May 19, 2015

Councilmember Curren D. Price, Jr., Chair, Economic Development Committee
200 N Spring Street
Los Angeles, California 90012
Council File: 14-1371, 14-1371-52

Dear Councilmember Price:

I am submitting this letter to you to comment on the matter of paid sick leave.

In Oakland, we adopted a paid sick leave policy in November 2014 when the minimum wage was raised. Voters approved Measure FF because of a desire to protect families’ and the public’s health. In particular, it’s important to require paid sick leave with regards to food service establishments, childcare, and other businesses that interface with the public. The lack of paid sick leave hurts the health of workers, their families, and customers.

With half of the private sector workers in Los Angeles lacking access to earned sick leave, this puts the most economically vulnerable at great risk. This population, similar to Oakland’s, includes many mothers and Latinos and African-Americans and already struggles to make ends meet and can least afford to stay home when they or their children are sick. This disproportionately affects the lower income, with governments and public health programs forced to pick up the cost of inadequate paid sick leave. Aside from worsened health concerns, many sick workers also fear intimidation or losing their wages or employment without clear legal mandates protecting them.
Paid sick leave is a fundamental policy that has been widely adopted by major California cities. Not just in Oakland, but also in San Francisco and San Diego, which helped inform Oakland’s eventual policy. These policies demonstrated that minimum wage ordinances can and should include earned sick leave. Policies in those cities provide for earned leave beyond the three days provided in statewide legislation that takes effect in July. (The statewide legislation, while an important first step, ultimately was insufficient for our city’s working parents when considering both their and their children’s health over the course of a year.)

Los Angeles is the exception to this trend and while we are cognizant of cost concerns by business owners, we think that if implemented thoughtfully, it will greatly benefit the denizens of your city. Firstly, as much of the low wage workforce lacking paid sick leave are working mothers, we believe this will increase the health of the workforce and their children. Their children will maintain greater school attendance and be less likely to spread illness to their peers.

Secondly, there is a significant reduction in costs to emergency care by workers either resting or receiving lower cost preventative treatments for injury or illness. Illnesses or injuries that exacerbate as a result of lack of timely care always cost much more to treat.

Lastly, we believe that earned sick leave policies strengthen the business community. More than two in three businesses in San Francisco supported their city’s earned sick day’s law with few employers reporting any negative impact on profitability. We believe this will be the case when Oakland’s employers are surveyed in the future, as our policy has only recently taken effect. Earned sick days are also expected to help businesses reduce one of their greatest costs, that of staff turnover. Replacing workers typically costs 20 to 200 percent of a worker’s annual compensation.

Elected officials and public health agencies alike know the value of earned sick leave. Los Angeles’ living wage ordinance should provide for compensated days off as Oakland’s does. As you consider raising your minimum wage, I highly suggest that earned sick leave be included in order to adopt the most comprehensive and effective policy.

Thank you for your review and feel free to consult with our office with any questions or concerns on paid sick leave policies.

Sincerely,

Libby Schaaf

Mayor of Oakland

Shereda F. Nosakhare
Deputy Chief of Staff | Office of the Mayor
1 Frank. H. Ogawa Plaza, 3rd Floor, Oakland CA 94612
Office: 510.238.3141 | Direct: 510.238.7439 |
Email: snosakhare@oaklandnet.com | http://www2.oaklandnet.com/Government/o/Mayor/index.htm
I, John A. Gordon, hereby declare as follows:

1. I am over 18 years of age, am competent to testify about the matters set forth herein, and submit the testimony below based upon personal knowledge and information.

Professional Background and Qualifications

2. I am the founder and principal of Pacific Management Consulting Group, a restaurant analysis and advisory consultancy. In addition to my work as a franchise business consultant, my professional background includes extensive franchise operations and financial management experience as a General Manager/Area Supervisor for a quick service restaurant chain, as a Cost Analyst and Financial Analyst for a publicly traded United States chain.
restaurant corporation, as a Manager of Financial Analysis and Chief Financial Officer/Director of Finance for a large international hospitality chain, and as a Senior Associate at a large management consulting firm. I graduated from Indiana University and obtained my initial professional restaurant management experience while in high school and college, progressing in the industry through more senior roles. I am a certified Master Analyst of Financial Forensics (MAFF) and specialize in complex business analytical projects.

3. My analytical roles and engagements have focused on restaurant and related industry business operations, management systems, and franchisor/franchisee practices. I have performed these engagements for franchisees, franchisee associations, franchisors, investors, investment banking firms, consulting firms, and private equity firms. Over the course of my professional career I have routinely worked with, and consulted for, both franchisors and franchisees alike.

4. I have had extensive experience in franchising, principally but not exclusively regarding the restaurant industry. My franchising experience includes operational, financial and business structure assessments of start-ups and existing franchisors, and I have worked with retail and service sector franchises on issues concerning organization structure, economics, supply chains, and franchise development system. In my consulting practice I have also worked with non-franchise small businesses, including independent hotel/casinos, print shops and other businesses in the service industry.

5. My detailed Curriculum Vitae, which includes a summary description of my prior work as an expert witness, is attached as Exhibit 1.

Franchising Background

6. The term “franchise business model” refers to a long-term business relationship in which one company (the franchisor) grants other companies (the franchisees) the right to sell products under its brand, using its business model and intellectual property, generally in exchange for ongoing royalty payments and other fees. Although the terms of franchise agreements differ from company to company and industry to industry, this basic model is at the

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8. I have been retained as an expert to state and explain the basis for my opinion that, as a general matter, franchisees in a given industry are often better able to absorb incremental minimum wage increases than independent small businesses in the same industry are able to absorb such increases. Attached hereto as Exhibit 2 is a list of documents I reviewed in preparing this declaration.

Summary of Findings

9. Franchisees generally have many advantages provided by the franchise business model that are not available to independent small businesses. Although the terms of franchise agreements differ and not every relationship includes each of the following benefits, common advantages to franchisees include: 1) a strong brand identity that reinforces and strengthens franchisee location sales, 2) access to detailed operating procedures and best practices concerning every aspect of the business, 3) economies of scale in purchasing and other costs, 4) access to relatively sophisticated market research, 5) cooperative marketing activities, sometimes at the national level, directed by experienced franchisors, 6) access to financing on more favorable terms than may otherwise be available, 7) training, both pre-opening and ongoing, and 8) a social network that enables franchisees to share best practices and other useful information more easily. In addition to these factors, franchisors also have the ability to use their greater financial resources to support the franchise by aiding franchisees during times of business stress. Because of these advantages, franchisees and franchisors are better able than independent small businesses to identify and respond to changed business conditions, including regularly scheduled minimum wage increases.
The Franchise Business Model Provides Many Benefits To Participants, Making Them Better Able To Manage Higher Minimum Wage Rates.

10. Each franchise relationship differs and there is great diversity in the franchise business model. Although the franchise model provides benefits to all franchisees, it does so in different proportions and magnitudes. Attached hereto as Exhibit 3 is a publication prepared by plaintiff International Franchise Association ("IFA") that describes a broad range of business benefits that the franchise model provides to franchisees. In this document, the IFA identifies many of the benefits that I discuss here as advantages of the franchise business model that enable franchisees and franchisors to more easily absorb or otherwise accommodate scheduled increases in labor costs.

11. **Strength of Brand:** Many franchises have established a high level of brand awareness and a strong brand identity based on the franchisor’s efforts, including advertising and identification of the franchisor’s trademarks, as well as the operations of the brand’s franchisees. This means that from the moment a franchisee opens a new store, it is able to sell familiar products under a recognized brand to an established customer base. Independent small businesses do not have this platform and must start at ground zero in building their business. For example, a Subway franchisee operator will enjoy the cumulative benefit of the market identity of all of the other stores in the brand network, as well as a long-running advertising campaign, that will often lead to higher revenues than would be immediately available to an independent sandwich shop. In my experience, this benefit often enables franchised operations to remain in business in difficult areas and business environments when otherwise similarly situated independent businesses have been forced to close.
12. **Operational Guidance and Control:** Many franchisors have an operations manual that they routinely provide to franchisees. These manuals are created based on the franchisor’s accumulated best practices, operations and management standards, and give participants in the franchise business model a proven pathway to execute profitably and efficiently in the competitive marketplace. The typical franchisor’s operations manual is hundreds of pages long and accumulates policies, procedures and plans that are the heart of the franchise operation. In some franchise relationships, the operational standards outlined by franchisors are so extensive as to constitute control over the operations of a franchisee’s business. Exhibit 4, attached hereto, is the table of contents from the operations manual summary from AlphaGraphics, the franchisor of one of the named franchisee plaintiffs in this action. ¹ The table of contents shows a wealth of information on operations, marketing, financial management, human resources, and information technology “best practices” that have been developed over time and that enable AlphaGraphics and its franchisees to benefit from efficient operations based on the accumulated knowledge of the franchisor and its other franchisees.

13. The operations manual typically contains topics associated with most business practices needed to open and operate the business, including operations, marketing, financial management, human resource management, and other disciplines. A recent survey of 100 randomly selected fast food franchise agreements showed that 99 referred to a franchisor-issued operations manual that set forth required procedures or made recommendations about best practices. Emerson, 2013 Mich. St. L. Rev. at 691. In my experience, having access to such an operations manual means that a franchisee does not have to learn management basics so more

¹ The table of contents is included in the AlphaGraphics franchise disclosure document, which some states require be filed with a state agency when a franchisor does business within the state.

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SCHWERIN CAMPBELL BARNARD
IGLITZIN & LAVITT LLP
18 W Mercer St, Seattle, WA 98119
(206) 285-2828
time can be spent on building business-to-business and client relationships, executing local store
marketing programs, and finding and developing staff.

14. The independent small employer usually has no comparable resource. It must
develop standard operating procedures through its own trial-and-error experience over a period
of years. In my experience, independent small businesses are often founder-driven, and those
founders typically have skills in some areas but not across the business discipline spectrum in all
business disciplines in which a large corporate franchisor commonly operates. For example, I
have provided consulting services to an independent pizza operator; his pizza product quality and
creative culinary skills were excellent, but he could not understand menu pricing or accounting
for the small offsite concession he ran, and operating losses in that concession weighed down his
business. He would have benefitted from the type of guidance typically found in franchise
operations manuals.

15. In addition to this operational guidance, the franchise business model often
involves extensive ongoing oversight, inspection, and even control over franchisee operations by
franchisors (by contract or as a result of economic pressures, or both), to which independent
small businesses are not subject. Franchisor oversight and control does not end when a new
franchisee location is opened, but continues over the life of the franchisee agreement. Many
franchisors, for example, create elaborate tracking and monitoring programs and employ staff
that serve as franchisee coaches and consultants. The theory is that franchisees will obtain
greater business stability in exchange for sacrificing economic and operational independence.

16. **Economies of Scale in Purchasing and Other Costs:*** The franchise model can
provide economies of scale in purchasing and other costs, often lowering the cost of goods
purchased, operational supplies, contracted services and construction, information technology,
equipment, and other capital investment costs that franchisees must pay. Independent small
business owners do not have this advantage, and typically must pay for goods and services at
higher “street account” rates, which are higher than the rates franchisees pay because the
independent cannot command similar volume discounts. My experience is that the vast majority
of independent business entities are charged these higher rates on their goods and supplies from
their vendors, and it weighs down their store profitability accordingly – and their ability to
accommodate scheduled labor cost increases.

17. **Access to Market Research:** The franchise business model often provides
franchisees access to relatively sophisticated market research, addressing topics such as customer
brand perceptions, site selection, store layout, product mix, and regional preferences.
Independent small businesses typically do not have access to such sophisticated market research.
Exhibit 3, the IFA’s Introduction to Franchising publication, describes the importance of this
market research. In my experience, such research helps franchisees and franchisors determine
where to open a business and identify prospective customers, allowing for targeted marketing
and, again, greater market stability.

18. **Marketing Assistance:** Many franchisees fund and participate in national and
local brand building marketing activities, often at the direction of their franchisors. Under these
programs, the collective action of numerous franchisees benefit each individual franchisee by
creating far larger marketing campaigns than would be possible for each separate franchise
operation acting alone. Having the franchisor direct the national marketing campaign also results
in centralized control. The survey of 100 randomly selected fast food franchise agreements to
which I previously referred showed that in 63, the franchisor committed to run advertisements
concerning the franchisee’s products and services. Emerson, 2013 Mich. St. L. Rev. at 696.
Inset One below provides a description of the Bright Star Marketing program from plaintiff Lyons’ franchise agreement. Excerpts of the Bright Star franchise agreement are attached hereto as Exhibit 5.

**Inset One: Bright Star Marketing Excerpt**

8. ADVERTISING AND MARKETING

8.1 General Marketing Fund. Franchisor or its designee will create, administer, and maintain a general marketing fund (“General Marketing Fund”). Franchisor will use General Marketing Fund contributions to develop, produce and distribute national, regional and/or local advertising and to create advertising materials and public relations programs which promote, in Franchisor’s sole judgment, the Licensed Marks, any other marks owned by Franchisor or its affiliates, and/or the products and services offered by System Franchisees. Franchisor has the sole right to determine contributions and expenditures from the General Marketing Fund, or any other advertising program, and sole authority to determine, without limitation, the selection of the advertising materials and programs; provided, however, that Franchisor will make a good faith effort to expend General Marketing Fund contributions in the general best interests of the System on a national or regional basis. Franchisor may use the General Marketing Fund to satisfy any and all costs of maintaining, administering, directing, preparing, and producing advertising, including the cost of preparing and producing Internet (including by using social media platforms), television, radio, magazine and newspaper advertising campaigns, the cost of direct mail and outdoor billboard advertising; the cost of public relations activities and advertising agencies; the cost of developing and maintaining an Internet website; the cost of developing and maintaining a social media presence; and personnel and other departmental costs for advertising that Franchisor internally administers or prepares. Franchisor also may use the General Marketing Fund to cover costs and expenses associated with the Annual Conference and branch leadership conference, including costs related to productions, programs and materials. Nevertheless, Franchisor acknowledges that not all System Franchisees will benefit directly or on a pro rata basis from such expenditures. While Franchisor does not anticipate that any part of the General Marketing Fund contributions will be used for advertising which is principally a solicitation for franchisees, Franchisor reserves the right to use the General Marketing Fund for public relations or recognition of the BrightStar brand, for the creation and maintenance of a web site, a portion of which can be used to explain the franchise offering and solicit potential franchisees, and to include a notation in any advertisement indicating “Franchises Available.”

19. In addition to national marketing, most franchisors provide detailed local store marketing programs to their franchisees that serve as guides to business visibility and customer-seeking activities. Local store marketing means block-by-block, business-by-business outreach to introduce a franchisee’s business and services offered. This guidance is available to franchisees whether they are in a national advertising market or not. An example of this activity
is hotels reaching out to airline offices to book room blocks for flight crews and displaced passengers. Having a local store marketing plan and a brand name provided by the franchise are important to securing such contracts.

20. Finally, many franchisors - such as Holiday Inn and Choice Hotels - provide their franchisee brands use of corporate websites and centralized reservation systems. Holiday Inn, for example, has had its Holidex Reservations System in place for decades, and Choice Hotels has its choiceADVANTAGE System. Attached as Exhibit 6 are excerpts from Holiday Inn and Choice Hotels Franchise Disclosure Documents describing these reservation systems. These reservation systems provide as much as half of a typical hotel's annual room bookings. See HVS Inc., http://www.hvs.com/Library/Articles/ and JMBM Global Hospitality Group, http://www.hotellawyer.com/resource-center.html. Many independent hotels lack such an online reservation system; and even where they exist, they cannot generate web traffic comparable to that of the website of a large national chain supported by extensive advertising and brand recognition. This benefit is present in any industry in which a substantial portion of business is generated through the internet.

21. **Improved Access to Business Financing:** The franchise model often provides participants easier access to start-up and expansion financing. The IFA's Introduction to Franchising publication, attached as Exhibit 3, notes the importance of this financing support. A minority of franchisors have in-house lending entities that provide funding or offer loan guarantees to franchisees. For example, Marco's Pizza provides in-house financial plans and guarantee programs to spur franchisee growth and survival. Others provide approved vendor lists to banks and other lending groups who have developed contacts with the franchise brands and thus already have more information about the soundness of a franchisee loan applicant than
an independent business owner who comes to the bank with a new, untested business model. As a result, franchisees may be able to obtain financing where an independent small business in the same industry would be unable to do so, or obtain financing on better terms than would otherwise be available. Easier access to financing is a tremendous advantage the franchise group has versus the independent small business group. Inset Two below is an excerpt from the franchise agreement between Alphagraphics and plaintiff Stempler describing the franchisor’s commitment to help the franchisee obtain financing. Excerpts from the Alphagraphics franchise agreement are attached hereto as Exhibit 7.

