

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 15-cv-_____-_____-____

MEHB KHOJA, and RODOLFO GUIZAR REYES as the assignee of TEXAS SNACKS, LLC,
on behalf of themselves and all other similarly situated persons

Plaintiffs,

v.

DPD SUB, INC., a Colorado corporation, and DPI SUB, INC. a Colorado corporation,

Defendants

COMPLAINT

COMES NOW the Plaintiffs, Mehb Khoja and Rodolfo Guizar Reyes as the assignee of Texas Snacks, LLC, and on behalf of themselves and all other similarly situated persons, allege and aver the following complaint against Defendants:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Mehb Khoja is an individual who resides in Mount Prospect, Illinois. On or about April 14, 2011, Mr. Khoja signed a Franchise Agreement with Doc Popcorn Development, Inc. Plaintiff Rodolfo Guizar Reyes was the sole member and is the assignee of Texas Snacks, LLC and resides in Las Vegas, Nevada. On or about June 17, 2011, Texas Snacks, LLC signed a Franchise Agreement with Doc Popcorn Development, Inc.

2. Defendant DPD Sub, Inc. is a Colorado corporation with a principal place of business at 2520 S. St. Paul Street, Denver, Colorado 80210. It was originally known as Doc Popcorn Development, Inc. According to Doc Popcorn's Franchise Disclosure Document and

Agreement dated March 15, 2011, Doc Popcorn Development, Inc. was the entity that offered and sold Doc Popcorn franchises to franchisees.

3. Defendant DPI Sub, Inc. is a Colorado corporation with a principal place of business at 2520 S. St. Paul Street, Denver, Colorado 80210. It was originally known as Doc Popcorn International, Inc. According to Doc Popcorn's Franchise Disclosure Document and Agreement dated March 15, 2011, Doc Popcorn International, Inc. was the entity to which some or all of a franchisee's fees were paid. Together, Defendant DPD Sub, Inc. and Defendant DPI Sub, Inc. shall be referred to herein as "Doc Popcorn."

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

5. This Court has original jurisdiction of this case pursuant to 28 U.S.C. § 1332(d)(2) because this case is a class action, the amount in controversy exceeds \$5,000,000.00 and the Plaintiff class includes citizens of states other than Colorado, which is the residence of the Defendants.

CLASS ACTION ALLEGATIONS

6. This action is brought by Plaintiffs on behalf of themselves and all other similarly situated persons whose joinder in this action is impracticable because the class is so numerous. The class consists of past and current franchisees of Doc Popcorn which is more than fifty (50) individuals or entities.

7. There are questions of law or fact common to the members of the class that predominate over questions of law or fact affecting only individual members. The questions of law or fact common to all members of the class are whether the dispute resolution provision in each of the class members' franchise agreements is illusory and, therefore, unenforceable,

whether Doc Popcorn made material misrepresentations to induce the class members to execute franchise agreements, and whether Doc Popcorn made material omissions to induce the class members to execute franchise agreements.

8. The claims of the named Plaintiffs are for declaratory relief regarding the validity of the dispute resolution provision in the franchise agreement and for money damages resulting from Doc Popcorn's intentional and/or negligent misrepresentations and omissions, which are true of the claims of the entire class, and are therefore typical of the claims of the class.

9. Plaintiffs are representative of all persons who were materially injured by Doc Popcorn's intentional and/or negligent misrepresentations and whose pursuit of legal claims against Doc Popcorn has been or will be chilled as a result of the illusory dispute resolution provision in the franchise agreement, and such Plaintiffs will, as representative parties, fairly and adequately protect the interests of the class.

10. Questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy. Additionally, the prosecution of separate actions by individual members of the class would create risk of inconsistent or varying adjudications or adjudications which would not be dispositive of the interests of other members not parties to the adjudications.

GENERAL ALLEGATIONS

11. Doc Popcorn was and is in the business of selling Doc Popcorn franchises and collecting franchise and other fees from franchisees such as Plaintiffs. One method Doc Popcorn used and uses to sell franchises to its franchisees is to market franchises on a website called

docpopcornfranchising.com. Such website includes a number of videos in which Robert Israel, Doc Popcorn's CEO, touts Doc Popcorn as the largest popcorn retailer in the world and greatly exaggerates the size and growth of Doc Popcorn.

