

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

CAJUNLAND PIZZA, LLC	*	CIVIL ACTION NO.
OLE TYME PIZZA, LLC	*	
CRESCENT CITY PIZZA, LLC	*	JUDGE:
PARTNERS PIZZA, LLC	*	
SELA PIZZA #1, LLC AND	*	MAGISTRATE:
SELA PIZZA #2, LLC	*	
	*	SECTION:
VERSUS	*	
	*	
MARCO’S FRANCHISING, LLC	*	
MARCO’S PIZZA HOLDINGS, LLC AND	*	
TONY LIBARDI	*	
	*	
* * * * *	*	* * * * *

COMPLAINT

Plaintiffs, CajunLand Pizza, LLC, Ole Tyme Pizza, LLC, Crescent City Pizza, LLC, Partners Pizza, LLC, SELA PIZZA #1, LLC and SELA PIZZA #2, LLC by and through undersigned counsel, hereby allege the following with knowledge regarding their own acts, and upon information and belief as to all other acts:

OVERVIEW OF DEFENDANTS’ UNLAWFUL CONDUCT

1. This action seeks compensatory damages, restitution, costs of suit, attorney fees, declarative judgment and any other relief that this Court deems proper, just, and in accordance with the applicable law arising from Defendants’ unlawful and extracontractual actions and interference with Plaintiffs’ operations, and transactions pursuant to Defendants status and related activities committed as the franchisors of Marco’s Pizza.

2. These actions include but are not limited to engaging in actions for the sole benefit of Defendants and those closely affiliated with Defendants which are performed with blatant disregard for the core business of Plaintiffs' Pizza franchises, purely for Defendants benefit, which defendants knew would create harm and in fact did harm and destroy the business of Plaintiffs.
3. Defendants intentionally and tortuously interfered with the Plaintiffs' businesses, and with contracts entered into by each Plaintiff.
4. Defendants knowingly perpetuated a scheme to interfere with Plaintiffs' right to sell and/or transfer their franchises.
5. Defendants directly interfered with the sale of Plaintiffs' franchises to a Purchaser, by refusing to permit the transfers and asset purchases after giving express approval six months earlier.
6. Upon information and belief, Defendants refused to sign the last documents needed to close the sale of all of the Plaintiffs' assets to the approved Purchaser in order to promote a purchase instead to an insider and former employee for significantly less money for the sole purpose of transferring these franchises to its own insiders, for a turnkey cost of less than 10% of the amount invested by each Plaintiff to build and operate its restaurant.

JURISDICTION AND VENUE

7. Jurisdiction is conferred on this Court by 28 U.S.C. Sec. 1332(a) as Plaintiffs are not citizens of the same state as the Defendants and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

PARTIES

Plaintiffs

8. **CajunLand Pizza, LLC**, (“**CLP**”), a Louisiana limited liability company, which is the sole member of Plaintiffs Sela Pizza #1 LLC and Sela Pizza #2 LLC.
9. **SELA PIZZA #1, LLC** a Louisiana limited liability company, d/b/a Marco’s # 5011, whose sole member is CLP.
10. **SELA PIZZA #2, LLC** a Louisiana limited liability company, d/b/a Marco’s # 5014, whose sole member is CLP.
11. **Ole Tyme Pizza, LLC**, a Louisiana limited liability company, whose members are members of CLP, as well as other investors.
12. **Crescent City Pizza, LLC**, a Louisiana limited liability company whose members are all members of CLP.
13. **Partners Pizza, LLC**, a Louisiana limited liability company whose members are members of CLP, as well as others.

Defendants

14. **Marco’s Franchising, LLC.**, an Ohio limited liability company whose principal business address is 5252 Monroe Street, 2d Floor, Toledo, Ohio (hereafter “**Marco’s**”).
15. **Marco’s Pizza Holdings, LLC**, (hereafter “**MPH**”) a Delaware limited liability company which was formed in May of 2017. Marco’s is its wholly owned subsidiary.

16. **Tony Libardi**, a person of full age of majority and a resident of Ohio, who at all times relevant herein was a senior executive with defendant Marco's and is now the President and Chief Operating Officer of defendant Marco's.

