wherein Defendants made intentionally false representations and promises in order to induce Plaintiff to enter the Aurora Franchise Agreement and to purchase a Tilden Inc. franchised business.

53. Upon information and belief, at the time of entering the Englewood Franchise Agreement, Defendants knew the disclosures and representations made therein to be false and/or misleading.

54. Upon information and belief, at the time of entering the Englewood Franchise Agreement, Defendants did not intend to perform in accordance with same.

55. Upon information and belief, at the time of entering the Englewood Franchise Agreement and thereafter, Defendants intended to defraud Plaintiff, wherein Defendants made intentionally false representations and promises in order to induce Plaintiff to enter the Aurora Franchise Agreement and to purchase a Tilden Inc. franchised business.

56. Following entry into the Aurora Franchise Agreement and the Englewood Franchise Agreement, Plaintiff discovered that the Tilden Representations, the Tilden 2012 FDD the Aurora Franchise Agreement and the Englewood Franchise Agreement, were intentionally misleading, false, fraudulent and known by the Defendants to be false and untrue at the time of disclosing the Tilden 2012 FDD and at the time of signing the Aurora Franchise Agreement and the Englewood Franchise Agreement. Specifically, among other things:

- i. Misrepresentation as to Ongoing Training and Operational Support: Despite the representations and disclosures in the Tilden 2012 FDD, the Aurora Franchise Agreement and the Englewood Franchise Agreement, Defendants failed to provide Plaintiff with ongoing training and operational support and did not possess the ability to provide ongoing training and operational support to franchisees. Specifically,
 - Tilden Inc. did not maintain a management team capable of providing franchisees with ongoing training and operational support.
 - To mask Tilden Inc.'s deficiencies as a franchisor, Tilden Inc. would utilize existing franchisees to provide *initial* training and support.
 - Tilden Inc. had no strategy nor system in place to help with ongoing business development.
 - Tilden Inc. did not maintain "in house" marketing or advertising personnel to work with franchisees.
 - At no point in time did the individuals identified as "trainers" in the Tilden 2012 FDD offer and/or provide Plaintiff with the requested assistance and ongoing support.

Following entry into the Tilden Franchise System, Plaintiff made requests for support and guidance with business development and operations, including help and training for new technologies being used in the automotive repair business and for new business operating software. Despite Plaintiff's requests, Defendants failed and refused to provide Plaintiff with the requested support and guidance. Since entering the Tilden Franchise System in 2013, and despite Plaintiff's requests, Plaintiff has not been provided with ongoing training and/or

operational support. Moreover, Defendants did not possess the knowledge nor ability to provide franchisees with ongoing training and operational support and knew that they were unable to do so.

- ii. Misrepresentations as to Business Systems and Collateral Materials. Despite the representations and disclosures in the Tilden 2012 FDD, the Aurora Franchise Agreement and the Englewood Franchise Agreement, wherein Defendants represented and promised a unique and proprietary system for advertising, marketing, establishing and operating a Tilden Inc. franchised business (including training manuals, policy manuals, operations manuals, sales promotion aids, business forms, accounting procedures, marketing reports, product development, supplier discounts and inventory systems; all of which were to be disclosed to Plaintiff only after entry into a franchise agreement), Defendants maintain no unique or proprietary systems for operating an automotive care business.
 - Upon information and belief, Defendants utilize for their “Technical Training Manual” a plagiarized and/or an exact duplicate copy of AllData information publically and readily available on the Internet.
 - Defendants maintain archaic, outdated and inefficient operating software that Plaintiff, following entry into the Tilden Franchise System, was left to replace on his own by sourcing an up-to-date operating software customizing same for the Tilden Franchise System and then training fellow franchisees to utilize same.
- iii. Misrepresentation as to Advertising, Marketing and Public Relations Support. Despite the representations and disclosures in the Tilden 2012 FDD, the Aurora Franchise Agreement and the Englewood Franchise Agreement, and despite demands by Plaintiff, Defendants failed and refused to provide Plaintiff with advertising, marketing and/or public relations support. Upon information and belief, Defendants do not maintain “in-house” marketing and/or advertising personnel, and Defendants offer no ongoing support, training and/or guidance as to advertising, marketing and/or public relations.
- iv. Misrepresentations as to Sources of Products and Services. Despite the representations and disclosures in the Tilden 2012 FDD, the Aurora Franchise Agreement and the Englewood Franchise Agreement, Defendants do not offer or provide discounted, reduced and/or negotiated pricing for supplies, parts and/or equipment. At all times, Plaintiff has been required to source and purchase all supplies, parts and equipment on his own.