Inset Two: AlphaGraphics Financing

C. FINANCING.

FRANCHISEE acknowledges and agrees that FRANCHISEE has the sole responsibility for securing all financing necessary for FRANCHISEE to construct, develop and operate the PRINTSHOP. COMPANY agrees to suggest sources of financing to FRANCHISEE and, at FRANCHISEE’s request, to assist FRANCHISEE in completing the necessary applications for such financing.

22. Franchisors build relationships with the lending community and share information with those lenders, as an essential element of their store development projects. For example, Wendy’s began a large refranchising effort in 2013 whereby over 400 company units were sold to franchisees. Wendy’s first priority was to sell to existing franchisees, and its sponsorship helped secure offers to finance. In addition, Wendy’s facilitated a line of credit facility through GE Capital for franchisees that needed to remodel. \(^3\)

\(^2\) Several large franchising industry forums and publications exist to exchange information about lenders and financing, including the Restaurant Finance and Development Conference and the Franchise Times publication, among others.

\(^3\) See http://finance.yahoo.com/news/ge-credit-facility-wendys-rebranding-124004127.html;_ylt=A0SO8xW.OSJU.G0AGwNXNyoA;_ylu=X3oDMTEza21lZWJ1BNiywNzcgRwb3MDNARjbi2xvA2dxMQR2tdGlkA1ZJUDUyM18x
23. **Training:** Most franchisors provide orientation instruction to their franchisees, including practical on-the-job training and business training on general management skills necessary to operate the business. The training is typically multi-week, with potential franchisees paying their own way to attend. Independent small businesses generally are not provided such specific training before they open; and, even if they were able to locate and pay for similar training, it would not be as specific to the business model. Inset Three below is language from one of the plaintiffs’ franchise agreements describing this initial training. A more complete excerpt is included in Exhibit 6.

**Inset Three: AlphaGraphics Initial Training**

4. TRAINING AND SUPPORT.

A. INITIAL TRAINING.

Prior to the opening of the PRINTSHOP, COMPANY agrees to furnish an initial training program on the operation of an ALPHAGRAPHCICS Printshop to the Managing Owner, and one other employee of FRANCHISEE.

Approximately three (3) to four (4) weeks of training will be furnished at one or more of COMPANY’s designated training centers or an ALPHAGRAPHCICS Printshop owned and operated by COMPANY, one of its Affiliates or a designated franchisee. The Managing Owner and one other employee of FRANCHISEE will attend and complete all phases of the initial training program to COMPANY’s satisfaction and participate in all other activities required to operate the PRINTSHOP. FRANCHISEE agrees to replace any Managing Owner or employee who does not complete the training program to the satisfaction of COMPANY.

24. In addition to initial training, franchisors often provide and/or require ongoing training and updates over time, providing an additional benefit and advantage that small independent businesses do not have. The Emerson franchise agreement study described above showed that every one of the 100 agreements reviewed provided for some form of franchisor training, and 94 provided for consulting services provided by the franchisor after initial training. Emerson, 2013 Mich. St. L. Rev. at 691. For example, plaintiff Lyon’s BrightStar franchise agreement provides a category of “Ongoing Assistance,” including “[r]egular consultation and...
advice in response to Franchisee’s inquiries about specific administrative and operating issues.”

Exhibit 5 (IFA-0123).

25. **Social Network Support:** The franchise model provides an important social support structure that benefits franchisees by facilitating sharing of ideas and best practices, and by creating a networking platform among franchisees who operate similar businesses and are confronting similar difficulties. In addition to this informal support, some franchisors sponsor annual update meetings and conventions, where information and new learning is exchanged. Some franchisees have franchisee associations sponsored by franchisors that convey many of the benefits described above — such as the Dunkin Donuts Franchisee Association and the Burger King National Franchise Association. Inset Four below is an excerpt from the Holiday Inn 2014 Franchise Disclosure Document that describes the Holiday Inn Franchisee Owners Association. A more complete excerpt of the 2014 Holiday Inn Franchise Disclosure Document is attached hereto as Exhibit 8.

**Inset Four: Holiday Inn Owners Association**

The IHG Owners Association (IHG Owners Association) was created by Holiday’s predecessor in interest in 1956. The IHG Owners Association is endorsed by Holiday and SCH and receives some sponsorship from SCH. Under the terms of the License, you, other System licensees, and Holiday are eligible for membership in the IHG Owners Association and are entitled to vote at its meetings on the basis of one hotel, one vote. The IHG Owners Association represents the franchisee community of Holiday’s various franchise systems and, through a series of committees, give advice and counsel to Holiday regarding the expenditures for the marketing, reservations and IHG Rewards Club Rewards funds. Holiday and SCH personnel administer the system funds and report system funds activities to the IHG Owners Association. The IHG Owners Association also provides educational opportunities to its members, organizes regular meetings and provides additional membership benefits. The address,

26. My experience has been that independent small business groups generally do not have such well-defined associations providing business training and education, meaning it is up

4 For example, BrightStar notes the potential of both an annual conference and an annual branch leadership conference, with mandatory franchisee or staff attendance. Exh 5 (excerpt from BrightStar 2014 Franchise Disclosure Document, IFA-0140).
to each individual business owner to build or take advantage of such groups. Business network
exchange groups and professional associations exist, of course, but they are not brand-specific,
and they are necessarily more generalized in content. Franchisees and franchisors thus gain
another advantage, because this common knowledge base enables participants to react faster and
in a more unified and organized way than small independent businesses can react to address
common business concerns (such as anticipated increases in labor costs).

27. **Franchisor Support:** Another advantage of the franchising model is that
corporate franchisors are often able to assist their franchisees with monetary and non-monetary
assistance and otherwise to enable them with survive periods of business start-up or business
stress, whatever the source. In some instances, franchisors may mandate that franchisees take
certain actions or change business practices in response to changed circumstances or to suit
franchisor purposes. In other cases, franchisors may respond to franchisee requests for
assistance. Examples of the latter include franchisors providing financing for capital
improvements or renovations, or waiving burdensome requirements of franchise agreements for
particular franchisees. Franchisors also have the ability to waive or reduce royalty payments, or
restructure debt obligations, for struggling (or non-struggling) franchisees. Because of the costs
and time required to identify, train and establish new franchisees and the negative reputational
consequences of having franchisees fail, it is not in a franchisor’s interest to have a high rate of
turnover among franchisees, much less see franchise locations close. Thus, there are a broad
range of circumstances in which a self-interested franchisor might choose to provide support to a
struggling franchisee, even though such support is rarely if ever guaranteed. Because franchisors
generally do not want to encourage their franchisees to request such assistance or to create any
sense of disparate treatment, it is generally the case that franchisors that choose to provide assistance to struggling franchisees also take steps to ensure that the assistance is confidential.

28. For this reason, the frequency and extent of franchisor support for franchisees is impossible to accurately survey and no one can be sure how often it is provided. Nonetheless, franchisors have been willing to publicize such assistance several instances that are likely indicative of the type of support available. For instance, attached hereto as Exhibit 9 is a 2013 article describing a $40 million program by Choice Hotels International, which operates the Comfort Inn brand under which one of the plaintiffs in this case operates, to renovate Comfort Inn locations around the country. According to the article, the company intends to “assess renovation needs at each Comfort property” and “set[] a property improvement plan with which each property must comply.” The article adds that part of the program is a “$40 million incentive program enabling hotels to fund renovation through promissory notes, which will be forgiven once work is completed and if hotels then remain in the Comfort system for a set amount of time.”

29. Burger King has also instituted at least one formal program to provide financial support to struggling franchisees. Attached hereto as Exhibit 10 is an article describing the “Burger King Franchisee Financial Restructuring Initiative to address the financial challenges of financially distressed franchisee operations.” According to the article, “[t]he initiative will assist a number of franchisees as they restructure their business so they can meet their financial obligations, focus on restaurant operational excellence, reinvest in their business and return to profitability.” The article reports that the Burger King Corporation has hired a third-party financial services firm “[t]o help our franchisees bring resolution to these issues – which include short-term liquidity, the ability to meet franchisee obligations and the need to reinvest in their

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IGLITZIN & LAVITT LLP
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(206) 285-2828
business.” The CEO of the corporation is quoted as saying “[c]learly one of the most pressing issues facing the Burger King system today is the financial distress of a number of our franchisees . . . . Addressing this issue and turning it into an opportunity to recapitalize these franchisees and enable them to emerge stronger with more robust financial structures will set us up for success. This is a top priority to enable us to focus on quality and on delivering an outstanding experience to our customers.”

30. Attached hereto as Exhibit 11 is a similar article describing ways in which the Quiznos franchisor worked to aid franchisees and reduce franchisee costs. According to the article, in response to complaints from franchisees, the franchisor “has worked to reduce food costs by as much as 4 percent, open communication channels with franchisees and test new products.” In addition, “Quiznos has hired a new advertising agency . . . to produce edgier ads,” and the CEO of the company “has met with franchise owners, delivers a weekly voice mail call to discuss operating developments, and spends late-night hours answer franchisee e-mails. He also created a Web site to assist franchisees and plans to give each a free computer to help them with a new online ordering program.”

31. For all of the reasons described above, I believe that franchisees have financial and other resources not available to independent small businesses in the same industries. These benefits, including structural benefits inherent to the franchise model, informal benefits of being associated with an established brand, and the financial resources of the franchisor make franchisees better able to identify and respond to changed circumstances, such as a scheduled increase in labor costs.
Multi-Unit Franchising

32. Multi-Unit franchisees — franchisees that own more than one location in a franchise network — are a fast growing subset of the franchising world and have many advantages in addition to those described above. Nationally, restaurant, food service, and retail food franchises represent about 33.0% of all franchise establishments, 56.3% of all individuals employed by franchises, and 38.4% of the economic output of franchises. Data for Seattle shows that of the 204 franchised restaurant locations in the City, 136 or 66% are owned by a franchisee who owns at least two locations within the franchise network in Washington State, and more than half of Seattle fast food franchises are owned by a franchisee owning at least two locations within the City of Seattle. Of the franchisees with multiple units in Washington State, the average number of restaurants operated by a common owner is five. The largest individual franchisee operates 30 Jack in the Box locations, followed by another that operates 22 Jamba Juice stores.

33. Franchisors tend to favor multi-unit franchisees because they are typically better run and more established organizations with greater capabilities than single unit franchisees. Multi-unit franchisees do not have the same need for training and support when they open new locations because they are already familiar with the brand’s business model and have a demonstrated ability to operate a franchise. Moreover, because of their track record, multi-unit franchisees generally have better access to capital and lower cost funding. The ability of multi-unit to spread overhead expenses among multiple stores also increases their overall profit.


6 Per FRANdata. FRANdata is a Virginia-based data and consulting company that studies and documents the franchising industry.
Taking into account administrative expenses, multi-unit franchisees typically have higher store-level profits.

**Franchisor Screening Process Is Intended To Produce Strongest Possible Franchise Operators**

34. The franchise industry routinely reports that only a very small proportion of franchisee applicants are accepted and approved for franchise ownership. Only about 1% of “leads” make it all the way to franchise opening.⁷ As part of the franchise business model, franchisors typically develop and maintain an extensive screening program, often using personality and business aptitude tests, to select the most desirable franchisees. In my experience, franchisors typically require that full business plans be prepared and submitted early in the franchisee evaluation process. The screening process is usually more rigorous for larger, well-established national franchises. This screening benefits the franchisor by producing a stronger, more flexible franchisee population. In turn, the screening benefits franchisees by ensuring that a viable business plan, screened by an experienced franchisor, is created early on and can serve as a template for later business opening and expansion. Independent small businesses do not undergo the same process.

35. Due to the rigor of the screening process, the franchise business model is designed to produce the most qualified group of franchisees possible. Combined with the ongoing nature of franchisor oversight and support, this has the effect of ensuring that franchisees will effectively operate their businesses, thereby providing reputation uplift to the franchise network as a whole and each franchisee separately. Independent small businesses do not have similar

consumer brand reputation uplift except through years of operation and providing good service on their own.

**Business Success Is Driven By Many Factors; the Minimum Wage Rate Is But One Factor**

36. I have found that several operational and financial factors drive successful business economic performance. The strength of the brand reputation, its management systems, and the quality of the staff providing customer service are clearly vital. From an economic profit standpoint, the relative sales level per store or location, the average retail ticket paid per customer, the amount of cost of debt invested in the business, the relative size of the capital investment, and the free cash flow that the business produces, are the key driving financial factors. Labor costs are real expenses, but are only one factor.

37. With respect to labor cost itself, the starting wage rate is but one input factor, and not the most important cost driver. In every organization, including franchise operations, labor costs are the sum of hourly employee costs and salaried management and owner wage costs, both in terms of direct labor costs (e.g., hourly employee and store management direct wages paid) and indirect labor costs (e.g., social security, workers compensation, federal and state unemployment taxes, medical and dental costs, etc.). Labor costs for store management are typically based on either a higher hourly wage or fixed salary. Ownership takes either a salary or a draw, a cash payment that comes from accumulated business cash flow.

38. The direct hourly employee wage expense is fundamentally the sum of the average wage times the number of hours worked. Where the franchisor permits its franchisees to retain a meaningful degree of control over cost and income factors (such as employee staffing

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8 Free cash flow is store level profit (earnings before interest, taxes, interest depreciation and amortization (EBITDA basis) less franchisee overhead, less interest, taxes, franchisee overhead, principal and loan corpus amortization, less future years remodel, IT and other business capital expenditures.
levels and performance standards and product pricing), the franchisee can plan for, and offset, the economic impact of upcoming scheduled wage increases by adjusting these other cost and income variables — even assuming no increase in productivity resulting from a better paid workforce. Moreover, although the starting minimum wage may affect a business’s average wage rate, other unrelated factors will influence the average wage rate as well, including the mix of employees hired, their turnover rate, their productivity, and the nature of their job requirements. The wage rate needed to attract and retain high-value employees in a particular labor market is an important factor affecting a business’s average wage rates as well.

39. In the many operational reviews and financial analysis for new and existing restaurants and other businesses that I have prepared and reviewed over my career, I cannot recall one that listed starting minimum wage as a major financial model calculation input. Of course, virtually all have a total labor cost component, typically as a percentage of sales. But minimum wage is just one input to wage costs that are also driven by other influences.

40. Labor costs will likely rise in Seattle as the minimum wage increases required by the ordinance take effect (although some may say that those costs could be counterbalanced, at least in part, by increased efficiency or productivity). For the reasons stated above, though, franchisees as a group will likely be better able to manage the increased costs because of their participation in the franchise business model.

**The Independent Small Business Group Must Compete For Employees**

41. In the City of Seattle, an estimated 102,177 employees currently earn less than $15/hour. Because the minimum wage will rise across the City, the independent small business...
group will have to compete with employers who are paying increased wages on the more accelerated minimum wage schedule in order to retain and attract employees. Thus, even if there is not a perfect linearity between the two groups, many independent small businesses will decide to raise wages to some extent to remain competitive, even if not required to do so by the schedule set forth in the Ordinance. Most employees seek improvement of pay and conditions, and many employees will chase the highest wages.

42. This competitive effect will cause the independent small business group to raise starting and base wages to some extent at the same time that other businesses in the Seattle market do so. This will have the effect of lowering or eliminating the wage gap that plaintiffs fear would create significantly higher labor costs for franchisees and result in a need for franchisees to raise prices and lose market share.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on October 2014, in San Diego, California.

John A. Gordon
LIST OF EXHIBITS

1. John A. Gordon CV
2. List of Documents Referenced
3. Introduction to Franchising, IFA Educational Foundation
5. Excerpts of BrightStar Franchise Agreement
6. Holiday Inn and Choice Hotels Reservations Systems
7. Excerpts of AlphaGraphics Franchise Agreement
8. Description of Holiday Inn Franchise Council from 2014 Franchise Disclosure Document
9. Article on Choice Hotels Renovation Financing Assistance
10. Article on Burger King Corporation Franchisee Assistance
11. Article on Quiznos Franchisee Assistance

DECLARATION OF JOHN A. GORDON
(2:14-cv-00848-RAJ) - 21

SCHWERIN CAMPBELL BARNARD
IGLITZIN & LAVITT LLP
18 W Mercer St, Seattle, WA 98119
(206) 285-2828
Pacific Management Consulting Group
Chain Restaurant Analysis and Advisory

John A. Gordon, MAFF
Restaurant Subject Matter Expert

5980 Mission Center Road, Unit A, San Diego, CA 92123
Office, 858 874-6626, Mobile, (619) 379-5561
Email: jgordon@pacificmanagementconsultinggroup.com
Website: www.pacificmanagementconsultinggroup.com

Curriculum Vitae


Typical Project Focus: litigation support, research, equities analysis, earnings analysis, revenue and expense analysis, M&A due diligence, special projects, economic and business feasibility studies, new business start-up, revenue enhancement, cost containment, profitability improvement, and organizational transformation advisory work.