GENERAL ALLEGATIONS

17. Marco's is a pizza franchising operation that sells Marco's Pizza franchises in numerous states whereby franchisees license the rights to operate Marco's Pizza franchise locations.
18. As a franchisor, Marco's is governed by the rules promulgated by the Federal Trade Commission, in particular, the mandatory disclosures for inclusion in the Franchise Disclosure Document ("FDD"). One such purpose of requiring the franchisor to provide an FDD prior to entering into a franchise relationship is to ensure a prospective franchisee has all information necessary for the franchisee to make an informed decision, without being misled. These are updated yearly by the franchisor, and must include specific information, including, but not limited to, financial data, ownership and management of the Franchisor, state by state descriptions of the number of franchisees, the average royalty sale volume, the start-up, operational and other costs for ownership of a franchise, litigation history, and sample franchise agreements.
19. In early 2009, two future managing members and officers of plaintiff CLP, James Ray and Brian Landry, were approached by a Bobby Curtis, who, upon his representation, was a regional manager for Papa John's Pizza. Mr. Curtis pitched Ray and Landry regarding investing in Marco's Pizza, which at that time had approximately 100 locations throughout the United States.

20. Mr. Curtis then arranged a meeting in New Orleans between Ray, Landry, and two senior executives of Marcos' Franchising Services, a wholly owned subsidiary of Defendant Marco's; Bryon Stephens, vice president of New Business Development, and Cameron Cummins, vice president of Franchise Management and Recruitment. Ray and Landry invited others whom might be interested in hearing about the opportunity. The concept and "opportunity" were pitched to the group by the Marco's team.
21. Marco's was offering three types of investment in 2009 and 2010: the first was the opportunity to become a franchisee. The second was an Area Development Agreement. The third was an Area Representative Agreement.
22. The Franchisee Agreement and the Area Development Agreement were both subject to the disclosures of the annual FDD, provided to a Franchisee when for the year that the Franchisee invested.
23. The purchase of a franchise is governed by the franchise disclosure document and, within that document, there is also an option to do area development and enter into an agreement (a development agreement) for franchise stores.
24. For an Area Representative ("AR") agreement, a separate franchise disclosure document is provided. The Area Representative agreement obligates purchasers to develop and service multiple franchise stores within a designated area which is referred to as "the territory". The AR agreement governs the manner in which the AR may solicit, screen, and evaluate perspective franchisees and service franchisees who have entered into a franchise agreement. Plaintiff CajunLand entered into an Area Representative agreement.

25. Pursuant to the Area Representative agreement, CajunLand was obligated to solicit, screen, and evaluate perspective franchisees, was obligated to own a certified training store in their territory by the end of the first year after signing the AR agreement, and to provide start up and ongoing support and assistance to franchisees and monitor the performance of new franchisees.
26. Also, pursuant to the obligations of the AR agreement, there is a probationary period of two years. At the end of this period, the franchisor, defendant Marcos, may terminate the AR agreement.
27. Under the AR agreement, CajunLand was to be compensated with a share of the revenues collected for franchisees, to-wit forty percent of the initial franchise fees less \$5,000 for funded programs and forty percent of the royalty fees less advertising set asides that are collected by the franchisor from franchisees operating within CajunLand's territory.
28. Pursuant to the franchise disclosure documents for franchisees, as well that for the Area Representatives, Marcos specifically designates the fiscal year into thirteen accounting periods. Each accounting period is four weeks in length. The specific obligations of the AR are set forth in the FDD, in this case entitled "Marcos Area Rep FDD" and dated August 10, 2009.
29. To enter into the Area Representative agreement, the AR would pay an initial fee of \$3,000 for each franchise store it committed to opening in its territory. This was due in full when the Area Representative agreement was signed, and, in this matter, there was a commitment for thirty stores within the area requiring a payment of \$90,000 from plaintiff CajunLand

Pizza. The FDD for the AR estimates that the total cost of the Area Rep agreement is between \$113,800 to \$190,800 exclusive of the costs of opening the franchise store which is required as the demonstration store and certified training store. The estimated cost for that, at the time of the Area Rep FDD, was between \$173,500 and \$369,000.

30. Per the Area Rep FDD, there were eighty-six Marco's franchised outlets beginning in 2006 with an increase of twelve for a total of ninety-eight at the end of 2006; ninety-eight in 2007 with an increase of eighteen to a total of one hundred twelve at the end of 2007; and one hundred twelve at the beginning of 2008 with the opening of an additional nineteen, although operations of ten had ceased and that left a total of one hundred thirty-eight franchises of Marcos pursuant to the Area Rep FDD.
31. The Area Representative concept was relatively new within Marcos' business model. At the end of 2006, there were three ARs, 2007 there were ten ARs, and in 2008, there were twenty-four ARs. There were three that ceased operations for "other reasons". However, which stage operations may have ceased is not revealed in FDD documents.
32. Cummins and Stephens held a second meeting in Kenner, Louisiana, attended by those who were not at the earlier meeting in New Orleans. Landry had prepared a proforma based solely upon the information provided by Marco's. Stephens was so impressed that he asked if he might use it at other franchisee sales meetings.
33. Plaintiff CajunLand Pizza, LLC ("**CLP**"), was formed in July of 2009 to investing in, developing new franchises, and assisting in the operation of Marco's franchises within its territory as an Area Representative.

