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**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY**

DUNKIN' DONUTS FRANCHISED)
RESTAURANTS LLC,)
a Delaware Limited Liability Company,)
DUNKIN' DONUTS FRANCHISING LLC,)
a Delaware Limited Liability Company,)
DD IP HOLDER LLC,)
a Delaware Limited Liability Company,)
BASKIN-ROBBINS FRANCHISED SHOPS LLC,)
a Delaware Limited Liability Company,)
BR IP HOLDER LLC,)
a Delaware Limited Liability Company,)
DB REAL ESTATE ASSETS I LLC,)
a Delaware Limited Liability Company, and)
DB REAL ESTATE ASSETS II LLC,)
a Delaware Limited Liability Company,)
Plaintiffs,)

v.)

C.A. No. _____

BAKERY MAESTRO, INC.,)
a New Jersey Corporation,)
DONUT MASTERS, INC.,)
a New Jersey Corporation,)
SHYAMJI DONUTS, INC.,)
a New Jersey Corporation,)
JKP DONUTS, INC.,)
a New Jersey Corporation,)
JANAM CORPORATION,)
a New Jersey Corporation,)
SPRING DONUTS, INC.,)
a New Jersey Corporation,)

CHERRY DONUT, INC.,)
a New Jersey Corporation,)
RAVI SUPERMARKET DONUTS, INC.,)
a New Jersey Corporation,)
MEDFORD DONUTS, INC.,)
a New Jersey Corporation,)
ADMIRAL DONUTS, INC.,)
a New Jersey Corporation,)
SHIV MANAGEMENT, INC.,)
a New Jersey Corporation,)
FRONT STREET DONUT, INC.,)
a Pennsylvania Corporation,)
PIYUSH AMIN,)
a resident of the State of New Jersey,)
VIPUL PATEL,)
a resident of the State of New Jersey,)
JATINKUMAR PATEL,)
a resident of the State of New Jersey,)
PINANKIN PATEL,)
a resident of the State of New Jersey, and)
MUKESH PATEL,)
a resident of the State of New Jersey,)
Defendants.)
_____)

COMPLAINT

This is an action for breach of contract, trademark infringement, trade dress infringement, and unfair competition arising from, among other things, Defendants’ failure to comply with the “obey all laws” provisions in their Franchise Agreements based on their failure to pay overtime wages to their employees, failure to maintain payroll records, failure to pay all payroll taxes due, and filing false tax returns. Plaintiffs seek monetary, injunctive, and other relief against Defendants for the reasons set forth below.

PARTIES

1. Plaintiff Dunkin’ Donuts Franchised Restaurants LLC, successor-in-interest to Dunkin’ Donuts LLC and Dunkin’ Donuts Incorporated, is a Delaware limited liability company

with its principal place of business at 130 Royall Street, Canton, Massachusetts. All Dunkin' Donuts Franchise Agreements dated prior to May 26, 2006, have been assigned to Dunkin' Donuts Franchised Restaurants LLC. It is engaged in the business of franchising independent businesspersons to operate Dunkin' Donuts shops throughout the United States. Dunkin' Donuts franchisees are licensed to use the trade names, service marks, and trademarks of Dunkin' Donuts and to operate under the Dunkin' Donuts System, which involves the production, merchandising, and sale of donuts and related products utilizing a specially designed building with special equipment, equipment layouts, interior and exterior accessories, identification schemes, products, management programs, standards, specifications, proprietary marks and identification.

2. Plaintiff Dunkin' Donuts Franchising LLC is a Delaware limited liability company with its principal place of business at 130 Royall Street, Canton, Massachusetts. All Dunkin' Donuts Franchise Agreements dated on or after May 26, 2006, are in the name of Dunkin' Donuts Franchising LLC. It is engaged in the business of franchising independent businesspersons to operate Dunkin' Donuts shops throughout the United States. Dunkin' Donuts franchisees are licensed to use the trade names, service marks, and trademarks of Dunkin' Donuts and to operate under the Dunkin' Donuts system, which involves the production, merchandising, and sale of donuts and related products utilizing a specially designed building with special equipment, equipment layouts, interior and exterior accessories, identification schemes, products, management programs, standards, specifications, proprietary marks and identification.

