

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

KILT HOLDINGS, LLC,

Plaintiff,

v.

TILTED KILT FRANCHISE
OPERATING, LLC,

Defendant.

Case No. _____

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

Plaintiff Kilt Holdings, LLC (“Kilt Holdings”), by and through its counsel, Howard & Howard Attorneys, PLLC, and for its Complaint for Injunctive and Other Relief Against Defendant Tilted Kilt Franchise Operating, LLC (“TKFO”), states as follows:

JURISDICTION AND VENUE

1. Plaintiff Kilt Holdings is an Indiana limited liability company with its principal place of business in South Bend, Indiana, that at all relevant times was authorized to do business in Indiana.

2. Defendant TKFO is a Wyoming limited liability company with its principal place of business in Tempe, Arizona.

3. On information and belief, none of TKFO’s members is a citizen or resident of Indiana.

Subject Matter Jurisdiction

4. This Court has original jurisdiction over this dispute pursuant to 28 U.S.C. § 1332(a) because the amount in controversy exceeds the sum of \$75,000 exclusive of interest or costs and the parties are citizens of different states.

Personal Jurisdiction

5. TKFO is subject to personal jurisdiction in the State of Indiana because it does business in Indiana, including but not limited to the sale of franchises, and its representatives have travelled to Indiana and held meetings in Indiana during the course of events relevant to Kilt Holdings' claims.

Venue

6. Venue in this District is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims asserted by Kilt Holdings occurred in this judicial district.

FACTUAL BACKGROUND

The Area Developer Agreements

7. TKFO is the franchisor of the nationwide chain of franchised Tilted Kilt Pub & Eatery® restaurants, which TKFO describes as being Celtic-themed sports and entertainment bars and restaurants.

8. On October 6, 2011, TKFO entered into an area development agreement with Kilt Development, LLC, later amended by a Second Amendment dated October 2014, and which was assigned to Kilt Holdings (the "Indiana AD Agreement").

9. Through the Indiana AD Agreement, Kilt Holdings purchased area development rights to solicit, sell, and support franchises for Tilted Kilt® restaurants within certain identified counties in Indiana, Michigan, and Kentucky (the “Indiana Territory”).

10. According to the Indiana AD Agreement, Kilt Holdings was required to develop a certain number of Tilted Kilt® restaurants within the Indiana Territory within a specified period of time identified as the “development schedule,” which restaurants would have to be open and operating according to the schedule deadlines.

11. Kilt Holdings could comply with the development schedule by either directly building, opening, and operating Tilted Kilt® restaurants within the Indiana Territory, or by soliciting and obtaining third-party franchisees to do so. Kilt Holdings’ compliance with the development schedule would be measured and determined by the number of Tilted Kilt® restaurants that were open within the Indiana Territory (regardless of whether those restaurants were owned by Kilt Holdings or by individual franchisees) according to the deadlines stated in the development schedule.

12. As a result of the Second Amendment, the parties agreed that Kilt Holdings could comply with the development schedule under the Indiana AD Agreement by having open and operating either: (a) four Tilted Kilt® restaurants in the Indiana Territory; or (b) nine Tilted Kilt® restaurants combined in the Indiana Territory, counties in Michigan (the “Michigan Territory”), and counties in Iowa, Illinois, Nebraska or South Dakota (the “Iowa Territory”) (collectively, the “Combined Territories”).

13. On October 6, 2011, TKFO entered into an area developer agreement with Kilt Development, LLC, later amended by a Second Amendment dated October 2014, and which was assigned to Kilt Holdings (the “Michigan AD Agreement”).

14. Through the Michigan AD Agreement, Kilt Holdings purchased area development rights to solicit, sell, and support franchises for Tilted Kilt® restaurants within certain identified counties in the Michigan Territory.

15. Like the Indiana AD Agreement, the Michigan AD Agreement had a defined development schedule. The development schedule under the Michigan AD Agreement required Kilt Holdings to, no later than December 31, 2015, have open and operating either: (a) four Tilted Kilt® restaurants in the Michigan Territory; or (b) nine Tilted Kilt® restaurants in the Combined Territories.

16. On September 12, 2012, TKFO entered into an area development agreement with KD KS-NE, LLC, later amended by a First Amendment dated October 2014 (“First Amendment”), and which was assigned to Kilt Holdings (the “Nebraska AD Agreement”).

17. Through the Nebraska AD Agreement, Kilt Holdings purchased area development rights to solicit, sell, and support franchises for Tilted Kilt® restaurants within certain identified counties in Nebraska (the “Nebraska Territory”).

18. Like the Indiana and Michigan AD Agreements, the Nebraska AD Agreement had a defined development schedule. As a result of the First Amendment, the parties agreed that Kilt Holdings could comply with the development schedule under the Nebraska AD Agreement by having open and operating either: (a) one Tilted Kilt® restaurant in the Nebraska Territory; or (b) four Tilted Kilt® restaurants in the Nebraska Territory combined with certain counties in Kansas and Missouri (the “Kansas Territory”) or counties in Missouri, Iowa or Illinois (the “Missouri Territory”) (collectively, (the “Nebraska Combined Territories”). The deadline for developing those restaurants in either case was December 31, 2015.