34. Landry and Ray, the founding members of **CLP**, continued discussions with Cummins and Stephens of **MFS** on behalf **Marco's**.
35. On December 10, 2009 CLP and Marco's entered into the Area Representative Agreement ("**AR**"). Landry prepared a five year business plan, which was sent to and approved by Stephens.
36. Stephens and Cummins heavily promoted Mr. Curtis to Landry and Ray, urging them to hire Curtis to run the AR operation, as the members of CLP were investors, not day to day managers.
37. CLP's Area Rep Agreement required it to do, among other things, solicit, screen, and evaluate potential franchisees to operate stores within the territory, and provide start-up and ongoing support and assistance to franchisees while monitoring their performance.
38. In exchange for the right of operating as the area representative, with the rights to open 30 stores within the territory, commencing in 2010 and ending in 2017, CLP paid an initial fee of \$90,000 dollars. In exchange for the payment, Marco's was to pay CLP 40% of the royalties received from stores opened by CLP and \$5000.00 of each initial franchisee fee paid to Marco's.
39. By the end of 2010, CLP had opened two stores in Slidell, both of which it owned (store No. 5011 and No. 5014, aka Sela #1 and Sela#2), ahead of the Development Schedule.
40. On June 6, 2011, Bryon Stephens approached CLP and offered it the opportunity to acquire extra territories. CLP paid Marco's an additional \$45,000 for the right to develop nine additional stores in western and northwestern Louisiana, Texas and southwest Arkansas.

41. CLP successfully developed and opened six stores within two years. The cost to open each store required payment of the initial franchise fee of \$25,000. Two of the restaurants were owned by CLP's subsidiary LLCs, Sela Pizza #1 and Sela Pizza #2, and the others were owned by CLP members with a few additional investors. Five of these franchises are the Plaintiffs herein.

FRANCHISE AGREEMENT FACTS

42. **Marcos** offers franchises for Marcos Pizza Stores at agreed upon locations. Under the franchise agreement, Marcos grants a franchisee the right and the franchisee accepts the obligation to operate a store at the agreed upon location.

43. The FDD dated August 2, 2010 was provided to Plaintiffs Pages 1 and 2 describe the development, ownership and affiliates of Marco's as follows:

- A. **Marco's** was exclusively owned by **Cleveland Marcos, LLC** and its manager, **JAB Management, LLC**, which is owned and controlled by **John A. Butorac, Jr.**, the president of Marcos. Cleveland Marcos and JAB Management share the principal business address with **Marco's**. Cleveland Marcos also owned four Marcos Pizza stores in the greater Cleveland area.
- B. In January of 2004, **Marco's** acquired the assets of Marcos, Inc. ("**MI**") which had owned the right to franchise the Marcos Pizza systems of operation. **MI** operated company - owned Marcos Pizza Stores from its beginning in 1978 until it transferred that to its affiliate, Marcos Pizza, Inc. ("**MPI**") in January 2001. **MI**

granted Marcos Pizza franchisees from January, 1979 until January 2004 and sold one hundred eighteen Marcos Pizza franchises.

- C. From the period of 2004 until 2010, MI and MPI have operated between thirty-six and forty-one Marcos Pizza stores that are similar to the franchised stores being offered.
- D. **MPI** was operating sixteen stores in Ohio in 2010. It also owns the right to develop additional stores in parts of Ohio and parts of Florida.
- E. **MPI** are also located in the same building as **Marcos**, in Toledo, Ohio.
- F. Marcos Franchise Services, LLC ("**MFS**") was the designated broker in August of 2010 for the sale of franchises and certain support services for the franchises. **Marcos** retains the right to sell franchises but intends that new franchise applications will be recommended by **MFS**.
- G. **MFS** was managed by **MP Management No. 2, LLC** which was managed and controlled by **John A. Butorac, Jr.**, the president and CEO of **Marcos**. Certain **MFS** employees, namely, **Bryon Stephens** and **Cameron Cummins**, have organized and performed the franchise sales functions of **MFS**. **MFS** is paid a share of the initial franchise fee and royalty fees for those services.
- H. **MFS Realty, LLC** is a wholly owned subsidiary of **MFS** and provides real estate lease support services to **MFS**. **MFS Leasing, LLC** is a majority owned subsidiary of **MFS**. **MFS Leasing, LLC** provides Marcos Pizza Store leasing services at no cost to qualify area representatives and franchisees.

