

**IN THE UNITED STATES DISTRICT COURT OF OKLAHOMA
WESTERN DISTRICT**

(1) **SONIC INDUSTRIES LLC,**)
a limited liability company,)
(2) **SONIC FRANCHISING LLC,**)
a limited liability company, and)
(3) **SONIC INDUSTRIES SERVICES**)
INC., a corporation,)

Plaintiffs,)

v.)

Case No. CIV-16-709-C

(1) **ARTHUR J. HALLERAN, JR.,** an)
individual,)
(2) **OKS CAMPBELL, LLC,** a limited)
liability company,)
(3) **OKS COMMERCIAL & U, LLC,**)
a limited liability company,)
(4) **OKS BEACH PLACE, LLC,**)
a limited liability company,)
(5) **OKS STADIUM, LLC,**)
a limited liability company, and)
(6) **OKS HIALEAH GARDENS, LLC,**)
a limited liability company,)
Defendants.)

COMPLAINT

Plaintiffs, Sonic Industries LLC (“Sonic Industries”), Sonic Franchising LLC (“Sonic Franchising”), and Sonic Industries Services Inc. (“SISI”) (Sonic Industries, Sonic Franchising, and SISI may be referred to collectively as “Plaintiffs”), for their Complaint against Defendants Arthur J. Halleran, Jr. (“Halleran”), OKS Campbell, LLC (“OKS Campbell”), OKS Commercial & U, LLC (“OKS Commercial”), OKS Beach Place, LLC (“OKS Beach Place”), OKS Stadium, LLC (“OKS Stadium”), and OKS

Hialeah Gardens, LLC (“OKS Hialeah Gardens”) (Halleran and the foregoing OKS entities may be collectively referred to as “Defendants”), allege and state as follows:

PARTIES, JURISDICTION, AND VENUE

1. Sonic Industries is a Delaware limited liability company with its principal place of business in Oklahoma County, Oklahoma.

2. Sonic Franchising is a Delaware limited liability company with its principal place of business in Oklahoma County, Oklahoma.

3. SISI is an Oklahoma corporation with its principal place of business in Oklahoma County, Oklahoma.

4. Upon information and belief, Halleran is a Florida resident.

5. Upon information and belief, OKS Campbell is a Florida limited liability company with its principal place of business in Miami-Dade County, Florida.

6. Upon information and belief, OKS Commercial is a Florida limited liability company with its principal place of business in Miami-Dade County, Florida.

7. Upon information and belief, OKS Beach Place is a Florida limited liability company with its principal place of business in Miami-Dade County, Florida.

8. Upon information and belief, OKS Stadium is a Florida limited liability company with its principal place of business in Miami-Dade County, Florida.

9. Upon information and belief, OKS Hialeah Gardens is a Florida limited liability company with its principal place of business in Miami-Dade County, Florida.

10. Sonic Industries is franchisor of the Sonic drive-in restaurant chain for Sonic restaurants licensed and development agreements signed before May 20, 2011.

11. Sonic Franchising is franchisor of the Sonic drive-in restaurant chain for Sonic restaurants licensed and development agreements signed after May 19, 2011.

12. SISI provides franchising services to Sonic franchisees on behalf of Sonic Industries and Sonic Franchising. SISI also administers three funds, the Sonic Brand Fund (“SBF”), the System Marketing Fund (“SMF”), and the Brand Technology Fund (“BTF”)(SBF, SMF and BTS are collectively referred to as the “Funds”), on behalf of Sonic franchisees.

13. Sonic Industries as franchisor and Halleran as developer entered into an area development agreement dated August 28, 2007 (the “Development Agreement”), that granted Halleran exclusive rights to develop 20 Sonic restaurants in Miami-Dade County and Broward County, Florida.

14. Sonic Franchising as franchisor and OKS Campbell as franchisee entered into a 6A form of Sonic license agreement dated June 13, 2011 (the “Homestead License”), that authorized OKS Campbell to own and operate a Sonic drive-in restaurant located at 2425 NE 8th Street in Homestead, Florida (the “Homestead Restaurant”).

