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FRANCHISE TRENDS

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Medi-Weightloss Franchisor Permitted to Enforce Post-Term Restrictions Shutting-Down Franchisee/Doctors

Medi-Weightloss Franchising USA, V. Medi-Wieghtloss Clinic Of Boca Raton, United States District Court, M.D. Florida.

Medi-Weightloss Franchising ("Medi") filed a complaint seeking preliminary and permanent injunctive relief as well as damages against Medi-Weightloss Clinic of Boca Raton, LLC ("Medi-Boca"), Dr. Eliot Slater ("Dr.Slater"), and Dr. Paul Martinez ("Dr.Martinez") (collectively, "Defendants") for alleged violations of provisions in their franchise agreement. Medi sought a preliminary injunction enjoining Defendants from continuing to operate a weightloss clinic in the same location as the former Boca Medi clinic in accordance with the non-compete terms in the parties' agreements, from disclosing or publishing Medi's confidential information, from using the word "Medi" in the name of any business or trade name for the business, from using the Medi-Program or Medi-System or any program confusingly similar to Medi's, from using any of Medi's proprietary or copyrighted information, and from competing unfairly with Medi in any manner whatsoever. In addition, Medi sought to have Dr.

Franchise Discrimination - Video 1 of 2

Franchise Discrimination - Video 2 of 2

Franchise Law: Fraud and Good Faith in Franchise Law

Franchise Law – Franchisees' Franchise Termination Damages

KFC Franchisee

Slater discontinue his services with the weightloss clinic that was currently in operation at the former Medic clinic.

When Medi-Boca became delinquent on fees due Medi, Medi sent a letter to Dr. Martinez in June 2010 informing him of the fees due, providing the time for curing any compliance defects, and addressing issues raised by Dr. Martinez in a prior e-mail, including Dr. Martinez's statement that: "The way I look at it we have two options. We can negotiate a new system of fees or we can completely part ways and I can run a weight loss clinic completely separate from Medi Weightloss"

In determining the legality of the franchisor's post-term restrictive covenants, the Court looked to a Florida Statute that permitted the enforcement of contracts restricting or prohibiting competition during or after the term of the restrictive covenant so long as such covenants were reasonable in time, area, and line of business. The Court in turn concluded that Medi had shown its restrictive covenants were reasonable as to time, stating that "in Florida, a presumption exists that any restrictive covenant for six months or less is reasonable and for more than two years is unreasonable as to a former employee, agent or independent contractor... Similarly, any restrictive covenant for one year or less is reasonable and for more than three years is unreasonable as to a former distributor, dealer, franchisee, or licensee of a trademark or service mark." The Court found that the temporal scope of the clause passed inspection as the clause lasted for a period of two years commencing on the effective date of termination or expiration of the franchise agreement.

Similarly, the Court agreed that Medi has shown that the restrictive covenants were reasonable as to area and line of business. The competitive restrictive covenants in the franchise agreements prohibited operation of a competitive business in any capacity at the site of the Boca Medi Clinic, within the protected area, or through the practice; within twenty-five miles of the site of the Boca Medi Clinic; or within twenty-five miles of any other Medi-Weightloss Clinic business or its site, protected area, or market area in operation or under construction on the later of the effective date of the termination or expiration. As to the geographic scope, the restrictive covenant was also found by the Court to also be reasonable. Indeed, Florida courts have upheld geographical restrictions covering a radius of 75 miles from the city where the defendant worked. The Court also noted that "moreover, the restrictions do not preclude Dr. Martinez or Dr. Slater from opening, operating or working in another weightloss clinic. The restrictions simply limit the geographic scope for a reasonable period of time. Accordingly, the restrictions as to geographic scope and line of business are reasonable."

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Permitted to Continue to Operate His Stores Despite Having Failed to Remodel Stores as Demanded by KFC

KFC Corporation, V. JRN, Inc., United States District Court For The Western District Of Kentucky.

