

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

COUNTY OF DURHAM

CASE NO.: 17CV23173

PURNIMA SANGHRAJKA )

and )

CARY FOODS, INC. )

Plaintiffs, )

v. )

FAMILY FARE, LLC )

and )

M.M. Fowler, Inc. )

Defendants )

**VERIFIED COMPLAINT**

DURHAM COUNTY, N.C.  
2017 MAY 12 PM 4:08

FILED

The plaintiffs Cary Foods, Inc., and Purnima Sanghrajka, acting by and through their undersigned counsel, hereby file this Verified Complaint against the Defendants, M. M. Fowler, LLC, and Family Fare, LLC, and allege as follows:

**I. PARTIES**

1. The plaintiff Cary Foods, Inc. is a North Carolina corporation, with its principal office located at 2000 Jadewood Drive, Morrisville, Wake County, North Carolina. Ms. Purnima Sanghrajka, a resident of Morrisville, Wake County, North Carolina, is the sole shareholder, officer and director of the plaintiff Cary Foods, Inc.

2. The defendant M.M. Fowler, Inc. ("Fowler") is a North Carolina corporation, with its principal office at 4220 Neal Road, Durham, North Carolina. Fowler at all relevant times conducted business in Durham, North Carolina, and throughout the state of North Carolina.

3. The Defendant Family Fare, LLC ("Family Fare", or collectively with Fowler "defendants"), is a North Carolina limited liability company, with its principal office at 4220 Neal Road, Durham, North Carolina. Family Fare at all relevant times conducted business in Durham, North Carolina, and throughout the state of North Carolina. Fowler, and Family Fare, are affiliated and/or subsidiary entities.

## **II. JURISDICTION AND VENUE**

4. This court has jurisdiction over this action, and of the parties hereto, pursuant to N.C.G.S. §7A-240, and N.C.G.S. §1-253 *et seq.* Venue is proper in this court pursuant to N.C.G.S. § 1-82, and pursuant to the venue selection provision of section 33(b) of a certain Franchise Agreement between the parties more fully discussed after this.

5. The parties have complied with the contractual non-binding mediation provision of section 33(a) of the Franchise Agreement. A mediated settlement was not reached.

## **III. GENERAL ALLEGATIONS APPLICABLE TO ALL CAUSES OF ACTION**

6. The issues in dispute relate to the following relationships between the plaintiffs and the defendants:

- a. Since 2006, the plaintiffs have operated a convenience store, including the sale of petroleum products under the trade name/mark “BP”, from premises owned and/or controlled by the defendants, located at 4525 Chapel Hill Blvd, Durham, NC (the “Garrett Road” store hereafter). Until December 2013, that relationship was characterized by the defendants as that of a “contract operator”; and
- b. On or about December 31, 2013, Fowler, in conjunction with its affiliate/subsidiary Family Fare, converted the Garrett Road store to a franchise relationship between defendant Family Fare and the plaintiffs; and
- c. In December, 2013, the defendants required the inclusion of a convenience store, and gas station facility, owned by the defendants located at 1201 Raleigh Road, Chapel Hill (the “Glen Lennox” store” hereafter), as a component of the franchise granted to the plaintiffs, which included the Garrett Road store. Both stores continued to sell petroleum products under the “BP” trademark/name after December 2013.

7. Before the creation of a franchise relationship by the defendants on or about December 31, 2013, which included both stores, the plaintiffs had operated only the Garrett Road store since 2006, under the purported “contract operator” relationship created by the defendants. As a result of the efforts of the plaintiffs, the performance of the Garrett Road store increased significantly.

8. The terms of the Garrett Road “contract operator” agreement(s) were drafted

unilaterally by the defendants, were not negotiated, were presented on a “take it or leave it” basis to the plaintiffs by the defendants, and were adhesionary.

9. The defendants had approximately 80 “contract operators” in North Carolina in 2015, when defendants’ unilaterally decided they were going to convert those “contract operator” relationships to franchise relationships. Based upon the plaintiffs’ knowledge and belief, at the time this decision was made all of defendants’ “contract operators” were operating convenience stores, and selling petroleum products under the “BP”, “Shell”, or “CAROCO”, trademarks/names.