15. Sonic Franchising as franchisor and Halleran as guarantor entered into a guaranty and restriction agreement dated June 13, 2011 (the “Homestead Guaranty”), whereby Halleran personally guaranteed to Sonic Franchising full and timely payment and performance of OKS Campbell’s financial obligations and non-financial duties under the Homestead License.

16. Sonic Franchising as franchisor and OKS Commercial as franchisee entered into a 6A form of Sonic license agreement dated August 26, 2011 (the

“Lauderhill License”), that authorized OKS Commercial to own and operate a Sonic drive-in restaurant located at 8188 West Commercial Boulevard in Lauderhill, Florida (the “Lauderhill Restaurant”).

17. Sonic Franchising as franchisor and Halleran as guarantor entered into a guaranty and restriction agreement dated August 26, 2011 (the “Lauderhill Guaranty”), whereby Halleran personally guaranteed to Sonic Franchising full and timely payment and performance of OKS Commercial’s financial obligations and non-financial duties under the Lauderhill License.

18. Sonic Franchising as franchisor and OKS Beach Place as franchisee entered into a 6A form of Sonic license agreement dated June 13, 2011 (the “Fort Lauderdale License”), that authorized OKS Beach Place to own and operate a Sonic drive-in restaurant located at 17 S. Ft. Lauderdale Beach Boulevard in Fort Lauderdale, Florida (the “Fort Lauderdale Restaurant”).

19. Sonic Franchising as franchisor and Halleran as guarantor entered into a guaranty and restriction agreement dated June 13, 2011 (the “Fort Lauderdale Guaranty”), whereby Halleran personally guaranteed to Sonic Franchising full and timely payment and performance of OKS Beach Place’s financial obligations and non-financial duties under the Fort Lauderdale License.

20. Sonic Franchising as franchisor and OKS Stadium as franchisee entered into a 6A form of Sonic license agreement dated August 26, 2011 (the “Miami Gardens License”), that authorized OKS Stadium to own and operate a Sonic drive-in restaurant

located at 2660 N.W. 199th Street in Miami Gardens, Florida (the “Miami Gardens Restaurant”).

21. Sonic Franchising as franchisor and Halleran as guarantor entered into a guaranty and restriction agreement dated August 26, 2011 (the “Miami Gardens Guaranty”), whereby Halleran personally guaranteed to Sonic Franchising full and timely payment and performance of OKS Stadium’s financial obligations and non-financial duties under the Miami Gardens License.

22. OKS Hialeah Gardens as franchisee signed a 6A form of Sonic license agreement dated April 20, 2015 (the “Hialeah Gardens License”), that would have authorized OKS Hialeah Gardens to own and operate a Sonic drive-in restaurant located at 11900 Hialeah Gardens Boulevard in Hialeah Gardens, Florida (the “Hialeah Gardens Restaurant”).

23. Sonic Franchising as franchisor and Halleran as guarantor were supposed to have entered into a guaranty and restriction agreement dated April 20, 2015 (the “Hialeah Gardens Guaranty”), whereby Halleran personally guaranteed to Sonic Franchising full and timely payment and performance of OKS Hialeah Gardens’ financial obligations and non-financial duties under the Hialeah Gardens License; however, Halleran has not signed and returned the Hialeah Gardens Guaranty to Sonic. Therefore, Sonic Franchising as franchisor did not sign the Hialeah Gardens License. Sonic Franchising would not have issued the Hialeah Gardens License to OKS Hialeah Gardens if Halleran would have disclosed in advance that contrary to his past practice of signing and returning personal guaranties, that he would not be signing and returning the Hialeah

Gardens Guaranty. Similarly, Sonic Franchising would not have refrained from pursuing its rights and remedies in this matter and would not have allowed OKS Hialeah Gardens to continue to operate while not fully and timely paying fees owed to Sonic Franchising.

