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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 BRIAN DOYLE, et al.,

11 Plaintiffs,

12 v.

13 NUTRILAWN U.S., INC.,

14 Defendant.

CASE NO. C09-0942JLR

ORDER DENYING PLAINTIFFS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT

AND

ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

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17 **I. INTRODUCTION**

18 This matter comes before the court on two motions for summary judgment:

19 Plaintiffs Brian Doyle, Brandi Doyle, and NW Lawn Care Professionals, LLC's

20 (collectively, "the Doyles") motion for partial summary judgment (Dkt. ## 43, 45-2); and

21 Defendant Nutrilawn U.S., Inc.'s ("Nutrilawn") motion for summary judgment and in the

22 alternative for a preliminary injunction (Dkt. # 46). Having considered the motions, as

1 well as all papers filed in support and opposition, and deeming oral argument
2 unnecessary, the court DENIES the Doyles' motion for partial summary judgment (Dkt.
3 ## 43, 45-2) and GRANTS in part and DENIES in part Nutrilawn's motion for summary
4 judgment (Dkt. # 46).

5 **II. BACKGROUND**

6 This action arises out of a Nutrilawn franchise agreement for the operation of a
7 lawn care business. Mr. Doyle and Nutrilawn entered into a franchise agreement
8 ("Franchise Agreement") with an initial five-year term running from January 19, 2004, to
9 January 19, 2009. (Doyle Decl. (Dkt. # 44) ¶ 2 & Ex. 1 (Franchise Agreement) at § 4.1.)
10 The Nutrilawn franchise product is a business program for establishing and operating a
11 lawn care center. (Vincent Decl. (Dkt. # 47) ¶ 1.)

12 The Franchise Agreement provides that Mr. Doyle could renew the agreement by
13 delivering notice of renewal not less than six months prior to the expiration of the initial
14 five-year term. (Franchise Agreement at § 4.2.) The parties agree that Mr. Doyle did not
15 renew the Franchise Agreement in accordance with the provisions of section 4.2. (Doyle
16 Mot. (Dkt. # 45-2) at 3; Nutrilawn Mot. (Dkt. # 46) at 2.) Nevertheless, the parties
17 engaged in ongoing negotiations regarding renewal throughout the remainder of the five-
18 year term. (Vincent Decl. ¶ 3.) The parties carried on these negotiations beyond January
19 19, 2009, and Mr. Doyle continued to operate his lawn care business after this time.

20 On July 8, 2009, the Doyles brought suit against Nutrilawn in federal court,
21 asserting claims for violation of Washington's Franchise Investment Protection Act
22 ("FIPA"), chapter 19.100 RCW, violation of Washington's Consumer Protection Act

1 (“CPA”), chapter 19.86 RCW, breach of contract, and breach of the covenant of good
2 faith and fair dealing. (Compl. (Dkt. # 1).) Nutrilawn answered the complaint and
3 pleaded counterclaims for breach of contract and quasi-contract, trademark infringement,
4 breach of the duty of good faith and fair dealing, and violation of the Uniform Trade
5 Secrets Act. (1st Am. Answer (Dkt. # 33).)

6 **III. ANALYSIS**

7 **A. Motions to Strike**

8 As a preliminary matter, the court considers the parties’ respective motions to
9 strike. These motions are essentially moot as the court does not rely on the challenged
10 evidence in the course of its ruling on the motions for summary judgment. Nevertheless,
11 to the extent the motions are not moot, the court denies both motions to strike.