3. Plaintiff DD IP Holder LLC, Dunkin's wholly-owned subsidiary and successor-in-interest to Dunkin' Donuts USA, Inc., is a Delaware limited liability company with its

principal place of business at 130 Royall Street, Canton, Massachusetts. DD IP Holder LLC is the owner of the trademark, service mark, and trade name “Dunkin’ Donuts,” and related marks. Unless otherwise specified, Dunkin’ Donuts Franchised Restaurants LLC, Dunkin’ Donuts Franchising LLC, and DD IP Holder LLC are collectively referred to hereinafter as “Dunkin” or “Dunkin’ Donuts.”

4. Plaintiff Baskin-Robbins Franchised Shops LLC, successor-in-interest to Baskin-Robbins USA LLC and Baskin-Robbins USA, Co., is a Delaware limited liability company with its principal place of business at 130 Royall Street, Canton, Massachusetts. All Baskin-Robbins Franchise Agreements dated prior to May 26, 2006, have been assigned to Baskin-Robbins Franchised Shops LLC. Baskin-Robbins is authorized to use the trademarks, service marks and trade names owned by BR IP Holder LLC and to sublicense Baskin-Robbins franchisees, as independent businesspersons, to use these marks and trade names. Baskin-Robbins franchisees are licensed to use the Baskin-Robbins trade names, service marks, and trademarks and to operate under the Baskin-Robbins system, which involves the production, merchandising, and sale of ice cream and related products utilizing special equipment, equipment layouts, interior and exterior accessories, identification schemes, products, management programs, standards, specifications, proprietary marks, and information.

5. Plaintiff BR IP Holder LLC, successor-in-interest to Baskin-Robbins Incorporated, is a Delaware limited liability company with its principal place of business at 130 Royall Street, Canton, Massachusetts. BR IP Holder LLC is the owner of the trademark, service mark, and trade name “Baskin-Robbins” and related marks. Unless otherwise specified, Baskin-Robbins Franchised Shops LLC, Baskin-Robbins Franchising LLC, and BR IP Holder LLC are collectively referred hereinafter as “Baskin-Robbins” or “Baskin.”

6. Dunkin' and Baskin operate as separate corporations. However, they pursue or permit joint development of units in selected markets, which are commonly referred to as "combo" shops.

7. Plaintiff DB Real Estate Assets I LLC, successor-in-interest to certain rights of Third Dunkin' Donuts Realty, LLC and Third Dunkin' Donuts Realty, Inc. ("DB Real Estate Assets I"), is a Delaware limited liability company with its principal place of business at 130 Royall Street, Canton, Massachusetts. DB Real Estate Assets I is a wholly-owned subsidiary of Dunkin' Donuts and is engaged in the business of leasing properties to Dunkin' Donuts franchisees to enable Dunkin' Donuts to franchise independent businesspersons to operate Dunkin' Donuts shops at those locations.

8. Plaintiff DB Real Estate Assets II LLC, successor-in-interest to certain rights of Third Dunkin' Donuts Realty, LLC and Third Dunkin' Donuts Realty, Inc. ("DB Real Estate Assets II"), is a Delaware limited liability company with its principal place of business at 130 Royall Street, Canton, Massachusetts. DB Real Estate Assets II is a wholly-owned subsidiary of Dunkin' Donuts and is engaged in the business of leasing properties to Dunkin' Donuts franchisees to enable Dunkin' Donuts to franchise independent businesspersons to operate Dunkin' Donuts shops at those locations.

9. Defendant Bakery Maestro, Inc. ("Bakery Maestro") is a corporation and, upon information and belief, its principal place of business is in Maple Shade, New Jersey. Defendant Bakery Maestro was the owner of Dunkin' Donuts franchise located at 2891 Route 73 South, Maple Shade, New Jersey, pursuant to a Franchise Agreement dated May 23, 2000.

10. Defendant Donut Masters, Inc. ("Donut Masters") is a New Jersey corporation and, upon information and belief, its principal place of business is in Cherry Hill, New Jersey.

Defendant Donut Masters was the owner of a Dunkin' Donuts and Baskin-Robbins combo shop located at 1410 Route 38, Cherry Hill, New Jersey, pursuant to a Franchise Agreement dated January 19, 2000.

