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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF ARIZONA**

9 Anthony Farace and Francis Atrash,
10 Plaintiff,

No. _____

11 v.

COMPLAINT

12 Rita's Water Ice Franchise Company,
LLC t/d/b/a Rita's Italian Ice,
13 Defendant.
14

JURY TRIAL DEMANDED

15 Plaintiffs, Anthony Farace and Francis Atrash by and through their undersigned
16 attorneys file this Complaint and state as follows:

17 **PARTIES**

18 1. Plaintiff, Anthony Farace, is an individual who resides at 6000 Cala Lily
19 Street Santee, CA 92071.

20 2. Plaintiff, Francis Atrash, is an individual who resides at 4912 Rockford
21 Drive, San Diego CA 92115.

22 3. Defendant is a limited liability company organized and existing under the laws of
23 the State of Delaware with its principal place of business located at 1210 Northbrook Dr.,
24 Suite 310, Trevese, PA 19053.
25

JURISDICTION AND VENUE

4. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332, because the amount in controversy exceeds seventy-five thousand dollars, and each Plaintiff is diverse from each Defendant.

5. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1332, this being a diversity action.

6. Venue in this District is proper under 28 U.S.C. § 1391(b)(2) because, as set forth more fully below, a substantial part of the events giving rise to this claim occurred within the boundaries of the District of Arizona and the subject matter of the parties' agreement at issue concerned franchise development in the State of Arizona.

FACTUAL BACKGROUND

7. Commencing on or about mid-November 2014 Plaintiffs began negotiating with Defendant's authorized employee and/or agent, Mo Boutara ("Boutara"), Defendant's Senior Director of Franchise Development, respecting Plaintiffs acquiring the rights to develop "Rita's Italian Ice" franchise retail locations in the State of Arizona.

8. During the course of the negotiations which extended from approximately mid-November 2014 through mid-December 2014 Plaintiffs requested and received certain due diligence information from Defendant through Boutara and were repeatedly assured the opportunity to develop franchise locations in the State of Arizona ("Area Developer Opportunity") was being held out by Defendant to Plaintiff's for acceptance by them.

9. Negotiations ultimately culminated in Defendant transmitting to Plaintiffs a revised Area Developer Opportunity Proposal for the State of Arizona on December 5, 2014. A true and correct copy of the revised Area Developer Opportunity Proposal is attached as Exhibit "A".

10. The revised Area Developer Opportunity Proposal specifically provided therein that it was valid until December 20, 2014 and that it must be signed and the specified fees paid to Defendant on or before Monday, December 29, 2014.

11. Notwithstanding the stated time frame set forth in the revised Area Developer Opportunity Proposal directed by Defendant to Plaintiffs, on December 17, 2014 Plaintiffs were informed by Defendant through Boutara that Defendant had decided to award the franchise area development rights for the State of Arizona to a third-party.

12. Upon receiving said notice from Defendant, Plaintiffs on December 19, 2014 transmitted to Defendant a written signed acceptance of the revised Area Developer Opportunity Proposal and requested advice from Defendant regarding bank details for transfer of the specified fees required in the proposal. A true and correct copy of the acceptance bearing Plaintiffs' respective signatures on December 18 and December 19, 2014 is attached as Exhibit "B".

13. Defendant did not respond to Plaintiffs' acceptance and proceeded to award the area development rights for the State of Arizona to a third party.

COUNT I

BREACH OF CONTRACT

14. The allegations of the preceding paragraphs are incorporated herein by reference as though fully set forth.

15. Plaintiffs submit a contract was formed between them and Defendant for the franchise area development rights for “Rita’s Italian Ice” for the State of Arizona by virtue of the negotiations leading up to the revised Area Development Proposal, the transmission of the revised Area Development Proposal and Plaintiff’s acceptance of the revised Area Development Proposal within the specified time frame for acceptance of same.

16. Defendant breached the aforesaid contract by nonetheless awarding the “Rita’s Italian Ice” franchise area development rights for the State of Arizona to a third party.

17. Plaintiffs have been damaged by Defendant's aforementioned breach of contract as they have been denied the benefit of their bargain with Defendant and the anticipated profits to be realized from the contemplated franchise development in the State of Arizona, in addition to costs and expenses incurred by Plaintiffs in preparing to accept and in fact accepting Defendant's contract offer, the revised Area Development Proposal. Said damages are in an as yet undetermined amount and are continuing in nature.

WHEREFORE, Plaintiffs demand the entry of judgment in their favor and against Defendant for compensatory damages, prejudgment interest and costs of suit in an amount in excess of \$75,000, plus such other and further relief as the Court deems just and appropriate.

COUNT II

SPECIFIC PERFORMANCE

18. The allegations of the preceding paragraphs are incorporated herein by reference as though fully set forth.

19. Plaintiff avers, on information and belief, that Defendant is the owner of numerous intellectual property registrations ranging from trademarks, copyrights and/or patents to common law trade secrets such that the goods and services offered and licensed by Defendant to its “Rita’s Italian Ice” franchisees are unique and exclusive to Defendant.

20. Because of the aforesaid uniqueness, the bundle of rights encompassed within Defendant's revised Area Development Proposal offered to and accepted by

1 Plaintiffs was and remains unique such that the resulting contract formed between
2 Plaintiffs and Defendant respecting “Rita’s Italian Ice” franchise rights encompassing the
3 State of Arizona is an appropriate subject matter for a decree of specific performance.

4 21. Indeed, absent a decree of specific performance, Plaintiffs may be left
5 without an adequate legal remedy to enforce their rights arising from the contract formed
6 between Plaintiffs and Defendant respecting “Rita’s Italian Ice” franchise rights
7 encompassing the State of Arizona.

8 WHEREFORE, Plaintiffs demand the entry of judgment in their favor consisting
9 of a decree of specific performance of the contract formed between Plaintiffs and
10 Defendant for exclusive “Rita’s Italian Ice” franchise rights encompassing the State of
11 Arizona, plus such other and further relief as the Court deems just and appropriate.

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13 **DEMAND FOR JURY TRIAL**

14 Plaintiffs demand a trial by jury.

15 Respectfully Submitted this 2nd day of December, 2015.

16 RENAUD COOK DRURY MESAROS, PA

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