Typical Clients: investors, management consulting firms, attorneys, franchisee associations, franchisees, research firms and start up businesses.


Summary Project Experience:

- Expert Consultant and Expert Witness detailed restaurant business and economics analysis, major deep dive research project actions, projects underway (many separate projects).
- Subject Matter Expert for international strategy consulting firm working major chain restaurant improvement projects (several engagements).
Restaurant marketing, menu, sales, and earnings forecasting and analysis centered on publicly traded restaurant companies (many engagements).

- Economic and Business feasibility assessments (numerous) for various hospitality and retail sector clients. Teaching and counseling of clients.
- Research: identification of econometric factors by market to create unit growth model, by major market, major QSR operator client.
- Management Systems assessment, conceptualization, planning and implementation for retail/hospitality sector client, via two year long project.
- Business assessment and profit improvement plan creation for service sector (restaurant and retail sector clients, numerous). Focused on operations, financial management, marketing, concept design and human resources issues.
- New business start-up planning, business plan analysis and review, counseling (numerous clients)
- Operational Reporting: assessment of operators' financial and operational systems, creation and refinement of revenue, expense and other balance scorecard like metrics, data collection means created, worked into financial reporting process.
- Reimplementation of Standard food and labor cost system: baselining and assessment of current system, operational gap analysis and assessment, creation of new system standards, selection of new platform, project management, creation of inputs, creation of cost standards, system documentation, training and creation of user guides, travel and implementation to field operators, cost reporting and analysis, system maintenance, continued testing, sampling and refreshment, for employer, $400M national chain restaurant operator.
- Executive search and business intelligence projects for several chain restaurant operators.
- Small Business Sector consulting; traveled Western United States working with numerous small business sector clients, in general management consulting roles, with diverse client base.

**Representative Summary Project Engagement Experience**

- **Engagement One:** Chain Restaurant SEC 10b5 Securities Action: chain restaurant federal securities matter (earnings disclosure) item. Provided company and relevant peer research, intelligence and analysis, input to complaints and answer, etc. Federal 2nd and 6th Circuit matter. 12-month engagement completed 2008.

- **Engagement Two through Four:** Chain Restaurant Franchisee v. Franchisor Actions Multiple Federal and State actions. Provided company and relevant sector operations, management, supply chain, financial management research, intelligence and analysis, input to complaints, answers, and pleadings. 18-month engagement, ending November 2009. Engagement Two Outcomes: Settled 2009 with large damages pool liquidating multiple state and federal class actions, in one of the largest settlements ever in the chain restaurant sector. Engagement Three: settled 2011. Engagement Four; settled 2012.

- **Engagement Five:** Chain Restaurant Menu Labeling Action: provided declaration and deposition, and relevant company intelligence, analysis and research on restaurant menu and sales, product mix and financial returns topics. California Alameda County Superior Court Action, 6-month engagement. Outcome: on Appeal, 2011.

- **Engagement Six:** Chain Restaurant SEC 10b5 Securities Action: Chain Restaurant Federal securities action, for plaintiffs. Provided company and sector research,
intelligence and analysis, input to complaints and answer, etc. Federal 8th Circuit matter. Settled, 2011.

- **Engagement Seven, Eight and Nine:** Franchisee Association support: provide research and analysis of financial matters to QSR sector franchisee associations. Ongoing engagements.

**Other Financial Management Related Projects:**

- **Financial Management Chair (Elected), and Committee Member (Appointed), Citizens Oversight Committee, for $2 billion California Schools construction program.**
- **Chair, Major Municipal Candidate’s Fiscal Advisory Team:** worked with team of professionals to create actionable business recovery plan for leading San Diego Mayoral candidate.
- **Municipal City Charter Review Commission Appointed Member:** reviewed assessed and composed recommended changes to City of San Diego Charter (constitution like document).
- **Creation and Implementation of Board of Directors Governance System:** creation, implementation, participation and recommendation with senior leadership on Hospitality Operator’s Board of Directors governance program, creation of financial and operational standards, creation of budget calendar and review process, software modification and coding, training program creation, field training, execution of multi-year operational and capital budgets, including budget formulation, review, approval and execution stages each year, for employer, $700M hospitality operator.

**Education and Certifications**

- BS, Business, Indiana University, 1982.
- Master Analyst, Financial Forensics, MAFF (original, 2012)

**Employment Summary**

- **PRINCIPAL, PACIFIC MANAGEMENT CONSULTING GROUP, 2003 to present** Management Consulting Group, 100% focused upon financial analysis and advisory topics for restaurant space clients.
- Earlier: Cost/Financial Analyst, Multi-Unit Supervisor, General Manager Two NYSE listed restaurant concerns, QSR Burger Sector and Family Dining Sector
Current and Prior Affiliations


References: client, business and personal references available upon request.

Publications: Restaurant related professional journals such as Restaurant Research, Restaurant Finance Monitor, Franchising Valuation Reporter, and others.


Overview of Related Expert Consulting/Witness Roles, and Publications

Expert and Consulting Expert Engagements, Depositions Taken:


Other Expert Engagements, Expert Research and Consulting provided:


Publications: I comment and opine on non-confidential, chain restaurant earnings, economics, and sales, cost and related business issues as a standard outgrowth of our consulting work, and have done so since 2008. We are extremely aware of and always abide to confidentiality agreements and orders not to disclose.

My articles and press clips are recorded or linked to the website, www.pacificmanagementconsultinggroup.com, in their entirety. For example, we write on restaurant business related topics, at the Forensic Group expert site, http://expertwitnessstoday.com, with many of the article topics from the noted articles. The link to these articles is on the website.
Exhibit 2
Exhibit 2
<table>
<thead>
<tr>
<th>Document Type</th>
<th>Description</th>
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<tr>
<td>Plaintiff's Motion for Limited Preliminary Injunction</td>
<td>August 5, 2014 filing</td>
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<tr>
<td>Plaintiff Charles J. Stempler Declaration</td>
<td>August 5 2014 filing</td>
</tr>
<tr>
<td>Plaintiff David Meinert Declaration</td>
<td>August 5, 2014 filing</td>
</tr>
<tr>
<td>IFA Plaintiff Dean Heyl Declaration</td>
<td>August 5 2014 filing</td>
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<td>Plaintiff Katheryn Lyons Declaration</td>
<td>August 5 2014 filing</td>
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<tr>
<td>Plaintiff Ronald Oh Declaration</td>
<td>August 5 2014 filing</td>
</tr>
<tr>
<td>BrightStar Franchise Disclosure Document, Franchise Agreement</td>
<td>2014 Franchise Disclosure Document</td>
</tr>
<tr>
<td>IHG Holiday Inn Franchise Disclosure Document</td>
<td>2014 Franchise Disclosure Document</td>
</tr>
<tr>
<td>FRANdata, Seattle Fast Food data</td>
<td>FRANdata database run</td>
</tr>
<tr>
<td>Franchise Contract Interpretation, Robert W. Emerson</td>
<td>Michigan State Law review, 2013</td>
</tr>
<tr>
<td>Choice Hotels Allots $40 Million to Jumpstart Comfort Brand Overhaul</td>
<td>Business Travel News, Article, May 15 2013</td>
</tr>
<tr>
<td>BK to help Struggling Franchisees</td>
<td>QSR Magazine, article, 2001 date of publication</td>
</tr>
<tr>
<td>Quiznos CEO Fills a Tall Order</td>
<td>Associated Press, article, July 18 2007</td>
</tr>
<tr>
<td>Introduction to Franchising, publication</td>
<td>IFA Foundation, Beshhel, International Franchise Association</td>
</tr>
<tr>
<td>HVS, Inc.</td>
<td>Library of hotel publications and articles</td>
</tr>
<tr>
<td>JMBM Global Hospitality Group</td>
<td>Library of hotel presentations and articles</td>
</tr>
<tr>
<td>McDonalds Corporation</td>
<td>2014 Franchise Disclosure Document</td>
</tr>
<tr>
<td>Burger King Corporation</td>
<td>2014 Franchise Disclosure Document</td>
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<tr>
<td>Dunkin Donuts</td>
<td>2008 Franchise Disclosure Document</td>
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<tr>
<td>IHS Economics, for IFA</td>
<td>Franchise Business Economic outlook for 2014</td>
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<tr>
<td>Pudget Sound Sage Group, City of Seattle Employment Estimates, $15 Wage Study</td>
<td>Data Per State of WA ESD, April 2014</td>
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Exhibit 3
An Introduction to Franchising
An Introduction to Franchising

IFAA EDUCATIONAL FOUNDATION

Sponsored by:

PEPSICO FOODSERVICE

By Barbara Beshel
1. What is a franchise?
2. What are common franchise terms?
3. What are the alternatives to franchising?
4. What are the advantages and disadvantages of owning a franchise?
5. What are the legal issues in franchising?

WHAT IS A FRANCHISE?

A franchise is the agreement or license between two legally independent parties which gives:

- a person or group of people (franchisee) the right to market a product or service using the trademark or trade name of another business (franchisor)
- the franchisee the right to market a product or service using the operating methods of the franchisor
- the franchisee the obligation to pay the franchisor fees for these rights
- the franchisor the obligation to provide rights and support to franchisees

FRANCHISE AGREEMENT

<table>
<thead>
<tr>
<th>FRANCHISOR</th>
<th>FRANCHISEE</th>
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<tbody>
<tr>
<td>Owns trademark or trade name</td>
<td>Uses trademark or trade name</td>
</tr>
<tr>
<td>Provides support:</td>
<td>Expands business with</td>
</tr>
<tr>
<td>• (sometimes) financing</td>
<td>franchisors support</td>
</tr>
<tr>
<td>• advertising and marketing</td>
<td></td>
</tr>
<tr>
<td>• training</td>
<td></td>
</tr>
<tr>
<td>Receives Fees</td>
<td>Pays Fees</td>
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</table>

AN INTRODUCTION TO FRANCHISING 5
TYPES OF FRANCHISES

PRODUCT DISTRIBUTION

Product distribution franchises simply sell the franchisor’s products and are supplier-dealer relationships. In product distribution franchising, the franchisor licenses its trademark and logo to the franchisees but typically does not provide them with an entire system for running their business. The industries where you most often find this type of franchising are soft drinks, automobiles and gasoline.

Some familiar product distribution franchises include:
- Coca-Cola
- Goodyear Tires
- Ford Motor Company

Although product distribution franchising represents the largest percentage of total retail sales, most franchises available today are business format opportunities.

BUSINESS FORMAT FRANCHISE

Business format franchises, on the other hand, not only use a franchisor’s product, service and trademark, but also the complete method to conduct the business itself, such as the marketing plan and operations manuals. Business format franchises are the most common type of franchise.

USA Today reported that the 10 most popular franchising opportunities are in these industries:
- fast food
- service
- restaurants
- building and construction
- business services
- retail
- automotive
- maintenance
- retail—food
- lodging

Some popular business format franchises include:

<table>
<thead>
<tr>
<th>Fast Food</th>
<th>Health &amp; Beauty</th>
<th>Auto</th>
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<tbody>
<tr>
<td>Wendy’s</td>
<td>Jenny Craig Weight Loss</td>
<td>AAMCO</td>
</tr>
<tr>
<td>McDonald’s</td>
<td>Great Clips</td>
<td>Midas</td>
</tr>
<tr>
<td>Hardee’s</td>
<td>Pearle Vision, Inc.</td>
<td>Budget Rent-A-Car</td>
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</table>

<table>
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<th>Retail</th>
<th>Business Services</th>
<th>Education</th>
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<tr>
<td>Athlete’s Foot</td>
<td>H &amp; R Block</td>
<td>Sylvan Learning</td>
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<tr>
<td>Blockbuster Video</td>
<td>Signs By Tomorrow</td>
<td>Huntington</td>
</tr>
<tr>
<td>Play It Again Sports</td>
<td>UPS Store</td>
<td>New Horizons</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Lodging</th>
<th>Maintenance</th>
<th>Restaurants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comfort Inn</td>
<td>Roto-Rooter</td>
<td>Blimpie</td>
</tr>
<tr>
<td>Embassy Suites</td>
<td>Stanley Steemer</td>
<td>Dairy Queen</td>
</tr>
<tr>
<td>Quality Inn</td>
<td>ServiceMaster</td>
<td>Outback Steakhouse</td>
</tr>
</tbody>
</table>
Because so many franchisors, industries and range of investments are possible, there are different types of franchise arrangements available to a business owner.

**SINGLE-UNIT (DIRECT-UNIT) FRANCHISE**

A single-unit (direct-unit) franchise is an agreement where the franchisor grants a franchisee the rights to open and operate ONE franchise unit. This is the simplest and most common type of franchise. It is possible, however, for a franchisee to purchase additional single-unit franchises once the original franchise unit begins to prosper. This is then considered a multiple, single-unit relationship.

**MULTI-UNIT FRANCHISE**

- area development
- master franchise (sub-franchising)

A multi-unit franchise is an agreement where the franchisor grants a franchisee the rights to open and operate more than one unit.

**AREA DEVELOPMENT FRANCHISE**

Under an area development franchise, a franchisee has the right to open more than one unit during a specific time, within a specified area. For example, a franchisee may agree to open 5 units over a five year period in a specified territory. The franchisor grants the franchisee exclusive rights for the development of that territory.

**MASTER FRANCHISE**

A master franchise agreement gives the franchisee more rights than an area development agreement. In addition to having the right and obligation to open and operate a certain number of units in a defined area, the master franchisee also has the right to sell franchises to other people within the territory, known as sub-franchises. Therefore, the master franchisee takes over many of the tasks, duties and benefits of the franchisor, such as providing support and training, as well as receiving fees and royalties.

Another hybrid-type of multi-unit franchise is an area representative franchise. In this model, the area representative buys a territorial franchise to sell and service unit franchisees in the territory. The area representative does not contract with the unit franchisees (who sign agreements directly with the franchisor), but does receive a portion of the initial fees and ongoing fees paid by the unit franchisee to the franchisor.
COMMON FRANCHISE TERMS

**franchise**
- a license that describes the relationship between the franchisor and franchisee including use of trademarks, fees, support and control
- also known as the FDD, or Franchise Disclosure Document
- the legal, written contract between the franchisor and franchisee which tells each party what each is supposed to do
- the person or company that gets the right from the franchisor to do business under the franchisor's trademark or trade name
- a method of business expansion characterized by a trademark license, payment of fees, and significant assistance and/or control
- the person or company that grants the franchisee the right to do business under their trademark or trade name
- a franchise where the franchisee simply sells the franchisor's products without using the franchisor's method of conducting business

**franchisor**
- the regular payment made by the franchisee to the franchisor, usually based on a percentage of the franchisee's gross sales
- the marks, brand name and logo that identify a franchisor which is licensed to the franchisee

**franchise agreement**
- also known as the FDD, or Franchise Disclosure Document, the disclosure document provides information about the franchisor and franchise system
- the Franchise Disclosure Document, FDD, is the format for the disclosure document which provides information about the franchisor and franchise system to the franchisee

**franchisee**
- the legal, written contract between the franchisor and franchisee which tells each party what each is supposed to do
- the person or company that gets the right from the franchisor to do business under the franchisor's trademark or trade name

**franchising**
- the regular payment made by the franchisee to the franchisor, usually based on a percentage of the franchisee's gross sales
- the marks, brand name and logo that identify a franchisor which is licensed to the franchisee

**business format franchise**
- this type of franchise includes not only a product, service and trademark, but also the complete method to conduct the business itself, such as the marketing plan and operations manuals

**disclosure statement**
- the Franchise Disclosure Document, FDD, is the format for the disclosure document which provides information about the franchisor and franchise system to the franchisee

**product distribution franchise**
- the legal, written contract between the franchisor and franchisee which tells each party what each is supposed to do
- the person or company that gets the right from the franchisor to do business under the franchisor's trademark or trade name
WHAT ARE THE ALTERNATIVES TO FRANCHISING?

In addition to franchising, there are two other popular methods by which businesses expand their market and distribution channels:

**DISTRIBUTORSHIP**

In a distributorship, the distributor usually:
- has a contractual relationship with the supplier
- buys from the supplier in bulk and sells in smaller quantities
- is familiar with local markets and customers
- may do business with many companies, more than just the supplier/producer
- may not receive contractual support and training from the supplier/producer like a franchisee

Some distribution arrangements are similar to franchises, and vice versa. A franchisee with a great deal of leeway in how to run the business may look like an independent distributor. A distributor may be subject to many controls by the supplier/producer and begin to resemble a franchise.