12. In Doc Popcorn's Franchise Disclosure Documents dated March 25, 2010 and March 15, 2011, Doc Popcorn represented that it provided site selection, site evaluation, lease review, and construction and project management to its franchisees. Additionally, Doc Popcorn stated that it had "established a network of professional organizations to assist all franchisees opening" fixed units. In exchange for such services, Doc Popcorn charged its franchisees at least \$10,000.00, dubbing such fee a "store creation fee" necessary to offset Doc Popcorn's costs in supporting franchisees' efforts in finding and developing a location.

13. Doc Popcorn perpetuated its representations regarding the real estate assistance it would provide to franchisees by assuring franchisees that it had close relationships with large mall owners and by representing to them that certain retail locations in malls owned by the mall owners with whom Doc Popcorn had close relationships were available when, in fact, they were not. Doc Popcorn concealed its misrepresentations by telling franchisees that Doc Popcorn, rather than the franchisee, would be solely responsible for communicating and negotiating with the property managers for these locations.

14. Doc Popcorn did not have close relationships with large mall owners, did not have any retail real estate expertise, and did not provide any real estate assistance to franchisees. In fact, the opposite was true: Doc Popcorn encouraged franchisees to open locations in any mall that would accept them although Doc Popcorn knew that such malls could not support a Doc Popcorn store.

15. The Franchise Disclosure Document and Agreements dated March 25, 2010 and March 15, 2011 represent that mobile units may be operated from permanent, fixed sites located in malls. Nonetheless, Doc Popcorn required franchisees with mall locations to purchase kiosks from Doc Popcorn rather than the much cheaper mobile units.

16. To be a franchisee of Doc Popcorn costs a substantial amount of money. Plaintiffs and the other class members paid an initial franchise fee of between \$27,500.00 and \$59,500.00, a “store creation fee” of between \$3,500.00 and \$15,000.00, and construction/equipment fees of up to \$130,000.00. In the Franchise Disclosure Document and Agreement dated March 15, 2011, Doc Popcorn estimated franchisee startup costs between \$66,250.00 and \$385,050.00.

17. Despite the representations made by Doc Popcorn on its website and in its Franchise Disclosure Document and Agreement and the substantial investment required and paid by franchisees, Doc Popcorn franchises are, for the most part, unprofitable and struggle to stay in business. In Doc Popcorn’s franchise model, Doc Popcorn is the only participant making money. Indeed, Doc Popcorn’s financial model is fundamentally flawed because it knowingly makes unwarranted and unrealistic assumptions to calculate customer capture rates and, based on such calculations, advises franchisees that outlets in malls and other locations with slow traffic are viable locations.

18. In a series of e-mails to franchisees in early 2013, Rob Israel, Doc Popcorn’s CEO, admitted that “sales were not as robust as expected,” his promised “comprehensive plan” to address Doc Popcorn’s poor business did not exist and “will not work,” and that Doc Popcorn’s business model “is not doing what we all projected.”

19. In its franchise agreement, Doc Popcorn requires franchisees to mediate any dispute they have with Doc Popcorn with JAG, a dispute resolution group headquartered in Denver, Colorado. In the event mediation is not successful, Doc Popcorn requires franchisees to arbitrate any dispute they have with Doc Popcorn with JAG. However, Doc Popcorn also reserves the right to unilaterally institute an alternative dispute resolution program, to make it mandatory, and to require franchisees to resolve any dispute they have with Doc Popcorn pursuant to its unilaterally-instituted dispute resolution program rather than through mediation/arbitration.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment)

20. The allegations contained in paragraphs 1 through 19 are incorporated by reference as if fully set forth herein.

21. Because Doc Popcorn has the right to unilaterally institute an alternative and mandatory dispute resolution program, the dispute resolution provision in the franchise agreement is illusory.