10. After having made the decision to convert the “contract operators” to franchisees, the defendants scheduled a series of meetings with the then “contract operators”, consisting of several operators at a time. At those meetings, based upon information and belief, the defendants disclosed their franchise conversion intentions to the then Fowler “contract operators”, and the fact that such franchise relationships would be with the defendant Family Fare, pursuant to rights granted by the defendant Fowler to Family Fare.

11. The plaintiff was excluded from such meetings.

12. At, or in conjunction with, the defendants’ meetings with the then “contract operators” in 2013, the attending “contract operators” were provided franchise disclosure documentation required pursuant to federal law, known within the franchise industry as the FDD. *See, Exhibit 1* attached to this Verified Complaint. Applicable franchise disclosure law requires:

- a. That all franchisors such as the defendants disclose detailed information related to 21 separate categories (*i.e.* as responses to 21 separate “Items”) relevant to the franchise offering, including information responsive to Items 6 (“other fees”), 7 (“estimated initial investment”), 9 (“franchisee’s obligations”), 17 (“renewal, termination, transfer and dispute resolution”), and 20 (“list of outlets and franchise information”) in the form of detailed tables; and
- b. That all franchisors such as the defendants provide to prospective franchisees in the FDD document copies of all contractual agreements related to the franchise offering/relationship including, in the case of these defendants, the proposed Family Fare franchise agreement, and real estate lease agreement; and
- c. That all prospective franchisees are required to be provided with a franchisor’s FDD documentation at least 14 days before entering into a franchise relationship and/or paying to the prospective franchisor any amounts related to the prospective franchise relationship; and
- d. That the franchisor is required to obtain a signed receipt from the prospective franchisee confirming and acknowledging receipt of the franchisor’s complete FDD documentation at least 14 days before entering into a franchise relationship. The 14 day period, and receipt, requirement applies to any amendments that the franchisor may seek to make with

regard to the franchise relationship represented to the prospective franchisee in the FDD documentation.

13. Prospective franchisees are intended, and expected, to rely upon the completeness, and accuracy, of the representations made by franchisors, including in this case such representations made by the defendants with regard to all aspects of the franchise relationship offered to prospective franchisees, including the plaintiffs.

14. The defendants' FDD, including the Family Fare franchise agreement appearing as "Exhibit A" of the defendants' FDD document, expressly represented to prospective franchisees, including the plaintiffs, that:

- a. If the franchise was later sold by a franchisee to a 3<sup>rd</sup> party, a "transfer fee" of 10% of that sale price was to be paid to the defendants. **Exhibit 1** attached, FDD Item 6, p.11, and FDD Item 9, page 25; and
- b. The same 10% "transfer fee" was expressly disclosed at section 26, page 34, of the represented franchise agreement comprising Exhibit A of the defendants' FDD document; and
- c. Within the defendants' FDD documentation, there was no other contrary, nor ambiguous, representation made to prospective franchisees, including the plaintiffs, with regard to the 10% transfer fee that would apply to the sale by any franchisee of a franchise to a 3<sup>rd</sup> party.

15. Based upon plaintiffs' knowledge and belief, it was not until after the defendants had met with each of its other "contract operators" earlier in 2013, all of whom were being offered Family Fare franchise relationships, that the defendants finally sought to

meet with the plaintiffs in late November, 2013, to inform the plaintiffs that the defendants intended to convert plaintiffs' relationship from that of a Fowler "contract operator" to a franchise relationship, consistent with the conversion of defendants' relationships previously communicated to all of the defendants' other Fowler "contract operators".

16. At the time the defendants' met with the plaintiffs, a copy of the defendants' Family Fare FDD documentation (Exhibit 1 attached), which is believed to be consistent with the documentation provided to the other "contract operators" being converted by the defendants to franchises, was provided to the plaintiffs. This included the express representations of the defendants' 10% "transfer fee" contained in FDD disclosures (**Exhibit 1** attached to this verified complaint), in Item 6 (p. 11), Item 9 (p. 25), and in the defendants' represented franchise agreement (FDD Exhibit A), at section 26 (p.34).

17. Contrary to the conversion by the defendants of the other Fowler "contract operators", the plaintiffs were informed that they would be required to take on, as a component of the defendants' franchise offering, the operations of the Glen Lennox store, in addition to continuing the operations of the Garrett Road store plaintiffs had been operating since 2006.

18. The defendants' Glenn Lennox store was a poorly performing store that the plaintiffs did not want to take over the operations of.