19. Pursuant to the Nebraska AD Agreement, the Indiana AD Agreement and the Michigan AD Agreement (collectively, the “AD Agreements”), Kilt Holdings is required to train, service, and support individual franchisees within the applicable territories. Critically, Kilt Holdings is not given the right under the AD Agreements to enforce the terms of the individual franchise agreements for Tilted Kilt® restaurants within its territories, that right having been reserved exclusively to TKFO.

20. In fact, TKFO retains the sole right and ability to enforce any and all of the provisions of the individual franchise agreements for Tilted Kilt® restaurants within Kilt Holdings’ territories. This means that TKFO, and not Kilt Holdings, has the sole right to require individual Tilted Kilt® franchisees to comply with the build-out and opening deadlines in their individual franchise agreements.

21. In fact, Kilt Holdings is not a party to any of the individual franchise agreements with Tilted Kilt® franchisees within its territories (except for those for restaurants Kilt Holdings actually owns), and lacks the authority to take any enforcement or other action whatsoever to ensure that the Tilted Kilt® franchisees are complying with the terms of their respective agreements. As a result, Kilt Holdings is powerless to require individual franchisees within Kilt Holdings’ territories to follow any deadlines for constructing, opening, and beginning to operate their respective restaurants as required by their respective franchise agreements.

Kilt Holdings and Applicable Franchise Sales Laws

22. Under the AD Agreements, Kilt Holdings is tasked with finding, training, servicing and supporting individual franchisees of Tilted Kilt® restaurants within Kilt Holdings’ various territories.

23. As part of that process, Kilt Holdings will find prospective Tilted Kilt®

franchisees, but Kilt Holdings is not authorized under the AD Agreements to actually *sign* franchise agreements with individual franchisees. That authority is left solely to TKFO, the franchisor.

24. In fact, all individual unit franchise agreements for the operation of Tilted Kilt® restaurants are between TKFO and individual franchisees. Kilt Holdings is not a party to these agreements, and retains no authority to enforce them. Once Kilt Holdings finds a prospective franchisee and completes the initial vetting process, Kilt Holdings turns the prospect over to TKFO for final approval and signing of the individual unit franchise agreement.

25. As a seller of franchises, Kilt Holdings is required to comply with various federal and state laws relating to the offer and sale of franchises. These laws include the Federal Trade Commission's Franchise Rule (16 C.F.R. §435 et seq), as well as similar laws in Indiana, Michigan, and other states.

26. Under these franchise laws, a franchise seller like Kilt Holdings is required to provide to prospective franchise buyers a disclosure document that contains certain disclosures required by law. These disclosures are in the form of a uniform franchise disclosure document ("FDD"), and Kilt Holdings must provide an FDD to a prospective franchise buyer before it *offers to sell or sells* a franchise to the buyer.

27. TKFO, and not Kilt Holdings, is the franchisor under each individual unit franchise agreement. As such, TKFO, and not Kilt Holdings, is obligated to create, update, and issue a legally-compliant FDD that Kilt Holdings can use as a franchise seller for TKFO.

28. Indeed, the AD Agreements specify that TKFO is obligated to provide Kilt Holdings with FDDs that Kilt Holdings can then disseminate to prospective franchise buyers. With respect to these documents, TKFO is to "control the use of and shall disseminate all

franchise disclosure documents and related disclosures and documents” and TKFO must “provide Kilt Holdings with information regarding any changes to its disclosure documents and other agreements within a reasonable time after such change.”

29. Pursuant to the AD Agreements, Kilt Holdings must operate in full compliance with all applicable laws and regulations and to use only disclosure documents that TKFO has approved for use in an applicable jurisdiction. Kilt Holdings is also required to “adhere to the highest standards of honesty, integrity, fair dealing, and ethical conduct.”

30. Pursuant to the AD Agreements, all disputes regarding those contracts are governed by Arizona law.

31. As described *infra*, TKFO has violated these requirements of the AD Agreements by providing Kilt Holdings with FDDs that do not comply with law, making it utterly impossible for Kilt Holdings to comply with its obligations to locate, solicit, train, and service franchisees for Tilted Kilt® restaurants within Kilt Holdings’ territories.

32. Nevertheless, and despite TKFO’s actions being the overriding cause for any non-compliance by Kilt Holdings, on March 2, 2016 TKFO informed Kilt Holdings that it was terminating the AD Agreements for non-compliance.

Kilt Holdings Complies With the Development Schedules

33. Under the AD Agreements Kilt Holdings sold a sufficient number of Tilted Kilt® franchises within the Indiana Territory, the Michigan Territory, and the Nebraska Territory to comply with the development schedules under those agreements.

34. The Indiana AD Agreement calls for Kilt Holdings to sell Tilted Kilt® franchises so that there are four franchises in the Indiana AD Territory or a combined nine Tilted Kilt® restaurants in the Combined Territories.

