

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE
CIVIL ACTION NO. 3-11-cv-472-H

LONG JOHN SILVERS, INC.

PLAINTIFF

v.

COMPLAINT

JOHN WILLINGHAM and PATTI
WILLINGHAM

DEFENDANTS

Plaintiff, Long John Silver's, Inc. ("LJS") seeks damages against John Willingham and Patti Willingham (collectively, the "Defendants") for breach of their guaranty and other contracts, trademark infringement and unfair competition due to the reasons set forth more fully below.

JURISDICTION

1. This Court has original jurisdiction pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. § 1338(a) over the claims asserted under the Lanham Act, 15 U.S.C. § 1051 et seq. This court also has supplemental jurisdiction over all related claims alleged herein pursuant to 28 U.S.C. § 1367(a).

2. This Court also has jurisdiction over this matter pursuant to 28 U.S.C. § 1332 because it involves parties of diverse citizenship and the amount in controversy is in excess of \$75,000.00, exclusive of interest and costs.

3. Personal jurisdiction and venue over the Defendants is proper under paragraph 15.02 of the parties Franchise Agreements. True and correct copies of the Franchise Agreements are attached as Exhibits A and B.

4. Personal jurisdiction and venue over John Willingham also is proper under: (1) a June 11, 2010 Conditional Reinstatement Agreement ¶ 8.8 and, (2) a June 2, 2010 Promissory Note p. 2, both of which state that any action to enforce their terms must be filed in the Kentucky. Exhibit D.

5. Personal jurisdiction over all Defendants also is proper under Kentucky's long-arm statute (KRS § 454.210), because this action arises out of and involves the enforcement of contracts executed in Kentucky and governed by Kentucky law, with payments and the guaranty of such payments and obligations under such contracts to be made to LJS, a Kentucky resident, the breach of which causes injury to LJS in Kentucky.

THE PARTIES

6. LJS is a Delaware corporation with its principal place of business at 1441 Gardiner Lane, Louisville, Kentucky.

7. Upon information and belief, John Willingham and Patti Willingham are individual citizens of Tucson, Arizona and also members, owners, and/or officers in Southwest Seafood Shoppes, LLC.

LJS'S BUSINESS

8. LJS is engaged in the business of operating and granting to others franchise rights to operate restaurants under the name and trademark "Long John Silvers" ("LJS Restaurants").

9. LJS through the expenditure of time, skill, effort, and money has developed and is the sole and exclusive owner of a distinctive food service system (the "LJS System") under which food is sold to the public from LJS Restaurants. The LJS System so developed includes, among other things, the following elements:

- (a) Methods and procedures for the preparation and serving of food and beverage products;
- (b) Special ingredients, confidential recipes for food products, a secret batter mix and distinctive service accessories;
- (c) Methods of achieving quality control and procedures designed to be advantageous to LJS Restaurant operators and consumers;
- (d) Plans and specifications for distinctive premises, featuring characteristic interior and exterior style, design, décor, furnishings, equipment layout and interior and exterior signage;
- (e) A uniform method of operating which is described in the “Long John Silvers Confidential Manual of Operations” and in other communications to franchisees (collectively referred to as “The LJS Confidential Manual”);
- (f) Distinctive and characteristic trademarks, trade dress, service marks, including without limitation “Long John Silvers” signs, designs, and emblems as LJS designates in the LJS Confidential Manual or otherwise in writing as prescribed for use with the LJS System, (collectively referred to as the “LJS Proprietary Marks”);
- (g) A public image that each LJS Restaurant is a unit in an established restaurant system and that all are operated with uniform standards of service and product quality and portions; and
- (h) Such exclusive copyrights and trade secrets as have been and may from time to time be developed, which are owned by LJS and which are disclosed to its franchisees in confidence in connection with the construction and operation of an LJS Restaurant.