12 First, the Doyles move to strike portions of the declaration of Ryan Vincent, the
13 president of Nutrilawn, pursuant to Federal Rules of Evidence 401, 402, 403, 408, 602,
14 and 704. (Doyle Resp. (Dkt. # 55) at 16-20.) The court denies the motion to strike in its
15 entirety. Contrary to the Doyles’ arguments, this evidence is relevant and its probative
16 value is not substantially outweighed by the danger of unfair prejudice or confusion.
17 This evidence is also not “offered to prove liability for, invalidity of, or amount of a
18 claim that was disputed as to validity or amount, or to impeach through a prior
19 inconsistent statement or contradiction.” Fed. R. Evid. 408(a). Instead, this evidence is
20 offered to show the ongoing negotiation efforts between the parties regarding renewal of
21 the Franchise Agreement. Next, Mr. Vincent’s personal knowledge and competence to
22 testify are reasonably implied from his position as president of Nutrilawn. *Barthelemy v.*

1 *Air Lines Pilots Ass'n*, 897 F.2d 999, 1018 (9th Cir. 1990). Finally, the court denies the
2 Doyle's motion to strike under Federal Rule of Evidence 704. This rule does not itself
3 preclude evidence of the sort challenged by the Doyles. To the extent Mr. Vincent's
4 declaration contains mere conclusory allegations, as the Doyles contend, this
5 consideration goes to the weight of the evidence, not its admissibility for purposes of
6 summary judgment.

7 Second, Nutrilawn moves to strike portions of the declaration of Kevin Murphy on
8 the basis that his statements constitute inadmissible legal conclusions under Federal Rule
9 of Evidence 702. (Nutrilawn Surreply (Dkt. # 57) at 1-2.) Nutrilawn also moves to strike
10 exhibits B and C to Mr. Muphy's declaration as irrelevant. The court denies Nutrilawn's
11 motion to strike. Although the court does not rely on Mr. Murphy's statements to
12 interpret the Franchise Agreement, as discussed below, the court is satisfied that his
13 declaration does not run afoul of Federal Rule of Evidence 702. The court also finds
14 exhibits B and C to be relevant, albeit minimally so and of no weight in the court's
15 analysis.

16 The court therefore denies the parties' respective motions to strike.

17 **B. Motions for Summary Judgment**

18 Summary judgment is appropriate if "the pleadings, the discovery and disclosure
19 materials on file, and any affidavits show that there is no genuine issue as to any material
20 fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P.
21 56(c)(2); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Galen v. County of Los*
22 *Angeles*, 477 F.3d 652, 658 (9th Cir. 2007). The moving party bears the initial burden of

1 showing there is no genuine issue of material fact and that he or she is entitled to prevail
2 as a matter of law. *Celotex*, 477 U.S. at 323. If the moving party meets his or her
3 burden, then the non-moving party “must make a showing sufficient to establish a
4 genuine dispute of material fact regarding the existence of the essential elements of his
5 case that he must prove at trial” in order to withstand summary judgment. *Galen*, 477
6 F.3d at 658. The non-moving party “must present affirmative evidence to make this
7 showing.” *Id.* Furthermore, as the Ninth Circuit teaches, “[b]ald assertions that genuine
8 issues of material fact exist are insufficient,” and a mere scintilla of evidence supporting
9 a party’s position is also inadequate. *Id.*

10 1. Non-Competition Clause and Covenant Not to Solicit Employees

11 The Doyles and Nutrilawn both move for summary judgment with respect to
12 Nutrilawn’s counterclaim that the Doyles are continuing to operate a lawn care business
13 in violation of the non-competition clause included in the Franchise Agreement at section
14 16.2. The Doyles also move for summary judgment with respect to Nutrilawn’s
15 counterclaim regarding the covenant not to solicit employees at section 16.3.

