

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DREAM DINNERS CAPITAL REGION, LLC;
DEBBIE GALLO; KATHRYN LAWLER;
WENDY BERRY; CREATIVE COOKING
CONCEPTS, INC.; CASSANDRA AYALA; KOZY
KITCHENS, INC.; SHELEE FETZER;
MONIQUE TAYLOR; TENNYSON AND
THOMAS WALSH; EAT YOUR HEART OUT, INC.;
JENNIFER GARCIA; MICHAEL TREMAGLIO;
LUANNE SCUDDER ENTERPRISES;
LUANNE SCUDDER;
NORTH ANDOVER DREAMS, LLC;
CATHERINE S. HEBERT;
RUPPERT ENTERPRISES, LLC;
JEAN RUPPERT-BOLING; CREATIVE COOKS, LLC;
KIM STEVENS; THE BISCUIT LLC;
CARYN AND MARK RUTHERFORD;
MEANT TO BE, JR&D, LLC; JENNIFER SHEA;
ROSEMARIE CRAWFORD; DIANE KAMPHAUS;
ROTH & ROTH ENTERPRISES, INC.;
GREG AND RITA ROTH; TWO PEAS, LLC;
LORA WILSON; CARYN AND KEN GEORGEN;
YAWANO, LLC; AND JENNIFER HEMANN,

Plaintiffs,

-against-

DREAM DINNERS, INC.,
DREAM DINNERS OPERATIONS, INC.,
DREAM DINNERS CANADA, INC.,
DREAM DINNERS MARKETING, LLC,
LIVING THE DREAM, INC.,
DREAM DINNERS FRANCHISE ADVISORY
COUNCIL, INC., STEPHANIE ALLEN,
TINA KUNA, BROOKE MCCURDY,
TRACY SMITH, And KIM PICKARD,

Defendants.

TO THE ABOVE-NAMED DEFENDANTS:

SUMMONS

Index No.

08102670

FILED

FEB 19 2008

COUNTY CLERK'S OFFICE
NEW YORK

You are hereby summoned and required to serve upon plaintiff's attorney an answer to the complaint in this action within twenty days after the service of this summons, exclusive of the day of service, or within thirty days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of the venue designated is defendants' consent pursuant to CPLR 501.

Dated: February 18, 2008

DADY & GARNER, P.A.



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ATTORNEYS FOR PLAINTIFFS

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TINA KUNA, BROOKE MCCURDY,
TRACY SMITH, And KIM PICKARD,

Defendants.

COMPLAINT

Index No.

08102070

Plaintiffs, by their attorneys, Dady & Garner, P.A., for their complaint
against defendants allege as follows:

Parties

1. Each of the plaintiffs is an individual, corporation or limited liability company that is or was a franchisee of a "Dream Dinners" home meal preparation service, franchised by defendant Dream Dinners, Inc. The residence of each of the plaintiffs is set forth on Exhibit 1, which is annexed hereto and made a part hereof.

2. Defendant Dream Dinners, Inc. is the franchisor of "Dream Dinners," a service through which individuals go to a central location operated by a franchisee where they prepare meals in bulk for home consumption. Dream Dinners, Inc. has its principal place of business in Snohomish, Washington, and is subject to jurisdiction here by reason of its consent to jurisdiction as a result of selling franchises here.

3. Defendants Dream Dinners Operations, Inc., Dream Dinners Canada, Inc., Dream Dinners Marketing, LLC, and Living the Dream, Inc. are affiliates of Dream Dinners, Inc. and were involved in the unlawful sale of franchises alleged herein.

4. Defendants Stephanie Allen and Tina Kuna are the founders of Dream Dinners, Inc. and participated and controlled the unlawful and fraudulent sales of franchises alleged herein. They are citizens of Washington State and are subject to jurisdiction in New York by reason of their commission of tortious acts within the state and tortious acts outside of the state that have caused injury within the state.

5. Defendants McCurdy, Smith and Pickard are individual citizens of the State of Washington who participated in the unlawful sale of franchises alleged herein and who are subject to jurisdiction here by reason of their commission of tortious acts outside the state that have caused injury within the state.

Facts

6. Defendant Dream Dinners is engaged in the sale of franchises intended to ease the burden of home meal preparation. At a Dream Dinners franchised outlet, a customer spends one to two hours assembling meals using Dream Dinners' recipes and prepared ingredients. The customer then leaves with a month or week's worth of meals for the family; these meals can be refrigerated or frozen, and simply need to be thawed and cooked per instructions to enjoy.