At issue in this case were JRN's obligations to remodel under ten separate but identical franchise agreements. Over the years, there was a constant tug-of-war between KFC and its franchisees. KFC wanted leverage to require renovation of existing stores; the franchisees wanted longer-term franchise agreements and more flexibility in managing capital expenditures. Matters arrived at a critical impasse when KFC felt compelled to terminate an otherwise profitable and compliant franchisee due to a failure to perform store renovations.

In 1989, a group of franchisees brought a class action lawsuit to prevent KFC from changing its standard franchise agreement. As part of the settlement of that suit in 1997, franchisees could renew their franchises for a twenty-year term by signing a new agreement (the "Early Renewal Agreement"). In consideration for this extended lease term, the Early Renewal Agreement required, among other things, that a franchisee remodel its restaurant by ten years into the lease. The parties referred to these obligations as "Exhibit A" requirements.

JRN exercised its twenty-year renewal option on its ninety-three franchises, obligating it to remodel these restaurants by June 2008. In subsequent years, JRN acquired many additional restaurants from both KFC and other franchisees. It also built new restaurants. Many of the acquired restaurants were subject to Early Renewal Agreements

Even if Franchisor's Support and Assistance was less than Perfect it did not Violate Franchise Agreement

In re Bono Holdings, Inc., Debtor, v. Quaker Steak & Lube Franchising Corporation, United States Bankruptcy Court, W.D. Pennsylvania.

Plaintiff Lawrence Salone was the sole owner and principal of co-plaintiffs Bono Holdings, LLC and Salone Holdings, Inc., both of which were debtors in bankruptcy. Bono Holdings was a franchisee of Quaker Steak & Lube Franchising and operated a Quaker Steak & Lube restaurant in State College, Pennsylvania. Plaintiffs asserted that Quaker Steak & Lube Franchising breached the franchise agreement, including the implied covenant of good faith and fair dealing, by failing to meet certain of its obligations arising under the agreement.

Under the franchise agreement, Quaker Steak & Lube Franchising was obligated to provide the franchisee with site-selection assistance; to advise and consult with the franchisee concerning the operation of the franchise; to provide marketing and public-relations information for use in marketing and local advertising for the restaurant; and to conduct an initial training program and subsequent retraining programs. The franchisee alleged that none of these obligations were met.

The Court first pointed out what the franchisee needed to prove. An action for breach of a contract requires: (1) the existence of a contract; (2) the breach of an obligation arising from the contract; and (3) resulting damages. In addition to duties or obligations which are expressly set forth in a contract, a duty of good faith and fair dealing in its performance and enforcement is imposed on each party to the contract.

The Court also stated that "In the absence of an express provision to that effect, Pennsylvania law implies an agreement by the parties to do and perform those things which reason and justice dictate they should do to effectuate the contract and to refrain from doing anything which would obviate or injure the other party's right to receive the fruits of the contract. The obligation to act fairly and in good faith in the performance of one's contractual duties varies with context and is not amenable to an all-encompassing description. It is, however, possible to identify certain "strains" of bad faith. Included are such things as: evasion of the spirit of the bargain struck; lack of diligence and "slacking off"; abuse of a power to specify terms; and interference with or failure to cooperate with the other party's performance."

Bono Holdings asserted that Quaker Steak & Lube Franchising breached the franchise agreement by: (1) failing to provide sufficient site-selection assistance; (2) failing to provide sufficient

and the same 2008 remodel deadline.

In 2001, JRN and KFC executed an agreement releasing JRN from the Exhibit A requirements and establishing a new timetable for remodeling restaurants (the "Remodel Agreement"). Instead of a single 2008 deadline for all restaurants, the Remodel Agreement provided for renovation of six restaurants in 2001, eight in 2002, ten in 2003, twelve in 2004, twelve in 2005, sixteen in 2006, sixteen in 2007, eighteen in 2008, ten in 2009, six in 2010, and six in 2011. It set monetary penalties for any shortfalls in upgrading and JRN's failure to comply would give KFC the right to terminate the agreement. It also required modifications or waivers of the Agreement to be made in writings signed by both parties.