- I. Additional affiliates were disclosed in this agreement as follows:
- a. **Authentic Pizza, LLC** owned thirteen Marcos Pizza stores in Cleveland, Ohio and ten percent of this LLC was owned by **Cleveland Marcos, LLC**.
 - b. **45 Pizza, LLC**, formed in June of 2004, operates two Marcos Pizza stores in Toledo, Ohio.
 - c. **Marcos Indiana, LLC** operated four Marcos Pizza stores in Indianapolis, Indiana.
 - d. **Cleveland Stores No. 1, LLC**, formed in December of 2004, owns three Marcos Pizza stores in Cleveland, Ohio.
 - e. **Marcos Assurance, LLC** (“**MA**”) is a wholly owned subsidiary formed in March of 2009 and it offers limited guarantees on loans, leases, and other financing programs sponsored by **Marcos**. These guarantees are an obligation of **MA** and not of **Marcos**.
 - f. **Marcos Capital, LLC** was formed in February of 2009 and offers to make private equity type investments in new Marcos Pizza Stores owned and operated by independent franchisees. **MC** is managed by another affiliate, **MP Management No. 6, LLC**.
 - g. **Marcos Pizza Distribution, LLC** (“**MPD**”) is affiliated with Marcos by virtue of common ownership but Marcos does not own any part of that company. **MPD** was created on March 23, 2009 to distribute food, packaging, and cleaning and maintenance supplies to Marcos Pizza stores

in the Ohio, Michigan, and Indiana areas. Certain of the Marcos executives, including the president, **John A. Butorac, Jr.** serve executive roles with **MPD**. **MPD** is headquartered in Maumee, Ohio.

44. All of the above affiliates were based at the 5252 Monroe Street, Toledo, Ohio address with the exception of MPD. None of the affiliates except MI, has ever offered franchises for sale.
45. Marco's key personnel, per the FDD of August 2, 2010, included:
 - a. **John A. Butorac, Jr., President of Marcos** since 2004 and was the sole manager in the Ohio Limited Liability Company filing. He also served as a **consultant to MI** and until January of 2004, he was the **president of Cleveland Marcos, LLC and all of the affiliates notes above.**
 - b. **Vice-President and Chief Financial Officer, Kenneth Switzer**, as of August of 2010 had been the vice-president and chief financial officer of Marcos since January of 2004. He has also been the vice-president and chief financial officer of MPI since it was formed in January of 2001 until January of 2004. He also is a majority shareholder in CRH, Inc. since September of 2001.
 - c. **Vice-President of Operations, Jim Strachan**, became the vice-president of franchise operations in January of 2009. From January of 2004 until January 2009, he was **Marcos Franchise Director**. From August of 2001 until January of 2004, he was the **franchise director of MI**. In addition, in December of 2008, he became the **area representative** in Nashville, Tennessee.

- d. **Dan O'Malley** was the **Area Representative Coordinator** since January of 2008. From June of 2006 until January of 2008, he was the **Franchise Representative**. Prior to that, he was a franchise representative for another pizza company in Cleveland. In addition, he owned a Marcos Pizza franchise from May of 1997 until September of 2004 and, as of **August of 2010, he was a minority owner of XLC, Inc.**, a Michigan corporation that was operating two franchise stores.
 - e. J. Bryon Stephens, aka **Bryon Stephens**, has been the Vice President of New Business of **MFS** since January of 2006. Previously, he had been an independent consultant for Marcos from July of 2004 until March of 2005.
 - f. **Cameron Cummins** was the Vice President of Franchise Marketing and Recruitment for **MFS** since January of 2006.
46. In January of 2016 Marco's terminated the AR agreement with CLP. The parties unsuccessfully mediated the dispute. The termination increased the royalties due from CLP stores, and lessened its revenue stream, which was not acceptable to the CLP investors.
47. CLP located a buyer who was a franchisee in another state, who wished to purchase not just the two restaurants owned by CLP, but also the other three Marco's franchise restaurants in southeast Louisiana that had been sold by CLP to franchisees and then developed and supported by CLP during their Area Rep agreement. These are the additional Plaintiffs in this action.

48. Plaintiffs' investment to open these five stores was more than \$1,750,000. When the relationship deteriorated between Plaintiffs and Defendants in 2017, Plaintiffs wanted to sell all five stores to a then current franchisee in Florida, Ketan Desai.
49. On November 3, 2017, Marco's issued its written approval of the purchase to both the buyer and the sellers, per the requirements of the Franchise Agreement.
50. When a new franchise is purchased, the franchisee's initial capital outlay to Marco's and affiliated suppliers is substantial. These include pre-payment of the franchise fee, leasing and building out an approved location to the exact specifications of the franchisor. The cost of everything, including signage, refrigerators, freezers, counters, specific ovens, furniture, computers, software, uniforms, delivery signs, boxes, countertops, cash registers, and the trade dress décor, as well as a \$35,000 brand launch fee, is borne solely by the franchisee, who must strictly comply with the Franchisor's specifications and choice of menu and suppliers.
51. The 2018 FDD states that the cost to **begin** operation of a store ranges from \$289,780 to \$528,330 for a Store with limited seating, and \$383,780 to \$762,530 for a store with more seating.¹
52. Pursuant to the FDD, Marco's offers preferred buyers/former or current employees and others a discount on the initial \$25,000 franchise fee. However, this altruism does not have

¹ Marco's 2018 Franchise Disclosure Document, p. 1.

a real effect on Marco's bottom line, as the initial franchise fees comprise only a fraction of its revenue.