22. Accordingly, Plaintiffs and the class members are entitled to a declaratory judgment pursuant to Fed.R.Civ.P. 57 and 28 U.S.C. § 2201 that the dispute resolution provision in the franchise agreement is unenforceable.

SECOND CLAIM FOR RELIEF
(Fraud/Fraud in the Inducement)

23. The allegations contained in paragraphs 1 through 22 are incorporated by reference as if fully set forth herein.

24. Doc Popcorn made material misrepresentations or omissions to Plaintiffs and

other similarly situated persons in the Franchise Disclosure Document and Agreements dated March 25, 2010 and March 15, 2011, on all subsequent versions of such document, and on docpopcornfranchising.com as to, among other things, the number of Doc Popcorn franchisees, Doc Popcorn's growth rate, the financial viability of a Doc Popcorn franchise, Doc Popcorn's real estate expertise and assistance, the availability of certain locations, and the right to operate mobile units as opposed to kiosks or permanent sites.

25. When Doc Popcorn made such misrepresentations or omissions, it knew or should have known that such misrepresentations and omissions were false and misleading or it was aware that it did not know whether such misrepresentations were true or false.

26. Upon information and belief, Doc Popcorn made misrepresentations and omissions to Plaintiffs and other Doc Popcorn franchisees with the intent that they would rely on the misrepresentations.

27. Plaintiffs and other Doc Popcorn franchisees justifiably relied on Doc Popcorn's misrepresentations.

28. As a result of justifiably relying on Doc Popcorn's misrepresentations and omissions, Plaintiffs and all other similarly situated past and current Doc Popcorn franchisees suffered damages in amounts to be proven at trial. Alternatively, as a result of justifiably relying on Doc Popcorn's misrepresentations and omissions, Plaintiffs and all other similarly situated past and current Doc Popcorn franchisees are entitled to rescission of their franchise agreements and a return of all funds paid to or on behalf of Doc Popcorn pursuant to their franchise agreements.

THIRD CLAIM FOR RELIEF
(Negligent Misrepresentation)

29. The allegations contained in paragraphs 1 through 28 are incorporated by reference as if fully set forth herein.

30. Doc Popcorn provided Plaintiffs and other Doc Popcorn franchisees with false information in the course of a business transaction between Doc Popcorn and its franchisees.

31. Doc Popcorn provided Plaintiffs and other Doc Popcorn franchisees with false information for the franchisees' use in a business transaction.

32. Doc Popcorn was negligent in obtaining or communicating the information.

33. Doc Popcorn provided Plaintiffs and other Doc Popcorn franchisees with the information with the intent or knowing that the franchisees would act in reliance on the information.

34. Plaintiffs and other Doc Popcorn franchisees relied on the information provided by Doc Popcorn to sign Doc Popcorn franchise agreements, to pay franchise and other fees to Doc Popcorn or its "affiliates," and to commence operating Doc Popcorn outlets.

35. As a result of Plaintiffs' and other Doc Popcorn franchisees' reliance on the false information provided by Doc Popcorn, the Doc Popcorn franchisees were damaged by, among other things, entering into the Doc Popcorn franchise agreement, paying franchise and other fees to Doc Popcorn or its "affiliates," and commencing operations of Doc Popcorn outlets. In addition, Plaintiffs and other Doc Popcorn franchisees have incurred consequential damages directly resulting from Doc Popcorn's actions.

JURY DEMAND

36. Pursuant to Fed.R.Civ.P. 38, Plaintiffs hereby demand a trial by jury of all claims asserted herein except for the claim for declaratory relief.

EXEMPLARY DAMAGES

37. Pursuant to C.R.S. § 13-21-102, Plaintiffs and the other class members reserve the right to amend this Complaint to include a claim for exemplary damages.

Respectfully submitted this 6th day of February, 2015.

By: /s/Paul M. Grant
Paul M. Grant
Thomas E. Goodreid
Goodreid Grant & Kuhn LLC
1801 Broadway, Suite 1100
Denver, CO 80202
Telephone: (720) 545-0883
pgrant@ggklaw.com
ATTORNEYS FOR PLAINTIFFS