In June 2003, the parties executed an agreement to supplement and amend the Remodel Agreement (the "2003 Letter Agreement"), which added to the Remodel Agreement's timetable any restaurant JRN subsequently acquired. Instead of an Exhibit A remodel deadline of 2008, the restaurants would be evenly distributed across the timetable, with no cap as to how many remodels the 2003 Letter Agreement could require in a single year. The more restaurants JRN acquired, the more its remodel requirements under the Remodel Agreement increased.

Beginning October 2005, the parties exchanged communications concerning JRN's current and future remodeling projects as well as proposals to alter the remodeling timetable as established by the Remodel Agreement and 2003 Letter Agreement. They discussed abandoning the 2003 Letter Agreement's "odd / even process" for folding new acquisitions into the original remodel timetable and instead adding those acquisitions to the requirements for 2009, 2010, and 2011, subject to a cap at fifteen

training assistance and (3) failing to provide sufficient start-up marketing. In addition, Bono Holdings asserted that Quaker Steak & Lube Franchising failed to provide a workable and profitable business model; retained rebate checks it obtained from Bono Holding's vendors without permission; and otherwise engaged in concerted efforts to undermine and drive the State College restaurant out of business.

Evidence produced at trial established that Quaker Steak & Lube Franchising in fact provided these things. Bono Holdings, however, claimed that Quaker Steak & Lube Franchising did not do so in good faith and fair dealing-i.e., sufficiently-and thus breached the franchise agreement.

The franchisee also alleged that Quaker Steak & Lube Franchising failed to provide a workable and profitable business model and otherwise engaged in a concerted effort to undermine and drive the franchisee's restaurant out of business. Bono Holdings maintained that Quaker Steak & Lube Franchising also breached its duty of good faith and fair dealing in these respects.

Review of the testimony offered at trial and of the stack of documents admitted into evidence led the Court to the conclusion that Bono Holdings did not prove, by a preponderance of the evidence, that Quaker Steak & Lube Franchising failed to deal with Bono Holdings fairly and in good faith. In this regard, the Court stated that "While, as is the case in virtually every real-world situation, the performance of Quaker Steak & Lube Franchising was less than perfect, there is nothing in the record to support the inference that Quaker Steak & Lube Franchising evaded the spirit of the franchise agreement, willfully rendered imperfect performance or interfered or failed to cooperate with Bono Holdings as it tried to achieve the benefit of its bargain with Quaker Steak & Lube Franchising. Proof of this was sorely lacking."

To the contrary, the Court stated, "defendants produced evidence which indicates, for instance, that: defendants visited several potential sites for a restaurant with Salone and consulted with him concerning the pros and cons of each; conducted training sessions for the managers and other employees of the restaurant; provided Bono Holdings with marketing assistance and suggestions about local advertising; and consulted with Bono Holdings about menus and item pricing."

In short, the evidence established that defendants made bona fide attempts to fulfill its obligations which arose under the franchise agreement. It was not until well after the restaurant "went south" and was closed that plaintiffs found fault with defendants' performance and accused them of not acting in good faith.

remodels per year. One e-mail from KFC proposed eliminating the S-6000 credits starting in 2006. Subsequent communications referenced a pace of fifteen remodels per year, as did a 2007 Asset Purchase Agreement in which JRN acquired KFC-owned restaurants in two markets.

In 2010, KFC asserted that JRN failed to meet its upgrade obligations for 2008 and 2009 and noted that it had terminated the Remodel Agreement in April. KFC also stated that it was willing to enter into a new remodel agreement in 2011, provided JRN complete thirteen remodels in 2010. JRN did not complete thirteen remodels and on January 24, 2011 KFC sent notice that JRN had defaulted on the Franchise Agreements for ten of its restaurants. A notice of termination followed in March. The parties attempted to negotiate an agreement to reinstate the terminated Franchise Agreements, but did not reach a resolution. KFC then sued the franchisees.