CONTRACTS BETWEEN THE PARTIES

10. Following the termination of an April 1, 2000 LJS franchise agreement, Southwest Seafood Shoppes, LLC (“Southwest Seafood” or “Franchisee”) and LJS entered into a

subsequent June 21, 2002 agreement titled “Franchise Agreement,” pursuant to which LJS granted to Southwest Seafood the right to prepare and offer for sale LJS products and display LJS’s Proprietary Marks at a restaurant identified as #7459 and located at 4100 North Oracle Road, Tucson, Arizona.

11. A true and correct copy of the franchise agreement for the North Oracle restaurant is attached as Exhibit A.

12. Southwest Seafood and LJS also entered into separate agreements, each titled “Franchise Agreement” and dated January 20, 2005, pursuant to which LJS granted to Southwest Seafood the right to prepare and offer for sale LJS products and display LJS’s Proprietary Marks at the following restaurants:

- (a) # 7555, located at 7120 East Broadway, Tucson, Arizona;
- (b) # 7606 and located at East 22nd St., Tucson, Arizona;
- (c) # 7705 and located at 3700 South Sixth Avenue, Tucson, Arizona;
- (d) # 7919 and located at 4640 West Ina Rd., Tucson, Arizona.

13. A true and correct copy of the franchise agreement for the East Broadway restaurant is attached as Exhibit B.

14. The franchise agreements for the East 22nd, South Sixth, and West Ina restaurants are identical in all pertinent respects to the East Broadway franchise agreement attached as Exhibit B.

15. The North Oracle, East Broadway, East 22nd, South Sixth and West Ina restaurants will collectively be referred to as the “Restaurants” and the franchise agreements for each will collectively be referred to as the “Franchise Agreements.”

16. By document dated June 21, 2002, defendant John Willingham personally guaranteed the performance of all the Franchisee's duties and obligations required by the LJS franchise agreement for the North Oracle restaurant.

17. By separate documents, each dated January 20, 2005, defendants John Willingham and Patti Willingham (the "Guarantors") personally guaranteed the performance of all the Franchisee's duties and obligations required by the LJS franchise agreements for the East Broadway, East 22nd, South Sixth and West Ina restaurants.

18. True and correct copies of the guaranty agreements for all the Restaurants are attached as Exhibit C, and collectively, will be referred to as "Guaranty Agreements."

THE DEFENDANTS' DEFAULTS AND TERMINATION

19. By letter dated March 31, 2010, LJS notified the Franchisee that the Franchise Agreements were terminated for its failure to cure the Notices of Default dated October 29, 2009, December 16, 2009, January 14, 2010, and February 22, 2010.

20. By agreement dated June 11, 2010, as amended August 29, 2010, defendants Southwest Seafood and John Willingham entered into a Conditional Reinstatement Agreement by which they acknowledged the Franchise Agreements, the defaults, termination, and past due amounts per the terms of those Agreements.

21. A true and correct copy of the Conditional Reinstatement Agreement, as amended, is attached as Exhibit D.

22. LJS agreed to forbear from enforcing its termination rights and provisionally reinstate the Franchise Agreements in exchange for compliance with various Franchisee and guarantor obligations stated in the Conditional Reinstatement Agreement. Exhibit D.

23. As partial consideration for the Conditional Reinstatement Agreement, Southwest Seafood and John Willingham executed a promissory note in favor of LJS in the amount of \$146,992.32 by document dated June 2, 2010 as payment for the acknowledged past-due amounts under the Franchise Agreements.

24. A true and correct copy of the Promissory Note is attached as Exhibit D to the Conditional Reinstatement Agreement.

25. By letters dated January 27 and March 15, 2011, LJS notified Southwest Seafood, through its control person John Willingham, that it was again in default under the Franchise Agreements for the Restaurants because it failed to remit to LJS the required monthly royalties and advertising fees (“Default Letters”).

26. True and correct copies of the Default Letters for the Restaurants are attached as Exhibit E.

27. The Franchisee failed to cure the financial defaults specified in the Default Letters within the cure period provided for therein.