Upon information and belief, the “Tilden® Equipment Corp.” alleged in the Tilden 2012 FDD to be a subsidiary of Tilden Inc. and to act as an “approved supplier to sell equipment which is used to operate a Tilden® Your Total Car Care Center” is either a defunct entity and/or does not offer or provide equipment to the Tilden Inc. franchisees. Upon information and belief, no equipment has been sold to any franchisees of the Tilden Franchise System from or by Tilden Equipment Corp.

Misrepresentations and Omissions as to Financial Statements: Despite the representations and disclosures in the Tilden 2012 FDD, the Aurora Franchise Agreement and the Englewood Franchise Agreement, upon information and belief, Tilden Inc. failed to provide audited financial statements for its 2011 fiscal year with the Tilden 2012 FDD.

- v. Misrepresentations As To Franchised Locations and Company-Owned Locations Upon information and belief, Defendants knowingly and intentionally overstated the amount of Franchised and/or Company Owned Locations within the Tilden Franchise System in the Tilden 2012 FDD. In doing so, Defendants (a) represented to Plaintiff that there were Thirty-Six (36) Tilden Inc. franchised business in the system and failed to disclose that seven (7) of the identified locations were not branded under the “Tilden” name and proprietary marks, (b) failed to disclose that at least five (5) of the identified Tilden Inc. franchised business locations had closed and/or terminated their affiliation with Tilden Inc. in calendar year 2012 (*i.e.* more than Thirteen (13%) of the alleged franchisees) and (c) represented that the Tilden Inc. Franchise System was a large, established, franchise system. This was done in order to give the illusion of brand recognition, brand development, longevity and value in the “Tilden” brand and name where it did not exist.
- vi. Material Misrepresentations as to Projected Openings. Upon information and belief, Defendants knowingly and intentionally overstated the amount of projected openings of new Tilden Inc. franchised businesses in the next fiscal year. Among other things, despite years of significant and material attrition in the number of franchised locations, Defendants represented an expectation of seventeen (17) new Tilden Inc. franchised businesses to be opened within the next fiscal year. Defendants had no basis for making said representations and did so to knowingly and intentionally mislead Plaintiff into believing that there was “high demand” for the Tilden Inc. franchised businesses, and to give the illusion of brand

recognition, brand development, longevity and value where it did not exists

- vii. Misrepresentations As to Royalty Structure. Upon information and belief, Defendants utilize a variable royalty structure with existing franchisees and do not maintain the flat “6% royalty fee” disclosed in the Tilden 2012 FDD. Defendants knowingly and intentionally misrepresented and misstated the Tilden Inc. royalty structure wherein, despite various “side deals” and unique royalty payment plans for all or most existing franchisees, Defendants represented and disclosed that Tilden Inc. franchisees pay a flat 6% royalty fee. In doing so, Defendants knowingly and intentionally misrepresented the Tilden Franchise System as a highly successful and profitable franchise system wherein funds were available and would be used toward development and expansion of the Tilden Franchise System.

Rather, after entry into the Tilden Franchise System, Plaintiff learned that virtually no funds or resources are allocated and/or invested toward developing and expanding the franchise system and Defendants simply collect minimum royalty fees from existing franchisees as a declining, run-down, “leasehold” that they will expire and ultimately abandon.

57. Upon information and belief, the Tilden Franchise System is an illusory franchise system and is in violation of the New York State Franchise Sales Act, N.Y. Gen. Bus. L. §680, *et. seq.*

58. Upon information and belief, as of May 1, 2013, Tilden Inc. was not authorized or registered to offer or sell out of the State of New York its Tilden Inc. franchised businesses in that it did not maintain a registered “offering prospectus” and/or Franchise Disclosure Document, concerning the contemplated offer or sale, with the New York State Office of the Attorney General.