**Some popular distributorships include:**
- Amway
- Color Me Beautiful Cosmetics
- Mountain Life Spring Water
- Knorr Soup Vendor
- Campbell's Soup Vending Machines

**LICENSING**

Licensing, on the other hand, allows a licensee to pay for the rights to use a particular trademark. Unlike franchises, in which the franchisor exerts significant control over the franchisee's operations, licensors are mainly interested in collecting royalties and supervising the use of the license rather than influencing the operations of the business. Check out www.licensing.org.

**Some popular licensors include:**
- Netscape Communications
- Apple Computer
- Canon Inc.
- Woolmark
WHAT ARE THE ADVANTAGES AND DISADVANTAGES OF OWNING A FRANCHISE?

ADVANTAGES

O "Owning a franchise allows you to go into business for yourself, but not by yourself."

O A franchise provides franchisees with a certain level of independence where they can operate their business.

O A franchise provides an established product or service which may already enjoy widespread brand-name recognition. This gives the franchisee the benefits of a pre-sold customer base which would ordinarily take years to establish.

O A franchise increases your chances of business success because you are associating with proven products and methods. Franchises may offer consumers the attraction of a certain level of quality and consistency because it is mandated by the franchise agreement.

O Franchises offer important pre-opening support:
  • site selection
  • design and construction
  • financing
  • training
  • grand-opening program

O Franchises offer ongoing support:
  • training
  • national and regional advertising
  • operating procedures and operational assistance
  • ongoing supervision and management support
  • increased spending power and access to bulk purchasing

DISADVANTAGES

O The franchisee is not completely independent. Franchisees are required to operate their businesses according to the procedures and restrictions set forth by the franchisor in the franchise agreement. These restrictions usually include the products or services which can be offered, pricing and geographic territory. For some people, this is the most serious disadvantage to becoming a franchisee.

O In addition to the initial franchise fee, franchisees must pay ongoing royalties and advertising fees.

O Franchisees must be careful to balance restrictions and support provided by the franchisor with their own ability to manage their business.

O A damaged, system-wide image can result if other franchisees are performing poorly or the franchisor runs into an unforeseen problem.

O The term (duration) of a franchise agreement is usually limited and the franchisee may have little or no say about the terms of a termination.
WHAT ARE THE LEGAL ISSUES OF FRANCHISING?

A good relationship between the franchisor and franchisee is critical for the success of both parties. Since franchising establishes a business relationship for years, the foundation must be carefully built by having a clear understanding of the franchise program. Unfortunately, understanding the legal language of franchising can be daunting. The advice of an experienced franchise attorney should be sought to help a prospective franchisee understand the legal issues and to protect them from making costly mistakes.

Franchising is governed by federal and state laws that require franchisors to provide prospective franchisees with information that describes the franchisor-franchisee relationship.

The two main franchising legal documents are:

THE DISCLOSURE DOCUMENT (also known as the FDD)

The purpose of the FDD is to provide prospective franchisees with information about the franchisor, the franchise system and the agreements they will need to sign so that they can make an informed decision.

In addition to the disclosure part of the document, the FDD includes the actual franchise agreement as well as other agreements the franchisee will be required to sign, along with the franchisor's financial statements.

The FDD is designed to give you some of the information you need in order to make an informed decision about investing in a particular franchise.

By law, a franchisor cannot sell a franchise until the franchisor has presented the prospective franchisee with a Disclosure Document. In fact, 14 states require franchisors to register their FDDs with the state or to notify them that they will offer franchises before they begin to conduct any franchising activity in the state.

The FDD includes information about:
- the franchisor
- the company's key staff
- management's experience in franchise management
- franchisor's bankruptcy and litigation history
- initial and ongoing fees involved in opening and running the franchise
- required investment and purchases
- territory rights
- responsibilities of the franchisor and franchisee
- other franchisees in the system with contact information
Receipt of the FDD is governed by the "14-day rule." This is a cooling-off period in which franchisors must give prospective franchisees 14 days to think about their decision before they are allowed to sign the franchise agreement.

**THE FRANCHISE AGREEMENT**

The franchise agreement is more specific than the FDD about the terms of the relationship between the franchisor and franchisee.

**The franchise agreement includes information about:**

- the franchise system, such as use of trademarks and products
- territory
- rights and obligations of the parties: standards, procedures, training, assistance, advertising, etc.
- term (duration) of the franchise
- payments made by the franchisee to the franchisor
- termination and/or the right to transfer the franchise

The franchise agreement is the legal, written document that governs the relationship and specifies the terms of the franchise purchase. A prospective franchisee should closely review the franchise agreement and consult with a professional advisor, like an attorney or an accountant, before making a final decision.
CHAPTER 2

Beginning Your Search

1. What are your options when you begin your business?
2. How do you investigate your options?
3. How do you investigate a franchise?
4. What are your criteria for selecting a franchise?

WHAT ARE YOUR OPTIONS WHEN YOU BEGIN YOUR BUSINESS?

Once you make the decision to start your own business, you need to decide whether you want to be an independent business owner or a franchisee.

STARTING A NEW BUSINESS

<table>
<thead>
<tr>
<th>Advantages</th>
<th>Disadvantages</th>
</tr>
</thead>
<tbody>
<tr>
<td>• usually lower start-up cost</td>
<td>• requires more time and energy</td>
</tr>
<tr>
<td>• independence and creative freedom</td>
<td>• higher risk of failure</td>
</tr>
<tr>
<td>• freedom with location and procedures</td>
<td>• takes longer to become profitable</td>
</tr>
<tr>
<td>• no inherited problems from an existing</td>
<td>• financing may be more difficult to obtain</td>
</tr>
<tr>
<td>business</td>
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</tr>
</tbody>
</table>
BUYING A NEW FRANCHISE

Advantages

• reduced risk of failure over an independent business
• proven methods and products
• start-up assistance
• on-going training and support
• local, regional and national advertising
• collective purchasing power
• research and development
• association and synergy with other franchisees
• easier to obtain financing

Disadvantages

• costs more (fees, royalties, supplies)
• smaller profit margins
• lack of independence and freedom
• difficult to achieve redress if franchisor fails to meet obligations
• a franchisor's problem may become your problem

BUYING AN EXISTING FRANCHISE

Advantages

• the business is already up and running
• risk and uncertainty are reduced
• the basic infrastructure is in place:
  - established location
  - existing customers and reputation
  - employees
  - vendors
  - policies and procedures
  - cash flow
  - no start-up period—quicker profitability
  - easier to obtain financing

Disadvantages

• tangible limitations:
  - design problems
  - location problems
  - merchandise problems
• intangible limitations:
  - customer or employee ill will
  - pricing problems
  - inadequate procedures
  - lease problems
• potentially higher costs to buy
• legal liability in inheriting lawsuits
HOW DO YOU INVESTIGATE YOUR OPTIONS?

Regardless of whether you choose to remain an independent business owner or become a franchisee, research is the single most important activity in making your decision. Without adequate information, you may end up making the most costly decision of your life.

STEPS FOR BEGINNING A FRANCHISE

What business?

Is there a market?

Can you afford it?

Can you make enough money to make it worthwhile?

WHAT BUSINESS SHOULD YOU START?

Sometimes people start a business because they think they’ll make a lot of money, only to find out that they do not enjoy the business. The adage, “know thyself” certainly applies here. You should start a business in an industry that you will enjoy for the next 10 to 15 years.

Ask yourself:
- What do you like to do? (interest and hobbies)
- What do you know how to do? (experience)
- What do you do well? (special skills and talents)
- Which industry(s) involve your interests and use your skills and talents? (For ideas, refer to IFA’s Franchise Opportunities Guide’s listing of industries in the table of contents.)
- What products or services could you sell in this industry(s)?
- Would you rather sell a product or service?
- What products or services would you like to sell the most?

"Find something you love to do and you'll never have to work a day in your life."

-Harvey Mackay
DETERMINE IF THERE IS A MARKET

All successful businesses must:

- satisfy a need
- solve a problem
- respond to a trend

Before starting any business, determine if there is a market for your product or service.

Conducting market research:
- How many potential customers are in your area?
- Will your product or service sell?
  - What need does it satisfy?
  - What problem does it solve?
  - What trend or fad does it address?
- What should the appropriate pricing be?
- Who are your competitors?
- How many competitors do you have?
- What do they offer?
- How will your product or service be unique?
- What marketing niche can you capture?

DETERMINE IF YOU CAN AFFORD TO START A BUSINESS

In order to start a business, you have to have money! In order to stay in business, you have to make money!

The single most common reason new businesses fail is that they did not have enough money to begin with! Don't forget the old business adage: "It takes twice as long and costs twice as much!"

Costs to consider:

Estimate your start-up costs:
- location design and construction
- professional fees
- equipment and fixtures
- furniture
- opening inventory and supplies
- insurance
- pre-opening labor
- opening advertising and promotion
Estimate how much working capital you will need (the money you will need until the business becomes profitable—include your living expenses, if necessary):

- salaries
- insurance
- utilities
- advertising
- rent
- interest on a loan, if applicable

Brainstorm where you might be able come up with money:

- yourself
- family
- friends
- savings and investments
- a partner
- selling personal assets
- loans

DETERMINE IF YOU CAN MAKE ENOUGH MONEY TO MAKE THE VENTURE WORTHWHILE

Estimate the profit potential for the business:

- income
- expenses
- profit (income – expenses)

Think about the amount of time and energy it will take to make the business successful.

Make a decision as to whether you think you can make enough money to make the entire venture worth your time and energy.
HOW DO YOU INVESTIGATE A FRANCHISE?

Like starting any business, buying a franchise involves a risk. Studies show that successful franchisees:

• conduct their own marketing research
• use their own financial and legal advisors
• develop thorough marketing and business plans
• have prior work experience in the industry

Prospective franchisees must devote a vast amount of time researching the franchises available and evaluating the strength of the franchisors.

FIND OUT WHAT FRANCHISES ARE AVAILABLE

(refer to pages 51 to 55 in Franchising for Dummies)

Read Directories

• The Franchise Opportunities Guide
• The Executives' Guide to Franchise Opportunities
• Bond's Franchise Guide
• The Franchise Annual
• Franchise Handbook
• How Much Can I Make?

Read Articles and Ads in Business Publications

• Inc.: www.inc.com
• Entrepreneur: www.entrepreneurmag.com
• Franchise Times: www.franchisetimes.com
• Franchising World: www.franchise.org
• Franchise Update: www.franchise-update.com
• The Wall Street Journal: www.wsj.com
• USA Today: www.usatoday.com
• The New York Times: www.nytimes.com
Attend Trade Shows and Expositions

- IFE (International Franchise Expo) is sponsored by the International Franchise Association (IFA: 202-628-8000 or www.franchise.org) and is the world's largest gathering of franchise companies.
- The U.S. Small Business Administration and Small Business Development Centers (SBA: www.sbaonline.sba.gov/sbdc/)

Research the Internet

- www.franchise.org
- www.franchise.com
- www.franchising.org
- www.aafd.org
- www.franchiseopportunities.com
- www.everyfranchise.com
- www.franchiseamerica.com
- www.franchiseconnections.com
- www.ownyourownfranchise.com
- www.topfranchises.com
- www.worldfranchising.com
- www.franchisedoc.com
- www.franchiseregistry.com
- startup.wsj.com
- www.bison.com

Evaluate the Strength of the Franchisor

Investigate the Franchisor's History

- How long has the franchisor been in business?
- How many current franchisees are there?
- What is the failure rate of the franchisees?
- Are there any pending or past lawsuits and what have they been for?
- Does the franchisor have a reputation for quality products or services?
- What is the franchisor's financial health? (get its Dun & Bradstreet rating)
  - credit rating
  - profitability
  - reputation
- What are the financial performance representations?
- On what are they based?
- Are the projections based on franchisor or franchisee-run centers?
- How long have the centers used for projections been in business?
- What is the background of the principals/management?
- What is their business experience?
- Have they personally had any bankruptcies?
- Have they personally had any recent litigation?
Obtain Professional Advice Concerning the Franchisor’s FDD and Franchise Agreement

Paying special attention to:
- costs
- agreement life and renewal provisions and conditions
- termination clauses
- franchise territory (if any)
- procedures and restrictions
- training and assistance
- financial performance potential - gross sales, net profit

Talk with Existing Franchisees

Emphasizing the:
- level of training
- quality of products or service
- level and promptness of support
- operations and quality of the operations manuals
- financial performance history/claims
- any problems or difficulties with the franchisor

Visit with Existing Franchisees

- Visit/talk with franchisees who have left the system and find out why they left.
- Visit the franchisor’s headquarters:
  - meet the support team
  - review the operations manuals and see if you can sit in on a training class

Work in an Existing Franchise

Get to know the system, manuals, training program, support, earning potential, etc.
### WHAT ARE THE CRITERIA FOR SELECTING A FRANCHISE?

Before buying any business, you must carefully consider many factors that are critical to your success:

<table>
<thead>
<tr>
<th>COSTS</th>
<th>YOUR ABILITIES</th>
</tr>
</thead>
<tbody>
<tr>
<td>- How much money will this franchise cost before it becomes profitable?</td>
<td>- Do you have the technical skills or experience to manage the franchise?</td>
</tr>
<tr>
<td>- Can I afford to buy this franchise?</td>
<td>- Do you have the business skills to manage the franchise?</td>
</tr>
<tr>
<td>- Can I make enough money to make the investment worth my time and energy?</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DEMAND</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>- Is there enough demand in your area for the franchisor's products or services?</td>
<td>- How much competition do you have, including other franchisees?</td>
</tr>
<tr>
<td>- Is the demand year-long or seasonal?</td>
<td>- Are the competing companies/franchises well established?</td>
</tr>
<tr>
<td>- Will the demand grow in the future?</td>
<td>- Do they offer the same products and services at the same or lower prices?</td>
</tr>
<tr>
<td>- Does the product or service generate repeat business?</td>
<td>- Is there a specialty or niche you can capture?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>BRAND NAME</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>- How well known is the franchise name?</td>
<td>- What kind and how much training and support does the franchisor provide?</td>
</tr>
<tr>
<td>- Does it have a reputation for quality?</td>
<td>- Do existing franchisees find this level of training and support adequate?</td>
</tr>
<tr>
<td>- Have any consumers filed complaints with the local Better Business Bureau?</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FRANCHISOR'S EXPERIENCE</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>- Has the franchisor been in business long enough to have established the type of business strength you are seeking?</td>
<td>- Is the franchisor planning to grow at a rate that is sustainable?</td>
</tr>
</tbody>
</table>
CHAPTER 3
Navigating the Paper Trail

WHAT ARE THE KEY SUBJECTS IN THE FRANCHISE AGREEMENT?

The franchise agreement is more specific than the FDD about the terms of the relationship between the franchisor and franchisee.

USE OF TRADEMARKS

One of the main benefits you receive when purchasing a franchise is the use of well-known trademarks. This section lists the trademarks, service marks or logos the franchisee is entitled to use.

- Has the trademark been in operation for a significant amount of time and is it well known?
- Are there any restrictions on its use by the franchisor or franchisee?

LOCATION OF THE FRANCHISE

This section describes the exclusive area or territory granted to the franchisee.

- Do you have exclusive rights in a certain territory?
TERM OF THE FRANCHISE

- In this section, the duration of the agreement is specified.
  - How long does the agreement last?
  - Can the franchisor purchase the franchise before the agreement expires?
  - Do you have the right to renew the agreement?

FRANCHISEE'S FEES AND OTHER PAYMENTS

- In this section, all the mandatory fees are described:
  - initial fee and what the franchisee receives for that fee
  - royalty payment, what it is based on and when it is due

OBLIGATIONS AND DUTIES OF THE FRANCHISOR

- This section describes the franchisee's responsibilities:
  - requirements for training
  - requirements for participation in the business
  - requirements for keeping and submitting adequate records

RESTRICTION ON GOODS AND SERVICES OFFERED

- This section describes any restrictions placed on the goods or services offered, including:
  - required quality standards
  - approved suppliers
  - approved advertising
  - hours of operation
  - pricing

RENEWAL, TERMINATION AND TRANSFER OF FRANCHISE AGREEMENT

- This section includes:
  - the rights and obligations of a franchisee upon termination
  - descriptions about the transfer of the franchise agreement
  - descriptions about the renewal of the franchise agreement
WHAT INFORMATION IS FOUND IN THE FDD?

The purpose of the FDD is to provide prospective franchisees with information about the franchisor, the franchise system and the agreements they will need to sign so that they can make an informed decision. (Refer to pages 83 to 91 in Franchising for Dummies.)