28. By letter dated April 7, 2011, LJS notified Southwest Seafood, through its control person, John Willingham, that the Franchise Agreements were terminated, effective immediately (“Termination Letter”).

29. A true and correct copy of the Termination Letter for the Restaurants is attached as Exhibit F.

30. Pursuant to paragraph 11.02 of the Franchise Agreements attached as Exhibits A and B, the Franchisee was required to take the following actions at the Franchisee’s sole cost and expense, including but not limited to (collectively the “Post-Termination Obligations”):

(a) Immediately cease doing business as LJS restaurants and discontinue the use and display of the LJS System, the LJS Proprietary Marks;

(b) Return to LJS the LJS Confidential Manuals; and

(c) To promptly de-image the Restaurants from their present appearance as LJS restaurants.

31. In the Termination Letter, LJS further confirmed and reemphasized these Post-Termination Obligations, and demanded that the Franchisee immediately take all such actions with respect to the Restaurants. Termination Letter, Exhibit F.

32. Despite the termination of the Franchise Agreements on April 7, 2011, the Franchisee has failed, among other obligations, to comply with all Post-Termination Obligations.

33. Instead, the Defendants continue to use and display LJS trademarks and trade dress or use and display confusingly similar trade dress.

34. Further, the Franchise Agreements contain a post-termination non-compete provision stating that:

For a period of one (1) year after the expiration or termination of this Agreement, regardless of the cause of termination, Franchisee and its Owners shall not, except as otherwise approved in writing by the Company, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership or corporation, own, maintain, engage in, or have any interest in any restaurant or business engaged in food service, which is located within one and one-half (1 1/2) miles of the Franchised Restaurant, if (1) the gross sales of seafood of the restaurant or business constitute or are likely to constitute twenty percent (20%) or more of all sales of the restaurant or business, or (2) the restaurant sells any battered seafood product in a quick service or "fast food" format.

Exhibits A and B ¶ 12.02(c).

35. Upon information and belief, the Defendants own and/or operate competing restaurants, called Overboard Seafood & Grille, at the site of some or all of the former LJS restaurants, whose menus mainly consist of seafood and battered seafood product.

36. There have been numerous complaints to LJS reporting the poor quality of the food, service, and facilities because the customers continue to believe that the Restaurants are authorized LJS restaurants, operated by an LJS franchisee with a valid and existing franchise agreement pursuant to the LJS System of operating standards.

37. Further, the Franchisee also has failed and refused to pay its outstanding indebtedness to LJS under the Franchise Agreements for past-due royalties and advertising fees and all royalties and advertising fees incurred during the period of their continued operation of the Restaurants using the LJS Proprietary Marks and Systems.

38. Despite notice that the Franchisee has failed to pay the fees required by the Franchise Agreements, the Guarantors have failed and refused to pay amounts due under the Franchise Agreements for the Restaurants, and to comply with all Post-Termination Obligations, including the non-compete provision of the Franchise Agreements.

39. Additionally, Southwest Seafood and John Willingham also have failed to make the required payments of principal and interest on the Promissory Note since September 10, 2010.

40. Southwest Seafood filed for bankruptcy May 17, 2011. No damages or other relief is sought against Southwest Seafood in this complaint.

41. Visits were made to the Restaurants June 7, 2011 verifying that Franchisee and Guarantors have not fully de-imaged the Restaurants and continue to display various LJS Proprietary Marks and trade dress on the exterior and interior of the Restaurants.

42. Due to all of the problems with the Franchisee's and Defendants' continued operation of the Restaurants as restaurants that are confusingly similar to LJS restaurants and

their failure to comply with their Post-Termination Obligations, the bankruptcy court entered a cease and desist order dated July 29, 2011.