59. Upon information and belief, as of May 1, 2013, Tilden Inc. did not maintain a registered Franchise Disclosure Document with the New York State Office of the Attorney General.

60. Upon information and belief, Defendants were not registered with the New York State Office of the Attorney General and/or authorized to sell Tilden Inc. franchised businesses for the period of May 1, 2013 through December 26, 2013.

61. Upon information and belief, Defendants were required to provide Plaintiff with a 2013 registered and updated Franchise Disclosure Document prior to entering the Englewood Franchise Agreement.

62. Upon information and belief, Defendants were not authorized to offer or sell to Plaintiff the Englewood Location.

63. Upon information and belief, Defendants were not authorized to offer and/or enter into the Englewood Franchise Agreement.

64. Upon information and belief, despite Defendants' representations and promises, Tilden Inc. did not maintain a franchise disclosure document with the State of New York Office of the Attorney General with an issuance date of March 1, 2013.

65. Tilden Inc. breached its contractual obligations by, among other things, intentionally falsifying, misrepresenting and/or withholding material facts.

66. Defendants breached the Tilden Representations, the representations made in the Tilden 2012 FDD, the Aurora Franchise Agreement and/or the Englewood Franchise Agreement by, among other things, intentionally falsifying, misrepresenting and/or withholding material facts.

67. Based on the foregoing, Tilden Inc. misrepresented the Tilden Franchise System franchise opportunity.

68. Starting in or about June, 2015, Plaintiff contacted Defendants and demanded that

the foregoing disclosure violations and misrepresentations be cured by Defendants by, among other things, rescinding the Aurora Franchise Agreement and the Englewood Franchise Agreement and releasing Plaintiff from any and all obligations under the Aurora Franchise Agreement and the Englewood Franchise Agreement (hereinafter “Plaintiff’s Cure Demands”).

69. In connection with Plaintiff’s Cure Demands, in or about June, 2015, Plaintiff sent to Defendants a letter outlining and confirming Plaintiff’s Cure Demand.

70. To date, Defendants have failed and refused to comply with Plaintiffs’ Cure Demands.

71. At no time have Defendants made to Plaintiff an offer to refund to Plaintiff the consideration paid together with applicable interest from the date of payment in connection with the Aurora Franchise Agreement and/or the Englewood Franchise Agreement. At no time have Defendants made to Plaintiff an offer of rescission in connection with the Aurora Franchise Agreement and/or the Englewood Franchise Agreement.

COUNT ONE
VIOLATION OF THE NEW YORK STATE FRANCHISE SALES ACT
(Against All Defendants)

72. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs “1” through and including “71” above as though more fully set forth herein at length.

73. The arrangement between Plaintiff and Defendant Tilden Inc. is a franchise as that term is used in the New York State Franchise Sales Act, N.Y. Gen. Bus. L. § 680 *et seq.*

74. Under the New York State Franchise Sales Act, a franchisor may not make a misrepresentation or fraudulent omission in connection with the sale of a franchise.

75. In addition, the franchisor must provide the franchisee with a Franchise

Disclosure Document that complies with the guidelines for disclosure of material information.

76. The Defendants Tilden Inc., Robert Baskind and Jason Baskind violated the New York Franchise Sales Act by, among other things,

- a. Offering to sell or selling a franchise unless and until there shall have been registered with the department of law, prior to such offer or sale, a written statement to be known as an “offering prospectus” concerning the contemplated offer or sale, which shall contain the information and representations set for in and required by the New York State Franchise Sales Act, N.Y. Gen. Bus. L. § 683, *et seq.*;
- b. By making the fraudulent statements, misrepresentations and/or omissions in the Tilden Representations, the Tilden 2012 FDD, the Aurora Franchise Agreement and/or the Englewood Franchise Agreement, as set forth above;
- c. By intentionally, fraudulently and unlawfully inserting and/or changing the signature date on the 2012 FDD Receipt of March 1, 2013 following Plaintiff’s execution of same;
- d. By misrepresenting the Tilden Franchise System franchise opportunity.

77. Each of the individual Defendants actually participated in the violations of law set forth here in a manner previously set forth in this Complaint.