11. Defendant Shyamji Donuts, Inc. ("Shaymji Donuts") is a New Jersey corporation and, upon information and belief, its principal place of business is in Cherry Hills, New Jersey. Defendant Shyamji Donuts was the owner of a Dunkin' Donuts shop located at 1860 Route 70, Cherry Hills, New Jersey, pursuant to a Franchise Agreement dated June 22, 2001.

12. Defendant JKP Donuts, Inc. ("JKP Donuts") is a New Jersey corporation and, upon information and belief, its principal place of business is in Mt. Laurel, New Jersey. Defendant JKP Donuts was the owner of Dunkin' Donuts shops located at 807 Route 73 North, Mt. Laurel, New Jersey, pursuant to a Franchise Agreement dated March 29, 2005, and 2891 Route 73 South, Maple Shade, New Jersey, pursuant to a Franchise Agreement dated April 1, 2004.

13. Defendant Janam Corporation ("Janam") is a New Jersey corporation and, upon information and belief, its principal place of business is in Cherry Hill, New Jersey. Defendant Janam was the owner of Dunkin' Donuts shops located at 1550 Kings Highway North, Cherry Hill, New Jersey, pursuant to a Franchise Agreement dated April 21, 2004, 145 Haddon Ave., Westmont, New Jersey, pursuant to a Franchise Agreement dated August 21, 2001, and 5245 Marelton Pike, Route 70 West, Pennsauken, New Jersey, pursuant to a Franchise Agreement dated June 5, 2007.

14. Defendant Spring Donuts, Inc. ("Spring Donuts") is a New Jersey corporation and, upon information and belief, its principal place of business is in Cherry Hill, New Jersey.

Defendant Spring Donuts was the owner of a Dunkin' Donuts shop located at 2060 Springdale Road, Cherry Hill, New Jersey, pursuant to a Franchise Agreement dated January 21, 2005.

15. Defendant Cherry Donut, Inc. ("Cherry Donut") is a New Jersey corporation and, upon information and belief, its principal place of business is in Cherry Hill, New Jersey.

Defendant Cherry Donut was the owner of a Dunkin' Donuts shop located at 2441 Route 38, Cherry Hill, New Jersey, pursuant to a Franchise Agreement dated September 7, 2004.

16. Defendant Ravi Supermarket Donuts, Inc. ("Ravi Donuts") is a New Jersey corporation and, upon information and belief, its principal place of business is in Cherry Hill, New Jersey. Defendant Ravi Donuts was the owner of a Dunkin' Donuts shop located at 2240-18 Route 70 West, Cherry Hill, New Jersey, pursuant to a Franchise Agreement dated May 23, 2000.

17. Defendant Medford Donuts, Inc. ("Medford Donuts") is a New Jersey corporation and, upon information and belief, its principal place of business is in Medford, New Jersey. Defendant Medford Donuts was the owner of a Dunkin' Donuts shop located at 422 Stokes Road, Unit #6, Medford, New Jersey, pursuant to a Franchise Agreement dated November 18, 2006.

18. Defendant Admiral Donuts, Inc. ("Admiral Donuts") is a New Jersey corporation and, upon information and belief, its principal place of business is in Camden, New Jersey. Defendant Admiral Donuts was the owner of a Dunkin' Donuts shop located at 1420 Admiral Wilson Boulevard, Camden, New Jersey, pursuant to a Franchise Agreement dated September 29, 2006.

19. Defendant Shiv Management, Inc. ("Shiv Management") is a New Jersey corporation and, upon information and belief, its principal place of business is in Deptford, New

Jersey. Defendant Shiv Management was the owner of a Dunkin' Donuts shop located at 1901 Deptford Center Road, Deptford, New Jersey, pursuant to a Franchise Agreement dated July 9, 2004.

20. Defendant Front Street Donut, Inc. ("Front Street Donut") is a Pennsylvania corporation and, upon information and belief, its principal place of business is in Philadelphia, Pennsylvania. Defendant Front Street Donut was the owner of a Dunkin' Donuts shop located at 2809 S. Front Street, Philadelphia, Pennsylvania, pursuant to a Franchise Agreement dated May 8, 2006.