43. A true and correct copy of the Bankruptcy Cease and Desist Order is attached as Exhibit G.

44. The Bankruptcy Cease and Desist Order ordered the Franchisee to immediately comply with all Post-Termination Obligations contained in the Franchise Agreements.

45. Upon information and belief, despite the contractual post-termination obligations and despite the Bankruptcy Cease and Desist Order, the Defendants continue to own and/or operate competing seafood restaurant that use and display actual and/or confusingly similar LJS trademarks and trade dress.

COUNT I
DECLARATORY JUDGMENT

46. The Franchise Agreements were terminated April 7, 2011 pursuant to the terms of the Franchise Agreements and the Default and Termination Letters.

47. Despite the termination of the Franchise Agreements, demand by LJS to cease and desist their unauthorized operation, and the Bankruptcy Court's Cease and Desist Order, the Defendants have failed to comply with all Post-Termination Obligations at the Restaurants, and continue to use and display, without permission, license, or valid franchise agreement, various LJS Proprietary Marks and LJS's distinctive trade dress at the Restaurants and to operate a competing seafood restaurant concept.

48. This action involves an actual controversy between the parties, within the scope and meaning of 28 U.S.C. § 2201-2202.

49. Pursuant to the federal Declaratory Judgment Act (28 U.S.C. § 2201 et seq.), LJS is entitled to a declaratory judgment by this Court that the Franchise Agreements have been

effectively and validly terminated pursuant to the Termination Letter, due to the Franchisee's failure to cure the notices of default according to the terms set forth in the Franchise Agreements and the Default and Termination Letters.

50. LJS is also entitled to a declaratory judgment by this court, pursuant to 28 § U.S.C. 2201, that the Defendants, as the Guarantors of payment and performance of all of the Franchisee's obligations: (1) are not authorized to continue to use and display the LJS Proprietary Marks and trade dress at the Restaurants, (2) must comply with all terms of the Franchise Agreements including payment of all royalties and advertising fees and complete performance of all Post-Termination Obligations, and (3) must comply with the post-termination non-compete provision of the Franchise Agreements.

COUNT II
(BREACH OF CONTRACT-FRANCHISE AND GUARANTY AGREEMENTS)

51. In consideration for the license to use LJS's Proprietary Marks and other rights granted in the Franchise Agreements, the Franchisee agreed to make certain payments to LJS including, without limitation, royalties and advertising fees per the Franchise Agreements, paragraphs 6.01 and 6.02, Exhibits A and B.

52. The Franchisee has failed to pay LJS all amounts due under the Franchise Agreements, and to submit all the required monthly sales reports for the Restaurants while open and operating as an LJS restaurant.

53. Despite termination of the Franchise Agreements, the Franchisee also failed to fully comply with its contractual Post-Termination Obligations for the Restaurants contained in paragraph 11.02 of the Franchise Agreements, Exhibits A-B, including the non-compete provisions. Therefore, LJS is entitled to preliminary and permanent injunctive relief that requires the specific performance of the Franchisee's Post-Termination Obligations.

54. The Franchise Agreements also require the Franchisee to pay LJS liquidated damages in the event it fails to comply with the Post-Termination Obligations of paragraph 11.02 of the Franchise Agreements in the amount of (\$50) per day beginning on the thirty-first (31st) day after the date of termination or expiration of this Agreement, not to exceed a maximum of Seven Thousand Five Hundred Dollars (\$7,500). Franchise Agreements ¶ 11.02(d), Exhibits A-B.

55. The Guarantors, John and Patti Willingham, signed Guaranty Agreements pursuant to which they agreed to guarantee, in their individual capacities, the payment and performance of all the Franchisee's obligations under the Franchise Agreements for the Restaurants. Guaranty Agreements, Exhibit C.

56. Despite notice of the Franchisee's defaults and termination of the Franchise Agreements, and knowledge of the Franchisee's failure to perform its Post-Termination Obligations, the Guarantors failed to pay and perform the Franchisee's obligations as required by the terms of the Guaranty Agreements.