78. As a result of Defendants' violation of the New York State Franchise Sales Act, Plaintiff is entitled to rescission of the Aurora Franchise Agreement, rescission of the Englewood Franchise Agreement, return of all funds invested in the Aurora Location, return of all funds invested in the Englewood Location, damages and attorneys' fees.

WHEREFORE, Plaintiff respectfully requests that the Court enter an award in his favor and against Defendants Tilden Inc., Robert Baskind and Jason Baskind for rescission of the Aurora Franchise Agreement, rescission of the Englewood Franchise Agreement, return of all funds invested by Plaintiff in the Aurora Location, return of all funds invested by Plaintiff in

the Englewood Location, compensatory damages, consequential damages, restitution, damages for loss of the benefit of the bargain, punitive damages, pre-judgment interest, post-judgment interest, costs and attorney fees pursuant to N.Y. Gen. Bus. L. §691, *et. seq.*, and for such other and further relief that this Court deems just and proper.

COUNT TWO - COMMON LAW FRAUD
(Against All Defendants)

79. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs “1” through and including “78” above as though more fully set forth herein at length.

80. Defendants Tilden Inc., Robert Baskind and Jason Baskind made the promises, representations and statements enumerated above, upon which Plaintiff relied, knowing that they were false, incomplete, contained material misrepresentations or were not supported by current data relevant to Plaintiff’s proposed franchise purchase, and with the knowledge that Plaintiff was relying on same and did enter the Tilden Franchise System as a result.

81. Defendants Tilden Inc., Robert Baskind and Jason Baskind knew or should have known that their promises, representations and/or statements were false, incomplete, contained material misrepresentations or were not supported by current data.

82. Defendants Tilden Inc., Robert Baskind and Jason Baskind made promises, representations and/or statements that were false, incomplete, contained material misrepresentations or were not supported by current data to induce Plaintiff to act.

83. Plaintiff reasonably and justifiably relied upon Defendants Tilden Inc., Robert Baskind and Jason Baskind promises, representations and/or statements.

84. As a result of the foregoing, Plaintiff has been damaged by a sum to be proved at trial but believed to be in excess of Three Million (\$3,000,000.00) Dollars.

WHEREFORE, Plaintiff respectfully requests that the Court enter an award in his favor

and against Defendants Tilden Inc., Robert Baskind and Jason Baskind for rescission of the Aurora Franchise Agreement, rescission of the Englewood Franchise Agreement, compensatory damages, consequential damages, restitution, damages for loss of the benefit of the bargain, punitive damages, pre-judgment interest, post-judgment interest, costs and attorney fees, and for such other and further relief that this Court deems just and proper.

COUNT THREE – NEGLIGENT MISREPRESENTATION
(Against All Defendants)

85. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs “1” through and including “84” above as though more fully set forth herein at length.

86. Defendants Tilden Inc., Robert Baskind and Jason Baskind, entered into a business transaction with the Plaintiff, and participated in entering into the transaction, with the knowledge that Plaintiff would sustain damages if the information provided by these Defendants to Plaintiff in connection with the transaction was not complete, truthful, and/or did not contain any material omissions of fact.

87. Defendants Tilden Inc., Robert Baskind and Jason Baskind, entered into the transaction with Plaintiff, without exercising due care to ensure that the information these Defendants had provided to Plaintiff was complete and truthful, and that it did not contain material omissions of fact.

88. The information provided to Plaintiff was false, incomplete, contained material misrepresentations or was not supported by current data.

89. Defendants Tilden Inc., Robert Baskind and Jason Baskind knew or should have known that the information was supplied to guide Plaintiff in his business transactions.

90. Defendants Tilden Inc., Robert Baskind and Jason Baskind were negligent in,

among other things, communicating and/or offering to Plaintiff the false, misleading and/or incomplete information.

91. Plaintiff reasonably and justifiably relied on the false, incomplete and/or misleading information provided by Defendants Tilden Inc., Robert Baskind and Jason Baskind and was induced into signing the Aurora Franchise Agreement and the Englewood Franchise Agreement based upon such information.

92. As a result of the foregoing, Plaintiff has been damaged by a sum to be proved at trial but believed to be in excess of Three Million (\$3,000,000.00) Dollars.