16 a. *Contract Interpretation in Washington*

17 Washington follows the objective manifestation theory of contracts for
18 interpreting contracts. *Hearst Commc’ns, Inc. v. Seattle Times Co.*, 115 P.3d 262, 267
19 (Wash. 2005). Under this approach, courts attempt to determine the parties’ intent “by
20 focusing on the objective manifestations of the agreement, rather than on the unexpressed
21 subjective intent of the parties.” *Id.* The subjective intent of the parties is thus generally
22 irrelevant if the court can determine the intent from the actual words used. *Id.* Courts

1 “give words in a contract their ordinary, usual, and popular meaning unless the entirety of
2 the agreement clearly demonstrates a contrary intent.” *Id.*

3 *b. Non-Competition Clause and Covenant Not to Solicit Employees*

4 The present dispute focuses principally on the question of whether the non-
5 competition clause and the covenant not to solicit employees in the Franchise Agreement
6 were triggered on the facts of this case. To answer this question, the court must resolve a
7 question of contract interpretation: does the “expiration” of the term of the Franchise
8 Agreement constitute a “termination” of the Franchise Agreement? This is a question of
9 law for the court to decide. For the reasons that follow, the court answers, “Yes.”

10 Section 16.2.1 of the Franchise Agreement is a non-competition clause that applies
11 “following termination of this Agreement for any reason whatsoever.” (Franchise
12 Agreement at § 16.2.1.) The non-competition clause provides in full:

13 Franchisee covenants and agrees that following termination of this
14 Agreement for any reason whatsoever and for a period of two (2) years
15 thereafter, neither Franchisee, the Designated Representative nor any
16 director, officer or shareholder of Franchisee shall, either individually or in
17 partnership, jointly or in conjunction with any person, firm, association,
18 syndicate or corporation, and whether as principal, agent, shareholder or in
19 any manner whatsoever (except as an owner of five (5) percent or less of
20 the issued and outstanding shares in any publicly-held corporation, unless
the same shall constitute a controlling interest therein), carry on or be
engaged in or be concerned with or interested in or advise, lend money to,
guarantee the debts or obligations of, or permit their name or any part
thereof to be used or employed by any person, firm, association, syndicate
or corporation, interested in the development, operation, franchising or
management of lawn care business which are the same or similar to the
business carried on by Franchisor or its authorized franchisees

21 (*Id.* § 16.2.1.) Section 16.3 of the Franchise Agreement is a covenant not to solicit
22 employees, which provides:

1 Franchisee covenants and agrees that during the Term of this Agreement
2 and following termination of this Agreement for any reason whatsoever and
3 for a period of two (2) years thereafter, neither Franchisee, the Designated
4 Representative, nor any director, officer or shareholder of Franchisee shall
5 attempt to obtain any unfair advantage over Franchisor, any other
6 franchisee of Franchisor or any affiliate of Franchisor by soliciting for
7 employment any person who is, at the time of such solicitation, employed
8 by such other franchisee, Franchisor or the said affiliate, nor shall they
9 directly or indirectly induce any such person to leave his employment as
10 aforesaid.

11 (*Id.* § 16.3.) The parties agree that the non-competition clause and covenant not to solicit
12 employees, by their plain language, are triggered upon “termination” of the Franchise
13 Agreement. They disagree, however, whether “termination” encompasses the
14 “expiration” of the term of the Franchise Agreement.

15 *c. “Expiration” and “Termination”*

16 Having reviewed the Franchise Agreement and finding it unambiguous for present
17 purposes, the court concludes that the “expiration” of the term of the Franchise
18 Agreement constitutes a “termination” of the Franchise Agreement. This interpretation
19 flows from the Franchise Agreement as a whole and from the ordinary meaning of the
20 terms used in the Franchise Agreement. Although the Franchise Agreement, like most
21 contracts, does not achieve perfect clarity, the agreement is generally written in a
22 straightforward and consistent manner. This lucidity simplifies the court’s task here.