Defendants' Representations

7. The Dream Dinners concept was originated by defendants Allen and Kuna, who then sought to franchise it. Each of the plaintiffs was a prospective franchisee and contacted Dream Dinners. Dream Dinners, through Allen and Kuna, and with the assistance of McCurdy, Smith and Pickard, made the following representations to each of the Plaintiffs to induce them to purchase one or more Dream Dinners franchises:

- Dream Dinners had a proven model for operation of a franchise consisting of a "unique system" for the management and operation of a business to operate self-prepared home meal replacement systems that were based on uniform standards, procedures and business operations that would result in profitable operations within a few months and readily sustain a revenue of at least \$30,000 a month per center.

- They presented to plaintiffs an in-person PowerPoint presentation that showed estimated numbers of customers per month, gross revenues, cost of goods, operating expenses and net profits in various "scenarios." Right before showing them these numbers, Ms. Allen smiled and said, in substance, "I know the lawyers say I'm not supposed to show this to you, but if you write fast, you can get it all down."
 - Allen and Kuna told plaintiffs during pre-sale interviews that "a full store would have 500 customers a month" and a second store would be expected to open with "at least 150 customers per month," which would, in effect, generate \$26,700 in revenue and that maximum gross revenues per week would be \$21,360.
 - They distributed to Plaintiffs a set of "Frequently Asked Questions" that also appeared on the Dream Dinners website and that shows purported customer numbers for January 2003 through April 2004 at company-owned stores and representations that the franchise operated with "what the perfect number is to make a profit."
 - They represented orally that corporate stores were operating with 600 to 800 customers per month.
 - They provided detailed "cost breakdowns per session" showing projections of revenues, expenses and profits for one session, weekly revenues, monthly and yearly revenues.
 - They provided a "monthly income and expense forecast" showing revenues, costs and profits at four different levels or "scenarios."
 - The cost of food for the operation of a Dream Dinners franchise would not exceed 45 percent of the franchisees' revenues.
8. In addition, Defendants furnished Plaintiffs with what they represented to be a lawful Uniform Franchise Offering Circular ("UFOC") – a document that franchisors are required to furnish to prospective franchisees by law and that is required to contain certain information to assist the prospective

franchisee to make an informed decision whether to purchase the franchise or not.

9. The UFOCs furnished by defendants to plaintiffs were deficient and unlawful in that omitted required financial statements of the franchisor; required agreements; lists of franchisees; and other required information.

10. In reliance upon the defendants' representations, as set forth above, plaintiffs entered into franchise agreements for Dream Dinners' franchises, paid Dream Dinners tens of thousands of dollars, spent tens of thousands of dollars building out their franchises and incurred obligations to landlords and others. Additionally, the individual plaintiffs were required to sign guarantees of the obligations of their franchises.

Defendant's Contractual Undertakings

11. Dream Dinners undertook many contractual obligations to Plaintiffs including the following:

- To provide training and support to franchisees;
- To assist with promotion, advertising and grand openings;
- To provide continuing support to franchisees.

Falsity of Defendants' Representations

12. Defendants' representations, as set forth above at paragraph 7, were false, misleading and unlawful in at least the following respects:

- There was no proven system, and the system that existed in no way was capable of generating \$30,000 per month in revenues. In fact, defendants changed the system repeatedly, rebuilt their website and otherwise undercut the system that plaintiffs had purchased

- All of the representations of revenues, earnings and profits, of the number of customers that plaintiffs would have, and the numbers of customers that existing stores had, were false, unlawful and unrepresentative. Such representations were knowing and deliberate violations of state and federal law.
- Food costs were not 45 percent but in fact exceeded that amount regularly.

13. As a result of defendants' misrepresentations and violations of law, plaintiffs have been injured through loss of their investments, lost earnings that they otherwise could have made, and lost profits, in an amount to be determined at trial, but in no event less than \$10 million.

Defendants' Breaches of Contract

14. Defendant Dream Dinners breached its contractual obligations to Plaintiffs by failing to provide training and support, failing to provide advertising and promotion, and failing to provide on going training.

15. As a result of Dream Dinners' breaches of contract, plaintiffs have been injured in an amount to be determined at trial, but in no event less than, collectively \$10 million.

COUNT ONE (Violation of State Franchise Laws)

16. Plaintiffs repeat and reallege each and every allegation set forth above as though set forth here in full.

17. Defendants' conduct, particularly their disclosure of earnings claims in violation of UFOC Guidelines and other misrepresentations, constitute violations of the following state franchise acts: Washington Franchise Investment Protection Act, R.C.W. 19.100.010 *et seq.*; the New York Franchise Sales Act,

N.Y. Gen. Bus. L. 680 *et seq.*; the Indiana Franchise Act, Ind. Code § 23-2-2.5-1; the Maryland Franchise Act, MD Code Ann., Bus. Reg. § 14-201; the Michigan Franchise Investment Law, Mich. Comp. L. § 445.1501; the Virginia Retail Franchising Act, Va. Code § 13.1-557 and the Florida Franchise Misrepresentation Act, Fla. Stat. § 817.416.