57. Consequently, the Guarantors have defaulted on their obligations under the Guaranty Agreements with LJS.

58. LJS has performed all of its obligations under the Guaranty Agreements.

59. Because the Franchisee has failed to perform its obligations to LJS arising out of the Franchise Agreements, the Guarantors are liable, and LJS is entitled to judgment against the Guarantors for: (a) all amounts due LJS under the Restaurants Franchise Agreements for unpaid royalties and advertising fees for the period the Franchisee and Guarantors continue the operation of the Restaurants using various LJS Proprietary Marks, Systems and trade dress, plus liquidated damages, interest and late charges; (b) all damages awarded LJS for trademark

infringement and unfair competition; (c) LJS's reasonable attorneys' fees, court costs, and expenses in connection with this action; (d) specific performance of the Franchisee's Post-Termination Obligations, and (e) specific performance of the non-compete provisions of the Franchise Agreements.

60. In addition to judgment entered in its favor, LJS is entitled to recover reasonable attorneys' fees and expenses incurred by reason of the Defendants defaults and this lawsuit to enforce the terms of the Franchise Agreements pursuant to paragraph 11.02 of Exhibits A and B.

COUNT III
**(BREACH OF CONTRACTS-CONDITIONAL REINSTATEMENT AGREEMENT
AND PROMISSORY NOTE)**

61. As a party to the Conditional Reinstatement Agreement and maker of the Promissory Note (Exhibit D to the Conditional Reinstatement Agreement attached as Exhibit D), John Willingham agreed to make certain payments of principal and interest to LJS.

62. Defendant John Willingham has failed to pay LJS the amounts owed under the Promissory Note.

63. Consequently, John Willingham has defaulted on his obligations under the Conditional Reinstatement Agreement and the Promissory Note.

64. LJS has performed all of its obligations under the Conditional Reinstatement Agreement and Promissory Note.

65. LJS is entitled to recover its actual damages for unpaid principle, accrued interest, late charges, pre- and post-judgment interest, attorney fees, and all other costs and disbursements incident to the collection of the balance due under the Promissory Note pursuant to the terms of the Promissory Note as attached as Exhibit D to the Conditional Reinstatement Agreement, Exhibit D.

COUNT IV
**(LJS LANHAM ACT TRADEMARK INFRINGEMENT-
DAMAGES AND INJUNCTIVE RELIEF)**

66. This claim arises under the Federal Trademark Act, 15 U.S.C. §1051-1127.

67. LJS owns certain proprietary marks and licenses, the “LJS Proprietary Marks.” LJS licenses and grants the right to use the LJS Proprietary Marks to franchisees operating LJS Restaurants pursuant to the terms of a valid franchise agreement.

68. LJS is now and has been extensively engaged in the business of operating and franchising restaurants and providing restaurant services in interstate commerce. In connection therewith, LJS’s principal trademark and service mark is “Long John Silver’s,” used alone and in conjunction with other words and designs. LJS also uses distinctive and characteristic trademarks, trade dress, service marks, including without limitation “Long John Silver’s” signs, designs, and emblems as LJS designates in the LJS Confidential Manual or otherwise in writing as prescribed for use with the LJS System. A nonexclusive list of LJS Proprietary Marks is attached at Exhibit H.

69. Since prior to the acts complained of herein, LJS has extensively used the LJS Proprietary Marks to identify its restaurants as Long John Silvers’ Restaurants, its products as LJS products, and to distinguish them from those made and sold by others. LJS has also invested substantial time and money to develop and promote the LJS Proprietary Marks in connection with its franchising and licensing program, and the marketing and sale of its services and related goods by, among other things, prominently displaying the LJS Proprietary Marks on the signs, menus, containers and displays associated therewith. In addition, LJS has prominently displayed the LJS Proprietary Marks on restaurant fronts, letterheads, bills, direct mail advertising, telephone directory advertising and in periodicals distributed throughout the United States.