19. When the plaintiffs informed the defendants that the plaintiffs did not want to take on the operations of the Glen Lennox store, defendants' representatives informed the plaintiffs that the two (2) stores would only be offered as a "single franchise package",

that the plaintiffs could take-it-or-leave-it only on that basis, and that the defendants would not allow the conversion of the plaintiffs' Garrett Road store to a franchise with the plaintiffs unless the plaintiffs agreed to also take the poorly performing Glenn Lennox store as part of a single franchise relationship.

20. The operation of the Garrett Road store was the plaintiffs' sole means of income and support, and the defendants knew that to be the case. Therefore, in addition to unilaterally drafting the FDD documentation, including the franchise agreement, and the lease agreement for the proposed franchise offering of the two (2) stores combined as a single franchise, the defendants knew that the plaintiffs had no alternative other than to accept the defendants' requirement that the plaintiffs accept both the Garrett Road store, and the undesirable Glen Lennox store.

21. Being faced with the loss of her sole means of livelihood and support, the plaintiff Sanghrajka, the sole shareholder, officer and director of the plaintiff Cary Foods, had no reasonable alternative but to proceed with the take-it-or-leave-it "package" franchise of the Garrett Road store with the undesirable Glen Lennox store.

22. On or about December 4, 2013, the defendants provided plaintiffs with the FDD documentation provided to the defendant's other Fowler "contract operators" being converted to franchises by the defendants, **Exhibit 1** attached.

23. On or about December 19, 2013, plaintiff Sanghrajka, as the sole shareholder, officer and director of the plaintiff's Cary Foods, Inc., met with the defendants' representatives to execute the franchise agreement, store leases, and other franchise documentation previously disclosed to her in the defendants' FDD documentation.

24. The terms of the franchise agreement documentation the defendants required the plaintiffs to execute were drafted unilaterally by the defendants, were not negotiated, were presented on a “take it or leave it” basis to the plaintiffs by the defendants, were adhesionary, unconscionable and neither prepared nor presented fairly or in good faith.

25. At the time of execution of the franchise documentation the plaintiff Sanghrajka was presented by the defendants with an additional document entitled “addendum” to the proposed franchise agreement. **Exhibit 2** attached to this verified complaint. That “addendum” had not been previously disclosed or provided to the plaintiffs.

26. Within the proposed “addendum” it was stated that defendants would impose upon the plaintiffs a “transfer fee” of 50% of any sale price, rather than the 10% “transfer fee” that had been uniformly disclosed to all other “contract operators” being converted by FF to franchises, and which 10% fee had also been expressly disclosed to the plaintiffs in the defendants’ FTC disclosure documentation and the represented franchise agreement.

27. The defendants again represented to the plaintiffs that, if the “addendum” setting forth the 50% “transfer fee” was not signed at that time, the plaintiffs would need to immediately cease operations at the Garrett Road store, and vacate that store, thereby depriving the plaintiff Sanghrajka of her sole means of livelihood and support, which she had worked at diligently to enhance for over 7 years..

28. Being left with no alternative, plaintiffs executed the previously undisclosed “transfer fee addendum” in order to preserve the sole means of livelihood of the plaintiff Sanghrajka.

29. The defendants disclosure of the 50% “transfer fee addendum” was not made more than 14 days in advance of the plaintiffs’ being required to execute the documentation creating the franchise relationship, as required by law, and is therefore void and unenforceable.

30. The defendants’ imposition of the 50% undisclosed “transfer fee” on the plaintiffs was without consideration, was adhesionary, was unconscionable, was unfair and deceptive, was discriminatory, was in bad faith, was unreasonable, arbitrary, and capricious, and otherwise wrongful.

31. At the time the plaintiffs signed the defendants’ franchise documentation on December 19, 2013, the defendants represented that the plaintiffs would be provided a fully executed copy of all franchise documents, including the receipt for the FDD documentation signed by the plaintiffs. The plaintiffs thereafter requested that such documents be provided. Those documents were not provided by the defendants to the plaintiffs until March 31, 2017.

32. After having operated both the Garrett Road store, and the Glen Lennox store, for a period of approximately 2 ½ years after the defendants’ conversion of those stores to a franchise, the plaintiffs decided to sell the franchise, and sought prospective buyers.