THE DISCLOSURE DOCUMENT (FDD)

- **Item 1:** The franchisor and any parents, predecessors and affiliates. This section provides a description of the company and its history.
- **Item 2:** Business experience. This section provides biographical and professional information about the franchisors and its officers, directors and executives.
- **Item 3:** Litigation. This section provides relevant current and past criminal and civil litigation for the franchisor and its management.
- **Item 4:** Bankruptcy. This section provides information about the franchisor and any management who have gone through a bankruptcy.
- **Item 5:** Initial fees. This section provides information about the initial fees and the range and factors that determine the amount of the fees.
- **Item 6:** Other fees. This item provides a description of all other recurring fees or payments that must be made.
- **Item 7:** Initial investment. This item is presented in table format and includes all the expenditures required by the franchisee to make to establish the franchise.
- **Item 8:** Restriction on sources of products and services. This section includes the restrictions that franchisor has established regarding the source of products or services.
- **Item 9:** Franchisee's obligations. This item provides a reference table that indicates where in the franchise agreement franchisees can find the obligations they have agreed to.
- **Item 10:** Financing. This item describes the terms and conditions of any financing arrangements offered by the franchisor.
- **Item 11:** Franchisor's Assistance, Advertising, Computer Systems and Training. This section describes the services that the franchisor will provide to the franchisee.
Item 12: Territory. This section provides the description of any exclusive territory and whether territories will be modified.

Item 13: Trademarks. This section provides information about the franchisor's trademarks, service marks and trade names.

Item 14: Patents, copyrights and proprietary information. This section gives information about how the patents and copyrights can be used by the franchisee.

Item 15: Obligation to participate in the actual operation of the franchise business. This section describes the obligation of the franchisee to participate in the actual operation of the business.

Item 16: Restrictions on what the franchisee may sell. This section deals with any restrictions on the goods and services that the franchisee may offer its customers.

Item 17: Renewal, termination, transfer and dispute resolution. This section tells you when and whether your franchise can be renewed or terminated and what your rights and restrictions are when you have disagreements with your franchisor.

Item 18: Public Figures. If the franchisor uses public figures (celebrities or public persons), the amount the person is paid is revealed in this section.

Item 19: Financial Performance Representations. Here the franchisor is allowed, but not required, to provide information on unit financial performance.

Item 20: Outlets and Franchisee Information. This section provides locations and contact information of existing franchises.

Item 21: Financial statements. Audited financial statements for the past three years are included in this section.

Item 22: Contracts. This item provides of all the agreements that the franchisee will be required to sign.

Item 23: Receipts. Prospective franchisees are required to sign a receipt that they received the FDD.
WHAT ARE THE KEY ITEMS IN THE FDD?

**Initial investment.** Some of these costs are averages or estimates and may vary in your area.

Talk to other franchisees who have been in the system for a year or more to see:
- how much money they needed in the beginning until they became profitable
- how much they were able to draw from the business to support themselves

**Franchisor's obligations.**

Be sure you understand the services you will get before you open:
- site selection
- training
- development assistance

Be sure you know what services you will receive for your grand opening:
- marketing
- advertising
- field support

Be sure you know what services you will receive after you begin operating your business:
- training
- advertising
- operations

Pay particular attention to those services the franchisor is obligated to provide and the services they may provide.

**Renewal, termination, transfer and dispute resolution.**

Take your time to understand what rights you will have and what rights you are giving up.

Pay particular attention to any non-compete provisions and your obligations when the franchise relationship ends.
**Item 19: Financial performance representations.**

Only 30 to 40 percent of all franchisors provide prospective franchisees with information about financial performance. The next best thing to do is to talk to existing franchisees about sales and earnings potential.

Another good source of information is *How Much Can I Make?* by Robert Bond. (800-841-0873 or www.worldfranchising.com).

**Item 20: Outlets and franchisee information.**

Examine how many units the franchisor has taken back and resold. If this number is high, this could indicate churning (when the franchisor takes back failed locations and remarkets them over and over.)

Pay attention to the contact information of the franchisees who have left the system. These are people you definitely want to talk to.

**Item 21: Financial statements.**

Financial statements are the track record of the franchisor. You should be given copies of the franchisor’s last three years financial statements. Take them to an accountant who specializes in franchising to evaluate.

Remember that the financial condition of the franchisor not only affects its ability to run a financially successful operation in the future, but it also determines whether it may go under and you will be left “holding the bag.”

The two key financial statements to focus on are the balance sheet and the income statement. Make sure they are audited.

**Item 22: Contracts.**

Make sure that all the agreements listed are attached to the FDD—and read every one of them.
Financial statements are the track record of the franchise. They are provided for you in the FDD and contain important information about the franchisor's financial status and strength.

The two most important financial statements you need to review:

- **balance sheet**
- **income statement**

### THE BALANCE SHEET

A balance sheet is a snapshot summary of how much a company is worth on any given day. It reports the financial condition (solvency) of the franchisor.

Balance sheet categories include:

- **assets** — what a company owns: current, fixed and intangible assets
- **liabilities** — what a company owes: current and long-term debt
- **stockholders' equity** — the company's net worth; it is the money the company has taken in from the sale of stock plus any accumulated profits:

\[
\text{Stockholder's Equity} = \text{Assets} - \text{Liabilities} = \text{Net Worth}
\]

Things you want to see on a franchisor's balance sheet:

- increasing assets
- increasing stockholders' equity
- more cash than debt
- amount of current debt < (less than) 1/2 of the total assets
- amount of current debt < 1/3 of the stockholders' equity
### ABC Sleepwear

**Balance Sheet**  
January, 2010

<table>
<thead>
<tr>
<th>ASSETS</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current Assets</strong></td>
<td></td>
</tr>
<tr>
<td>Cash</td>
<td>$6,900</td>
</tr>
<tr>
<td>Accounts Receivable</td>
<td>$4,900</td>
</tr>
<tr>
<td>Inventory</td>
<td>$8,000</td>
</tr>
<tr>
<td>Prepaid Expenses</td>
<td>$200</td>
</tr>
<tr>
<td><strong>Total Current Assets</strong></td>
<td>$20,000</td>
</tr>
<tr>
<td><strong>Fixed Assets</strong></td>
<td></td>
</tr>
<tr>
<td>Machinery</td>
<td>$8,500</td>
</tr>
<tr>
<td>Computer/Printer</td>
<td>$1,000</td>
</tr>
<tr>
<td>Furniture</td>
<td>$4,500</td>
</tr>
<tr>
<td><strong>Total Fixed Assets</strong></td>
<td>$14,000</td>
</tr>
<tr>
<td><strong>Total Assets</strong></td>
<td>$34,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LIABILITIES AND EQUITY</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current Liabilities</strong></td>
<td></td>
</tr>
<tr>
<td>Accounts Payable</td>
<td>$6,500</td>
</tr>
<tr>
<td>Current Long-Term Due</td>
<td>$1,200</td>
</tr>
<tr>
<td>Accrued Expenses</td>
<td>$1,800</td>
</tr>
<tr>
<td><strong>Total Current Liabilities</strong></td>
<td>$9,500</td>
</tr>
<tr>
<td><strong>Long-Term Liabilities – Note</strong></td>
<td>$12,500</td>
</tr>
<tr>
<td><strong>Stockholder’s Equity</strong></td>
<td>$12,000</td>
</tr>
<tr>
<td><strong>Total Liabilities and Equity</strong></td>
<td>$34,000</td>
</tr>
</tbody>
</table>
THE INCOME STATEMENT

An income statement reports a company's profit or loss. It shows a company's income, expense and net income—also known as the "bottom line" or earnings.

Other names for an income statement include:
- Profit and Loss Statement
- Statement of Income
- Statement of Operation
- Statement of Earnings
- Results of Operations
- Statement of Consolidated Income

Income statement categories include:
- revenues
- costs and expenses: cost of sales, selling, general administrative, interest expenses
- income before taxes
- provision for income taxes
- net income (earnings)
- net income (earnings) per share

Things you want to see on a franchisor's income statement:
- increasing profit
- more revenue derived from royalties and system income than from selling franchises
- increasing revenue trends, usually > 15%
- increasing net income trends, usually > 15%
- increasing net income per share trend, usually > 15%
- a profitable franchisor!

What you should know about these financial statements:
- The financial statements should be audited financial statements.
- The statements should contain three years of financial data (unless the franchisor has less than 3 years of operating history).

You should take these to an accountant experienced in franchising for evaluation.
ABC Sleepwear
Income Statement
January, 2010

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SALES/REVENUE</strong></td>
<td>$2,600</td>
</tr>
<tr>
<td><strong>COST OF GOODS</strong></td>
<td></td>
</tr>
<tr>
<td>Merchandise</td>
<td>$1,155</td>
</tr>
<tr>
<td>Purchases</td>
<td>$610</td>
</tr>
<tr>
<td>Freight</td>
<td>$11</td>
</tr>
<tr>
<td><strong>GROSS PROFIT</strong></td>
<td>$824</td>
</tr>
<tr>
<td><strong>OPERATING COSTS AND EXPENSES</strong></td>
<td>$544</td>
</tr>
<tr>
<td>Fixed</td>
<td></td>
</tr>
<tr>
<td>Insurance</td>
<td>$26</td>
</tr>
<tr>
<td>Rent</td>
<td>$100</td>
</tr>
<tr>
<td>Salaries</td>
<td>$310</td>
</tr>
<tr>
<td>Utilities</td>
<td>$42</td>
</tr>
<tr>
<td>Variable</td>
<td></td>
</tr>
<tr>
<td>Advertising</td>
<td>$24</td>
</tr>
<tr>
<td>Dues</td>
<td>$4</td>
</tr>
<tr>
<td>Telephone</td>
<td>$24</td>
</tr>
<tr>
<td>Office Supplies</td>
<td>$14</td>
</tr>
<tr>
<td><strong>PROFIT (INCOME) BEFORE TAXES</strong></td>
<td>$280</td>
</tr>
<tr>
<td><strong>TAXES (30%)</strong></td>
<td>$84</td>
</tr>
<tr>
<td><strong>NET PROFIT (NET INCOME)</strong></td>
<td>$196</td>
</tr>
<tr>
<td>(&quot;The Bottom Line&quot;)</td>
<td></td>
</tr>
</tbody>
</table>
WHERE CAN I GET HELP?

- International Franchise Association (IFA), 202-628-8000, www.franchise.org
- IFA's Council of Franchise Suppliers (CFS) publishes a list of firms that specialize in franchising law, www.franchising.org
- recommendations from other franchisees
CHAPTER 4

Evaluating a Franchise - Interviewing Both Sides

1. What should I ask the franchisor?
2. What should I ask the franchisees?
3. What questions should I ask myself before buying a franchise?
4. What are the keys to franchise success?

WHAT SHOULD I ASK THE FRANCHISOR?

ABOUT THE FRANCHISOR:

- Who owns the trademarks, service marks, etc., and are they federally registered?
- Are there any disputes pending or threatened against the trademarks?
- Has the franchisor complied with the FTC and state disclosure laws?
- Are any senior management or key personnel leaving the system?
- Does this company compete with the franchisees in the marketplace?
- Will the franchisor finance any of the costs?
- Is the franchisor willing to negotiate the terms of the franchise?
- Does the franchisor staff attend seminars on franchising and management?
- Do field consultants offer help and guidance or merely act in a regulatory role?
- How many franchises are expected to be added each year?
- Where will they be located?
- What is the success rate of existing franchises?
- What method is used to protect franchisees from poorly performing franchises?
- Is there a franchise owners association?
- Is there a franchise advisory council?
ABOUT COSTS:

What is the total investment required to own a franchise?
- franchise fee
- furniture, fixtures and equipment
- leasehold improvements
- lease deposits
- other deposits
- franchise training
- travel expense
- supplies
- advertising and brochures
- grand-opening advertising
- inventory
- pre-opening staff costs
- working capital until breakeven
- working capital – living expenses
- other

What are the continued financial costs, the basis used for calculation, method of payment and frequency of payment?
- royalties
- advertising

Must the franchisee purchase products or services from the franchisor?
- Does the franchisor earn income on purchases?
- How much does the franchisor earn?
- How are the products distributed?
- How long does it take for the orders to be filled?
- What other initial or continuing services does the franchisor provide? What do these cost?

ABOUT CONSUMER RESEARCH AND MARKETING:

- What type of consumer research has the company conducted?
- What were the results?
- Has the franchisor conducted any market studies on the territory to ensure that it can support a franchise?
- What are the demographics required to support a franchise?
- What are the traffic counts required to support a franchise?

ABOUT TRAINING:

- What are the location, duration and additional costs of initial training?
- Who must attend the training?
- What is the cost of additional staff attending training?
- What is the training curriculum?
- Who conducts the training and what are their backgrounds?
- Who pays for transportation, room and living expenses?
- Does the franchisor provide training materials for training new staff in addition to the operations manuals?
- Does the franchisor provide hands-on assistance during the pre-opening, grand opening and initial period? Of what type, duration and cost?
ABOUT PRODUCTS AND SERVICES:

- Are there any new products or services under consideration for addition to the franchise?
- When are they going to be introduced?
- What is the estimated additional cost for adding the new products or services?
- Are there any restrictions on the distribution or sale of the product?
- Is there a guarantee or warranty program? How is it administered and what is the cost?
- Is there a minimum that must be purchased?

ABOUT OPERATIONS:

- What are the roles and responsibilities of the field staff?
- How many locations does each franchise consultant work?
- What is the background of the franchise consultant I will be working with? Can I meet that person before purchasing the franchise?
- How often does the field staff visit a franchisee’s location?
- What is the additional cost of field services if the franchisee requires it?
- Exactly what kind of assistance is given?
- What kind of supervision or quality control is there?
- What, if any, is the charge for assistance?
- What kind of business management systems are provided to boost sales and profits?

ABOUT ADVERTISING AND MARKETING:

- What type of consumer advertising does the company recommend?
- What types of cooperative advertising programs are being used?
- What percentage of sales is recommended or required for advertising or marketing?
- How do the franchisees obtain their sales leads or customers?
- What is the franchisor’s national/regional advertising program and budget?
- What portion of the national/regional advertising contribution is used for administrative/corporate/agency expenses and fees?
- What are the primary advertising/marketing vehicles?
- What is the grand opening advertising program and cost?
WHAT SHOULD I ASK THE FRANCHISEES?

- How much support do you get?
- Are you satisfied with the franchisor?
- Is the franchisor fair and easy to work with?
- Does the franchisor listen to your concerns and accept input from the franchisees?
- Have you had any disputes and, if so, were you able to settle them?
- Do you know of any trouble the franchisor has had with other franchises, competitors or the government?
- Has the franchisor kept its promises?

ABOUT COSTS:

- Is your franchise profitable?
- What are your gross revenues?
- What have your pre-tax profits been for the past three years?
- What is your salary?
- How is your cash flow?
- Were the franchisor's start-up costs and working capital requirements accurate?
- Were the franchisor's profit projections and earnings claims accurate?
- How long did it take you to break-even?
- Have you made the profit you expected to make?

ABOUT THE FRANCHISOR:

- How much support do you get?
- Are you satisfied with the franchisor?
- Is the franchisor fair and easy to work with?
- Does the franchisor listen to your concerns and accept input from the franchisees?
- Have you had any disputes and, if so, were you able to settle them?
- Do you know of any trouble the franchisor has had with other franchises, competitors or the government?
- Has the franchisor kept its promises?

ABOUT TRAINING:

- Was the training by the franchisor adequate?
- Was the training by the franchisor effective?
ABOUT PRODUCTS AND SERVICES:

- Is the product or service you sell of good quality?
- Is delivery of goods from the franchisor adequate?
- Are you getting supplies cheaper from the franchisor than you could on your own?
- What does the franchisor supply?

ABOUT OPERATIONS:

- How effective are the operational procedures?
- Have the operations manuals helped you?
- What do you think of the manuals?
- Are the manuals updated on a regular basis?
- What did you do before you bought the franchise?
- Describe your day.
- How many hours a day do you work?
- How many hours a week do you work?
- How much freedom do you have to make decisions?
- Are you happy with your investment?
- Are you disappointed in any aspect of the business?
- Is there anything about the business you do not like?
- What do you like most about the business?
- What kind of problems do you encounter?
- What do you like least about the business?
- Would you do it again?
- Would you recommend I buy a franchise?

ABOUT ADVERTISING AND MARKETING:

- How much do you spend on advertising a month?
- How effective is the regional or national advertising?
- Do you think you are getting good value for your advertising dollars?
- Are you satisfied with the marketing and promotional assistance the franchisor has provided?
There are three main sets of questions you should ask yourself:

- Do I have what it takes to start my own business/be an entrepreneur?
- Do I have what it takes to be a franchisee?
- Do I have all the answers I need about the franchise I am considering buying?