53. Marco's also profits from all other business requirements of franchisees, including but not limited to equipment purchases from a company owned by its insiders, food products from its own distribution chain, rebates with preferred vendors, computer software and hardware fees, upgrades and training, and marketing and advertising funds for which there is assurance that said funds will be spent in a franchisees market.
54. Dan Cook, who had partnered with Travis Worley, a Marco's former employee, and the person whom Marco's had assigned to manage the Louisiana stores when they terminated the AR Agreement, was operating several stores in Arkansas.
55. During the period when Plaintiffs were cementing the financing details of the sale to Mr. Desai, Marco's requested that plaintiffs instead transact with a buyer which they preferred: Dan Cook and Travis Worley. According to Marco's, Mr. Cook supposedly had purchased and run several franchise stores in Arkansas that Marco's claimed had been "distressed". Marco's preferred buyer, Dan Cook, submitted an offer, which was substantially lower than the offer CLP had independently secured.
56. Mr. Cook's offer to purchase these same five stores was not acceptable to Plaintiffs, as it comprised a 40% reduction in the sale price already agreed upon with Mr. Desai, and seller financing at a substantially reduced interest rate with a much longer term.
57. In April of 2018 the Asset Purchase Sale documents were signed and sent to Defendant

Marco's per the requirements of the Franchise Agreement, so that the transfer of each license could be effectuated between each Seller and the buyer to have the license granted to each franchisee transferred to the buyer.

58. The sale to Ketan Desai was set for on May 21, 2018.
59. Less than a week before the scheduled closing, on May 16, 2018, Marco's management team scheduled a conference call with Plaintiffs' representatives. On that call, Marco's advised that they were withdrawing their earlier written consent, stopping the transaction to the detriment of the Plaintiffs, who had made costly business decisions based upon the pending sale, and the buyer, who had also relied upon and made decisions from his home state in order to move to Louisiana and own and operate the five restaurants.
60. The last-minute reversal by Marco's, days before the closing was to occur, left Plaintiffs in a difficult position, as two of the stores had been kept open specifically for the sale. Marco's suggested that Plaintiffs/sellers reach out to Mr. Cook, their favored insider, to see if his earlier offer still stood.
61. On May 17, 2018, Debbie Allen, Marco's Director of Corporate Compliance, emailed to state that she had reached out to Dan Cook regarding his previous five store proposal.
62. Ms. Allen subsequently advised Plaintiffs that Mr. Cook was unavailable until after a franchise conference.
63. On June 1, 2018, Marco's closed the location in Mandeville owned by Plaintiff Partner's Pizza, citing health and safety concerns, which in fact had been rectified. The franchise was terminated, effective immediately.

64. Upon receiving this information on the morning of June 1, 2018, Partner's Pizza member Jim Ray went to the store and spoke with the manager and inspected the premises. Marco's stated based for closing the Mandeville location was an insect infestation and water pooling in the walk-in cooler.
65. Mr. Ray observed a single dead insect under a sink in plain site and a small puddle in the walk-in. He cleaned up the puddle and picked up the insect.
66. Upon the many subsequent trips to the premises, Mr. Ray continuously checked the walk-in cooler for water, and looked for any sign of insects. Neither ever re-appeared.
67. Subsequent to the termination by Defendants, Dan Cook contacted Partner's Pizza, and offered to purchase the equipment and improvements, and sent his team into inspect same on June 18, 2018. He offered \$40,000 for these items.
68. On or about June 20, 2018, Jim Ray, a managing member of Partner's Pizza, received an email from Debbie Allen at Marco's, which stated the following: "I see Brian was the only signer on the franchise agreement. Although the franchise agreement has been terminated, we in good faith will allow the term of the franchise agreement transfer to Dan. We will forward a transfer agreement for your signature through DocuSign over the next few days." This email is not about the purchase of equipment; it is about the transfer of the franchise agreement. This is the same franchise agreement that was supposed to be sold and transferred to Mr. Desai one month earlier for \$150,000 plus interest.
69. The only difference between the proposed sale to Mr. Desai and the proposed sale from Debbie Allen was that Marco's insiders were provided, by Marco's, with an opportunity to

obtain the Franchise for the store and its equipment for one quarter of the price for which it had been scheduled to be sold one month earlier.