KFC argued that JRN breached the Remodel Agreement, leading to its termination and revival of the Early Renewal Agreements, which required upgrades by 2008. Indeed, JRN did not remodel all of the ten restaurants in question. Under KFC's line of argument, this failure constituted a breach of the underlying Franchise Agreements. This, in turn, according to KFC, meant that JRN was using KFC's exact trademarks without permission, which is a Lanham Act violation.

JRN's renovation of various restaurants and its failure to renovate others were undisputed. The factual disputes concerned whether the parties agreed in writing to amend the Remodel Agreement and, if so, upon what new terms did they do so. The Court pointed out that if it were to find that the various written exchanges regarding the terms of the franchise agreements presented ambiguous meanings, it must determine whether

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It was Conceivable that Underbidding by Franchisor Could Cause Actionable Harm to Jani-King Franchisee

Maria Juarez, Luis A. Romero And Maria Portillo, Individually And On Behalf Of All Others Similarly Situated, v. Jani-King Of California, Inc., United States District Court, N.D. California.

In this case the franchisor, a Jani-King franchisee sued its franchisor for fraud and breach of contract. The franchisee's claims for fraud were predicated on nine categories of alleged fraudulent actions. Specifically, Plaintiffs alleged that Jani-King: (1) made false earnings promises; (2) misrepresented the amount of work available for franchisees; misrepresented the geographic location of available accounts; (2) failed to fully disclose Jani-King's fees and costs; (5) failed to provide Plaintiffs with the Uniform Franchise Offering Circular ("UFOC") before they signed their franchise agreements; (6) misrepresented that Plaintiffs' franchise down-payment was the exclusive purchase price; (7) failed to disclose Plaintiffs' right to seek a refund if their franchise failed to secure a certain amount of business within the "Initial Offering Period"; (8) misrepresented that Plaintiffs were required to purchase supplies from Cole Supplies, which is owned by Jani-King; and (9) failed to provide Plaintiffs with Spanish language translations of key documents, including their franchise agreements.

The Court ruled that under relevant law, the alleged omissions and oral misrepresentations were directly contradicted by written agreements received and signed by Plaintiffs. The Franchise Agreement included terms concerning profits and earnings, the down-payment and total purchase price, the geographic location of accounts, fees and costs, and refund rights, among other things When Plaintiffs purchased their franchises, they signed a written form acknowledging that they had not received any representation regarding any "sales, income, or profit levels.

The franchisees also asserted that Jani-King breached the implied covenant by, among other things, offering Plaintiffs accounts that generated little or no income due to underbidding. The Court agreed with the franchisees and ruled that, unlike the claim for fraud, their claim for breach of the implied covenant would be permitted to proceed to trial.

In allowing the franchisees' breach of the covenant of good faith and fair dealing claim to go to trial, the Court explained what the covenant embodied: "There is an implied covenant of good faith and fair dealing in every contract that neither party will do anything which will injure the right of the other to receive the benefits of the agreement." The Court further stated that "This

the parties reached any agreement at all and whether they agreed upon the particular terms KFC asserted.

The terms of the Remodel Agreement as it stood in 2010, the year KFC declared that agreement terminated, seemed ambiguous. At best, the various email exchanges created ambiguity. For example, in response to KFC's November 2005 e-mail proposing a new remodeling schedule and eliminating S-6000 credits, JRN agreed to the new remodeling schedule, proposed a reduction in penalties, and was silent as to S-6000 credits. KFC responded that it is in agreement with the "revised" Remodel Agreement, but with enumerated exceptions (e.g. rejecting the reduction in penalties) and clarifications (future store divestitures from KFC to JRN will not be part of the Remodel Agreement). There was no further clarification of the status of S-6000 credits.