24. Pursuant to Section 23 of the Homestead License, the Lauderhill License, the Fort Lauderdale License, the Miami Gardens License, and the Hialeah Gardens License (collectively, the “OKS Licenses”), OKS Campbell, OKS Commercial, OKS Beach Place, OKS Stadium, and OKS Hialeah Gardens (collectively, the “OKS Franchisees”) agreed that this Court has personal jurisdiction over them.

25. Pursuant to Section 6 of the Homestead Guaranty, the Lauderhill Guaranty, the Fort Lauderdale Guaranty, the Miami Gardens Guaranty, and the Hialeah Gardens Guaranty (collectively, the “OKS Guaranties”), Halleran agreed that this Court has personal jurisdiction over him.

26. Pursuant to Section 23 of the OKS Licenses, the OKS Franchisees agreed that venue is proper in Oklahoma County, Oklahoma.

27. Pursuant to Section 6 of the OKS Guaranties, Halleran agreed that venue is proper in this Court.

28. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties because the Development Agreement, the OKS Licenses, and the OKS Guaranties were prepared, negotiated, and signed, whether in whole or in part, in Oklahoma County, Oklahoma.

COMMON FACTUAL ALLEGATIONS

29. Under Section 5 of the OKS Licenses, the OKS Franchisees agreed to fully and timely pay royalty fees (Section 5.02) to Sonic Franchising and advertising fees (Section 5.03) to SBF that are calculated as prescribed percentages of their respective Sonic restaurants' monthly gross sales as defined in the OKC Licenses ("Gross Sales") and agreed to pay interest on late payments at the rate of 1.75% per month (Section 5.05).

30. Under Section 11 of the OKS Licenses, the OKS Franchisees agreed to fully and timely pay advertising contributions to their Sonic restaurants' Sonic Franchising-approved advertising cooperative, known as the OKS Miami-Dade/Broward Advertising Cooperative (the "Cooperative"). Sonic and the OKS Franchisees (with the exception involving OKS Hiahleah Gardens) entered into an advertising addendum for each of their Sonic restaurants that required the OKS Franchisees to pay contributions to the Cooperative in amounts required by the Cooperative or five percent of their respective Sonic restaurants' monthly Gross Sales, whichever is higher. By agreement, monthly advertising cooperative contributions are remitted to SMF.

31. Effective March 1, 2016, Sonic Franchising and the OKS Franchisees entered into a license amendment whereby these Sonic franchisees agreed to pay to BTF a technology fee that is a certain percentage of their respective Sonic restaurants' monthly Gross Sales.

32. The OKS Franchisees regularly ordered and received monthly point-of-purchase promotional marketing kits ("POP Kits") from SISI.

FIRST CAUSE OF ACTION

OKS Campbell, LLC's Breach of Contract under the Homestead License

33. Plaintiffs adopt, incorporate, and re-allege the allegations contained in Paragraphs 1 through 32 herein.

34. OKS Campbell is in default under the Homestead License by not paying to Sonic Franchising and the Funds all amounts due and owing under such License. The amount in controversy and due and owing by OKS Campbell exceeds \$75,000.00, exclusive of interest and costs.

35. OKS Campbell owes Sonic Franchising and the Funds for interest that accrued and hereafter accrues on delinquent royalty, advertising, and technology fees, until paid.

36. Pursuant to Section 17.02 of the Homestead License, OKS Campbell owes Sonic Franchising for costs, expenses, and attorneys' fees already incurred and incurred in the future that are related to enforcing Sonic Franchising's rights, remedies, and collection efforts under the Homestead License.

SECOND CAUSE OF ACTION

OKS Campbell, LLC's Unjust Enrichment under an Open Account

37. Plaintiffs adopt, incorporate, and re-allege the allegations contained in Paragraphs 1 through 36 herein.

38. OKS Campbell has been unjustly enriched under an open account by not paying SISI for POP Kits that OKS Campbell and the Homestead Restaurant ordered and received.

39. OKS Campbell has been unjustly enriched under an open account by not paying SBF for a food safety audit at the Homestead Restaurant.