70. The closure by Marco's of this store, commencing with threats of closure the day after the call between Marco's and the Plaintiffs when Marco's nixed the deal with Mr. Desai and encouraged that a deal be made with Dan Cook, followed by the closure and termination of another of Plaintiffs' stores by Marco's, was not coincidence but coercion, intending to bestow a benefit upon a favored former employee, Travis Worley, and Dan Cook, insiders.
71. On July 7, 2018, Dan Cook and Travis Worley made an offer for all five of Plaintiffs' stores. This offer was 50% of the offer from February 19, 2018, and one quarter of the price that Mr. Desai had agreed to pay. Cook wanted to pay this over a 5 year period, at 4% interest with no money down.
72. Plaintiff Ole Tyme Pizza, which had been struggling and stayed open since November of 2017 to wait for the purchase by Mr. Desai, and then suffered through the cogitations by Cook, decided it could no longer stay open. It subsequently closed and sold its equipment for \$25,000.
73. Plaintiff Sela #2 was then told by its food supplier, the only Marco's approved vendor, with whom it had always been current, that going forward all purchases had to be made with cash, instead of the terms it had previously enjoyed. This was punitive and a fabrication. As the store does not get paid for the food it purchases until customers buy it, and there are no accounts receivables, it was impossible to keep Sela #2 open due to cash flow.

74. Plaintiff Sela #2 closed its doors on July 15, 2018 and contacted Marco's to see if they wanted the equipment and whether they were going to waive their right of first refusal on the lease. Scott Escarra, as a managing member of CLP, contacted Marco's repeatedly, and was told by Debbie Allen that Defendants "were still analyzing the Louisiana market."
75. This analysis of corporate "analyzing the market" resulted in no communication regarding the Franchisor's intentions regarding the closed stores. Marco's mandatory lease rider did not permit a landlord to sublet or re-lease any closed store until Marco's had either executed its right of first refusal or rejected same.
76. While Marco's would not decide, Sela #2 continued to pay the rent on the closed store.
77. The delay in a response caused the loss of a potential tenant to replace the Sela #2 store, and the landlord has now commenced collection actions to be paid for the balance of the lease as there was not a timely response from Defendants.
78. In September of 2018, Plaintiff Crescent City Pizza was approached by Dan O'Malley, a member of Zydeco LLC, another Marco's insider, who was a former executive, for Marco's and franchisee owner in several other states. Mr. O'Malley and his partners in Zydeco LLC, which included Jim Strachan, former Vice President of Operations purchased this fully operational and active franchise for one quarter of the price that Crescent City Pizza would have received if the sale to Desai had been permitted to close. That sale was completed in November of 2018.

79. In October of 2018, CLP was advised that the last open store, Sela #1, which was also profitable, with sales above the average for the Marcos franchises, would be terminated unless it purchased new hardware and software for a cost of up to \$40,000. This store could not financially handle a purchase of this size, and its existing hardware and software were operating well and were still supported by the software vendor.
80. At the end of October, Sela #1 received a waiver from Marco's regarding the new purchase.
81. In December of 2018, Marco's offered Sela #1 the opportunity to stay open by making a deposit to purchase Foodtec, which would give Sela #1 time to negotiate a sale with Marco's insiders, Dan O'Malley and Jim Strachan.
82. On December 26, 2018, The Sela #1 store was told that its franchise was terminated. On December 30, before the store was permanently closed, Dan O'Malley on behalf of Zydeco LLC made an offer to buy the store if Marco's would approve, if he could get a new lease, and pay a price that was 20% of the amount in the contract with Desai, and pay over a thirty-month period, no interest, first payment in 90 days.
83. This was rejected by CLP. It did not accept the offer from the insiders of \$30,000 for its restaurant, Sela#1, which had weekly sales translating to yearly sales above the purported mean as released in Marco's FDD document from April of 2018.
84. Keith Sizemore, Marco's Vice President for New Territory Development, then entered the negotiation, attempting to strong arm a sale price well below market. Ostensibly Sizemore was negotiating for the equipment, but he was actually negotiating for Dan O'Malley to purchase it, rent the space, and get the franchise, for less than 20% of the Desai deal.