35. The Michigan AD Agreement calls for Kilt Holdings to sell Tilted Kilt® franchises so that there are four franchises in the Michigan Territory or a combined nine Tilted Kilt® restaurants in the Combined Territories.

36. There are currently six Tilted Kilt® restaurants open and operating in the Combined Territories, including three restaurants in the Indiana AD Territory (Downtown Indianapolis; Fort Wayne; and Northside Indianapolis); and three in the Michigan AD Territory (Novi, Sterling Heights, and Canton).

37. Kilt Holdings has also sold four additional franchises within the Combined Territories which, if open and operating, would equate to four Tilted Kilt® restaurants in the Indiana AD Territory, six Tilted Kilt® restaurants in the Michigan AD Territory, and a total of ten Tilted Kilt® restaurants in the Combined Territories.

38. However, none of those four additional franchises that Kilt Holdings has sold have opened yet, in spite of the subject franchise agreements with those individual franchisees having been signed years ago, with required build-out and opening deadlines having long since passed.

39. In the face of these franchisees blatantly and openly ignoring their deadlines, TKFO has stood silent and has refused to enforce (or even demand compliance with) any of the deadlines or timelines in the individual franchise agreements.

40. In this way, TKFO has allowed these franchisees to simply sit on their rights, which causes practical problems for Kilt Holdings, which (due to territorial exclusivity provisions in the individual franchise agreements) is unable to sell new franchises in the areas where the existing franchisees have contracts that they are not honoring.

41. Based on the timelines established for development and build-out of those restaurants under the individual franchise agreements, the Tilted Kilt® franchises that Kilt Holdings sold within the relevant territories should have been open and operating well before December 31, 2015 – ensuring that Kilt Holdings was easily in compliance with all applicable development schedules.

42. Under the AD Agreements, Kilt Holdings is not empowered with the ability to enforce against the individual franchisees their franchise agreements, that power having been reserved exclusively to TKFO.

43. Because TKFO has the sole right to enforce individual Tilted Kilt® franchise agreements, once Kilt Holdings sells a franchise, Kilt Holdings is powerless to require the franchisee to actually develop, build, and open the applicable Tilted Kilt® restaurant.

44. As a result, only TKFO, and not Kilt Holdings, is able to hold a franchisee to its required build-out timeline and to force a franchisee to actually open its Tilted Kilt® restaurant before the applicable deadline.

45. Although Kilt Holdings met all deadlines within its development schedules by having sold a sufficient number of franchises within each of the applicable development territories, TKFO refused to actually enforce against those franchisees the deadlines in their respective franchise agreements.

46. In fact, for a number of Tilted Kilt® franchises that have been sold by Kilt Holdings but are not yet open, TKFO has allowed each franchisee to completely ignore its contractual deadlines.

47. TKFO has never sent any of the franchisees that are clearly in default of their respective franchise agreement (and the opening deadlines contained in the agreement) a default

notice, warning, or any other communication about their failure to meet the required schedules. Instead, TKFO allows each such franchisee to sit on its respective franchise rights in its respective city, which (due to territorial rights held by each such franchisee) effectively prevents Kilt Holdings from selling another franchise in that city.

48. As a result, if Kilt Holdings is not in compliance with its obligations under the AD Agreements, it is only because TKFO has refused to do anything to require franchisees to actually move forward and build their respective Tilted Kilt® restaurants as required under the individual franchise agreements.

By Using Non-Compliant Disclosure Documents, TKFO Has Prevented Kilt Holdings From Selling Franchises Pursuant To All Of The AD Agreements

49. As an area developer of TKFO, Kilt Holdings is obligated to solicit, sell, train, service, and support new franchises within the various territories under the AD Agreements.

50. Kilt Holdings is also required (both legally and contractually) to comply with applicable law and standards of ethical conduct.

51. This means that as a franchise seller, Kilt Holdings must provide to a prospective buyer of Tilted Kilt® franchise rights an FDD that complies with federal and state law.

52. The AD Agreements specify that TKFO is responsible for drafting, updating, and controlling the FDD for the Tilted Kilt® franchise system, and Kilt Holdings is not given the contractual authority or power to draft, update, modify, or correct the Tilted Kilt® FDD.

53. Under the AD Agreements TKFO has the sole and exclusive right to “control the use of and shall disseminate all franchise disclosure documents and related disclosures and documents.” To that end, TKFO is obligated to “provide Kilt Holdings with information regarding any changes to its disclosure documents and other agreements within a reasonable time after such change.”

54. Pursuant to federal law and governing state law in each of the jurisdictions where TKFO does business, TKFO is required to ensure that all information contained in its FDD is completely accurate.

55. In 2015, Kilt Holdings became aware that TKFO had failed to comply with applicable federal and state franchise law by refusing to update its FDD to disclose a massive number of closures that had occurred within the Tilted Kilt® franchise system.

56. Kilt Holdings has learned that TKFO specifically engineered the closures and their timing in a way designed to try to avoid having to disclose them to potential franchise buyers (based on an incorrect understanding of the law).

57. TKFO has engaged in certain practices designed to hide or mask the failure rate of its franchisees. This has resulted in TKFO having an FDD that does not comply with applicable federal or state franchise law.