DO I HAVE WHAT IT TAKES TO START MY OWN BUSINESS/BE AN ENTREPRENEUR?

So you want to be an entrepreneur? You're not alone! Consider these statistics:

- 55% of all Americans want to be their own boss.
- 37% of all households are involved in small business.
- 70% of all high schools students want to start a business.
- 1 out of every 25 adults is currently starting a business.
- 5 million people started a business in 1995.
- By 2000, there will be 200 million home-based businesses.

An entrepreneur is defined as:

- "One who pursues opportunity beyond the resources currently controlled."
- "A person who sees an opportunity and creates an organization to pursue it."
- "A dreamer who attempts to turn an idea into a profitable reality."
- "Anyone who assumes the risk and responsibility for starting and managing a business."
- "Anyone who takes the risk of starting a business for the purpose of making a profit."

Entrepreneurs have a different way of looking at life:

- Opportunity INSTEAD OF Security
- Results INSTEAD OF Routine
- Profit INSTEAD OF A Paycheck
- Trying New Ideas INSTEAD OF Avoiding Mistakes
- Vision INSTEAD OF Short-Term Gain

The advantages of being an entrepreneur:

- freedom and independence
- control over a major aspect of your life
- an outlet for creativity
- excitement
- satisfaction and sense of achievement
- self-esteem
- status and recognition
- flexibility
- job security—you cannot be fired or laid off
- unlimited income potential
- growth of initial monetary investment

The disadvantages of being an entrepreneur:
- risk
- responsibility and pressure
- fear of failure
- obstacles and frustration
- loneliness
- more work
- longer hours
- less time or energy to spend with friends and family
- less financial security
- fewer job benefits
- risk of losing investment
- income fluctuation
- you are responsible for your own portion of taxes and FICA

**Entrepreneurial self-assessment:**
Starting a successful business takes a tremendous amount of energy and certain personal characteristics. Read each of the characteristics below and circle the number that most accurately describes your entrepreneurial potential on a scale of one to ten. (1 is low, 10 is high)

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Description</th>
<th>Your Tendency (low to high)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motivation</td>
<td>drive, energy to succeed</td>
<td>1 2 3 4 5 6 7 8 9 10</td>
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<tr>
<td>Enthusiasm</td>
<td>excited involvement</td>
<td>1 2 3 4 5 6 7 8 9 10</td>
</tr>
<tr>
<td>Risk-taker</td>
<td>willing to take chances</td>
<td>1 2 3 4 5 6 7 8 9 10</td>
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<tr>
<td>Confidence</td>
<td>sure of your own abilities</td>
<td>1 2 3 4 5 6 7 8 9 10</td>
</tr>
<tr>
<td>Competitiveness</td>
<td>wanting to win</td>
<td>1 2 3 4 5 6 7 8 9 10</td>
</tr>
<tr>
<td>Perseverance</td>
<td>refusal to quit a task</td>
<td>1 2 3 4 5 6 7 8 9 10</td>
</tr>
<tr>
<td>Creativity</td>
<td>imaginative thinking</td>
<td>1 2 3 4 5 6 7 8 9 10</td>
</tr>
<tr>
<td>Organization</td>
<td>keeping things in order</td>
<td>1 2 3 4 5 6 7 8 9 10</td>
</tr>
<tr>
<td>Vision/leadership</td>
<td>knowing where you want to be</td>
<td>1 2 3 4 5 6 7 8 9 10</td>
</tr>
<tr>
<td>Persuasiveness</td>
<td>ability to convince others</td>
<td>1 2 3 4 5 6 7 8 9 10</td>
</tr>
<tr>
<td>Honesty</td>
<td>truthfulness</td>
<td>1 2 3 4 5 6 7 8 9 10</td>
</tr>
<tr>
<td>Adaptability</td>
<td>can handle new situations</td>
<td>1 2 3 4 5 6 7 8 9 10</td>
</tr>
<tr>
<td>Understanding</td>
<td>can sense peoples’ feelings</td>
<td>1 2 3 4 5 6 7 8 9 10</td>
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<tr>
<td>Self-discipline</td>
<td>sticking to a plan or schedule</td>
<td>1 2 3 4 5 6 7 8 9 10</td>
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<tr>
<td>Independence</td>
<td>belief in oneself</td>
<td>1 2 3 4 5 6 7 8 9 10</td>
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<tr>
<td>Purposefulness</td>
<td>doing things for a reason</td>
<td>1 2 3 4 5 6 7 8 9 10</td>
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<tr>
<td>Goal-oriented</td>
<td>work steadfastly toward a goal</td>
<td>1 2 3 4 5 6 7 8 9 10</td>
</tr>
<tr>
<td>Problem-solver</td>
<td>think of solutions to problems</td>
<td>1 2 3 4 5 6 7 8 9 10</td>
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<tr>
<td>Drive</td>
<td>desire to work hard</td>
<td>1 2 3 4 5 6 7 8 9 10</td>
</tr>
<tr>
<td>Optimism</td>
<td>positive attitude</td>
<td>1 2 3 4 5 6 7 8 9 10</td>
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</table>

Date: ___________________________  Total Score: ___________________________
Your score is an indication of the extent to which you possess personal characteristics similar to those of successful entrepreneurs.

**The Probability of Your Entrepreneurial Success**

**A Score of 160-200**
You possess very strong entrepreneurial characteristics. You will probably find entrepreneurship a very desirable, exciting and fulfilling way of life.

**A Score of 120-159**
You are mildly entrepreneurial. You may find entrepreneurship desirable and stimulating, but may have to develop your entrepreneurial abilities through training.

**A Score of 120 and Below**
You will probably find entrepreneurship undesirable and difficult. You will probably be more successful working for someone else, although you can still develop your entrepreneurial abilities. So, if you are determined to start your own business, don't give up!

Making a decision to start your own business isn't just about numbers. It's about you...your lifestyle, family, likes and dislikes, work habits, values, ethics and dreams. You need to honestly define who you are and what you want—your future depends on it!

Questions to ask yourself:
- Do you have the personal drive to be a successful entrepreneur?
- Are you willing to work whatever hours it takes to make your business a success?
- Are you willing to give up the perks of being an employee to invest and run your own business?
- Are you self-reliant?
- Can you work without support?
- Are you healthy?
- Do you have the physical ability to meet the needs of operating on your own?
- Can you handle stress?
- Do you have the mental ability to meet the everyday needs of operating your own business?
- Can you handle crisis situations and deadlines?
- Do you like people?
- Do you listen well?
- Do you have patience when working and interacting with others?
- Do you communicate well?
- Can you be a leader and a trainer for your staff as well as a front person for your business?
- Can you maintain a positive relationship with the people who work for you?
- Can you meet the needs of your customers?
- Do you have the ability to sell—youself and your products and services?
- Can you afford to start your own business?
- Do you have the support of your family and friends?
DO I HAVE WHAT IT TAKES TO BE A FRANCHISEE?

Once you have determined that you have the abilities, skills and desire to start your own business, you have to further determine if you have the requisite traits to become a franchisee.

- Can you follow someone else's rules, even when you think you have a better way?
- Are you prepared to accept coaching and advice on how to run your business from a franchisor’s field and headquarter’s staff?
- If the franchisor turns down your great idea for changing the system, can you live with that?
- Can you trust that a franchisor is working for the benefit of the entire system—even when their decisions do not necessarily go your way?
- Are you willing to share financial information and prepare required reports each month?
- Are you willing, able and eager to learn new skills?
- Can you set aside old habits and beliefs to follow a franchise system?

DO I HAVE ALL THE ANSWERS I NEED ABOUT THE FRANCHISE I AM CONSIDERING BUYING?

Do you know the franchisor?
Have you spent enough time finding out about the franchisor from:
- other franchisees?
- the International Franchise Association?
- the franchisee’s owners association
- the franchise advisory council

Can you afford a franchise?
- How much do you have to invest?
- How much can you risk losing?
- How much do you need to live on?
- What is the total investment required for getting into the franchise?
- What portion of the investment can be financed?
- Can you find anyone willing to invest in you and your future?
- How much can you earn as a franchisee?
- How long will it take to breakeven?
- What return can you get on your investment?
- Can you get a better return from another investment?
- Are the risks equal?
- Is your research thorough? (Have you researched the industry, the franchisor, the disclosure documents, and talked with current and former franchisees?)
- Have you gotten the assistance of professional advisors who are familiar with franchising?
- Have you made a slow and detailed evaluation of the opportunity to determine if it will meet your personal and financial goals?
Do you understand the terms of the contract?

- Have you thoroughly read the FDD and the franchise agreement?
- Have you had all your questions satisfactorily answered?
- Have the promises which the franchisor made during your discussions been included in the agreement?
- Have you had a qualified, experienced franchise attorney review the documents?
- Have you had a qualified, experienced accountant, familiar with franchising, review the documents?

Are the other franchisees happy with their investments?

- Have you talked with and visited other franchisees?
- Have you worked at a franchise location to get a better feeling if this is the right decision?
- Have you contacted the franchise owners association and talked with the president?
- Have you talked with the director of the franchise advisory council?

Does the franchisor have a history of litigation?

- Are other franchisees constantly bringing lawsuits against the franchisor?
- Is there anything about the franchisor's litigation history that causes you concern?
- Have you discussed these concerns with the franchisor's management and the leadership of the franchisee owners association or franchisee advisory council?

Can you make enough money with this franchise? Ask other franchisees:

- Are you making money with the franchise investment?
- How long did it take you to breakeven?
- How long before you started to make money?
- Was the investment estimate the franchisor gave you accurate? If not, how much more money did you need?
- Was the estimated working capital accurate? How much did you need to have and how long before you could take money out of the business to live on?
- Are there any mistake you made in starting up the franchise that cost you money? How can I avoid the same problem?

Is the franchisor making money and where is the money coming from?

- If the franchisor has been in business awhile, is their business being supported by continuing royalties or is it coming mostly from initial franchise fees?
- Is the franchisor profitable?
- Is the franchisor on firm financial ground?
Does the franchisor understand franchising?

- Does the franchisor have adequate staff, resources and trained personnel to meet its commitment to you?
- Do you feel the franchisor has the appropriate temperament to operate a franchise system?
- Does the franchisor staff attend seminars on franchising and management? Do they know about the latest changes in the industry? Are they active in trade associations for their specific industry and are they active in the International Franchise Association?
- Has the franchise been growing? Are new locations being added on a regular basis? How many locations closed in the last year? Why did they close?
- Are the sales within individual stores increasing?
- Does the franchisor have an active research and development department that introduces new products and services?
- Do the field staff act as consultants and advisors or do they act as police personnel (inspecting franchises and writing up violations, but not offering help and guidance?)

What are the keys to franchise success?

Making any business reach its full potential takes talent. If you’ve selected your franchise well, your franchisor will be able to help you avoid many of the mistakes new, independent start-up businesses make. Here are some keys for franchisee success.

Make sure you have enough money.

- Determine how much you have to invest, how much you’re willing to risk and how much you will need to live on for at least 12 months.
- Make sure you understand the initial investment required.
- Make a careful and rational decision about buying the franchise. Listen to your attorney and accountant and do not be pressured by the franchise salesperson.

Follow the system.

- Franchisees often get their business up and running and then begin to change, add or modify existing products, advertising, hours, services and even the quality and consistency they are licensed to deliver. This violates the franchise agreement and puts you in jeopardy of having your franchise terminated!
- By following the system, you:
  - preserve the brand
  - protect your investment and that of your fellow franchisees
Don’t neglect your family and friends.

- Be prepared to work long hours, but also make sure to budget time for your family and friends.
- Don’t forget to acknowledge the sacrifices your family makes.
- Allow your family and friends to share in your new life.

Be an enthusiastic franchisee.

- The success of any business is linked to the level of enthusiasm you bring to the job.
- Enthusiasm brings a level of excitement and energy to the operation that everyone can feel—including your customers and staff.
- Let your staff in on the fun. Acknowledge their good work with recognition or a raise.

Recruit the best and treat them with respect.

- Good help is hard to find—great help is essential.
- To keep the good staff you’ve hired:
  - Rotate routine and boring jobs.
  - Be fair. Don’t show favoritism.
  - Work with your staff to develop the schedule.
  - Treat your employees with respect. Don’t allow employees to be disrespectful to any other employee.
  - Keep employees informed of new marketing and other promotions.
  - Remove hassles—ask employees which procedures are working and which aren’t.
  - Make their workdays challenging.
  - Provide timely performance reviews and wage or salary increases.

Teach your employees.

- In franchising, training should be continuous. Employees are your front line.
- Training classes are a good way to show your employees that they matter to you.
- Get all the training you can from the franchisor.
- Regularly train and retrain all your employees.
- Hold refresher and advanced classes on a regular basis.
- Alert your franchisor when you need additional training.
- Take advantage of every training opportunity, whether it’s offered by the franchisor or by local schools, trade associations and other sources.
Give customers great service.

- The most important thing you can do is to get everyone to smile!
- Let the customer know you're happy they chose your business.

Get involved with the community.

Customers like to shop in places that support them:
- sponsor Little League team
- support a civic or youth group
- give tours of your business for school groups
- set up a kiosk at community events

Stay in touch with your franchisor and other franchisees:

- Stay in communication with the franchisor: letters, newsletters, emails, phone calls, faxes, training classes, regional meetings, conferences and conventions
- Communicate with other franchisees by participating in the franchise owners association.

Watch the details.

- Success is in the pennies! If you watch your pennies, the dollars will take care of themselves.
- Minimize costs and maximize sales.
- Watch out for shrinkage (merchandise that is missing or unaccounted for).
- Work hard every day. Choose your time away from the franchise wisely.
Exhibit 4
September 27, 2013

Mr. Dan Sexton
Minnesota Department of Commerce
85 — 7th Place East, Suite 500
St. Paul, Minnesota 55101-2198

Re: Franchise Registration Renewal Application for:
AlphaGraphics, Inc.
File No. F-2513

Dear Mr. Sexton:

Enclosed please find the following materials in connection with the franchise registration renewal application of the above-referenced franchisor:

1. A check in the amount of $300.00 for your fees;
2. Uniform Franchise Registration Application;
3. Franchisor’s Costs and Sources of Funds;
4. Uniform Franchise Consent to Service of Process;
5. Consent of Accountant;
6. Franchise Seller Disclosure Forms;
7. One red-lined copy of the revised Franchise Disclosure Document on paper; and
8. One red-lined copy of the revised Franchise Disclosure Document on CD-ROM, in PDF format.

If you have any questions or comments regarding this renewal application, please feel free to contact me. Thank you for your cooperation in this matter.

Very truly yours,

Elizabeth S. Dillon

ESD/mdr
Enclosures
GP:3473260 v1
The franchise offered is to operate an AlphaGraphics® Business Center, which offers customized marketing solutions to businesses using data driven, multi-channel communications that may require a blend of design, print, web, mobile and social media services.

The estimated total initial investment necessary to begin operation of a new AlphaGraphics® Business Center franchise is $233,950 to $377,100, excluding real estate costs. This includes $59,500 in initial fees that must be paid to the franchisor or an affiliate. The estimated total initial investment necessary to begin operation of an AlphaGraphics® Business Center franchise under our Conversion Pathway is $69,100 to $267,800, excluding real estate costs. This includes $12,500 in initial fees that must be paid to the franchisor or an affiliate. The estimated total initial investment necessary to begin operation of an AlphaGraphics® AGStudio Sales Office franchise is $49,500 to $114,500, excluding real estate costs. This includes $21,500 in initial fees that must be paid to the franchisor or an affiliate.

This disclosure document summarizes certain provisions of your franchise agreement and other information in plain English. Read this disclosure document and all accompanying agreements carefully. You must receive this disclosure document at least 14 calendar-days before you sign a binding agreement with, or make payment to, the franchisor or an affiliate in connection with the proposed franchise sale. Note, however, that no governmental agency has verified the information contained in this document.

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact Chrys Richardson, the Franchise Development Sales and Support Manager at 215 South State Street, Suite 320, Salt Lake City, Utah 84111 and (800) 955-6246.

The terms of your contract will govern your franchise relationship. Don’t rely on the disclosure document alone to understand your contract. Read all of your contract carefully. Show your contract and this disclosure document to an advisor, like a lawyer or an accountant.

Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as “A Consumer’s Guide to Buying a Franchise,” which can help you understand how to use this disclosure document, is available from the Federal Trade Commission (FTC). You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington D.C. 20580. You can also visit the FTC’s home page at www.ftc.gov for additional information on franchising.

There may also be laws on franchising in your state. Ask your state agencies about them.