33. On September 2, 2016, the plaintiffs informed the defendants, as required under paragraph 26 (“transfer provisions”) of the franchise agreement, that the plaintiffs had entered into an agreement to sell the franchise, which included both the Garrett Road store, and the Glen Lennox store, for a sale price of \$380,000. A copy of the purchase agreement, and of other personal and financial information relating to the prospective

buyer, were provided to the defendants as required by the franchise agreement.

34. The plaintiffs were then informed that the defendants would not approve of plaintiffs' prospective buyer, nor allow any sale by the plaintiffs to occur unless:

- a. The plaintiffs agreed to pay the defendants' a 50% "transfer fee"; and
- b. The plaintiffs' buyer agreed to accept the imposition of a 50% transfer fee on any future sale by the buyer, which demand of the defendants' resulted in a significant reduction of \$30,000 in the sale price the buyer was willing to pay to the plaintiffs.

35. To reach an interim resolution the plaintiffs, and the defendants, reached an agreement that:

- a. The sale of the plaintiffs' franchise would be allowed subject to the conditions of subparts b. and c. below being agreed to; and
- b. The plaintiffs would pay over to the defendants an amount equivalent to 10% of the franchise sale price of \$350,000, i.e. \$35,000; and
- c. An amount of \$140,000 would be deposited and held in escrow pending the resolution of the "transfer fee" dispute between the parties with regard to the transfer fee that was properly applicable to the plaintiff's sale of the franchise.

36. As the plaintiffs have no right to pursue a private cause of action under the provisions of federal franchise disclosure laws, the plaintiffs have filed this action pursuant to applicable and governing North Carolina law.

**IV. CAUSES OF ACTION**

**COUNT ONE:  
VIOLATION OF THE NORTH CAROLINA  
UNFAIR AND DECEPTIVE TRADE PRACTICES ACT**

37. The plaintiffs incorporate by reference all preceding and subsequent paragraphs of this Verified Complaint, as though fully set forth herein.

38. The actions of the defendants were and are in violation of applicable franchise disclosure laws (which provide no private cause of action to the plaintiffs) and comprise a *per se* violation of the North Carolina Unfair and Deceptive Trade Practices Act, including the violation of N.C. General Statutes sections 75-1 *et seq.*

39. Defendants' actions were unfair or deceptive acts, or practices in or affecting commerce, in a continuous and ongoing effort and attempt to injure and damage the plaintiffs.

40. These violations of the North Carolina Unfair and Deceptive Trade Practices Act have substantially injured, and continue to substantially injure, the plaintiffs in an amount in excess of \$10,000.

41. As a direct and proximate result of the defendants' wrongful conduct, the plaintiffs are entitled to actual, compensatory, and special damages. Plaintiffs are also entitled to punitive damages, and court costs, including attorneys' fees and reasonable expert witness fees, pursuant to the North Carolina Unfair and Deceptive Trade Practices Act, including but not limited to N.C. General Statute § 75.16.1.

**COUNT TWO**  
**RESCISSION- TRANSFER FEE "ADDENDUM" VOID AND UNENFORCEABLE**

42. Plaintiffs incorporate herein by reference all preceding and subsequent paragraphs of this Verified Complaint as though fully set forth herein.

43. The purported "50% transfer fee addendum", is void and unenforceable, and is otherwise without force or effect, as a result of the wrongful actions of the defendants.

44. As a further direct and proximate result of the defendants' actions, misrepresentations, concealments and omissions, plaintiffs have suffered actual, compensatory and special damages in an amount in excess of \$10,000.

**COUNT THREE:**  
**FRAUD; INTENTIONAL MISREPRESENTATION/CONCEALMENT**

45. Plaintiffs incorporate herein by reference all preceding and subsequent paragraphs of this Amended Verified Complaint as though fully set forth herein.

46. By their actions and omissions, the defendants, individually and collectively:

- a. Expressly represented to the plaintiffs that a 10% "transfer fee" would be imposed by the defendants in the event of the plaintiffs sold their franchise to a 3<sup>rd</sup> party; and
- b. Knew that this express representation by the defendants of a 10% "transfer fee" would be relied upon in good faith by the plaintiffs;
- c. Falsely represented and/or concealed the defendant's actions from the plaintiffs with the intent, and for the purpose of, wrongfully and unilaterally imposing upon the plaintiffs, in a deceptive, discriminatory,

bad faith, and adhesionary manner, the defendants' intent to impose upon the plaintiffs an improper and discriminatory 50% "transfer fee" knowing that the plaintiffs would have no alternative but to accept the unilaterally imposed, bad faith, fraudulent, and discriminatory 50% "transfer fee".