58. Having a legally non-compliant FDD makes it impossible for Kilt Holdings to solicit, offer, or sell franchises because Kilt Holdings, as a franchise seller, is also legally responsible for complying with state and federal franchise law.

59. Essentially, TKFO's failure to comply with applicable law forces Kilt Holdings into an untenable position, where it must decide to either comply with the development schedules under the AD Agreements (and potentially violate the law by using a non-compliant FDD), or comply with law by refusing to use TKFO's materially deficient FDD.

60. Because it is TKFO's actions – and its refusal to properly update its FDD to comply with law – that have placed Kilt Holdings in this situation of potentially either having to comply with the development schedule under the AD Agreements or comply with law, TKFO should not be allowed to proceed with terminating any of its AD Agreements with Kilt Holdings.

61. Multiple franchisees whose locations were failing were encouraged, cajoled, or persuaded by TKFO to wait until after December 31, 2014 and December 31, 2015 to close their respective Tilted Kilt® restaurants, based on the mistaken belief by TKFO that closures after January 1 would not have to be reported in TKFO's FDD until the following calendar year.

62. During the 2015 calendar year, more than 10 Tilted Kilt restaurants were closed, which is more than ten percent of the total system.

63. Since January 1, 2016, between five and eight *additional* Tilted Kilt restaurants have been closed.

64. None of the 2015 closures, however, were contained in the March 27, 2015 FDD or in the quarterly update to the FDD that was amended and issued on September 10, 2015.

65. TKFO did not issue a quarterly update of its FDD in 2015 showing the high rate of system closures last year or the closures since January 1, 2016.

66. TKFO has also been concealing in violation of the disclosure requirements the ownership of certain company-owned outlets in Item 20 of its FDD by not listing all of the outlets owned by TKFO's affiliates.

67. By blatantly violating its own duties to provide Kilt Holdings with a legally compliant FDD, TKFO has obstructed Kilt Holdings from performing its obligations.

68. Because TKFO refused to provide Kilt Holdings with a legally-compliant FDD (which was the sole and exclusive domain of TKFO), Kilt Holdings was legally unable to sell franchises for the majority of calendar year 2015.

TKFO Has Precluded Kilt Holdings' Compliance With The Nebraska AD Agreement By Failing To Disclose Seminal Information About The Lincoln, Nebraska Franchise And By Otherwise Refusing To Abide By Its Franchise Obligations

69. The presence of a pre-existing franchise in Lincoln, Nebraska (the "Lincoln Franchise") was crucial to Kilt Holdings' decision to enter into the Nebraska AD Agreement and thereby purchase area development rights to Nebraska.

70. At the time Kilt Holdings executed the Nebraska AD Agreement, the Lincoln Franchise had been sold to a franchisee but had not yet opened.

71. The Lincoln Franchise opened in 2014.

72. In late 2014, TKFO provided Kilt Holdings with the First Amendment, which contained a general release of claims, to Kilt Holdings.

73. At the time TKFO provided Kilt Holdings with the First Amendment, TKFO had knowledge that the Lincoln Franchise was in danger of imminent closure but did not share those facts with Kilt Holdings.

74. TKFO was aware of the importance of the existence of the Lincoln Franchise, was aware that the Nebraska territory had limited potential for the sale of Tilted Kilt® franchises by Kilt Holdings due to the relatively low population of the state outside of two metropolitan areas within the State of Nebraska, and was also aware that Kilt Holdings would not have executed the First Amendment (which required Kilt Holdings to have one open Tilted Kilt® restaurant in the Nebraska Territory by December 31, 2015) if there was not a pre-existing franchise in Lincoln.

75. TKFO never disclosed to Kilt Holdings that the franchisee for the Lincoln Franchise had not met TKFO's franchise standards and, furthermore, that the Lincoln Franchise was undercapitalized and was in imminent danger of closing.

76. A few weeks after Kilt Holdings executed the First Amendment and the general release contained therein, the Lincoln Franchise closed.

77. It was not until after the closure of the Lincoln Franchise that TKFO finally informed Kilt Holdings that the Lincoln Franchise never met TKFO's qualifications for a franchisee, and should have never been granted a franchise in the first place.

78. TKFO never attempted to enforce against the franchisee the terms of its agreement for the Lincoln Franchise.

79. Due to TKFO's concealment of material facts and violations of its own obligations, Kilt Holdings could not possibly have complied with the Nebraska AD Agreement with respect to the Lincoln Franchise.

**TKFO Has Also Precluded Compliance With The Nebraska AD Agreement
By Its Actions And Inactions Regarding The Omaha, Nebraska Franchise**

80. In March, 2014, Kilt Holdings sold a franchise within the territory for the Nebraska AD Agreement to Sandwell, LLC for the right to open a franchise in Omaha, Nebraska (the "Omaha Franchise").

81. To date, no restaurant has opened in connection with the Omaha Franchise.

82. Even though the franchisee for the Omaha Franchise has never been in compliance with its agreement with TKFO for that franchise, TKFO has simply allowed it to sit on its rights and has done absolutely nothing to enforce the terms of that agreement. The existence of the Omaha Franchise effectively prevents Kilt Holdings from selling any other Tilted Kilt® franchise rights in Omaha, as the city is likely not large enough to support more than one franchise.