To begin with, section 16.2.1 provides that the non-competition clause applies
“following termination of this Agreement for any reason whatsoever.” (*Id.* § 16.2.1.)
The same is true of the covenant not to solicit employees under section 16.3. This
language is undeniably broad and implies that termination must be read expansively so as

1 to extend to “any reason whatsoever,” but does not specify whether “expiration”
2 constitutes a “termination.” Section 18.1, however, builds on the breadth of sections
3 16.2.1 and 16.3 and provides additional guidance on the present question. In addressing
4 certain effects of termination, section 18.1 states that these effects apply “[u]pon the
5 termination of this Agreement for any reason whatsoever, including the expiration of the
6 Term[.]” (*Id.* § 18.1.) This language unambiguously includes expiration of the term of
7 the Franchise Agreement within the scope of termination. Finally, section 18.2, which
8 addresses the survival of covenants, provides:

9 Termination or expiration of the term of this Agreement shall not . . .
10 release Franchisee from those obligations hereunder which survive
11 termination, including without limitation, those obligations set forth in this
12 Section XVIII and in Section XVI of this Agreement.

13 (*Id.* § 18.2.) Section 18.2 contemplates that the obligations set forth in Section XVI,
14 which includes the non-competition clause and the covenant not to solicit employees,
15 shall remain binding following either termination or expiration of the term of the
16 Franchise Agreement.¹ Section 18.2 thus further clarifies that expiration falls within the
17 broad scope of termination sufficient to trigger the non-competition clause and the
18 covenant not to solicit employees under sections 16.2.1 and 16.3. On the whole, when
19 these sections are viewed together and their language is given its ordinary meaning, it is

20 ¹ Section 18.2 is not a model of clarity. However, the court interprets the language of
21 section 18.2 as distinguishing between the termination of the term, *i.e.*, a termination prior to the
22 natural expiration of the term, and the termination of the Franchise Agreement itself, which
occurs either by termination or expiration of the term. In other words, the term of the Franchise
Agreement can be ended either by termination or expiration, but both means of ending the term
constitute a termination of the Franchise Agreement.

1 | evident that expiration of the term of the Franchise Agreement constitutes a termination
2 | of the agreement.

3 | The Doyles argue that expiration of the term does not constitute a termination of
4 | the Franchise Agreement because section 17 does not define termination to include
5 | expiration. Yet section 17 does not define the term “termination” at all. The Doyles’
6 | assertions to the contrary are simply incorrect. Instead, section 17 enumerates certain
7 | events of default upon which Nutrilawn “shall have the right . . . to terminate this
8 | Agreement[.]” (*Id.* § 17.1.) This is different from defining the term “termination.”
9 | Although the Doyles correctly observe that section 17 does not discuss the expiration of
10 | the term of the Franchise Agreement, it does not follow that this absence demonstrates
11 | that expiration does not constitute a termination. Rather, because expiration is not an
12 | event of default, section 17.1 simply does not address it.² The court is therefore not
13 | persuaded that section 17 supports the Doyle’s proposed interpretation.

14 | Neither the cases cited by the parties nor the FIPA warrant a different result where
15 | the Franchise Agreement speaks for itself. Although the Doyles point to cases that
16 | distinguish between termination and expiration, these cases hold limited persuasive value
17 | here as they necessarily rest on the language of the particular contracts at issue in those
18 | cases. *See, e.g., Specialty Rental Tools & Supply, LP v. Shoemaker*, 553 F.3d 415, 421

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20 | ² Indeed, it is difficult to understand the Doyles’ argument that section 17 would have
21 | addressed expiration of the term of the Franchise Agreement if such expiration was meant to
22 | constitute a termination of the Franchise Agreement. In effect, the Doyles suggest that
Nutrilawn should have drafted section 17 to provide that Nutrilawn has the right to terminate the
Franchise Agreement upon the expiration of the term of the agreement. In the court’s view, it
would be entirely superfluous to do so.