Given this ambiguity, the Court was left only with the subsequent course of dealing among the parties to determine whether they reached such an agreement. KFC's primary course-of-dealing evidence was that JRN did not attempt to use S-6000 credits where such use might have been expected if the credits were still valid. JRN's witnesses denied any agreement as to credits. The Court considered all this evidence but found it insufficient to prove the parties agreed to eliminate S-6000 credits. The Court found that the uncertainty concerning these key contract terms alone was a sufficient roadblock to granting the preliminary injunction.

Even should KFC prevail on its contractual argument discussed above, JRN argued that Section 6.2 of the Franchise Agreements applied at all times to the remodeling requirements under the relevant Early Renewal Agreements and the Remodel Agreement as amended. Section 6.2 of the Franchise Agreements read in relevant part: "Franchisee shall from time to time

covenant exists to "prevent one contracting party from unfairly frustrating the other party's right to receive the benefits of the agreement actually made."

The Court ruled that there was a triable issue of fact as to whether Jani-King breached the implied covenant by underbidding accounts serviced by Plaintiffs. The Jani-King policies and procedures manual showed that Jani-King exerted a substantial amount of control over bids made to clients. The franchisees contended that a significant number of these bids were too low and that Jani-King often underestimated the amount of time necessary to service an account.

For example, Portillo testified that she spent 24 hours per month servicing a Jani-King account which only paid $86 per month after Jani-King fees were deducted. Portillo also testified that another account took significantly longer to service than Jani-King had represented that she was forced to turn down several accounts because they were underbid, and that Jani-King underbid almost all of the accounts she serviced. Similarly, Alejandro Juarez stated that Jani-King miscalculated the time it would take to clean "the vast majority of accounts" and that only "three or four" of his accounts were profitable. Maria Juarez stated that some of her accounts paid only $5 to $6 per hour.

Jani-King argued that this evidence failed to show that JaniKing's bids fell below an "objective standard" that would identify a properly bid account. The Court disagreed, concluding that "Plaintiffs' testimony suggests that Jani-King often underestimated the time it would take to service an account and that Plaintiffs serviced certain Jani-King accounts for $3.58 to $6 per hour. This evidence, which Defendants do not dispute, is sufficient to create a genuine issue of material fact for trial."

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Franchisor Loses Rare Battle to Pull Franchise Litigation Out of Court and Push it into Arbitration

Faraz Saleemi and Sob, LLC, Plaintiffs-Appellants, v. Gosh Enterprises, Inc., Defendant-Appellee, United States Court of Appeals, Ninth Circuit.

Plaintiffs (franchisees) filed a state-court action against Defendant (franchisor), which Defendant removed to federal court, asserting a number of claims arising from their previous relationship. The district court dismissed the case without prejudice because the claims were subject to arbitration and because Washington was an improper venue under the Agreement's forum-selection

abide by any reasonable requirement of KFC with regard to the remodeling and upgrading of the Outlet to comply with standards then applicable to new franchises and stores owned by KFC and its affiliates, provided, however, that such requirements shall not impose an undue economic burden."

JRN contended that factual issues, like the economic burden posed by remodeling these restaurants and the image standards KFC has applied to other franchisees and corporate-owned restaurants, warranted further discovery.

KFC made three arguments why Section 6.2 did not control this case. First, Section 6.2 only applies to "time-to-time" remodeling requirements KFC might unilaterally impose, not the date-certain remodeling requirements to which the parties agreed in the Early Renewal Agreements and Remodeling Agreement. Second, Exhibit A to the Early Renewal Agreement supersedes any effect of Section 6.2 by providing that the "Franchisee shall be required to remodel and upgrade" a restaurant by a certain date, "[n]otwithstanding any other provision in the Franchise Agreement." Third, KFC argued the Remodel Agreement supersedes Section 6.2 because it does not incorporate the Franchise Agreements by reference and is a later agreement related to remodeling required upon renewal of a franchise. Although KFC argued that Section 6.2 was completely irrelevant to this dispute, it acknowledged that further discovery and consideration of it may be necessary.

