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7 Attorneys for Plaintiff ASHWANI JAISWAL

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **RIVERSIDE COURT**

11 ASHWANI JAISWAL,
12 Plaintiff,

13 v.

14 DICKEY'S BARBECUE
15 RESTAURANTS, INC.,
16 Defendant.

Case No.:

JURY TRIAL DEMANDED

COMPLAINT FOR DAMAGES

Trial Date: None set

17
18 Plaintiff Ashwani Jaiswal alleges as follows under information and belief unless otherwise
19 stated:

20 1. Ashwani Jaiswal is a resident of Beaumont, California in Riverside County,
21 California. He acquired three Dickey's franchises in Temecula, Beaumont, and Moreno Valley,
22 California.

23 2. Defendant Dickey's Barbecue Restaurants, Inc. is a Texas corporation with its
24 principal place of business at 4514 Cole Avenue, Suite 1015, Dallas, Texas 95205.

25 3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) in that
26 there is complete diversity of citizenship between all of the Plaintiffs and all Defendants and the
27 amount in controversy exceeds \$75,000.

28 4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial

1 part of the events or omissions giving rise to the claims occurred in the judicial district.

2 5. Defendant Dickey’s sells franchise stores to franchisees nationwide. Dickey’s
3 restaurants are a combination of quick service/fast casual dining experience, specializing in
4 barbecue.

5 6. On October 7, 2021, Mr. Jaiswal signed a Dickey’s franchise agreement for a store in
6 Beaumont.

7 7. On March 30, 2022, Mr. Jaiswal signed a Dickey’s franchise agreement for a store in
8 Morena Valley.

9 8. On April 28, 2022, Mr. Jaiswal signed a Dickey’s franchise agreement for a store in
10 Temecula.

11 9. All three franchise agreements contained the following provisions:

12 a. Section 4.2 – Dickey’s will collect a 6% royalty;

13 b. Section 4.12 – Franchisees are required to use the Sparks Point of Sale
14 system;

15 c. Section 5.1 – Franchisees are required to participate in “all advertising,
16 marketing, and promotion programs in complete accordance with the terms and conditions
17 established by Dickey’s for each program.”

18 d. Section 5.6 – Dickey’s will establish pricing requirements governing the
19 prices that the franchisees for which they can sell Dickey’s products;

20 e. Section 5.8 - Dickey's will collect a 3% marketing fee;

21 f. Section 8.26 – Dickey’s requires its franchisees to cooperate with food
22 delivery services.

23 10. Since the inception of these three franchises, Dickey’s has consistently and
24 significantly overcharged for its 9% royalty/marketing fee. The Sparks system appears to be part of
25 the problem. The delivery services are another part of the problem. Dickey’s internal systems are yet
26 another part of the problem.

27 11. Dickey’s requires its California franchisees to charge the same prices as the stores in
28 Texas, a number of which are corporate-owned. Dickey’s also does not allow its franchisees to

1 charge premium prices for deliveries to cover the costs of those services. These pricing policies set
2 up the California franchisees for failure.

3 **FIRST CAUSE OF ACTION**

4 **Price Fixing**

5 12. All preceding allegations are incorporated herein by reference.

6 13. Unlawful price fixing is an agreement to set, raise, lower, maintain, or stabilize the
7 prices to be charged for a product or service.

8 14. Dickey’s sets the prices to be charged for its products and forces franchisees to
9 agreement to maintain those prices.

10 15. Plaintiff has been harmed by this price fixing in an amount to be proven at trial,
11 which harm was substantially caused by Defendant.

12 **SECOND CAUSE OF ACTION**

13 **Breach of Contract**

14 16. All preceding allegations are incorporated herein by reference.

15 17. There are three contracts between Plaintiff and Defendant related to the three
16 Dickey’s franchises that Plaintiff operates.

17 18. Under those agreement, Dickey’s is only entitled to collect a 6% (of net revenues)
18 franchise fee and a 3% (of net revenues) marketing fee.

19 19. Dickey has breached that term of the agreement by collecting in excess of its
20 cumulative 9% from Plaintiff’s net revenues.