1 | (5th Cir. 2008); *Vollmer v. Akerson*, 688 N.W.2d 225, 228 (S.D. 2004); *Sonny's Pizza,*
2 | *Inc. v. Braley*, 612 So.2d 844, 846-47 (La. Ct. App. 1992). So too, the case law cited by
3 | Nutrilawn is of limited persuasive value. *See, e.g., Carvel Corp. v. Eisenberg*, 692 F.
4 | Supp. 182, 184-85 (S.D.N.Y. 1988); *Carvel Corp. v. Rait*, 503 N.Y.S.2d 406, 410 (N.Y.
5 | App. Div. 1986). The court is also not convinced that the FIPA and other franchise
6 | statutes require a result in contravention of the plain language of the Franchise
7 | Agreement. The court therefore does not rely on this case law or the FIPA and other
8 | franchise statutes in interpreting the Franchise Agreement.

9 | In addition, the Uniform Franchise Offering Circular (“UFOC”), although it
10 | supports Nutrilawn’s proposed interpretation, proves of limited persuasive value. With
11 | respect to the non-competition clause, the UFOC refers to section 16.2 as the provision in
12 | the Franchise Agreement regarding “Non-Competition Covenants After the Franchise Is
13 | Terminated or Expires.” (Doyle Decl. Ex. 2, Item 17(R).) This language signals that the
14 | non-competition clause applies upon both termination of the term and expiration of the
15 | term. The court, however, declines to rely on the UFOC to interpret the Franchise
16 | Agreement.

17 | Finally, the court is unmoved by the declarations of Douglas Berry and Mr.
18 | Murphy. This court discerns no need to rely on this evidence to interpret an agreement
19 | that is unambiguous.

20 | In sum, viewing the Franchise Agreement as a whole and giving its terms their
21 | ordinary meaning, the court concludes that the “expiration” of the term of the Franchise
22 | Agreement constitutes a “termination” of the Franchise Agreement. Having reached this

1 conclusion, the court denies the Doyles' motion for partial summary judgment (Dkt. ##
2 43, 45-2).

3 *d. Violation of the Non-Competition Clause*

4 Nutrilawn next argues that the Doyles are violating the non-competition clause of
5 the Franchise Agreement, and that Nutrilawn is thus entitled to a permanent injunction.³
6 (Nutrilawn Mot. at 10-13.) In the alternative, Nutrilawn requests entry of a preliminary
7 injunction. The Doyles resist entry of an injunction, but rest the entirety of their
8 opposition on the theory that the non-competition clause was not triggered on the facts of
9 this case. (Doyle Resp. at 13-14.)

10 The court now concludes that the non-competition clause applies here. In
11 reaching this conclusion, the court need not resolve whether the Franchise Agreement
12 expired at the end of the initial term in January 2009 or whether it was terminated by
13 Nutrilawn following an event of default in August 2009. The non-competition clause
14 was triggered under either circumstance because each constitutes a termination of the
15 agreement.

16 On this record, however, the court declines to conclude that the Doyles are acting
17 in contravention of the non-competition clause. The court also declines to consider
18 whether the terms of the non-competition clause are enforceable. Nutrilawn has
19 presented only minimal evidence regarding the alleged violation of the non-competition
20 clause. (*See Vincent Decl.* ¶ 5.) This evidence does not provide sufficient information to

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22 ³ In its motion, Nutrilawn does not address the covenant not to solicit employees.

1 satisfy Nutrilawn's burden to show that no genuine issue of material fact exists regarding
2 whether the Doyles violated or are violating the non-competition clause. The court
3 therefore denies without prejudice Nutrilawn's requests for a permanent injunction and
4 for a preliminary injunction. Nutrilawn may file a subsequent motion for injunctive
5 relief, if and when it deems appropriate. However, the court encourages the parties to
6 meet and confer regarding the non-competition clause and this court's order before filing
7 new motions.

8 2. Reasonable Opportunity to Renew the Franchise Agreement Claims

9 Nutrilawn also moves for summary judgment in its favor with respect to all of the
10 Doyles' five causes of action. (Nutrilawn Mot. at 15.) In these claims, the Doyles allege
11 that Mr. Doyle was denied a reasonable opportunity to renew the Franchise Agreement.