85. Sela # 1 paid two months' rent waiting for O'Malley and Sizemore to make definitive offers.
86. The draft Asset Sale for furniture, fixtures and equipment and Bill of Sale documents, when finally provided to Sela #1 after more than two months, included specific provisions that indicated the purchaser believed it was buying more than just the furniture, fixtures and equipment. These included "Issuance of "MARCO'S PIZZA®" Franchise Agreements. The approval of this Agreement, and the transactions contemplated herein, by Marco's Franchising, LLC ("Franchising"), as the franchisor of the Business, and the issuance to the Purchaser of a valid "Marco's Pizza" Franchise Agreement (the "Franchise License") for the Transaction Store." Other clauses in the document provided by Dan O'Malley and Zydeco LLC included personal guarantees by individual members, confidentiality clauses, the granting of a Power of Attorney to the Purchaser, the tender of business records, and a warranty of financial condition.
87. A contract for the furniture, fixture and equipment was clearly not what was evidenced in the documents prepared by Purchaser. The Seller then incurred additional legal expenses to have the agreement properly negotiated and edited to remove all references which implied that this was the sale of an ongoing business, required personal guarantees by individuals, confidentiality, and the granting of a Power of Attorney to the Purchaser.
88. Despite the removal of these provisions in the contract, the actual transaction was the sale of a completely turnkey Marco's store to two of its former executives free from the outlay

and investment of \$500,000 or more to initially purchase a franchise, build it out and provide the equipment in accordance with the precise specifications of Marco's.

89. Marco's preferred buyer in any location, and certainly in southeast Louisiana, is delivered the opportunity to obtain a fully operational, fully equipped existing business, complete with a customer base, trained employees, and suitable retail location with signage, all for one tenth of the capital outlay required to get the business operational initially. This sweetheart deal comes with a significantly lower or waived franchise fee, other reduced costs, and eliminated any opportunity for the selling and /or terminated franchisee to recoup any of its investment.
90. When Marco's terminated this last franchise, they have gave themselves and their insiders the opportunity, pursuant to the Franchise Agreement, to purchase just the equipment at fair market value, which, upon information and belief, is between \$25,000 and \$50,000, without paying to SELA #1 anything else for this restaurant that was operating profitably and well within the parameters of the other franchisees throughout the country.
91. Franchises for sale with sale numbers similar to Sela #1, that was closed by Marco's on December 31, 2018, are selling for \$230,000 to \$370,000 or more, depending upon location. Marco's insiders, Dan O'Malley and Jim Strachan, offered for this turnkey store while it was still open.
92. Upon information and belief, Marco's engages in unfair and deceptive trade practices, targeting area representatives and initial franchisees as they have done to the Plaintiffs herein. Marco's engages in the pattern and practice of collecting the initial fees and

royalties associated with the original area representative and early franchisees, while allowing these parties to make all the required capital expenses to get the businesses operational. Marco's then leverages its superior power to squeeze out the area representative and franchisees.

93. Marco's takes advantage of these failing or failed locations, creating or attempting to create additional franchisees with lower entry costs, as the new franchisees purchase the recovered equipment of the defunct franchisees, with Marco's assistance as the lien holder of the equipment.
94. Marco's engaged in a pattern of this course of conduct, which represents only a short-term interruption in royalties, but creates immediate positive cash flow for the new owner of the franchise, enabling these insiders to continue to purchase other failed franchises, which would not have failed had the Defendants not engaged in the unfair trade practices.

FIRST CAUSE OF ACTION

**Violation of the Louisiana Unfair Trade Practices and
Consumer Protection Law, La. R.S. 51:1401 *et seq.***

95. Plaintiff realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.
96. The Louisiana Unfair Trade Practices Act ("LUTPA") prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." La. R.S. 51: 1405 *et seq.*

97. Marco's violated LUTPA by unfairly, and without just cause, orally retracting the written approval for the sale of the Plaintiff franchises, five months after giving its written approval, and just five days prior to the closing date for the sale of the five franchises, and after the Plaintiffs had incurred significant expense. These expenses included keeping certain of Plaintiffs' stores open which had become non-profitable due to rising food costs solely so that the Purchaser would be able to acquire an ongoing concern, as well as expenses for legal and administrative costs in anticipation of the sale. Marco's last-minute refusal to execute the transfer of the licenses held by each to the purchaser was deceptive, and unfair, as Marco's had known of the deal and given its approval five months previously, to each Plaintiff herein, as well as to the Buyer, via letter.
98. Marco's failure to either kill the sale at the outset or to permit it to go forward as planned was deceptive and unfair. It continued to reap the benefits of collecting the royalties from the five stores, as their royalties are guaranteed regardless of profitability. This delay damaged all Plaintiffs, who were kept their stores open to enable the sale to go forward, despite decreasing profits.
99. Marco's violated LUTPA by utilizing its power to interfere and block the sales of the Plaintiff's franchises.
100. Marco's violated LUTPA by interfering with Plaintiffs' contract with the bonafide purchaser in order to make the stores available to an insider and favorite franchisee, on terms beneficial to those person/entities and detrimental to the Plaintiffs. Marco's

interfered to such an extent that it scheduled conference calls with the sellers and its new “favored” buyer.