21. Defendant Piyush Amin is a natural person and a citizen and resident of the State of New Jersey. Defendant Piyush Amin is an officer, member, and/or shareholder of each of the aforementioned corporate Defendants, and personally guaranteed the obligations of the foregoing entities pursuant to executed personal guarantees. In addition, Piyush Amin was the operator of Dunkin' Donuts shops located at 110 S. White Horse Pike, Hammonton, New Jersey, 302 White Horse Pike, Atco, New Jersey, and 235 S. White Horse Pike, Berlin, New Jersey, pursuant to separate Temporary Operating Agreements dated March 29, 2007.

22. Defendant Vipul Patel is a natural person and a citizen and resident of the State of New Jersey. Defendant Vipul Patel is an officer, member, and/or shareholder of Bakery Maestro, Donut Masters, JKP Donuts, Janam, Spring Donuts, Cherry Donut, Ravi Donuts, Medford Donuts, Admiral Donuts, Shiv Management, and Front Street Donut, and personally guaranteed the obligations of the aforementioned entities pursuant to executed personal guarantees.

23. Defendant Jatinkumar Patel is a natural person and a citizen and resident of the State of New Jersey. Defendant Jatinkumar Patel is an officer, member, and/or shareholder of

Bakery Maestro, Donut Masters, Cherry Donut, Ravi Donuts, Medford Donuts, and Shiv Management, and personally guaranteed the obligations of the aforementioned entities pursuant to executed personal guarantees.

24. Defendant Mukesh Patel is a natural person and a citizen and resident of the State of New Jersey. Defendant Mukesh Patel is an officer, member, and/or shareholder of Shyamji Donuts, JKP Donuts, and Janam, and Medford, and personally guaranteed the obligations of the aforementioned entities pursuant to executed personal guarantees.

25. Defendant Pinankin Patel is a natural person and a citizen and resident of the State of New Jersey. Defendant Pinankin Patel is an officer, member, and/or shareholder of Cherry Donut, Ravi Donuts, and personally guaranteed the obligations of the aforementioned entities pursuant to executed personal guarantees.

JURISDICTION AND VENUE

26. This Court has jurisdiction pursuant to §§ 34(a) and 39 of the Lanham Act, 15 U.S.C. §§ 1116 (a) & 1121, and 28 U.S.C. §§ 1331, 1332(a), 1338, & 1367(a). The amount in controversy exceeds \$75,000, exclusive of interest and costs.

27. This Court has *in personam* jurisdiction over Defendants because they conduct business in this District and the events giving rise to Plaintiffs' claims occurred in this district.

28. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

BACKGROUND FACTS

The Dunkin' Donuts System

29. Dunkin' is the franchisor of the Dunkin' Donuts franchise system.

30. DD IP Holder LLC is the owner of the trademark, service mark, and trade name "Dunkin' Donuts," and related marks. Dunkin' Donuts Franchised Restaurants LLC has the

exclusive license to use and license others to use these marks and trade name and has used them continuously since approximately 1960 to identify its doughnut shops, and the doughnuts, pastries, coffee, and other products associated with those shops.

31. The Dunkin' Donuts trademarks and trade name are distinctive and famous and have acquired secondary meaning.

32. The Dunkin' Donuts trademarks and trade name are utilized in interstate commerce.

33. The Dunkin' Donuts marks have been widely advertised and promoted by Dunkin' Donuts over the years. Over the past thirty-five years Dunkin' Donuts and its franchisees have spent more than \$1,500,000,000 on advertising and promoting the Dunkin' Donuts marks. Dunkin' Donuts spent approximately \$167,000,000 in fiscal year 2005 alone on advertising and promotion.

34. Dunkin' Donuts and its franchisees currently operate approximately 5,600 shops in the United States and 2,000 shops outside of the United States. Dunkin' Donuts shops feature Dunkin' Donuts' distinctive trade dress, including the pink and orange color scheme, and the frankfurter lettering style. In the more than fifty years since the Dunkin' Donuts system began, millions of consumers have been served in Dunkin' Donuts shops.