40. OKS Campbell owes SISI for interest that accrued and hereafter accrues on delinquent POP Kits purchases until paid, and owes SISI for costs, expenses and attorneys' fees already incurred and incurred in the future that are related to enforcing SISI's rights, remedies, and collection efforts concerning purchases of such POP Kits and food safety audit, until paid.

THIRD CAUSE OF ACTION

OKS Commercial, LLC's Breach of Contract under the Lauderhill License

41. Plaintiffs adopt, incorporate, and re-allege the allegations contained in Paragraphs 1 through 40 herein.

42. OKS Commercial is in default under the Lauderhill License by not paying to Sonic Franchising and the Funds all amounts due and owing under such License. The amount in controversy and due and owing by OKS Commercial exceeds \$75,000.00, exclusive of interest and costs.

43. OKS Commercial owes Sonic Franchising and the Funds for interest that accrued and hereafter accrues on delinquent royalty, advertising, and technology fees until paid.

44. Pursuant to Section 17.02 of the Lauderhill License, OKS Commercial owes Sonic Franchising for costs, expenses, and attorneys' fees already incurred and incurred in the future that are related to enforcing Sonic Franchising's rights, remedies, and collection efforts under the Lauderhill License.

FOURTH CAUSE OF ACTION

OKS Commercial, LLC's Unjust Enrichment under an Open Account

45. Plaintiffs adopt, incorporate, and re-allege the allegations contained in Paragraphs 1 through 44 herein.

46. OKS Commercial has been unjustly enriched under an open account by not paying SISI for POP Kits that OKS Commercial and the Lauderhill Restaurant ordered and received.

47. OKS Campbell has been unjustly enriched under an open account by not paying BTF for point-of-sale equipment ordered and received by OKS Commercial at the Lauderhill Restaurant.

48. OKS Commercial owes SISI for interest that accrued and hereafter accrues on delinquent POP Kits purchases until paid, and owes SISI for costs, expenses, and attorneys' fees already incurred and incurred in the future that are related to enforcing SISI's rights, remedies, and collection efforts concerning purchases of such POP Kits and point-of-sale equipment until paid.

FIFTH CAUSE OF ACTION

OKS Beach Place, LLC's Breach of Contract under the Fort Lauderdale License

49. Plaintiffs adopt, incorporate, and re-allege the allegations contained in Paragraphs 1 through 48 herein.

50. OKS Beach Place is in default under the Fort Lauderdale License by not paying to Sonic Franchising, SBF, and SMF all amounts due and owing under such License. OKS Beach Place further breached the Fort Lauderdale License by closing the

franchised business prior to expiration of the term of the License, thereby causing additional damages to Sonic Franchising in the form of lost future revenue. The amount in controversy and due and owing by OKS Beach Place exceeds \$75,000.00, exclusive of interest and costs.

51. OKS Beach Place owes Sonic Franchising, SBF, and SMF for interest that accrues and hereafter accrues on delinquent royalty and advertising fees until paid.

52. Pursuant to Section 17.02 of the Fort Lauderdale License, OKS Beach Place owes Sonic Franchising for costs, expenses, and attorneys' fees already incurred and incurred in the future that are related to enforcing Sonic Franchising's rights, remedies, and collection efforts under the Fort Lauderdale License.

SIXTH CAUSE OF ACTION

OKS Stadium, LLC's Breach of Contract under the Miami Gardens License

53. Plaintiffs adopt, incorporate, and re-allege the allegations contained in Paragraphs 1 through 52 herein.

54. OKS Stadium is in default under the Miami Gardens License by not paying to Sonic Franchising and the Funds all amounts due and owing under such License. The amount in controversy and due and owing by OKS Campbell exceeds \$75,000.00, exclusive of interest and costs.

55. OKS Stadium will owe Sonic Franchising and the Funds for interest that accrues and hereafter accrues on delinquent royalty, advertising and technology fees until paid.

56. Pursuant to Section 17.02 of the Miami Gardens License, OKS Stadium will owe Sonic Franchising for costs, expenses, and attorneys' fees already incurred and incurred in the future that are related to enforcing Sonic Franchising's rights, remedies, and collection efforts under the Miami Gardens License.