12 a. *FIPA Claim*

13 The court denies summary judgment in favor of Nutrilawn with respect to the
14 Doyles' first cause of action for violation of the FIPA. The Doyles allege that Nutrilawn
15 violated the FIPA by failing to provide an offering circular or franchise disclosure
16 document that Mr. Doyle allegedly requested in December 2008. RCW 19.100.080
17 provides:

18 It is unlawful for any person to sell a franchise that is registered or required
19 to be registered under this chapter without first delivering to the offeree, at
20 least ten business days prior to the execution by the offeree of any binding
21 franchise or other agreement, or at least ten business days prior to the
22 receipt of any consideration, whichever occurs first, a copy of the offering
circular required under RCW 19.100.040, with any addition or amendment
to the offering circular required by RCW 19.100.070, together with a copy
of the proposed agreements relating to the sale of the franchise.

1 In a similar vein, the Code of Federal Regulations provides:

2 In connection with the offer or sale of a franchise to be located in the
3 United States of America or its territories, unless the transaction is
4 exempted under Subpart E of this part, it is an unfair or deceptive act or
5 practice in violation of Section 5 of the Federal Trade Commission Act:

6 (a) For any franchisor to fail to furnish a prospective franchisee with a
7 copy of the franchisor's current disclosure document, as described in
8 Subparts C and D of this part, at least 14 calendar-days before the
9 prospective franchisee signs a binding agreement with, or makes any
10 payment to, the franchisor or an affiliate in connection with the
11 proposed franchise sale.

12 16 C.F.R. § 436.2.

13 Here, Nutrilawn asserts that it was not subject to RCW 19.100.080 because that
14 section only applies to a person "that is registered or required to be registered" and
15 Nutrilawn was neither registered nor required to be registered in December 2008.
16 Nutrilawn also argues that 16 C.F.R. § 436.2(a) does not apply on the facts of this case
17 because 16 C.F.R. § 436.1(t) provides that the sale of a franchise "does not include
18 extending or renewing an existing franchise agreement where there has been no
19 interruption in the franchisee's operation of the business, unless the new agreement
20 contains terms and conditions that differ materially from the original agreement." The
21 court agrees with Nutrilawn that 16 C.F.R. § 436.2(a) does not apply here because the
22 parties were negotiating to extend or renew the existing franchise, not negotiating for the
offer or sale of a new franchise. By contrast, the court disagrees with Nutrilawn that
summary judgment is appropriate with respect to the Doyles' FIPA claim. Nutrilawn's
assertions regarding its registration status in Washington may or may not be correct. If
correct, it appears likely that the Doyles do not have a viable FIPA claim. However,

1 Nutrilawn has presented no evidence to establish that it was not registered in Washington
2 in December 2008. In his declaration, Santino Ferrante states only that Nutrilawn was
3 registered in Washington from May 15, 2003, through May 14, 2004; he simply does not
4 address Nutrilawn's registration status on other dates. (Ferrante Decl. (Dkt. # 60) ¶ 3 &
5 Ex. B.) The court therefore denies summary judgment on the Doyles' FIPA claim.

6 *b. CPA Claim*

7 The court denies summary judgment in favor of Nutrilawn with respect to the
8 Doyles' second cause of action for violation of the CPA. A violation of the FIPA may
9 constitute a violation of the CPA. *See* RCW 19.100.190; *Nelson v. Nat'l Fund Raising*
10 *Consultants, Inc.*, 842 P.2d 473, 478 (Wash. 1992). Neither Nutrilawn nor the Doyles
11 address the merits of the Doyles' CPA claim in their briefing. Because a genuine issue of
12 material fact remains as to Nutrilawn's registration status and its obligations under the
13 FIPA, and in light of the parties' cursory briefing, the court denies summary judgment as
14 to the Doyle's CPA claim.