83. Accordingly, in connection with the Omaha Franchise as well, TKFO's improper actions have stood in the way of Kilt Holdings performing its obligations, thereby also making termination completely improper.

TKFO has Wrongfully Granted Unilateral Royalty Fee Waivers

84. As an area developer of TKFO, Kilt Holdings is substantially dependent upon TKFO's good faith, commercially reasonable performance of its duties and its reasonable exercise of its rights as a franchisor under each of the individual franchise agreements within Kilt Holdings' area development territories.

85. Many of the critical sales, approval, and support functions and abilities under each of its franchise agreements with individual Tilted Kilt restaurants are vested solely in TKFO, with Kilt Holdings having no discretion or ability to make any operational or enforcement decisions relating to the individual franchisees in the Tilted Kilt system.

86. TKFO has abused the discretion that has been contractually vested in TKFO. In so doing, TKFO has prevented Kilt Holdings from enjoying the fruits of its efforts and its contract with TKFO, to Kilt Holdings' significant detriment.

87. TKFO is required to pay to Kilt Holdings a commission equal to thirty-three percent of the amount of Royalty Fees paid by each third-party franchisee located within Kilt Holdings' AD Territories.

88. Despite Kilt Holdings' receipt of these commissions being a material part of the AD Agreements, TKFO has intentionally watered down these commissions and significantly sapped the value of the AD Agreements from Kilt Holdings.

89. Specifically, TKFO has unilaterally and without consulting Kilt Holdings in any way decided to allow franchisees in Kilt Holdings' territory to pay less than the full amount of royalties that are due under their respective franchise agreements.

90. These unilateral decisions by TKFO include its providing full temporary waivers to franchisees of their obligations to pay Royalty Fees to TKFO for a defined period of time.

91. The effect of these royalty waivers has been to reduce the revenue to both TKFO and Kilt Holdings, resulting in tens of thousands of dollars of lost revenue.

92. Despite Kilt Holdings' operating income being significantly decreased due to these unilateral royalty waivers, Kilt Holdings is forced to continue incurring significant expense in traveling and supporting franchisees within Kilt Holdings' territories.

**TKFO Has Engaged In A Myriad Of Additional Activities Further Thwarting
Tilted Kilt's Ability To Comply With All Of The Agreements**

93. As demonstrated herein, in addition to the foregoing TKFO has also made numerous additional actions and inactions which have precluded Kilt Holdings from selling franchises and otherwise complying with the AD Agreements.

94. TKFO hired a consultant and restaurant industry veteran, Lane Cardwell, to evaluate the Tilted Kilt® brand and system. Mr. Cardwell (whose fee was paid mostly by franchisees) drafted a report wherein he made recommendations for improving the brand. Mr. Cardwell also offered to assist TKFO in significantly improving the Tilted Kilt® system and brand. However, TKFO completely ignored Mr. Cardwell's recommendations (other than insisting that franchisees buy white plates at a cost of \$3,500 per restaurant), and instead told franchisees that they should "throw away" Mr. Cardwell's report. TKFO has refused to make any substantive changes or improvements to the Tilted Kilt system® to improve its declining sales.

95. Due to all of TKFO's actions, franchisees are experiencing higher costs and decreased margins, making it more difficult for franchisees to operate profitably.

96. Despite Kilt Holding's having repeatedly informed TKFO that certain specific franchisees are not in compliance with their respective franchise agreements, TKFO has specifically not required franchisees to: (a) comply with build-out and opening schedules (including, as identified above, the franchisees in Omaha, Nebraska; Grand Rapids, Michigan; East Lansing, Michigan; Indianapolis (northside), Indiana; and Detroit, Michigan); (b) comply with operating standards; (c) comply with brand and system quality standards; and (d) pay liquidated damages in the event the franchise agreement is terminated early.

97. TKFO has forbidden Area Developers, including Kilt Holdings, from negotiating better vendor deals for franchisees. For example, TKFO has set insurance requirements for both Area Developers and individual Tilted Kilt franchisees that are substantially higher than what is legally required or even practical for a Tilted Kilt restaurant. This is done solely for the purpose of financially benefitting TKFO's owners.

98. TKFO creates needless additional expenses for Area Developers by requiring them to share the expense of an errors and omissions policy through TKFO, which has extremely high premiums due to TKFO's mismanagement of the Tilted Kilt system and the lawsuits that have been filed against TKFO in the instances where TKFO has acted as an Area Developer.

99. When Area Developers attempted to form an association to improve the Tilted Kilt® system as a whole, TKFO worked to sabotage those efforts by discouraging certain of the Area Developers from joining or participating in that association.

100. TKFO has made disparaging and damaging statements against members of the association to other franchisees and area developers, in attempt to convince those non-members to refuse to join the association.

101. TKFO has made multiple misstatements about Kilt Holdings to franchisees within Kilt Holding's territories, trying to place blame for system failures and other problems on Kilt Holdings, and damaging Kilt Holding's relationships with franchisees within its territories.