SEVENTH CAUSE OF ACTION

OKS Stadium, LLC's Unjust Enrichment under an Open Account

57. Plaintiffs adopt, incorporate, and re-allege the allegations contained in Paragraphs 1 through 56 herein.

58. OKS Stadium has been unjustly enriched under an open account by not paying SISI for POP Kits that OKS Stadium and the Miami Gardens Restaurant ordered and received.

59. OKS Stadium has been unjustly enriched under an open account by not paying SBF for a food safety audit at the Miami Gardens Restaurant.

60. OKS Stadium will owe SISI for interest that accrued and hereafter accrues on delinquent POP Kits purchases until paid, and will owe SISI for costs, expenses, and attorneys' fees already incurred and incurred in the future that are related to enforcing SISI's rights, remedies, and collection efforts concerning purchases of such POP Kits and the unpaid food safety audit until paid.

EIGHTH CAUSE OF ACTION

OKS Hialeah Gardens, LLC's Breach of Contract under the Hialeah Gardens License

61. Plaintiffs adopt, incorporate, and re-allege the allegations contained in Paragraphs 1 through 60 herein.

62. OKS Hialeah Gardens is in default of the Hialeah Gardens License by not paying to Sonic Franchising and the Funds all amounts due and owing under such License. The amount in controversy and due and owing by OKS Campbell exceeds \$75,000.00, exclusive of interest and costs.

63. OKS Hialeah Gardens owes Sonic Franchising and the Funds for interest that accrues and hereafter accrues on delinquent royalty, advertising, and technology fees until paid.

64. Pursuant to Section 17.02 of the Hialeah Gardens License, OKS Hialeah Gardens owes Sonic Franchising for costs, expenses, and attorneys' fees already incurred and incurred in the future that are related to enforcing Sonic Franchising's rights, remedies, and collection efforts under the Hialeah Gardens License.

NINTH CAUSE OF ACTION

OKS Hialeah Gardens, LLC's Unjust Enrichment under an Open Account

65. Plaintiffs adopt, incorporate, and re-allege the allegations contained in Paragraphs 1 through 64 herein.

66. OKS Hialeah Gardens has been unjustly enriched under an open account by not paying SISI for POP Kits that OKS Hialeah Gardens and the Hialeah Gardens Restaurant ordered and received.

67. OKS Hialeah Gardens has been unjustly enriched under an open account by not paying SBF for a food safety audit at the Hialeah Gardens Restaurant.

68. OKS Hialeah Gardens owes SISI for interest that accrued and hereafter accrues on delinquent POP Kits purchases until paid, and owes SISI for costs, expenses, and attorneys' fees already incurred and incurred in the future that are related to enforcing SISI's rights, remedies, and collection efforts concerning purchases of such POP Kits and the unpaid food safety audit until paid.

TENTH CAUSE OF ACTION

Halleran's Breach of Contract under the Development Agreement

69. Plaintiffs adopt, incorporate, and re-allege the allegations contained in Paragraphs 1 through 68 herein.

70. Halleran defaulted under the Development Agreement by failing to construct and open a Sonic restaurant to the public within the Development Agreement's territory by February 28, 2016.

71. In a letter to Halleran in March, 2016, Sonic Industries notified him that he was in default of the Development Agreement and that pursuant to Section 11 of the Development Agreement that Sonic Industries would have the right to terminate the Development Agreement.

72. Based upon Halleran's failure to cure his default under the Development Agreement, Sonic Industries had the right to terminate the Development Agreement and retain the unused development fees.

ELEVENTH CAUSE OF ACTION

Halleran's Breach of Contract under Halleran's Guaranties of the License Agreements

73. Plaintiffs adopt, incorporate, and re-allege the allegations contained in Paragraphs 1 through 72 herein.

74. Each of Halleran's guaranties [referring to the Homestead Guaranty, the Lauderhill Guaranty, the Fort Lauderdale Guaranty, the Miami Gardens Guaranty, and the Hialeah Gardens Guaranty (collectively, "Halleran's Guaranties")], constituted an absolute, unconditional, irrevocable, and continuing guaranty.