WHEREFORE, Plaintiff respectfully requests that the Court enter an award in his favor and against Defendants Tilden Inc., Robert Baskind and Jason Baskind for rescission of the Aurora Franchise Agreement, rescission of the Englewood Franchise Agreement, compensatory damages, consequential damages, restitution, damages for loss of the benefit of the bargain, punitive damages, pre-judgment interest, post-judgment interest, costs and attorney fees, and for such other and further relief that this Court deems just and proper.

COUNT FOUR – BREACH OF CONTRACT: AURORA FRANCHISE AGREEMENT
(Against Defendant Tilden Inc.)

93. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs “1” through and including “92” above as though more fully set forth herein at length.

94. Defendant Tilden Inc. breached the Aurora Franchise Agreement by, among other things, failing and refusing to,

- a. Provide Plaintiff with ongoing training and support for business development and operations;

- b. Provide Plaintiff with discounted, reduced and/or negotiated pricing for supplies, parts and/or equipment; and
- c. Making false statements, material misrepresentations and/or omissions in the Tilden 2012 FDD.

95. In addition, there are implied terms contained within the Aurora Franchise Agreement, including an implied covenant of good faith and fair dealing, requiring each party to cooperate with the other so that each may obtain the full benefit of performance under the Aurora Franchise Agreement.

96. Inherent within the Aurora Franchise Agreement was the implied covenant and/or implied obligation upon Defendant Tilden Inc. that:

- a. It was prepared to, capable of and experienced in operating a franchise system;
- b. It possessed the infrastructure necessary to provide the services it agreed to provide its franchisees, including Plaintiff; and
- c. It possessed an internal operations sufficient to administer the Tilden Franchise System, in accordance with its Franchise Disclosure Document(s).

97. Defendant Tilden Inc. breached the implied obligations contained in the Aurora Franchise Agreement.

98. As a result of the foregoing, Plaintiff has been damaged by a sum to be proved at trial but believed to be in excess of Three Million (\$3,000,000.00) Dollars.

WHEREFORE, Plaintiff respectfully requests that the Court enter an award in his favor and against Defendant Tilden Inc. for rescission of the Aurora Franchise Agreement, rescission of the Englewood Franchise Agreement, compensatory damages, consequential damages, restitution, damages for loss of the benefit of the bargain, punitive damages, pre-judgment

interest, post-judgment interest, costs and attorney fees, and for such other and further relief that this Court deems just and proper.

COUNT FIVE – BREACH OF CONTRACT:
ENGLEWOOD FRANCHISE AGREEMENT
(Against Defendant Tilden Inc.)

99. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs “1” through and including “98” above as though more fully set forth herein at length.

100. Defendant Tilden Inc. breached the Englewood Franchise Agreement by, among other things, failing and refusing to,

- a. Provide Plaintiff with ongoing training and support for business development and operations;
- b. Provide Plaintiff with discounted, reduced and/or negotiated pricing for supplies, parts and/or equipment; and
- c. Making false statements, material misrepresentations and/or omissions in the Tilden 2012 FDD.

101. In addition, there are implied terms contained within the Englewood Franchise Agreement, including an implied covenant of good faith and fair dealing, requiring each party to cooperate with the other so that each may obtain the full benefit of performance under the Englewood Franchise Agreement.

102. Inherent within the Englewood Franchise Agreement was the implied covenant and/or implied obligation upon Defendant Tilden Inc. that:

- a. It was prepared to, capable of and experienced in operating a franchise system;
- b. It possessed the infrastructure necessary to provide the services it agreed to provide to its franchisees, including Plaintiff; and
- c. It possessed an internal operations sufficient to administer the Tilden Franchise System, in accordance with its Franchise Disclosure Document(s).

103. Defendant Tilden Inc. breached the implied obligations contained in the Englewood Franchise Agreement.

104. As a result of the foregoing, Plaintiff has been damaged by a sum to be proved at trial but believed to be in excess of Three Million (\$3,000,000.00) Dollars.