47. The actions and omissions of the defendants, individually and collectively, did in fact deceive the plaintiffs, and did result in the plaintiffs' being deprived of their rights with regard to the proper disclosure of the 50% transfer fee which the defendants sought to wrongfully impose upon the plaintiffs in violation of applicable law.

48. As a direct and proximate result of the defendants actions, misrepresentations, concealments and omissions, the plaintiffs have suffered actual, compensatory and special damages in an amount in excess of \$10,000.

49. The plaintiffs are also entitled to punitive/exemplary damages as a result of the alleged wrongful actions, misrepresentations, concealments and omissions of FF.

**COUNT FOUR:  
NEGLIGENT MISREPRESENTATION**

50. Plaintiffs incorporate herein by reference all preceding and subsequent paragraphs of this Verified Complaint as though fully set forth herein.

51. By the defendants' actions and omissions, the defendants negligently and falsely misrepresented and/or concealed defendants' actions, and disregarded the rights of the plaintiffs, for the purpose of falsely representing and/or concealing the defendant's actions from the plaintiffs, with the intent, and for the purpose of, wrongfully and unilaterally imposing upon the plaintiffs, in a deceptive, discriminatory, bad faith, and

adhesionary manner, the defendants' intent to impose upon the plaintiffs an improper and discriminatory 50% "transfer fee", knowing that the plaintiffs would have no alternative but to sign the unilaterally imposed, bad faith, fraudulent, and discriminatory 50% "transfer fee addendum".

52. The wrongful actions and omissions of the defendants, individually and collectively, did in fact deceive the plaintiffs, and did result in the plaintiffs' being deprived of their rights with regard to the proper disclosure of the 50% transfer fee which the defendants sought to wrongfully impose upon the plaintiffs in violation of, and/or in negligent disregard of, applicable law.

53. The actions and omissions of the defendants, including the negligent misrepresentations, omissions, and concealments of defendants, were reasonably calculated and intended to deceive plaintiffs.

54. The plaintiffs in good faith relied upon the negligent misrepresentations, omissions, and concealments of the defendants which were calculated by the defendants, and intended by them, to deceive the plaintiffs.

55. The actions and omissions of the defendants did in fact deceive the plaintiffs.

56. As a direct and proximate result of defendants' actions, misrepresentations, concealments and omissions, the plaintiffs have suffered actual, compensatory and special damages in an amount in excess of \$10,000.

57. The plaintiffs are also entitled to punitive/exemplary damages as a result of the alleged wrongful actions, misrepresentations, concealments and omissions of the defendants.

**COUNT FIVE:  
BREACH OF THE  
DUTY OF GOOD FAITH AND FAIR DEALING**

58. The plaintiffs incorporate by reference all preceding and subsequent paragraphs of this Verified Complaint, as though fully set forth herein.

59. The misrepresentations, actions, and omissions, of the defendants' violated defendants' obligations to deal fairly and in good faith with the plaintiffs.

60. As a direct and proximate result of the defendants' actions, misrepresentations concealments and omissions, the plaintiffs have suffered actual, compensatory and special damages in an amount in excess of \$10,000.

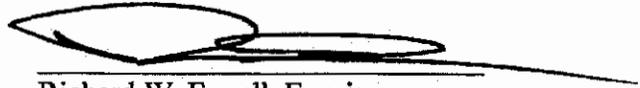
**WHEREFORE**, the Plaintiffs request the following relief:

1. Actual, compensatory, and special damages in an amount in excess of \$10,000, plus interest pursuant to applicable law; and
2. Punitive and/or exemplary damages in accordance with applicable North Carolina law, if so warranted, in an amount in excess of \$10,000, plus interest; and
3. An order from this Court that the current escrow amount held be released to the plaintiffs; and
4. For the damage award to be trebled pursuant to N.C.G.S. § 75-16.1; and
5. For the costs of this action to be taxed to the Defendants in accordance with applicable North Carolina law, if so warranted; and
6. For an award of attorney's fees, costs, and expert witness fees, in accordance with applicable North Carolina law if so warranted; and

7. For a trial by jury on all issues so triable; and
8. For such other and further relief as the Court may deem just and proper.

This the 3d day of May, 2017

THE FARRELL LAW GROUP, P.C.



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