35. As a result of the extensive sales, advertising, and promotion of items identified by the Dunkin' Donuts marks, the public has come to know and recognize the Dunkin' Donuts marks, and to associate them exclusively with products and services offered by Dunkin' Donuts and its franchisees. The Dunkin' Donuts marks are among the best and most widely known trademarks in the United States today, and are assets of inestimable value to Dunkin' Donuts, representing and embodying Dunkin' Donuts' considerable goodwill and favorable reputation.

The Baskin-Robbins System

36. Baskin-Robbins is the franchisor of the Baskin-Robbins system.

37. BR IP Holder LLC is the owner of the trademark, service mark, and trade name “Baskin-Robbins” and related marks. Baskin-Robbins Franchised Shops LLC has the exclusive license to use and license others to use these marks and trade names and has used them continuously since approximately 1947 to identify its ice cream stores, and the ice cream and other products associated with those stores.

38. BR IP Holder LLC owns numerous federal registrations for the mark “Baskin-Robbins” or derivations thereof, as well as related marks. Each of these registrations is in full force and effect, and most of them are incontestable pursuant to 15 U.S.C. § 1065.

39. The Baskin-Robbins trademarks are utilized in interstate commerce.

40. The Baskin-Robbins marks have been very widely advertised and promoted by Baskin-Robbins over the years. As a result, the Baskin-Robbins marks have become famous throughout the United States.

41. Baskin-Robbins and its franchisees currently operate approximately 2,500 stores in the United States and 3,000 stores outside of the United States. In the more than fifty years since the Baskin-Robbins system began, millions of consumers have been served in Baskin-Robbins stores.

42. As a result of the extensive sales, advertising, and promotion of items identified by the Baskin-Robbins marks, the public has come to know and recognize the Baskin-Robbins marks, and to associate them exclusively with products and services offered by Baskin-Robbins and its franchisees. The Baskin-Robbins marks are among the best and most widely known

trademarks in the United States today, and are assets of inestimable value to Baskin-Robbins, representing and embodying Baskin-Robbins' considerable goodwill and favorable reputation.

Defendants' Obligations Under the Franchise Agreements

43. Under the terms of the Franchise Agreements, Defendants agreed they would use Dunkin' Donuts' and Baskin-Robbins' proprietary marks, including, but not limited to, their trademarks, logos, emblems, trade dress and other indicia of origin, "only in the manner and to the extent specifically licensed" by the agreement. Franchise Agreement §§ 7.0 and 7.1.

44. Defendants agreed that any unauthorized use of the Dunkin' and Baskin-Robbins proprietary marks during or after the expiration or earlier termination of the agreement would constitute an incurable default causing irreparable harm subject to injunctive relief. Franchise Agreement §§ 7.1, 9.4.2 and 9.4.3.

45. Defendants agreed that they would comply with all applicable laws, rules, regulations, ordinances, and orders of public authorities. Franchise Agreement § 5.1.7.

46. Defendants also agreed not to use the franchised premises for any illegal or unauthorized purpose. Franchise Agreement § 9.0.3.

47. Defendants agreed that it would be a default under the Franchise Agreements if they were convicted of or plead guilty or "nolo contendere" to a felony, crime involving moral turpitude, or any other crime or offense that Plaintiffs believed is injurious to Plaintiffs' systems, proprietary marks or the goodwill associated therewith, or if Plaintiffs had proof that Defendants had committed such a felony, crime or offense. Franchise Agreement § 9.0.2.

48. Defendants agreed they would not do or perform, directly or indirectly, any act injurious or prejudicial to the goodwill associated with Dunkin' Donuts' and Baskin-Robbins'

proprietary marks and the Dunkin' Donuts and Baskin-Robbins systems. Franchise Agreement § 8.0.1.

49. Defendants agreed to keep full, complete, and accurate books and records in accordance with generally accepted accounting principles and in a form and manner as may be prescribed by Plaintiffs. Franchise Agreement § 5.2.

50. The Franchise Agreements each contain a "cross-default" provision, which states in Sections 9.0 and 9.0.4 that "Franchisee shall be in default under this Agreement . . . [i]f any other franchise agreement between FRANCHISEE and FRANCHISOR or any affiliated entity is terminated by reason of FRANCHISEE's default thereunder" Franchise Agreement §§ 9.0 and 9.0.4.