In addition to ruling that KFC had not established a strong likelihood of prevailing on the merits of its claim, the Court also found that KFC had failed to show that, absent the issuance of the preliminary injunction, it would be irreparably harmed. "Some of these restaurants at issue have been remodeled to some

provision. The Franchisees, who apparently desired to litigate the case in Court rather than in an Arbitration, appealed to Court's ruling, and the Appeals Court agreed with the franchisee, and vacated and remanded the case to the trial court.

The Court stated that although there is a presumption that dispute resolution provisions survive termination of a contract, the presumption is rebuttable. Then, the Court applied that rule to the case. "Here, Defendant's March 17, 2008 email said that the franchise agreement was 'fully terminated' and that 'no contractual obligations exist anymore.' At oral argument, counsel for Defendant asserted that this email extinguished all of Plaintiffs' future contractual obligations, including those with express survival clauses, but not background obligations governing dispute resolution-the forum-selection and arbitration provisions. Plaintiffs contend that the email relieved them of all contractual obligations, including the forum-selection and arbitration provisions, thereby rebutting the presumption." The Court then held that the record was insufficiently developed on this narrow fact question and therefore vacated and remanded for the district court to determine the import of the March 17 email.

It was Sharkey's Alleged Fraud - Not Mismanagement by Franchisee - that Caused Damages

The Final Cut, LLC v. Scott Sharkey, Superior Court of Connecticut.

This case involved the accuracy, adequacy and completeness of the defendant franchisor's disclosures in the sale of certain franchises to the plaintiff franchisee. The plaintiff was an entity called The Final Cut, LLC, which was established by its members for the express purpose of purchasing from the defendants and then running three franchised hair salons. Sharkey's Franchising is currently in the business of selling franchised hair salons.

Approximately one year before they created Sharkey's Franchising, the defendants incorporated their first hair salon in July 2002 with a concept that they decided to franchise and sell to investors. This was the co-defendant Sharkey's Cuts For Kids, LLC, a Connecticut limited liability company established by Scott and Linda Sharkey with a salon in Cos Cob, Connecticut. That location was followed by two other salons, all three of which were eventually sold to the plaintiff Final Cut in a single transaction.

The plaintiff franchisee claimed that the defendants made a number of material and deceptive misrepresentations of fact,

degree while the others have the same image as other KFC restaurants, including corporate-owned locations. KFC has not demonstrated that the look, operation or condition of these ten restaurants is such that KFC suffers harm from their continued existence. Indeed, KFC continues to receive royalty payments from these ten JRN restaurants and has inspected them since filing this lawsuit. Moreover, closing these ten restaurants would cause a substantial harm to JRN and its employees, while serving no identifiable public interest."

For all these reasons, the Court found that KFC had failed to meet its burden at this stage of the proceedings, and its request for a preliminary injunction was denied.

Jackson Hewitt Franchisee's Relatives Living in Different States Subject to Court Injunction in a Different State

Jackson Hewitt Inc., V. Semo Tax Services, Inc., United States District Court For The District Of New Jersey.

Plaintiff, Jackson Hewitt, asserted that Defendants (Jackson Hewitt franchisees), and those in active concert or participation with them, were operating an independent tax preparation business – Tax Savers – in former Jackson Hewitt franchise locations and that this was in violation of a prior injunction entered by the Court against the franchisees, SEMO and Karen Lance.

The issue presented was whether the

failed to disclose a number of material facts, and violated the disclosure rules contained in the regulations promulgated by the Federal Trade Commission under the Federal Trade Act, all in order to induce the plaintiff to enter into the purchase and the franchise agreements with the defendants. The plaintiff also alleged that the defendants' conduct constituted unfair and deceptive trade practices.