102. TKFO has mismanaged the advertising and marketing money paid to TKFO by Area Developers, wrongfully focusing those funds on areas and territories where TKFO acts as the Area Developer. For example, TKFO used marketing funds to buy advertisements in Alaska Airlines' magazine, marketing the Tilted Kilt franchise opportunity in Alaska, where TKFO is the Area Developer.

103. TKFO has discriminated among its similarly-situated franchisees (including Area Developers) by providing preferential treatment and terms to certain franchisees and Area Developers over others.

104. TKFO creates false sales statistics and information in internal system reports and demands that Kilt Holdings and its other Area Developers circulate these false reports among franchisees within their respective areas. Based on these false reports, TKFO then blames poor individual performance on individual franchisees.

105. TKFO provides inaccurate information to area developers, franchisees, and third parties regarding the current status of the Tilted Kilt system and its per-unit sales.

106. TKFO fails to spend the funds paid into the national advertising fund for the system on legitimate marketing expenses or the type of expenses that are disclosed in TKFO's Franchise Disclosure Document.

107. TKFO has been unable to assemble an accounting of how it spent the Advertising Fund.

108. TKFO has made it known in the Tilted Kilt franchise system that it desires to terminate Kilt Holdings, thus undermining Kilt Holding's ability to perform as an area developer.

109. Based on the foregoing, TKFO has violated not only the terms of the AD Agreements but also applicable state franchise laws.

COUNT I

Breach of the Implied Covenant of Good Faith and Fair Dealing

110. Kilt Holdings realleges and incorporates by reference the allegations of Paragraphs 1 through 109 of the Complaint as if fully set forth herein.

111. Pursuant to Arizona law, in every contract there is an implied covenant of good faith and fair dealing, under which the parties are precluded from taking action which would contravene the spirit and intent of the agreement so as to deny the other party its justified expectations under the contract. The duty arises by operation of law but exists by virtue of a contractual relationship.

112. The AD Agreements are valid and enforceable contracts between Kilt Holdings and TKFO.

113. TKFO owed an implied duty of good faith and fair dealing to Kilt Holdings.

114. Kilt Holdings reasonably relied on TKFO to act in a manner that was faithful to the purpose of the AD Agreements and the justified expectations of Kilt Holdings.

115. TKFO unreasonably deprived Kilt Holdings of the expectations of the AD Agreements as described in Paragraphs 1 through 109.

116. TKFO failed to act in a manner that was faithful to the purpose of the AD Agreements and the justified expectations of Kilt Holdings.

117. As a direct and proximate cause of TKFO's breach of the implied covenant of good faith and fair dealing, Kilt Holdings has suffered damages in an amount to be proven at trial, but in excess of \$75,000.

118. It has been necessary for Kilt Holdings to retain the services of attorneys to pursue this claim and it is entitled to recover its reasonable costs and attorneys' fees as damages pursuant to the AD Agreements.

COUNT II

Violations of the Indiana Deceptive Franchise Practices Act

119. Kilt Holdings realleges and incorporates by reference the allegations of Paragraphs 1 through 118 of the Complaint as if fully set forth herein.

120. A franchisor / franchisee relationship exists between Kilt Holdings and TKFO and, as such, Kilt Holdings is entitled to the protections provided by the Indiana Deceptive Franchise Practices Act (the "Indiana Act").

121. Pursuant to the Indiana Act, it is a violation for a franchisor to terminate a franchise without good cause. Ind. Code § 23-2-2.7-2.

122. Pursuant to the Indiana Act, it is unlawful for a franchisor to: (1) discriminate unfairly among its franchisees; (2) unreasonably fail or refuse to comply with any terms of a franchise agreement; (3) or use deceptive advertising or engaging in deceptive acts in connection with the franchise or the franchisor's business. Ind. Code § 23-2-2.7-2.

123. TKFO has violated the Indiana Act as described in Paragraphs 1 through 109 of the Complaint including, *inter alia*, by terminating Kilt Holdings' franchise agreements without good cause, failing to provide Kilt Holdings with FDDs that satisfy the disclosure requirements

set forth in federal and state law, discriminating against Kilt Holdings, violating the terms of its agreements with Kilt Holdings, and by engaging in deceptive acts in connection with its business and Kilt Holdings' operations.

124. As a direct and proximate cause of TKFO's wrongful actions, Kilt Holdings has suffered damages in an amount to be proven at trial, but in excess of \$75,000.

125. It has been necessary for Kilt Holdings to retain the services of attorneys to pursue this claim and it is entitled to recover its reasonable costs and attorneys' fees as damages pursuant to the Indiana Act. See Ind. Code § 23-2-2.5-28.

COUNT III

Breach of Contract -- The Indiana AD Agreement

126. Kilt Holdings realleges and incorporates by reference the allegations of Paragraphs 1 through 125 of the Complaint as if fully set forth herein.