The issuance date of this Disclosure Document is October 15, 2012, as amended December 17, 2012, September 27, 2013.
### Sales and Marketing Operations Manual

<table>
<thead>
<tr>
<th>Section</th>
<th>Number of Pages</th>
<th>Notes</th>
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<tbody>
<tr>
<td>Introduction</td>
<td>2</td>
<td>Includes introductory statements and the definition of marketing</td>
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<tr>
<td>Begin with Research</td>
<td>16</td>
<td>Includes information regarding AlphaGraphics, Inc. research, competitive analysis and Shopping Techniques and having a fully competitive shop</td>
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<tr>
<td>System Standard Marketing Requirements</td>
<td>24</td>
<td>Includes information regarding AlphaGraphics logo and trademark usage guidelines, message-on-hold, targeted direct marketing, outside sales process, and Global Accounts Program</td>
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<td>Implementation of the AIM Program</td>
<td>106</td>
<td>Includes information regarding Encompass Contact Management System, targeted direct mail Marketing tools, targeted inside and outside sales tools and AIM sales and marketing support</td>
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<td>New Store Marketing Program</td>
<td>6</td>
<td>Includes information regarding the yellow pages, message-on-hold program, business publications, subscriptions and dues, grand opening celebration, new store marketing budget summary, new store marketing support, marketing materials and new store marketing and budget template with guidelines</td>
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<tr>
<td>Optional Marketing Strategies</td>
<td>16</td>
<td>Includes information regarding the Regional and Multi-Regional Marketing Funds, print advertising, broadcast advertising, outdoor advertising, public relations and open house/anniversary event procedures</td>
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<td>An Overview of Sales Management</td>
<td>6</td>
<td>Includes information regarding the job description, qualifications and responsibilities of a sales manager</td>
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<td>Lead Generation Systems</td>
<td>6</td>
<td>Includes information regarding cold calling, estimates and referrals</td>
</tr>
<tr>
<td>Account Management</td>
<td>6</td>
<td>Includes information regarding new accounts, house accounts, uncertain accounts and account management</td>
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<tr>
<td>Sales Management Skills</td>
<td>36</td>
<td>Includes information regarding hiring sales representatives, training, evaluating performance, coaching your salespeople, running a successful sales meeting, when to hire and promoting sales inside your store</td>
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<tr>
<td>Basic Selling Skills</td>
<td>16</td>
<td>Includes information regarding stating your mission, selling from a buyer’s point of view, probing for information, how to handle</td>
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</table>

Exhibit E
Page 1
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<tr>
<th>Section</th>
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<tbody>
<tr>
<td>The AlphaGraphics Sales Process and Daily Organization</td>
<td>12</td>
<td>objections and how to close a sale includes information regarding preparing with Encompass, prospecting, appointments and follow-up</td>
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<tr>
<td>Advanced Sales Skills</td>
<td>12</td>
<td>includes information regarding how to build and keep a large account, corporate and group presentations and how to prepare an account profile form</td>
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<tr>
<td>Exhibit 1 AIM Program Hardware Minimum Requirements</td>
<td>6</td>
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<td>Exhibit 2 Definition of TargetSmart! View Fields</td>
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<td>Exhibit 3 Direct Mail Summary Table</td>
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<td>Exhibit 4 TDM Offer List</td>
<td>4</td>
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<td>Exhibit 5 AIM Letter Templates</td>
<td>12</td>
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<td>Exhibit 6 New Store Marketing and Advertising Budget Year 1</td>
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<td>Exhibit 7 Sales Lead Form</td>
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<td>Exhibit 8 Characteristics of the Ideal Sales Reps</td>
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<td>Exhibit 9 Sample Ad Copy for Sales Reps</td>
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<td>Exhibit 10 Recommended Interview Questions</td>
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<td>Exhibit 11 Questions to Expect from Sales Candidates</td>
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<td>Exhibit 12 A 90-Day Sales Training Plan</td>
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<td>Exhibit 13 Weekly/Monthly Sales Activity Report</td>
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<td>Exhibit 14 Sales Compensation Model</td>
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Managing Profitability Operations Manual

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<td>Glossary of Terms</td>
<td>6</td>
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<tr>
<td>Financial Management</td>
<td>34</td>
<td>Includes information regarding basics of accounting and financial reporting, principal</td>
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## Section

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<tr>
<td>Case 2:14-cv-00848-RAJ Document 70-2 Filed 10/02/14 Page 87 of 141</td>
<td></td>
<td>financial documents, AlphaGraphics accounting procedures, costs, margins and breakeven analysis and forecasting revenues, expenses and cash flows</td>
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<tr>
<td>Financial Documents</td>
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<td>Includes information regarding ratios of cash and credit sales, credit applications, assigning and monitoring credit limits, small claims court, collection agencies and sample letters</td>
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<td>Cash Management</td>
<td>8</td>
<td>Includes information regarding objective measurements of cash management</td>
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<td>Tracking and Reporting</td>
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<td>Includes a checklist for submitting financial information, and information regarding the royalty reduction program and universal service credits policy</td>
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<td>Exhibit 1 A Checklist of Ways to Increase Cash Flow</td>
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### Operating Efficiently Operations Manual

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AGENCY FRANCHISE AGREEMENT

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towards Franchisor, Franchisor’s affiliates and designated suppliers, Franchisee may, at its option, renew this Agreement upon the expiration of the Initial Term for an additional term of ten (10) years. Franchisee must exercise its option to renew by giving Franchisor written notice of Franchisee’s election to renew not less than six (6) months nor more than one (1) year prior to the expiration of the Initial Term. As a condition of any renewal, Franchisee must (i) pay to Franchisor a renewal fee in an amount equal to five thousand dollars ($5,000), (ii) sign Franchisor’s then-current form of franchise agreement for renewal franchises, which may include terms and conditions materially different from those in this Agreement, such as different performance standards, fee structures and/or increased fees; (iii) if available, execute a new lease for three years with an option to renew for two years for the Agency premises; (iv) execute a general release in a form satisfactory to Franchisor of any and all claims against Franchisor, its parent, subsidiaries or affiliates (if applicable) and their officers, directors, attorneys, Owners and employees; (v) complete any new training requirements not yet completed; and (vi) at Franchisee’s sole expense and if necessary in Franchisor’s sole opinion, bring the Agency up to Franchisor’s then-current standards for an Agency, including installation or upgrade of computer hardware and software, and the ABS. The first renewal franchise agreement referred to above will include an option for Franchisee to renew that agreement for one additional term of five (5) years on the terms of the second renewal franchise agreement being offered by Franchisor at that time to similarly situated renewing franchisees provided that at the time any such option is to be exercised by Franchisee, Franchisee has met the ten year sales goal agreed upon between Franchisor and Franchisee for the first renewal term and Franchisee is not in default under the first renewal franchise agreement, or any other agreement with Franchisor, at any time during the last six (6) months of the first renewal term.

3. OPERATING ASSISTANCE

3.1 Assistance Prior to Opening. Prior to Franchisee’s Opening Date, Franchisor will provide Franchisee with the following assistance, on the same basis as it will from time to time make available to other Agency franchisees:

3.1.1 Franchisee will be granted access to the Operations Manual via our intranet. If Franchisee opens multiple Agencies, Franchisee is responsible for making copies of the Operations Manual for use at its additional Agency locations. Franchisor may modify the Operations Manual by written or on-line supplements of which Franchisee will receive copies or receive links to print document.

3.1.2 Make available to Franchisee specifications on the size, layout and floor plan of the Agency office to assist with the purchasing of desks and file cabinets.

3.1.3 Review the proposed Premises and grant approval to the proposed Premises if it meets Franchisor’s standards. Franchisor neither offers nor provides any other services in this regard.

3.1.4 Review the proposed lease for Agency Premises to determine that it meets Franchisor’s standards for notice of assignment to Franchisor and other requirements included in the Operations Manual.
3.1.5 Assistance in the ordering of business cards, brochures, letterhead, and initial recruiting and marketing materials as listed in the Operations Manual.

3.1.6 A copy of job descriptions for all key positions to assist in hiring.

3.1.7 A checklist of Agency office supplies to be purchased.

3.1.8 Assistance with a forecast to manage business expectations, assistance with the development of a business plan to assist with obtaining financing, and assistance with pay and bill rate development.

3.1.9 Four days of new owner training at the Franchisor's headquarters on the selection of a location, hiring of branch manager/operations manager and registered nurse, licensure, territory zoning, and introduction to sales. The in-class training is supplemented by e-learning through the BrightStar Online Training System. We reserve the right to reduce the number of days at the Franchisor's location through the use of e-learning.

3.1.10 Five days of training at the Franchisor's headquarters for up to three (3) members. On responsibilities and system functionality, including two days of sales training to determine which institutions utilize agencies to help them supplement their staff, and training on staff recruitment. The branch manager/operations manager, director of nursing and Franchisee must attend and satisfactorily complete training. If Franchisee is serving as branch manager/operations manager, Franchisee's sales manager must attend and satisfactorily complete the sales portion of the training.

3.1.11 Several sample ads to be run in the newspapers to assist in announcing of office opening and recruiting of staff.

3.1.12 If the Agency operated under this Agreement is Franchisee's first Agency, and is not acquired through a transfer, Franchisee must participate in and comply with all of the requirements of the "BrightStart" Program. The BrightStart program is designed to assist new owners in opening their new business as well as focus on the core competencies of sales and marketing of the BrightStar business.

3.2 Ongoing Assistance. After Franchisee's Opening Date, Franchisor or its designee will make the following assistance available to Franchisee:

3.2.1 Regular consultation and advice in response to Franchisee's inquiries about specific administrative and operating issues. Franchisor may decide how best to communicate such consultation and advice to Franchisee, whether by telephone, in writing, electronically or in person. The method chosen by Franchisor may be different than the methods used by Franchisor for other franchisees.

3.2.2 Administer the General Marketing Fund and approve advertising that Franchisee creates for Franchisee’s local use.

3.2.3 Make goods and services available to Franchisee either directly or through approved suppliers.
3.2.4 While not currently in place, Franchisor may develop a mandatory advanced training program and require Franchisee’s key personnel, as designated by Franchisor, to attend the advanced training which will be held at Franchisor’s headquarters or another location designated by Franchisor. Franchisor may charge a fee for this mandatory advanced training, and Franchisee must pay all of its travel expenses (transportation, hotel, meals, etc.) and related salary expenses. Except as stated below, Franchisor will not require more than two persons to attend more than three days of additional mandatory advanced training during any running twelve month period. All replacement branch manager/operations managers must meet Franchisor’s applicable training requirements at the time of hire. If Franchisor trains any replacement managers, Franchisee will pay Franchisor a fee and pay all travel expenses (transportation, hotel, meals, etc.) and related salary expenses for any replacement manager to attend training.

3.2.5 Maintain the Athena Business System including the website (www.brightstarcare.com) that will support multiple functions (i.e. sales, recruiting, payroll, billing, HR, etc.) and initial assistance with pricing of service for the Agency.

3.2.6 Periodically revise the Operations Manual to incorporate new developments and changes in the BrightStar Agency Program and franchise and provide Franchisee with electronic access to all updates.

3.2.7 Provide suggestions on staffing matters, including recommended organizational charts for different levels of revenue; detailed position descriptions for all office and field positions with interview guides for all positions.

3.2.8 Provide information on improvements and developments in the BrightStar Agency Program in the form of regular announcements via main menu page of website or email bulletins.

3.2.9 Additional optional training is available on an as-needed basis for an additional fee of $500 per day per trainer plus travel, room and board expenses for each trainer.

3.3 Referral Fee. If Franchisee or Franchisee’s employee refers a prospective franchisee directly to Franchisor and the prospective franchisee signs a franchise agreement with Franchisor, Franchisor will pay the referring party, upon receipt of the initial franchise fee from the referred franchisee or franchisee’s employee, a referral fee in an amount of $5,000. Additionally, Franchisor may provide incentives and/or other benefits to franchisees who refer employees or clients to a BrightStar agency as further described in the Operations Manual.

4. FEES AND OTHER PAYMENTS

4.1 Initial Franchise Fee.
used by Franchisor and designated for confidential use within the BrightStar Agency Program and the information contained therein as confidential and limit access to employees of Franchisee on a need-to-know basis. Franchisee acknowledges that the unauthorized use or disclosure of Franchisor’s confidential information or trade secrets will cause irreparable injury to Franchisor and that damages are not an adequate remedy. Franchisee accordingly covenants that it will not at any time, without Franchisor’s prior written consent, disclose, use, permit the use thereof (except as may be required by applicable law or authorized by this Agreement), copy, duplicate, record, transfer, transmit, allow access to or otherwise reproduce such information, in any form or by any means, in whole or in part, or otherwise make the same available to any unauthorized person or source. Any and all information, knowledge and know-how not known about the BrightStar Agency Program and Franchisor’s products, services, standards, procedures, techniques and such other information or material as Franchisor may designate as confidential will be deemed confidential for purposes of this Agreement.

7.3 Revisions. Franchisee understands and acknowledges that Franchisor may, from time to time, revise the contents of the Operations Manual to implement new or different requirements for the operation of the Agency, and Franchisee expressly agrees to comply with all such changed requirements which are by their terms mandatory, provided that such requirements will also be applied in a reasonably nondiscriminatory manner to comparable businesses operated under the BrightStar Agency Program by other Franchisees. Franchisee acknowledges that Franchisor may provide updates to the Operations Manual electronically over its intranet website. Franchisee agrees, therefore, to periodically check Franchisor’s intranet website, at least twice per week, for such updates. The implementation of such requirements may require the expenditure of reasonable sums of money by Franchisee. If Franchisor elects to provide Franchisee with a hard copy of the Operations Manual, Franchisee must at all times ensure that its copy of the Operations Manual is kept on the Agency Premises and kept current and up to date. In the event of any dispute as to the contents thereof, the terms and dates of the master copy thereof maintained by Franchisor at its principal place of business will be controlling.

7.4 Replacement Fee. If Franchisor provides Franchisee with a hard copy version of the Operations Manual, rather than an electronic or online version, and Franchisee loses any portion of the Operations Manual, Franchisee must pay Franchisor a fee of $1,000, plus all shipping expenses, or such lesser amount as Franchisor may charge. If the loss, in Franchisor’s opinion, is attributable to Franchisee’s breach of the Franchise Agreement Franchisor may also elect to terminate the Franchise Agreement.

8. ADVERTISING AND MARKETING

8.1 General Marketing Fund. Franchisor or its designee will create, administer, and maintain a general marketing fund (“General Marketing Fund”). Franchisor will use General Marketing Fund contributions to develop, produce and distribute national, regional and/or local advertising and to create advertising materials and public relations programs which promote, in Franchisor’s sole judgment, the Licensed Marks, any other marks owned by Franchisor or its affiliates, and/or the products and services offered by System Franchisees. Franchisor has the sole right to determine contributions and expenditures from the General Marketing Fund, or any other advertising program, and sole authority to determine, without limitation, the selection of the advertising materials and programs; provided, however, that Franchisor will make a good
faith effort to expend General Marketing Fund contributions in the general best interests of the System on a national or regional basis. Franchisor may use the General Marketing Fund to satisfy any and all costs of maintaining, administering, directing, preparing, and producing advertising, including the cost of preparing and producing Internet (including by using social media platforms), television, radio, magazine and newspaper advertising campaigns, the cost of direct mail and outdoor billboard advertising; the cost of public relations activities and advertising agencies; the cost of developing and maintaining an Internet website; the cost of developing and maintaining a social media presence; and personnel and other departmental costs for advertising that Franchisor internally administers or prepares. Franchisor also may use the General marketing Fund to cover costs and expenses associated with the Annual Conference and branch leadership conference, including costs related to productions, programs and materials. Nevertheless, Franchisee acknowledges that not all System Franchisees will benefit directly or on a pro rata basis from such expenditures. While Franchisor does not anticipate that any part of the General Marketing Fund contributions will be used for advertising which is principally a solicitation for franchisees, Franchisor reserves the right to use the General Marketing Fund for public relations or recognition of the BrightStar brand, for the creation and maintenance of a web site, a portion of which can be used to explain the franchise offering and solicit potential franchisees, and to include a notation in any advertisement indicating “Franchises Available.”

8.1.1 Franchisor may periodically assist franchisees to maintain high quality standards through customer surveys, customer interviews, and other similar initiatives (“Surveys”). The cost of such programs can be paid by the General Marketing Fund. The cost of these programs may be charged directly to Franchisee if Franchisee’s results from a Survey fall below System established minimum standards for such Surveys. Any such fees charged will be contributed to the General Marketing Fund.

8.1.2 Franchisor has the right to reimburse itself from the General Marketing Fund contributions for such reasonable costs and overhead, if any, as Franchisor may incur in activities reasonably related to the direction and implementation of the General Marketing Fund.