21 20. Dickey agreed not to make technology charges.

22 21. Dickey breached that agreement by charging technology charges for Boost.

23 22. That breach has caused harm to Plaintiff in an amount to be proven at trial.

24 **THIRD CAUSE OF ACTION**

25 **Breach of Covenant of Good Faith and Fair Dealing**

26 23. All preceding allegations are incorporated herein by reference.

27 24. There are three contracts between Plaintiff and Defendant related to the three
28 Dickey’s franchises that Plaintiff operates.

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1 25. Plaintiff did all, or substantially all, of the significant things that the contract required
2 from him.

3 26. Defendant prevented Plaintiff from enjoying all of the benefits under the contract by
4 entering into agreements with various delivery services calling for a nearly 50% fee on the cost of
5 food delivered. Those agreements also vested in Dickey’s the ability to dictate promotions about
6 which Plaintiff was not previously advised or to which Plaintiff consented.

7 27. By engaging in this conduct, Defendant did not act fairly and in good faith.

8 28. Defendant’s conduct caused harm to Plaintiff in an amount to be proven at trial.

9 **FOURTH CAUSE OF ACTION**

10 **Interference with Prospective Economic Advantage**

11 29. All preceding allegations are incorporated herein by reference.

12 30. Plaintiff and various food delivery services were in an economic relationship that
13 probably would have resulted in an economic benefit to Plaintiff.

14 31. Defendant knew about this relationship.

15 32. Defendant engaged in wrongful conduct.

16 33. By engaging in that conduct, Defendant intended to disrupt the relationship and/or
17 knew that disruption of the relationship was certain or substantially certain to occur.

18 34. The relationship was disrupted.

19 35. Plaintiff was harmed.

20 36. Defendant’s conduct was a substantial factor in causing Plaintiff’s harm.

21 **FIFTH CAUSE OF ACTION**

22 **Violation of Business and Professions Code § 17200, et seq.**

23 37. All preceding allegations are incorporated herein by reference.

24 38. Defendant has engaged in unfair practices related to collection of its royalties.

25 39. Defendant has engaged in unfair practices related to dealings with delivery
26 companies.

27 40. Defendant has engaged in fraudulent practices related to collection of its royalties.

28 41. Defendant has engaged in fraudulent practices related to dealings with delivery

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1 companies.

2 42. Defendant has engaged in unlawful practices related to collection of its royalties.

3 43. Defendant has engaged in unlawful practices related to dealings with delivery
4 companies.

5 44. Defendant has engaged in unlawful practices by stealing Plaintiff's money.

6 **PRAYER FOR RELIEF**

7 Wherefore Plaintiff prays for relief as follows:

8 **As to the First Cause of Action:**

- 9 1. For damages;
- 10 2. For treble damages;
- 11 3. For injunctive relief;
- 12 4. For costs of suit;
- 13 5. For attorneys' fees; and
- 14 6. For such other relief that the Court deems appropriate.

15 **As to the Second Cause of Action:**

- 16 7. For damages;
- 17 8. For injunctive relief;
- 18 9. For costs of suit;
- 19 10. For attorneys' fees; and
- 20 11. For such other relief that the Court deems appropriate.

21 **As to the Third Cause of Action:**

- 22 12. For damages;
- 23 13. For injunctive relief;
- 24 14. For costs of suit;
- 25 15. For attorneys' fees; and
- 26 16. For such other relief that the Court deems appropriate.

27 **As to the Fourth Cause of Action:**

- 28 17. For damages;

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- 18. For injunctive relief;
- 19. For costs of suit;
- 20. For attorneys' fees; and
- 21. For such other relief that the Court deems appropriate.

As to the Fifth Cause of Action:

- 22. For injunctive relief;
- 23. For restitution;
- 24. For declaratory relief;
- 25. For costs of suit;
- 26. For attorneys' fees; and
- 27. For such other relief that the Court deems appropriate.

Dated: September 18, 2023

THORSNES BARTOLOTTA MCGUIRE LLP

By: 

KAREN R. FROSTROM, ESQ.
Attorneys for Plaintiff
ASHWANI JAISWAL