127. The Indiana AD Agreement is a valid and enforceable contract between Kilt Holdings and TKFO.

128. Kilt Holdings performed or was excused from performance of all obligations under the Indiana AD Agreement.

129. TKFO breached the Indiana AD Agreement as described in Paragraphs 1 through 109.

130. As a result of TKFO's breaches, Kilt Holdings has suffered damages in an amount to be proven at trial, but in excess of \$75,000.

131. It has been necessary for Kilt Holdings to retain the services of attorneys to pursue this claim and it is entitled to recover its reasonable costs and attorneys' fees as damages pursuant to Section 20.3 of the Indiana AD Agreement.

COUNT IV

Violations of the Nebraska Franchise Practices Act

132. Kilt Holdings realleges and incorporates by reference the allegations of Paragraphs 1 through 131 of the Complaint as if fully set forth herein.

133. A franchisor / franchisee relationship exists between Kilt Holdings and TKFO and, as such, Kilt Holdings is entitled to the protections provided by the Nebraska Franchise Practices Act (the “Nebraska Act”).

134. Pursuant to the Nebraska Act, it is a violation for a franchisor to terminate a franchise without good cause. Neb. Rev. Stat. § 87-404.

135. Pursuant to the Nebraska Act, it is unlawful for a franchisor to “impose unreasonable standards of performance upon a franchisee.” Neb. Rev. Stat. § 87-406.

136. TKFO has violated the Nebraska Act as described in Paragraphs 1 through 109 of the Complaint including, inter alia, by terminating Kilt Holdings’ franchise agreements without good cause, failing to provide Kilt Holdings with FDDs that satisfy the disclosure requirements set forth in federal and state law, discriminating against Kilt Holdings, violating the terms of its agreements with Kilt Holdings, and by engaging in deceptive acts in connection with its business and Kilt Holdings’ operations.

137. As a direct and proximate cause of TKFO’s wrongful actions, Kilt Holdings has suffered damages in an amount to be proven at trial, but in excess of \$75,000.

138. It has been necessary for Kilt Holdings to retain the services of attorneys to pursue this claim and it is entitled to recover its reasonable costs and attorneys’ fees as damages.

COUNT V

Breach of Contract -- The Nebraska AD Agreement

139. Kilt Holdings realleges and incorporates by reference the allegations of Paragraphs 1 through 138 of the Complaint as if fully set forth herein.

140. The Nebraska AD Agreement is a valid and enforceable contract between Kilt Holdings and TKFO.

141. Kilt Holdings performed or was excused from performance of all obligations under the Nebraska AD Agreement.

142. TKFO breached the Nebraska AD Agreement as described in Paragraphs 1 through 109.

143. As a result of TKFO's breaches, Kilt Holdings has suffered damages in an amount to be proven at trial, but in excess of \$75,000.

144. It has been necessary for Kilt Holdings to retain the services of attorneys to pursue this claim and it is entitled to recover its reasonable costs and attorneys' fees as damages pursuant to Section 20.3 of the Nebraska AD Agreement.

COUNT VI

Violations of Michigan Franchise Investment Law

145. Kilt Holdings realleges and incorporates by reference the allegations of Paragraphs 1 through 144 of the Complaint as if fully set forth herein.

146. A franchisor / franchisee relationship exists between Kilt Holdings and TKFO and, as such, Kilt Holdings is entitled to the protections provided by the Michigan Franchise Investment Law (the "Michigan Act").

147. Pursuant to the Michigan Act, it is a violation for a franchisor to terminate a franchise without good cause. Mich. Comp. Laws § 445.1527.

148. TKFO has violated the Michigan Act as described in Paragraphs 1 through 109 of the Complaint including, inter alia, by terminating Kilt Holdings' franchise agreements without good cause, failing to provide Kilt Holdings with FDDs that satisfy the disclosure requirements set forth in federal and state law, discriminating against Kilt Holdings, violating the terms of its agreements with Kilt Holdings, and by engaging in deceptive acts in connection with its business and Kilt Holdings' operations.

149. As a direct and proximate cause of TKFO's wrongful actions, Kilt Holdings has suffered damages in an amount to be proven at trial, but in excess of \$75,000.

150. It has been necessary for Kilt Holdings to retain the services of attorneys to pursue this claim and it is entitled to recover its reasonable costs and attorneys' fees as damages.

COUNT VII

Breach of Contract -- The Michigan AD Agreement

151. Kilt Holdings realleges and incorporates by reference the allegations of Paragraphs 1 through 150 of the Complaint as if fully set forth herein.

152. The Michigan AD Agreement is a valid and enforceable contract between Kilt Holdings and TKFO.

153. Kilt Holdings performed or was excused from performance of all obligations under the Michigan AD Agreement.

154. TKFO breached the Michigan AD Agreement as described in Paragraphs 1 through 109.

155. As a result of TKFO's breaches, Kilt Holdings has suffered damages in an amount to be proven at trial, but in excess of \$75,000.

156. It has been necessary for Kilt Holdings to retain the services of attorneys to pursue this claim and it is entitled to recover its reasonable costs and attorneys' fees as damages pursuant to Section 20.3 of the Michigan AD Agreement.