51. Thus, the termination of one Franchise Agreement constitutes grounds for the termination of all of the other Franchise Agreements, and each of them individually.

52. Under Section 9.1.4 of the Franchise Agreements, no cure period is available if Defendants are in default under any section designated in 9.0.1 through 9.0.4 or if they otherwise commit an act of fraud with respect to their obligations under the Agreement. Moreover, as a matter of law, no cure period is available for such defaults.

53. Defendants agreed that, upon the termination of the Franchise Agreements, their rights to use Plaintiffs' proprietary marks and system would cease, and that they would promptly pay Plaintiffs any damages, costs, and expenses, including reasonable attorneys' fees, incurred by Plaintiffs as a result of the Defendants' default(s). Franchise Agreement §§ 9.3, 9.4, 9.4.1 and 9.4.2.

54. Defendants agreed that any unauthorized use of Dunkin' Donuts' and Baskin-Robbins' proprietary marks following the effective date of the termination of the Franchise

Agreements would result in irreparable harm to Dunkin' Donuts and Baskin-Robbins and would constitute willful trademark infringement. Franchise Agreement § 9.4.3.

The Temporary Operating Agreements

55. The Temporary Operating Agreements ("TOAs") between Plaintiffs and Piyush Amin are terminable-at-will. Under the terms of the TOAs, Defendant Piyush Amin was not granted any franchise rights in the Hammonton, Atco, and Berlin shops. Instead, Defendant Piyush Amin was granted the right to operate the shops on a temporary basis and until such time as Dunkin' and Baskin-Robbins' (or Amin) elected to terminate the TOAs. Defendant Piyush Amin agreed to operate the shops as if the terms, covenants, and conditions of the Spring Donuts Franchise Agreement applied to those shops.

56. Dunkin' and Baskin-Robbins are not required, pursuant to the terms of the TOAs, to establish cause for termination of those Agreements.

The Subleases

57. On September 29, 2006, Defendant Admiral Donuts became a lessee of DB Real Estate Assets II pursuant to a Sublease for its shop. On May 8, 2006, Defendant Front Street Donut became a lessee of DB Real Estate Assets I pursuant to a Sublease for its shop. On September 7, 2004, Defendant Cherry Donut became a lessee of DB Real Estate Assets I pursuant to a Sublease for its shop. On September 19, 1994, Defendants Janam, Piyush Amin, Vipul Patel, and Mukesh Patel became the lessee of DB Real Estate Assets I pursuant to an Agreement to Transfer a Dunkin' Donuts Shop by the Sale of Assets, by which they were assigned all rights in a Sublease dated August 9, 1989 for the shop located at 1550 Kings Highway, Cherry Hill, New Jersey. On January 19, 2000, Defendant Donut Masters became the lessee of DB Real Estate Assets II pursuant to an Agreement to Transfer a Dunkin' Donuts Shop

by the Sale of Assets, by which they were assigned all rights in a Sublease dated February 13, 1969 for the shop located at 1410 Route 38, Cherry Hill, New Jersey. On January 25, 1996, Defendant JKP Donuts became a lessee of DB Real Estate Assets I pursuant to a Sublease for the shop located at 807 Route 73 North, Mt. Laurel, New Jersey. On March 29, 2007, Defendant Piyush Amin became a lessee of DB Real Estate Assets II pursuant to the TOAs for the shops located 235 South White Horse Pike, Berlin and 302 White Horse Pike, Atco, New Jersey. On March 29, 2007, Defendant Piyush Amin became a lessee of DB Real Estate Assets I pursuant to the TOA for the shop located New Jersey, 110 S. Whitehorse Pike, Hammonton, New Jersey. The aforementioned Subleases are collectively referred to hereinafter as the "Subleases".

58. The Subleases provide that DB Real Estate Assets I or II (as applicable) has the right to terminate the Subleases if the corresponding Franchise Agreement for the shops is terminated for any reason. Further, the Subleases give DB Real Estate Assets I or II (as applicable) the right, upon termination, to enter upon the premises and repossess the same and expel Defendants. Defendants further agreed that upon the termination of the Subleases they would promptly pay DB Real Estate Assets I or II (as applicable) any damages, costs, and expenses, including reasonable attorneys' fees, incurred by DB Real Estate Assets I or II (as applicable) as a result of the termination.