70. As a result, LJS's Proprietary Marks are distinctive and highly regarded by the consuming public, signifying LJS as the source of high quality, reliable restaurant services and related goods. The LJS Proprietary Marks have become, through widespread and favorable public acceptance and recognition, assets of substantial value symbolizing LJS's restaurant services and related goods, and its good will.

71. LJS has widely expanded its restaurant operations under the LJS Proprietary Marks and franchises numerous restaurants around the country.

72. The Franchisee and Guarantors have no right or authority to display the LJS Proprietary Marks at the Restaurants after termination as an LJS franchisee.

73. The LJS Franchise Agreement sets forth the Post-Termination Obligations of the franchisee upon termination of the LJS franchise agreement. These Post-Termination Obligations provide, in part, that upon termination the licensee shall immediately cease displaying the LJS Proprietary Marks, to de-image the Restaurants (remove all signs, emblems, or displays associated with LJS or the LJS System), to return to LJS all copies of the LJS Confidential Manual, to relinquish the franchise phone number, and to modify the exterior and interior of the Restaurants so as to differentiate it from its prior identity as an LJS restaurant.

74. In addition to their contractual obligation to comply with all the Post-Termination Obligations, LJS specifically advised the Franchisee and Guarantors of their Post-Termination Obligations upon termination of the LJS Franchise Agreements and demanded compliance.

75. The Franchisee and Guarantors continue to fail and refuse to comply with all of the Post-Termination Obligations of the LJS Franchise Agreements.

76. With full knowledge of LJS's rights in the LJS Proprietary Marks, the Franchisee and Guarantors have infringed on same by improperly displaying the LJS Proprietary Marks at the Restaurants after the termination of the Franchise Agreements.

77. Upon information and belief, despite the contractual post-termination obligations and despite the Bankruptcy Cease and Desist Order, the Defendants continue to own and/or operate competing seafood restaurant that use and display actual and/or confusingly similar LJS trademarks and trade dress.

78. The Franchisee's and Guarantors' display of the LJS Proprietary Marks in connection with the Restaurants creates in the minds of purchasers and potential purchasers a direct association with LJS, which irreparably harms the value of the LJS Proprietary Marks and their franchise system, and injures LJS's reputation and good will.

79. Such acts were being committed with the intent and purpose of appropriating and trading upon the good will and reputation of the LJS Proprietary Marks, all to the detriment of LJS and to the good will the public has come to associate with said marks.

80. As a direct result of the Franchisee's and Guarantors' failure to fully de-image the Restaurants, LJS has received various complaints from consumers believing, or confused as to whether, they had patronized an authorized LJS franchise.

81. By virtue of the aforementioned acts, the Defendants have violated Section 32(1) of the Lanham Act, 15 U.S.C. §1114(l).

82. Therefore, LJS prays for judgment as set forth below and an accounting of the Franchisee's profits.

COUNT V
FEDERAL UNFAIR COMPETITION

83. The Franchisee and Guarantors, after the termination of the Franchisee's license to use the LJS Proprietary Marks in the operation of the Restaurants under the Franchise Agreements, and with the intent and purpose of misleading the trade and the public, have continued to partially use and display the LJS Proprietary Marks at the Restaurants.

84. The Franchisee's and Guarantors' unlicensed use of the LJS Proprietary Marks comprises a false designation of origin or false representation, and constitutes the utilization of false descriptions and representations in interstate commerce. The Defendants are falsely representing themselves to the public as an LJS franchisee.

85. As a consequence of the foregoing, the Defendants are unjustly enriched by unlawfully benefitting from the good will and reputation of LJS.