The court found that the defendants made a number of material and deceptive misrepresentations of fact, failed to disclose a number of material facts, and violated the disclosure rules contained in the regulations promulgated under the Federal Trade Act, or under the alternative mode of disclosure permitted by the Federal Trade Commission (i.e., UFOC rules), all in order to induce the plaintiff to enter into the purchase and franchise agreements. The defendants failed to conform to the Federal Trade Commission regulations requiring disclosure of financial statements by a franchisor which, inter alia, present the required financial statements in a tabular form that compares at least two fiscal years, to disclose the franchisor's balance sheet for the previous two fiscal year-ends before the disclosure document issuance date, to include statements of operations, stockholders equity, and cash flows for each of the franchisor's previous three fiscal years. The Court also found that the franchisor also failed to conform to the Federal Trade Commission regulations by disseminating financial performance representations to the plaintiff after they disclaimed the right to do so, and in that such representations they made were untrue.

The Court also found that defendants improperly attempted to disclaim, and attempted to require the plaintiff to waive, reliance upon representations made by the defendant Sharkey's Franchising in the UFOC and its exhibits.

The Court found that defendants also knowingly misstated the salons' 2005 financial information to the members of Final Cut; failed to disclose the salons' true operating expenses; and failed to disclose the fact that before the sale to the plaintiff, the defendant Scott Sharkey had promised salary increases to several of the salon staff, raises which the plaintiff would have to pay in order to retain the key staff and continue normal business operations. In addition, the Court found that the defendants failed to disclose to the plaintiff the existence of employee health insurance which presented additional costs to the operation of the franchises. The defendants further misstated the status of certain inventory, materials, and equipment in the salons as being "owned" by the defendants when, in fact, some of the inventory and materials were consigned, leased, or under a loan obligation taken by the defendant.

The plaintiff therefore incurred additional expenses in connection with those items, and did not receive the benefit of the bargain it made with respect to those materials.

injunction bound other persons, including John S. Lance, Austin Lance, John Tyler Lance, Ashley Lance, and Lance Ozark. The Court concluded that "Defendants' involvement with Tax Savers, as demonstrated by Tax Savers' corporate records, as well as the evidence presented by Plaintiff concerning the operation of Tax Savers businesses in former Jackson Hewitt locations run by SEMO and Karen Lance, convinced the Court that Defendants are indeed acting in active concert or participation with SEMO and Karen Lance." In addition, the Court ruled that "Plaintiff's personal service of this Court's Opinion, Order, and Order to Show Cause demonstrates that Defendants were aware of this Court's Orders, but continued in their operation of Tax Savers businesses nonetheless. The Court therefore finds that Defendants are bound by the injunction issued against SEMO and Karen Lance."

While the Court was mindful that enjoining Defendants requires an exercise of jurisdiction over non-residents, the Court was convinced that such an exercise of jurisdiction was proper. "The mandate of an injunction runs nationwide, and the violation of an injunction is cognizable in the court which issued the injunction regardless of where it occurred." Further, "nonparties who reside outside the territorial jurisdiction of a district court may be subject to that court's personal jurisdiction if, with actual notice of the court's order, they actively aid and abet a party in violating that order. This is so despite the absence of other contacts with the forum."

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The defendants failed to prove that the plaintiff repeatedly failed to adhere to the rules or requirements of Sharkey's Franchising, or that the plaintiff somehow mismanaged the salon businesses. The evidence does not support the defendants' contention that the plaintiff failed in a material way to follow the operations manual, or the policies and procedures of Sharkey's Franchising. Mr. Sharkey himself admitted that he did not always adhere to the letter of the manual, and the court also finds that any deviations from the operations manual were not the proximate cause of the harms and losses suffered by the plaintiff in this case.

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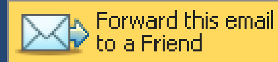

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