DEFENDANTS' DEFAULTS

59. Plaintiffs recently discovered that Defendants breached their agreements by the conduct described below.

60. On information and belief, Defendants have failed to pay numerous employees at overtime wage rates due for work in excess of 40 hours per week in the shops.

61. On information and belief, Defendants have failed to comply with federal and state minimum wage laws.

62. On information and belief, Defendants have failed to maintain proper payroll records for their employees.

63. On information and belief, Defendants have participated in a fraudulent scheme to avoid paying federal and state payroll taxes due and owing to the IRS and the New Jersey Department of Revenue in violation of employee income tax withholding laws and regulations.

64. Based on the foregoing, and pursuant to the applicable provisions of the Franchise Agreements, Subleases, and TOAs, on February 4, 2008, Plaintiffs sent to Defendants a Notice of Default and Termination, terminating the aforementioned agreements effective sixty days from Defendants' receipt of the Notice, stating the grounds for termination, and demanding that Defendants comply with their post-termination obligations as set forth in the agreements upon the effective date of the Notice.

COUNT I
(Breach of Contract – Franchise Agreements)

65. The allegations of paragraphs 1 through 54 are hereby incorporated by reference.

66. The conduct described herein constitutes breaches of the contractual obligations and agreements contained in the Franchise Agreements.

67. These breaches constitute good cause for terminating the agreements.

68. As a result of Defendants' actions, Dunkin' and Baskin-Robbins have suffered and are continuing to suffer irreparable injury, and have incurred and are continuing to incur monetary damage in an amount that has yet to be determined.

COUNT II
(Breach of Contract – TOAs)

69. The allegations of paragraphs 1 through 68 are hereby incorporated by reference.

70. The TOAs were terminable at will by Plaintiffs upon three weeks notice to Defendant Piyush Amin. Plaintiffs provided Defendant Piyush Amin proper notice of Plaintiffs intent to terminate the TOAs.

71. To the extent good cause is required to terminate the TOAs, these breaches constitute good cause for terminating the TOAs.

72. As a result of Defendants' actions, Dunkin' and Baskin-Robbins have suffered and are continuing to suffer irreparable injury, and have incurred and are continuing to incur monetary damage in an amount that has yet to be determined.

COUNT III
(Breach of Contract – Subleases)

73. The allegations of paragraphs 1 through 72 are hereby incorporated by reference.

74. The conduct described herein constitutes breaches of the contractual obligations and agreements contained in the Subleases.

75. These breaches constitute good cause for terminating the Subleases.

76. As a result of Defendants' actions, DB Real Estate Assets I and II have suffered and are continuing to suffer irreparable injury, and have incurred and are continuing to incur monetary damage in an amount that has yet to be determined.

COUNT IV
(Trademark Infringement)

77. The allegations of paragraphs 1 through 76 are hereby incorporated by reference.

78. The use in commerce of the Dunkin' and Baskin-Robbins trademarks and trade names by Defendants outside the scope of the Franchise Agreements and without Dunkin's and

Baskin-Robbins' consent is likely to confuse or deceive the public into believing, contrary to fact, that the unauthorized activities of Defendants are licensed, franchised, sponsored, authorized, or otherwise approved by Dunkin' and Baskin-Robbins. Such unauthorized use of Dunkin's and Baskin-Robbins' trademarks and trade names infringes Dunkin's and Baskin-Robbins' exclusive rights in their trademarks under § 32 of the Lanham Act, 15 U.S.C. § 1114, and applicable state law.

79. The acts of Defendants were and are being done knowingly and intentionally to cause confusion, or to cause mistake, or to deceive.

80. As a result of the actions of Defendants, Dunkin' and Baskin-Robbins have suffered and are continuing to suffer irreparable injury, and have incurred and are continuing to incur monetary damage in an amount that has yet to be determined.