18. Defendants Allen, Kuna, McCurdy, Smith and Pickard are liable for the violations of franchise law set forth above by reason of their position as officers, directors, control persons or persons occupying a similar status.

19. Defendants Dream Dinners Operations, Inc., Dream Dinners Canada, Inc., Dream Dinners Marketing, LLC, Living the Dream, Inc. and Dream Dinners Advisory Council are liable for the violations of franchise law set forth above by reason of their position as control persons of Dream Dinners or persons occupying a similar status.

20. Plaintiffs are entitled, by reason of Defendants' violations of the franchise laws set forth above, to rescind their franchise agreements, have their guarantees canceled and rescinded, and recover restitution and damages from Defendants in an amount to be determined at trial, but in no event less than \$10 million, plus attorneys fees and costs.

**COUNT TWO
(Violation of Unfair Trade Practice Statutes)**

21. Plaintiffs repeat and reallege each and every allegation set forth above as though set forth here in full.

22. Defendants' conduct, as set forth above, constitutes violations of the unfair trade practice statutes of Washington, Idaho, Massachusetts, New York, Connecticut, Virginia, Indiana, Maryland, Michigan and Florida.

23. As a result of defendants' violations of the aforesaid unfair trade practice statutes, plaintiffs are entitled to recover their actual damages of no less than \$10 million, trebled to \$30 million, plus attorneys fees and costs.

COUNT THREE
(Common Law Fraud)

24. Plaintiffs repeat and reallege each and every allegation set forth above as though set forth here in full.

25. Defendants Dream Dinners, Allen and Kuna made deliberate and knowing misrepresentations of fact, knowing that they were true and unlawful, with the intent that Plaintiffs rely upon them to their detriment. Plaintiffs did so rely upon them to their detriment, with the result that they lost millions of dollars.

26. As a result of Defendants' common law fraud, Plaintiffs are entitled to recover from Dream Dinners, Allen and Kuna their actual damages of no less than \$10 million and to have their guarantees rescinded and canceled.

27. Defendants' conduct was willful and knowingly unlawful, and intended to obtain money from plaintiffs without providing corresponding benefits. Defendants' conduct was willful and unlawful and intended to injure plaintiffs. Accordingly, Defendants Dream Dinners, Inc., Allen and Kuna are liable for punitive damages in an amount sufficient to punish them for their conduct and to deter others from so conducting themselves in the future. Plaintiffs request an award of \$25 million in punitive damages.

**COUNT FOUR
(Negligent Fraud)**

28. Plaintiffs repeat and reallege each and every allegation set forth above as though set forth here in full.

29. Defendants made representations to plaintiffs in the course of business dealings, knowing that plaintiffs would rely upon such statements and representations. Defendants failed to exercise due care in making their statements, the result of which is that they injured plaintiffs.

30. Plaintiffs are entitled to recover their actual damages from defendants as a result of defendants' negligent representations, in an amount no less than \$10 million.

**COUNT FIVE
(Breach of Contract)**

31. Plaintiffs repeat and reallege each and every allegation set forth above as though set forth here in full.

32. Defendant Dream Dinners, Inc. breached its contractual obligations to plaintiffs as set forth above. Plaintiffs are entitled to recover their actual damages as a result of defendant's breaches of contract, in an amount to be determined at trial, but in no event less than \$5 million.

WHEREFORE, Plaintiffs demand a trial by jury, and upon trial, judgment:

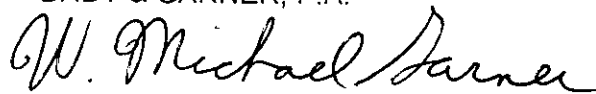
(a) Rescinding their franchise agreements, personal guarantees and other transactions that they entered into with Dream Dinners, Inc.

(b) Awarding them actual damages as a result of defendants' wrongdoing in an amount no less than \$10 million;

- (c) Treble damages pursuant to state unfair trade practice laws;
- (d) Punitive damages against Dream Dinners, Inc., Allen and Kuna in an amount no less than \$25 million;
- (e) Attorneys fees, interest and costs; and
- (f) Such other and further relief as the Court deems just and proper.

Dated: February 18, 2008

DADY & GARNER, P.A.



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