75. Each of Halleran's Guaranties provided that Sonic Franchising would have no obligation to take any action against any other person or entity for collection of any payments prior to making any demand for payment or bringing any action against Halleran.

76. Each of Halleran's Guaranties provided that disputes concerning Halleran's Guaranties would be resolved in accordance with the resolution of disputes provisions contained in the guaranteed license agreements, that federal and state courts in Oklahoma would have personal jurisdiction over Halleran, and that Halleran waived objections to venue in those courts.

77. Halleran is in default of Halleran's Guaranties because Halleran has failed to fully and timely pay to Sonic Franchising and the Funds all unpaid amounts that the OKS Franchisees are obligated to pay under the OKS Licenses, all as more fully described hereinabove.

TWELFTH CAUSE OF ACTION

Halleran's Unjust Enrichment

78. Plaintiffs adopt, incorporate, and re-allege the allegations contained in Paragraphs 1 through 77 herein.

79. Halleran has been unjustly enriched by owning and operating the Hialeah Gardens Restaurant pursuant to a purported Sonic license agreement that Sonic Franchising prepared for OKS Hialeah Gardens with the understanding from Halleran that he would sign and return the Hialeah Gardens Guaranty.

80. Not only has Halleran failed to sign and return the Hialeah Gardens Guaranty to Sonic Franchising, but he has not paid Sonic Franchising for OKS Hialeah Gardens' delinquent financial obligations incurred under the Hialeah Gardens License, all as more fully described hereinabove.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court grant the following relief:

(A) Award Plaintiff Sonic Franchising judgment jointly and severally against Defendant OKS Campbell, as franchisee, and against Defendant Halleran, as guarantor, for all amounts due and owing under and related to the Homestead License, together with accrued contractual interest, pre and post judgment statutory interest and costs, including reasonable attorneys' fees;

(B) Award Plaintiff Sonic Franchising judgment jointly and severally against Defendant OKS Commercial as franchisee and against Defendant Halleran as guarantor for all amounts due and owing under and related to the Lauderhill License, together with accrued contractual interest, pre and post judgment statutory interest and costs, including reasonable attorneys' fees;

(C) Award Plaintiff Sonic Franchising judgment jointly and severally against Defendant OKS Beach Place as franchisee and against Defendant Halleran as guarantor for all amounts due and owing under and related to the Fort Lauderdale License, together with accrued contractual interest, pre and post judgment statutory interest and costs, including reasonable attorneys' fees;

(D) Award Plaintiff Sonic Franchising judgment jointly and severally against Defendant OKS Stadium as franchisee and against Defendant Halleran as guarantor for all amounts due and owing under and related to the Miami Gardens License, together with accrued contractual interest, pre and post judgment statutory interest and costs, including reasonable attorneys' fees;

(E) Award Plaintiff Sonic Franchising judgment jointly and severally against Defendant OKS Hialeah Gardens as franchisee and against Defendant Halleran as guarantor for all amounts due and owing under and related to the Hialeah Gardens License and for unjust enrichment, together with accrued contractual interest, pre and post judgment statutory interest and costs, including reasonable attorneys' fees;

(F) Grant Plaintiff Sonic Industries judgment against Halleran that Sonic Industries had the right to terminate the Development Agreement and retain the unused development fees; and

(G) Award Plaintiff SISI costs for POP kits ordered, but not paid for, including any interest that accrued and hereafter accrues on delinquent POP Kits purchases until paid, costs, expenses and attorneys' fees already incurred and incurred in the future that are related to enforcing SISI's rights, remedies, and collection efforts concerning

purchases of such POP Kits; and

(H) Grant Plaintiffs Sonic Franchising, Sonic Industries, and SISI such other and further relief against the OKS Franchisees and Halleran that Plaintiffs Sonic Franchising, Sonic Industries, and SISI are entitled to receive pursuant to the evidence presented and as the Court deems just and appropriate under the circumstances.

Respectfully submitted,

s/ Joe M. Hampton

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