**COUNT V
(Unfair Competition)**

81. The allegations of paragraphs 1 through 80 are hereby incorporated by reference.

82. The use in commerce of Dunkin's and Baskin-Robbins' trademarks and trade names by Defendants outside the scope of the Franchise Agreements and without the consent of Dunkin' and Baskin-Robbins is likely to cause confusion, or to cause mistake, or to deceive as to the origin, sponsorship, or approval of their goods, services, or commercial activities by another person. Such unauthorized use of Dunkin's and Baskin-Robbins' trademarks and trade names violates § 43 of the Lanham Act, 15 U.S.C. § 1125(a), and applicable state law.

83. The acts of Defendants were and are being done knowingly and intentionally to cause confusion, or to cause mistake, or to deceive.

84. As a result of the actions of Defendants, Dunkin' and Baskin-Robbins have suffered and are continuing to suffer irreparable injury, and have incurred and are continuing to incur monetary damage in an amount that has yet to be determined.

**COUNT VI
(Trade Dress Infringement)**

85. The allegations of paragraphs 1 through 84 are hereby incorporated by reference.

86. Defendants' shops are identified by signs, exterior appearance, packaging, containers, and other items on which the words "Dunkin' Donuts" and "Baskin-Robbins" appear in the same lettering style and in the same distinctive color scheme as Dunkin' Donuts and Baskin-Robbins use for the doughnut and ice cream shops operated by Dunkin' Donuts and Baskin-Robbins licensees.

87. The use by Defendants of trade dress that is identical to the Dunkin' Donuts and Baskin-Robbins trade dress outside the scope of the Franchise Agreements constitutes a false designation of the origin of Defendants' shops, which is likely to cause confusion, or to cause mistake, or to deceive the public as to the affiliation, connection, or association of their shops with the Dunkin' Donuts and Baskin-Robbins shops operated by Dunkin' Donuts and Baskin-Robbins licensees. Such adoption of Dunkin' Donuts and Baskin-Robbins trade dress violates § 43 of the Lanham Act, 15 U.S.C. § 1125, and the common law.

88. The acts of Defendants were and are being done knowingly and intentionally to cause confusion, or to cause mistake, or to deceive.

89. As a result of the actions of Defendants, Dunkin' and Baskin-Robbins have suffered and are continuing to suffer irreparable injury, and have incurred and are continuing to incur monetary damage in an amount that has yet to be determined.

Prayer for Relief

WHEREFORE, Plaintiffs pray that this Court:

- a. Enter a declaratory judgment order stating that the conduct of Defendants violated the terms of the Franchise Agreements, Subleases, and TOAs, and constitutes good cause for terminating the Franchise Agreements, Subleases, and TOAs;
- b. Enter a judgment in favor of Plaintiffs for the damages incurred by them as a result of the breaches of the Franchise Agreements, Subleases, and TOAs by Defendants;
- c. Enter an injunctive order ratifying and enforcing the termination of the Franchise Agreements, Subleases, and TOAs as of the effective date of the Notice of Termination, or as otherwise provided by applicable law;
- d. Enjoin Defendants and all those acting in concert with them from infringing upon Dunkin's and Baskin-Robbins' trademarks, trade dress, and trade names and from otherwise engaging in unfair competition with Dunkin' and Baskin-Robbins;
- e. Enter an injunctive order directing Defendants to comply with their post-termination obligations under any contract with Plaintiffs, including but not limited to the Franchise Agreements, Subleases, TOAs, Lease Riders, and Lease Option Agreements;
- f. Award Dunkin' and Baskin-Robbins judgment against Defendants for the damages they have sustained and the profits Defendants have derived as a result of their actions, and that such damages be assessed in a separate accounting procedure and trebled in accordance with § 35 of the Lanham Act, 15 U.S.C. § 1117;
- g. Award Dunkin' and Baskin-Robbins prejudgment interest in accordance with § 35 of the Lanham Act, 15 U.S.C. § 1117;

h. Award Plaintiffs such exemplary or punitive damages as are deemed appropriate because of the willful, intentional, and malicious nature of the conduct of Defendants;

i. Award Plaintiffs their costs and attorneys' fees incurred in connection with this action pursuant to the contract and § 35 of the Lanham Act, 15 U.S.C. § 1117; and

j. Award Plaintiffs such other relief as this Court may deem just and proper.

Respectfully submitted,

s/ Michael N. Morea

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