WHEREFORE, Plaintiff respectfully requests that the Court enter an award in his favor and against Defendant Tilden Inc. for rescission of the Aurora Franchise Agreement, rescission of the Englewood Franchise Agreement, compensatory damages, consequential damages, restitution, damages for loss of the benefit of the bargain, punitive damages, pre-judgment interest, post-judgment interest, costs and attorney fees, and for such other and further relief that this Court deems just and proper.

COUNT SIX – UNJUST ENRICHMENT
(Against All Defendants)

105. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs “1” through and including “104” above as though more fully set forth herein at length.

106. Defendants Tilden Inc., Robert Baskind and Jason Baskind have been unjustly enriched to the detriment of Plaintiff.

107. As a result of the foregoing, Plaintiff has been damages by a sum to be proved at trial but believed to be in excess of Three Million (\$3,000,000.00) Dollars.

WHEREFORE, Plaintiff respectfully requests that the Court enter an award in his favor and against Defendants Tilden Inc., Robert Baskind and Jason Baskind for rescission of the Aurora Franchise Agreement, rescission of the Englewood Franchise Agreement, compensatory damages, consequential damages, restitution, damages for loss of the benefit of the bargain,

punitive damages, pre-judgment interest, post-judgment interest, costs and attorney fees, and for such other and further relief that this Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

ON THE FIRST COUNT: rescission of the Aurora Franchise Agreement, rescission of the Englewood Franchise Agreement, return of all funds invested by Plaintiff in the Aurora Location, return of all funds invested by Plaintiff in the Englewood Location, compensatory damages, consequential damages, restitution, damages for loss of the benefit of the bargain, punitive damages, pre-judgment interest, post-judgment interest, costs and attorney fees pursuant to N.Y. Gen. Bus. L. §691, *et. seq.*, and for such other and further relief that this Court deems just and proper.

ON THE SECOND COUNT: damages in an amount to be determined at trial but believed to be in excess Three Million (\$3,000,000.00) Dollars, including compensatory damages, consequential damages, restitution, damages for loss of the benefit of the bargain, punitive damages, pre-judgment interest, post-judgment interest, costs and attorney fees, rescission of the Aurora Franchise Agreement, rescission of the Englewood Franchise Agreement, and for such other and further relief as the Court deems just and proper;

ON THE THIRD COUNT: damages in an amount to be determined at trial but believed to be in excess of Three Million (\$3,000,000.00) Dollars, including compensatory damages, consequential damages, restitution, damages for loss of the benefit of the bargain, punitive damages, pre-judgment interest, post-judgment interest, costs and attorney fees, rescission of the Aurora Franchise Agreement, rescission of the Englewood Franchise Agreement, and for such other and further relief as the Court deems just and proper;

ON THE FOURTH COUNT: damages in an amount to be determined at trial but believed to be in excess of Three Million (\$3,000,000.00) Dollars, including compensatory damages, consequential damages, restitution, damages for loss of the benefit of the bargain, punitive damages, pre-judgment interest, post-judgment interest, costs and attorney fees, rescission of the Aurora Franchise Agreement, rescission of the Englewood

Franchise Agreement, and for such other and further relief as the Court deems just and proper;

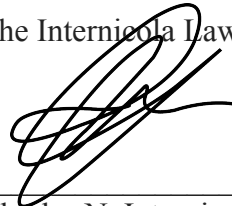
ON THE FIFTH COUNT: damages in an amount to be determined at trial but believed to be in excess of Three Million (\$3,000,000.00) Dollars, including compensatory damages, consequential damages, restitution, damages for loss of the benefit of the bargain, punitive damages, pre-judgment interest, post-judgment interest, costs and attorney fees, rescission of the Aurora Franchise Agreement, rescission of the Englewood Franchise Agreement, and for such other and further relief as the Court deems just and proper; and

ON THE SIXTH COUNT: damages in an amount to be determined at trial but believed to be in excess of Three Million (\$3,000,000.00) Dollars, including compensatory damages, consequential damages, restitution, damages for loss of the benefit of the bargain, punitive damages, pre-judgment interest, post-judgment interest, costs and attorney fees, rescission of the Aurora Franchise Agreement, rescission of the Englewood Franchise Agreement, and for such other and further relief as the Court deems just and proper.

Dated: January 5, 2016

The Internicola Law Firm, P.C.

By:



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