15 *c. Breach of Contract Claim*

16 The court grants summary judgment in favor of Nutrilawn with respect to the
17 Doyles' third cause of action for breach of contract. The Doyles allege that Nutrilawn
18 breached the Franchise Agreement by failing to offer Mr. Doyle a meaningful
19 opportunity to renew the agreement. The question of whether Nutrilawn breached the
20 Franchise Agreement is distinct from the question of whether it violated obligations
21 imposed by the FIPA. The Doyles have not identified any section of the Franchise
22 Agreement that they believe Nutrilawn breached. Mr. Doyle may have been dissatisfied

1 with the renewal process and the associated negotiations between the parties, but the
2 Doyles have not submitted any evidence to support their contention that this constitutes a
3 breach of contract. On this record, the court grants Nutrilawn’s motion as to the Doyles’
4 breach of contract claim.

5 *d. Breach of the Duty of Good Faith and Fair Dealing Claims*

6 The court grants summary judgment in favor of Nutrilawn with respect to the
7 Doyles’ fourth and fifth causes of action for breach of the duty of good faith under the
8 FIPA and breach of the covenant of good faith and fair dealing. In Washington, there is
9 in every contract an implied duty of good faith and fair dealing. *Badgett v. Sec. State*
10 *Bank*, 807 P.2d 356, 360 (Wash. 1991); *Carlile v. Harbour Homes, Inc.*, 194 P.3d 280,
11 291 (Wash. Ct. App. 2008). This duty “requires only that the parties perform in good
12 faith the obligations imposed by their agreement.” *Badgett*, 807 P.2d at 360. By
13 contrast, the duty neither obligates a party to accept a material change in the terms of the
14 contract, nor injects substantive terms into the contract. *Id.* The FIPA also imposes an
15 obligation that the franchisor and the franchisee “shall deal with each other in good
16 faith,” and enumerates specific proscribed conduct. RCW 19.100.180(1); *see Corp. v.*
17 *Atl. Richfield Co.*, 860 P.2d 1015, 1019 (Wash. 1993). “While the scope of the
18 contractual duty of good faith may have been unclear when FIPA was enacted,
19 Washington courts have since recognized that the duty of good faith does not operate to
20 create rights not contracted for, nor does it override the express terms of a contract.”

21 Douglas C. Berry, David M. Byers & Daniel J. Oates, *State Regulation of Franchising:*
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1 | *The Washington Experience Revisited*, 32 SEATTLE U. L. REV. 811, 871 (2009) (citing
2 | *Badgett*, 807 P.2d at 360).

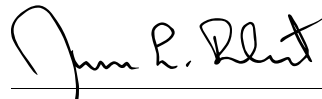
3 | Here, the Doyles have presented no evidence to demonstrate that Nutrilawn
4 | violated its good faith obligations. Specifically, the Doyles do not identify any section of
5 | the Franchise Agreement that they believe Nutrilawn breached, do not point to any
6 | obligation imposed by the Franchise Agreement that they believe Nutrilawn failed to
7 | carry out in good faith, and do not argue that Nutrilawn violated any of the specific
8 | provisions of RCW 19.100.180(2). As the Washington Supreme Court teaches, the duty
9 | of good faith and fair dealing “arises only in connection with terms agreed to by the
10 | parties.” *Badgett*, 807 P.2d at 360. The Doyles, however, have not shown how
11 | Nutrilawn failed to act in good faith in connection with the terms of the Franchise
12 | Agreement. On this record, even viewing the evidence in the light most favorable to the
13 | Doyles, the court concludes that Nutrilawn has satisfied its burden to show that no
14 | genuine issue of material fact exists and that it is entitled to judgment as a matter of law.

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1 **IV. CONCLUSION**

2 For the foregoing reasons, the court DENIES the Doyles' motion for partial
3 summary judgment (Dkt. ## 43, 45-2) and GRANTS in part and DENIES in part
4 Nutrilawn's motion for summary judgment (Dkt. # 46).

5 Dated this 17th day of May, 2010.

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8 JAMES L. ROBART
9 United States District Judge
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