86. The Franchisee's acts are in violation of 15 U.S.C. § 1125(a) and federal unfair competition law.

87. The Franchisee's and Guarantors' acts have caused and will continue to cause irreparable injury to LJS if not restrained by this court from violations of LJS's rights. LJS has no adequate remedy at law, and therefore seeks injunctive relief under 15 U.S.C. § 1116 and such monetary relief to which it is entitled pursuant to 15 U.S.C. § 1117, including treble actual damages, costs, and reasonable attorneys' fees.

RELIEF REQUESTED

WHEREFORE, LJS demands judgment against the Defendants, as follows:

1. LJS is entitled to a declaratory judgment by this Court that the Franchise Agreements have been effectively and validly terminated according to the terms set forth in the

Franchise Agreement and the Default and Termination Letters, due to the Franchisee's failure to cure the notices of default and other breaches of the Franchise Agreement;

2. LJS is also entitled to a declaratory judgment by this court, pursuant to 28 § U.S.C. 2201, that the Defendants must comply with all terms of the Franchise Agreements including payment of all amounts due under their agreements and performance of all Post-Termination Obligations;

3. A preliminary and permanent injunction pursuant to the agreement of the parties and powers granted to the Court under 15 U.S.C. §1116, enjoining and restraining Defendants, their agents, servants, employees, successors, related companies and assigns from directly or indirectly:

(a) Doing business as LJS restaurant or operating under any name or in any manner that might tend to give the public the impression that are or were a LJS Franchisee or otherwise associated with LJS;

(b) Using the LJS System and the LJS Proprietary Marks, LJS name, symbols, or indicia, doing any other act, or making any statement which suggests or indicates that Defendants are in any way affiliated, connected, or associated with the LJS franchising system, are an authorized LJS franchisee, or which is likely to cause confusion or mistake or to deceive in connection with the advertising, promotion and selling of goods and services at the Defendants' Restaurants operated under the Franchise Agreements;

(c) Using any proprietary information or other trade secrets disclosed to them or using goods, emblems, signs, displays or other property on which the LJS name, any of the LJS Proprietary Marks or any confusing assimilation thereof are imprinted;

(d) To require the Defendants to immediately de-image the Restaurants from their present appearance, to remove all signs, emblems, displays or other items associated with LJS, the LJS System, and the LJS Proprietary Marks, to return all copies of the LJS Confidential Manual, and to de-identify or modify the exterior of the Restaurants as to differentiate them from their prior identity as an LJS restaurant; and

(e) To require the Defendants to comply with the non-compete provision of the Franchise Agreements.

4. That the Defendants be required to file with the Court and serve on LJS's counsel within 30 days after service of any injunction issued herein or within such reasonable time as the Court shall direct, a report in writing and under oath setting forth in detail the manner in which Defendants have complied with such injunction;

5. An accounting of Defendants' sales at the Restaurants from the date they failed to pay all fees required by the Franchise Agreement through the time that Defendants comply with all Post-Termination Obligations;

6. Judgment in favor of LJS on its claims for payment due and owing under the Franchise and Guaranty Agreements, jointly and severally against the Defendants, including without limitation, the Defendants' obligations for royalties, advertising fees, liquidated damages and all late fees, interest charges, and finance charges, plus such amounts as accrue until judgment, costs, attorneys' fees, and expenses;

7. Judgment in favor of LJS on its claims for payment due and owing under the Promissory Note against John Willingham, including without limitation, actual damages for unpaid principle, accrued interest, late charges, pre- and post-judgment interest, attorney fees, and

all other costs and disbursements incident to the collection of the balance due under the Promissory Note.

8. Judgment in favor of LJS on its claims for trademark infringement and unfair competition, jointly and severally against the Defendants, including without limitation, damages of lost profits and treble damages pursuant to U.S.C. §1117(a), along with such other and further relief as the Court may deem just and proper;

9. Pre- and post- judgment interest;

10. Reasonable attorney fees and all other costs and expenses of this litigation; and

11. All such further legal and equitable relief to which LJS is entitled and as this Court deems proper.

Respectfully submitted,

/s/ *Margaret Grant*

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