COUNT VIII

Fraud In The Inducement

157. Kilt Holdings realleges and incorporates by reference the allegations of Paragraphs 1 through 156 of the Complaint as if fully set forth herein.

158. Commencing in 2014, TKFO made material misstatements including, among other things, statements that the Lincoln Franchise was viable, properly capitalized and in good standing. Those statements were false when made, and TKFO either knew those statements were false or lacked sufficient factual bases for such statements when they were made, as described in Paragraphs 1 through 109, and those misrepresentations constitute a fraud upon Kilt Holdings.

159. Commencing in 2014, TKFO made material omissions of fact in an effort to conceal from Kilt Holdings that the Lincoln Franchise was undercapitalized, did not meet TKFO's standards, did not qualify and never should have been granted a franchise, and was not viable.

160. TKFO knew its misrepresentations and omissions were material.

161. Kilt Holdings justifiably relied upon such misrepresentations and omissions made by TKFO by entering into the First Amendment which included a release of claims and Kilt Holdings would not have entered into the First Amendment or released those claims pursuant to that document if Kilt Holdings had known the true facts.

162. As a direct and proximate cause of TKFO's wrongful actions, Kilt Holdings has suffered damages in an amount to be proven at trial, but in excess of \$75,000.

163. The actions of TKFO were intentional, willful and malicious, and Kilt Holdings is entitled to punitive and exemplary damages.

164. It has been necessary for Kilt Holdings to retain the services of attorneys to pursue this claim and it is entitled to recover its reasonable costs and attorneys' fees as damages.

COUNT IX

Accounting And Appointment of a Special Master

165. Kilt Holdings realleges and incorporates by reference the allegations of Paragraphs 1 through 164 of the Complaint as if fully set forth herein.

166. Kilt Holdings is entitled to an accounting to determine the full amount and extent of the waiver of Royalty Fees TKFO has granted to franchisees within Kilt Holdings' territories.

167. Kilt Holdings is entitled to an accounting to determine the full amount and extent of TKFO's mismanagement and self-dealing relating to its use and expenditure of the advertising and marketing money paid to TKFO by Area Developers and its wrongfully focusing those funds on areas and territories where TKFO acts as the Area Developer.

168. Kilt Holdings is entitled to an accounting to determine the full amount and extent of TKFO's use of false sales statistics and information in internal system reports.

169. Pursuant to Rule 53 of the Federal Rules of Civil Procedure, this Court should appoint a Special Master to inspect and audit TKFO's files, documents, financial and operating books, tax returns, and records and perform an accounting.

170. It has been necessary for Kilt Holdings to retain the services of attorneys to pursue this claim and it is entitled to recover its reasonable costs and attorneys' fees as damages.

COUNT X

Declaratory Relief

171. Kilt Holdings realleges and incorporates by reference the allegations of Paragraphs 1 through 170 of the Complaint as if fully set forth herein.

172. A justiciable controversy exists between Kilt Holdings, on the one hand, and TKFO, on the other hand.

173. Kilt Holdings has a legally-protectable interest in prosecuting this claim, and this interest is adverse to the interests of TKFO.

174. The issues involved in this controversy are ripe for judicial determination.

175. This Court has the power to declare the rights, status and other legal relationships between Kilt Holdings and TKFO.

176. Accordingly, Kilt Holdings seeks a declaratory judgment that no good cause exists for TKFO to terminate the AD Agreements.

COUNT XI

Injunctive Relief

177. Kilt Holdings realleges and incorporates by reference the allegations of Paragraphs 1 through 176 of the Complaint as if fully set forth herein.

178. By virtue of the foregoing events and actions, TKFO has caused, and will cause in the future, substantial and irreparable harm to Kilt Holdings' business and operations through the violation and breach of its obligations as set forth in the AD Agreements and applicable law.

179. Through the factual allegations contained herein, Kilt Holdings has established a likelihood of success on the merits and that there exists no adequate remedy at law

180. Pursuant TKFO's contractual duties and governing law, the AD Agreements may only be terminated by TKFO if good cause exists.

181. TKFO does not have good cause to terminate the AD Agreements.

182. Kilt Holdings seeks an injunction maintaining the status quo and preventing TKFO from terminating the AD Agreements until factual determinations can be made as to whether TKFO's efforts to terminate the AD Agreements were for good cause.

183. Unless TKFO is temporarily, preliminarily and permanently enjoined from committing and continuing to commit the foregoing conduct, TKFO will terminate the AD Agreements which will irreparably harm Kilt Holdings by destroying the viability of its business operations.

WHEREFORE, Kilt Holdings prays for relief as follows:

- A. For an injunction enjoining TKFO from terminating the AD Agreements;
- B. For a judicial declaration that no good cause exists for TKFO to terminate the AD Agreements;
- C. For monetary damages in excess of \$75,000 on all claims;
- D. For a finding that the actions of TKFO were intentional, willful and malicious, and that Kilt Holdings is entitled to punitive and exemplary damages;
- E. For all costs and attorney fees incurred herein;
- F. For all pre- and post-judgment interest; and
- G. For such other and further relief as the Court deems proper.

Respectfully submitted,

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