101. After blockading the sale to Mr. Desai, Marco’s then tried to push through the sale of the five stores owned by Plaintiffs, which were each built, developed, and equipped for more than \$300,000, to their former employee and favored buyer, at a and well below the price which the Sellers had negotiated with the willing purchaser.
102. Marco’s violated LUTPA when the day after the area representative told Plaintiff Partners’ Pizza that the inspection was up to standard, that same Marco’s employee falsified infractions to shut down this store on no notice. This was done, upon information and belief, to force the Plaintiffs to accept the significantly below market lower offer made by an insider after Defendant destroyed the pending sale with Ketan Desai.
103. Marco’s violated LUTPA by leveraging its superior bargaining power to promote the interests Marco’s insiders and former employees at the expense of non-insider franchisees and area representatives.
104. Marco’s violated LUTPA by forcing the remaining CLP franchise to close its doors on Dec. 30, 2018 when this Seller rejected an offer from an insider to purchase the open and operational, profitable store for \$30,000.
105. The refusal to accept \$30,000 for the ongoing franchise caused the Marco’s Vice President to ask that store to invest in an expensive new software and hardware system just to stay open so the insiders O’Malley and Strachan could arrange to purchase the store for \$30,000 resulted in store closure by Marco’s.

106. Defendants' acts were and are unconscionable, unfair, deceptive, and misleading to CLP and territory franchisees.
107. Because of Defendants' unconscionable, unfair, deceptive acts, Plaintiffs have suffered damages including, but not limited to, the costs incurred to keep the stores open for a transaction which Marco's blocked; the transactions costs associated with preparing the franchisees for sale; the loss of the sale to Ketan Desai, arbitrary closure of Plaintiffs' stores to ensure that insiders were provided with opportunities at the sole expense and to the detriment of Plaintiffs, and numerous other losses to be discovered.
108. Pursuant to LUTPA, Plaintiff is entitled to recover their reasonable attorney's fees and costs incurred in bringing this action. See La. R.S. 51:1409.

SECOND CAUSE OF ACTION

Tortious and Intentional Interference with Plaintiffs' Agreement to Sell its Franchises

109. Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.
110. The actions of Tony Libardi, described above, constitute a tortious and intentional interference with Plaintiffs' business. Marco's is vicariously liable for the acts and omission of its officers, specifically Tony Libardi and other employees who actively interfered with and prevented the sale of the Plaintiffs' ownership interests to Ketan Desai.

111. The actions of Marco's officers described above, constitute a tortious and intentional interference with Plaintiffs' business relations, which was not for the protection of Defendants but solely to the detriment of Plaintiffs' herein.
112. A contract for the sale of its assets existed between Plaintiffs and Ketan Desai, and Marco's was and is fully aware of the contract.
113. After Defendants granted written approval in November of 2017 for the transfer of Plaintiffs' interest to Ketan Desai, Defendants delayed affixing its signature upon the Franchise Assignment Documents of the purchase agreement on the negotiated terms.
114. Upon information and belief, Tony Libardi, the President of Marco's since November of 2017, was the individual who was responsible for the interference with the contract between the Plaintiffs and Ketan Desai.
115. After sabotaging that sale, Defendants, without justification or cause, and based upon the instruction of Defendant Libardi, attempted to force plaintiffs herein to sell to the Marco's former employee and favored insider on terms significantly less lucrative than had been negotiated in an arm's length transaction with Mr. Desai.
116. After Defendants prevented the transaction with Mr. Desai on five days' notice, which would have immediately released Plaintiffs from further expense and liability, the Plaintiffs suffered immediate harm.
117. As a direct and proximate result of Defendants' tortious interference with the Plaintiffs' contract with Mr. Desai, Plaintiffs' have suffered considerable damages, which have resulted in the closure of the franchises owned by Plaintiffs CLP, Sela # 1, Sela #2, `Ole

Tyme Pizza and Partners Pizza, and a fire sale for 25% of the amount it would have received had Plaintiff Crescent City Pizza been bought sold to Mr. Desai on May 21, 2019.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- (a) Declare Defendants' acts and practices as described herein are in violation of the Louisiana Unfair Trade Practices Act;
- (b) Declare Defendants' acts and practices to be a tortious interference with contract;
- (c) Award Plaintiff statutory damages to the fullest extent allowed by law;
- (d) Treble Damages;
- (e) Grant Plaintiffs judicial interest from the date of this demand;
- (f) Grant cost of suit, including reasonable attorneys' fees, costs and expenses, and
- (g) Grant all such other relief as the Court Deems appropriate.

Respectfully Submitted,

MARTZELL, BICKFORD & CENTOLA

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