8.1.3 Franchisee agrees that the General Marketing Fund may otherwise be used to meet any and all costs incident to such General Marketing, including joint or collective advertising campaigns of Franchisor’s direct or indirect parent corporations or subsidiaries thereof or affiliated companies, if any, using the BrightStar Agency Program.

8.1.4 Franchisor may terminate, and resume, the General Marketing Fund periodically during the term of this Agreement, however, any decision to terminate or resume the General Marketing Fund will apply to all franchisees and Franchisor-owned locations equally. Franchisor will not terminate the General Marketing Fund before making arrangements to spend or rebate any balance in the General Marketing Fund after payment of all expenses. If Franchisor resumes the General Marketing Fund, Franchisor will give Franchisee at least 30 days written notice before General Marketing Fees become due again, and will collect General Marketing Fees at the original rate in this Agreement.

8.2 Accounting for General Marketing Fund. Franchisor will administratively segregate all contributions to the Fund on its books and records. All such contributions to the Fund may be deposited in Franchisor’s general operating account and may be commingled with
Franchisor’s general operating funds. Contributions to the Fund are neither held in a “trust” nor does Franchisor hold them as a fiduciary or in a similar special capacity or relationship. Upon written request Franchisor will furnish Franchisee an unaudited report in a form determined by Franchisor no later than 120 days after the close of Franchisor’s fiscal year on each Fund to which Franchisee contributed during the preceding year. Franchisor may elect to accumulate monies in the Fund for such periods of time as it deems necessary or appropriate, with no obligation to expend all monies received in any fiscal year during such fiscal year. In the event Franchisor’s expenditures for General Marketing in any one fiscal year exceed the total amount contributed to the applicable Fund during such fiscal year, Franchisor will have the right to be reimbursed to the extent of such excess contributions from any amounts subsequently contributed to the applicable Fund or to use such excess as a credit against its future contributions.

8.3 Cooperative Advertising and/or other Marketing Programs. Franchisee must participate in all cooperative advertising and/or marketing programs as are from time to time prescribed by Franchisor. The terms and conditions required for participation in any such co-op advertising program or programs will be as specified in the Operations Manual.

8.4 Local Advertising. Beginning on the Opening Date of Franchisee’s Agency and for the first 24 full months thereafter, Franchisee must expend the greater of (i) 1.5% of its monthly Net Billings or (ii) $1,000 per month for the purposes of local advertising. Such requirement will be appropriately adjusted by Franchisor if the Agency’s Opening Date is on a date other than the first of the month. Thereafter, Franchisee must expend the greater of (i) 1% of its monthly Net Billings or (ii) $1,000 per month for the purposes of local advertising. Fifty percent of these expenditures must be spent for recruiting. All local advertising (including advertising on social media platforms) by Franchisee must be in such media and of such type and format as Franchisor may approve, must be conducted in a dignified manner and must conform to such standards and requirements as Franchisor may specify. Franchisee may not use any advertising or promotional plans or materials unless and until Franchisee has received written approval from Franchisor, pursuant to the procedures and terms set forth in Section 8.6 hereof.

8.5 Grand Opening Advertising. In addition to the local advertising requirements under Section 8.4 above, Franchisee agrees to expend an additional amount of at least Fifteen Hundred Dollars ($1,500) on promotion and advertising of the Agency beginning the month of Agency’s Opening Date and ending sixty (60) days following the Opening Date ("Grand Opening Advertising").

8.6 Advertising Generally. With regard to advertising generally for the Agency, Franchisee must place or display at the Agency location (interior and exterior) only such signs, emblems, lettering, logos and displays and advertising materials as Franchisor approves in writing from time to time. Franchisee must submit to Franchisor, at least fifteen (15) days prior to publication or use, samples of all sales promotional and advertising materials Franchisee desires to use, including, but not limited to, print, radio and television advertising, signage, and supplies which Franchisor has not previously approved. Such submission will not affect Franchisee’s right to determine the prices at which Franchisee sells Franchisee’s services. Within ten (10) business days of Franchisor’s receipt of any sample sales promotional material or advertising materials from Franchisee, Franchisor will notify Franchisee in writing of

BrightStar Franchising, LLC FDD 2011
Agency Franchise Agreement

IFA-0141
Franchisor's approval or disapproval of the materials. Franchisee may not use any advertising or promotional materials for which Franchisor has not given Franchisor's prior written approval. All advertising must prominently display the Licensed Marks and must comply with any standards for use of the Licensed Marks Franchisor establishes as set forth in the Operations Manual or otherwise in writing. Franchisor may require Franchisee to discontinue the use of any advertising or marketing material, within time frames prescribed by Franchisor, at Franchisee's sole cost and expense.

8.7 Website Matters. Except as expressly permitted by Franchisor, Franchisee may not maintain a Web Site, as defined below, or otherwise maintain a presence or advertise using any public computer other than on the Web Site hosted by Franchisor pursuant to the ABS. “Web Site” means any part of the Internet (including social media) used as a commercial computer Agency by the public, and any successor technology, whether now existing or developed after the date of this Agreement, that enables the public to purchase services or goods by means of electronic commerce. Franchisor may establish a website that provides information about the System and Franchisor's products and services. Franchisor may use part of the monies from the General Marketing Fund that Franchisor collects under this Agreement to pay or reimburse the costs associated with the development, maintenance and update of such web site. Franchisor will be the web master, either directly or through a third party, and have the right to control such website.

8.7.1 Franchisor may design and provide to Franchisee a web page for the promotion of Franchisee's Agency on Franchisor's website. In such case, Franchisor will be the web master, either directly or through a third party, and have sole control over such web page. Franchisee will review and execute, subject to Franchisor's approval, requested changes to Franchisor's web page. Franchisor is not permitted to maintain an individual website related to the Agency, or to establish a URL incorporating any variation of the "BrightStar" name or the Licensed Marks, without Franchisor's prior written approval. Franchisee will not violate Franchisor's privacy policies as posted on the website. Franchisor may use part of the monies from the Funds that Franchisor collects under this Agreement to pay or reimburse the costs associated with the development, maintenance and update of the website. Franchisee must also participate in any System-wide Area computer Agency, intranet system, or extranet implemented by Franchisor as described above.

8.7.2 Franchisee acknowledges that Franchisor is the lawful, rightful and sole owner of the Internet domain names www.brightstarhealthcare.com, www.brightstarcare.com and www.247brightstar.com, and any other Internet domain names registered by Franchisor, and unconditionally disclaims any ownership interest in those or any similar Internet domain name. Franchisee agrees not to register any Internet domain name in any class or category that contains words used in or similar to any brand name owned by Franchisor or Franchisor's affiliates or any abbreviation, acronym, phonetic variation or visual variation of those words.

8.8 Yellow Pages Advertising. In addition to the advertising obligations described above, as soon as possible (based on publication deadlines) after signing this Agreement, Franchisee must place an advertisement for the franchised business in the local "Yellow Pages" (or its functional equivalent) serving Franchisee's Protected Territory. The advertisement must conform to Franchisor's standards and specifications and Franchisee must place the
advertisement under the heading(s) Franchisor designates in the Operations Manual or otherwise in writing. If Franchisee’s telephone directory extends beyond Franchisee’s Protected Territory, Franchisor has the right to require Franchisee to advertise as a pro rata participant in a group display advertisement. Franchisee may advertise either as a single franchisee or, if the telephone directory encompassing Franchisee’s Protected Territory includes another System franchisee’s protected territory, Franchisee may advertise as a pro rata participant in a common group advertisement. While not presently in force, Franchisor may use funds from the General Marketing Fund to cover or supplement Franchisee’s costs associated with its Yellow Pages advertising.

9. MODIFICATIONS.

9.1 Modifications to the BrightStar Agency Program. The business environment affecting the Franchisor’s franchise program, including Agencies, is continually changing. Franchisor may develop other business activities or modify existing business activities in response to changes in the business environment, including those resulting from technological advances, e-commerce, expansion into new markets and other factors that may not presently be anticipated. Franchisor reserves the right to change or modify the Licensed Marks, the Agency concept, the Operations Manual, and any proprietary software Franchisor requires Franchisee to use. Franchisor may adopt and use new or modified trade names, trademarks, service marks, logos, equipment, software, products, techniques or concepts. Franchisor may add new and different services and products and withdraw services or products or change their names or image; redesign the trade dress, software programs and equipment or fixture standards; or discontinue them as Franchisor considers appropriate. Franchisee must accept and use the changes as if they were part of this Agreement. If changes are related to the Licensed Marks, then Franchisee will have one hundred twenty (120) days from the date of notice to implement any such changes under this Section 9.1.

9.2 Modifications not Requiring Significant Changes in Fixtures or Equipment. If any changes or modifications involving services or products would not require the installation of new fixtures or equipment, Franchisor may instruct Franchisee to begin offering the new services or products on a date specified in a supplement to the Operations Manual or other notice. Likewise, if the withdrawal of a service or product would not require the removal of fixtures or equipment, Franchisor may direct Franchisee to stop offering the service or product on a date specified in a supplement to the Operations Manual or other notice. Franchisee agrees to comply with these instructions and directions.

9.3 Modifications Requiring Significant Changes in Fixtures or Equipment. If any changes or modifications involving new trademarks, concepts, services or products or items necessitate the addition or removal of fixtures, equipment or signs, Franchisor may instruct Franchisee to adapt the Agency to the change through a supplement to the Operations Manual. In consultation with Franchisor’s franchisees, Franchisor will establish a schedule for Franchisee to implement the change, which will depend, among other factors, on the amount Franchisee has spent in recent periods on any other changes to the BrightStar Agency Program. Franchisee will have one hundred twenty (120) days from the date of notice to implement any such changes under this Section 9.3.
Exhibit 6
Exhibit 6
FRANCHISE DISCLOSURE DOCUMENT
HOLIDAY HOSPITALITY FRANCHISING, LLC
A Delaware Limited Liability Company
Three Ravinia Drive, Suite 100
Atlanta, Georgia 30346
(770) 604-2000
www.holidayinn.com/development
www.hiexpress.com/development
americas.development@ihg.com

The franchisee will establish and operate a hotel under the Holiday Inn®, Holiday Inn® & Suites, Holiday Inn Express®, Holiday Inn Express® & Suites or Holiday Inn® Resort brand.

The total investment necessary to begin operation of a typical 143-room Holiday Inn or Holiday Inn & Suites hotel, excluding land costs and other matters, ranges from $12,710,770 to $17,300,935 ($88,887 to $120,986 per guest room) or more (see Item 7), including between $127,520 and $153,935 or more that must be paid to the franchisor or affiliate (see Item 5). The total investment necessary to begin operation of a typical 93-room Holiday Inn Express or Holiday Inn Express & Suites hotel, excluding land costs and other matters, ranges from $7,200,120 to $10,014,535 ($77,421 to $107,683 per guest room) or more (see Item 7), including between $136,870 and $164,035 or more that must be paid to the franchisor or affiliate (see Item 5). The total investment necessary to begin operation of a typical 180-room Holiday Inn Resort hotel, excluding land costs and other matters, ranges from $17,381,020 to $23,695,935 ($96,561 to $131,644 per guest room) or more (see Item 7), including between $227,520 and $298,935 or more that must be paid to the franchisor or affiliate (see Item 5).

This disclosure document summarizes certain provisions of your franchise agreement and other information in plain English. Read this disclosure document and all accompanying agreements carefully. You must receive this disclosure document at least 14 calendar days before you sign a binding agreement with, or make any payment to, the franchisor or an affiliate in connection with the proposed franchise sale. Note, however, that no government agency has verified the information contained in this document.

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact Patricia Womack, Franchise Sales at Holiday Hospitality Franchising, LLC, at Three Ravinia Drive, Suite 100, Atlanta, Georgia 30346 and (770) 604-2912.

The terms of your contract will govern your franchise relationship. Don’t rely on the disclosure document alone to understand your contract. Read all of your contract carefully. Show your contract and this disclosure document to an advisor, like a lawyer or an accountant.

Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as “A Consumer’s Guide to Buying a Franchise,” which can help you understand how to use this disclosure document is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, DC 20580. You can also visit the FTC’s home page at www.ftc.gov for additional information. Call your state agency or visit your public library for other sources of information on franchising.

There may also be laws on franchising in your state. Ask your state agencies about them.

Issuance Date: April 3, 2014
and operated Inter-Continental Hotels since 1949. IHC offered franchises for Inter-Continental Hotels & Resorts branded hotels outside the United States from the late 1960s until November 2010, when those license agreements were assigned to the regional entities mentioned in the previous paragraph. These companies now offer InterContinental Hotels & Resorts franchises on a regional basis, outside of the Americas. Holiday began offering InterContinental Hotel & Resort franchises in the United States in December, 2003. As of the date of this disclosure document, IHC has 41 franchised InterContinental Hotels & Resorts hotels in Europe, the United States, Mexico, Latin America and the Asia/Pacific region, of which 9 hotels are co-branded under licensing agreements in Mexico (with “Grupo Presidente”) and 2 are co-branded in Central America with Real Hotels & Resorts. IHC’s address is Three Ravinia Drive, Suite 100, Atlanta, GA 30346.

Six Continents PLC, formerly the ultimate parent of Holiday and predecessor in interest of InterContinental Hotels Group PLC, directly or through a subsidiary, owned and operated 60 hotels in Europe known as Crest Hotels, and also operated, in Europe, 44 Toby Hotels. During 1990 and 1991, Six Continents PLC disposed of its interests in the Crest and Toby hotel brands.

Effective December 31, 2003, pursuant to an agreement with guest lodging franchisor Candlewood Hotel Company, Inc. and Candlewood Hotel Company, L.L.C., SCH acquired all rights to the “Candlewood Suites” extended-stay hotel brand; all existing Candlewood Suites franchise agreements; and, the right to grant all Candlewood Suites franchise agreements in the future (including any franchise applications that were in process as of December 31, 2003). SCH then assigned all Candlewood Suites franchise agreements to Holiday, effective December 31, 2003. Holiday is now the franchisor for the Candlewood Suites hotel brand.

Neither Holiday nor any of its affiliates has offered franchises for any other line of business.

Holiday’s affiliate, IHG ECS (Barbados) SaRL operates the IHG Commission ServicesSM program, and its address is c/o Holiday Hospitality Franchising, Inc., Three Ravinia Drive, Suite 100, Atlanta, GA 30346 (see Item 6, note 8).

PROPERTY MANAGEMENT & RESERVATION SYSTEM:

SCH owns or licenses (in the case of certain software) and administers a computerized reservation network the “Reservations System”. Components of the Reservations System operate under various names, such as “HOLIDEX® Plus” and PERFORM™ (“PERFORM”). All hotels must be linked to the SCH central reservation system (currently HOLIDEX® Plus), including all system enhancements and upgrades such as the PERFORM™ Revenue Management System (RMS) or such successor systems as SCH may designate. Hardware and software systems required to connect to the Reservations System must be fully operational when the hotel opens, with appropriate management and staff trained and competent to operate the system at all times.

SCH requires each Hotel to obtain and install an approved Property Management System (“PMS”). As of the date of this disclosure document, the MICROS Opera or Micros Opera Xpress solutions are the only approved PMS. FastConnect Plus is also part of the PMS solution. (see Items 8 and 11 of this disclosure document for a detailed description of the systems).

You must enter into the Master Technology Agreement (“MTA”) with SCH (Exhibit C) that provides for the procurement, installation, training, use and maintenance of PMS equipment and software in order to access and communicate with the Reservations System. The Opera or Opera Xpress PMS Software are supplied by MICROS Systems, Inc. (“MICROS”). You must sign an Opera license agreement with MICROS. The Opera license or hosting agreements, which provide for the software, installation, training, use and maintenance of the PMS software, are available upon request. AT&T is the provider for FastConnect Plus. You will be required to sign a contract with AT&T for FastConnect Plus.
In October 2012, SCH entered into an Equipment Refresh and Integration Services Agreement with Hewlett-Packard Company ("HP") for deployment and procurement services for the hotel property management system. Pursuant to that agreement, HP will provide PMS hardware, software and deployment services at your Hotel. You must enter into a HP Joinder Agreement in order to obtain the PMS hardware, software and deployment services at your Hotel. A copy of the HP Joinder Agreement can be found within Exhibit C to this disclosure document.

The Reservation System will provide room availability and rate data on all hotels that Holiday franchises. You must also participate in Holiday’s reservation and referral system. This system will facilitate communication of reservations to you from Holiday and from other hotels that Holiday franchises on a reservation referral basis.

SCH may install one or more “private network” connecting services, or another solution as specified, for use in communicating with the Reservations System.

**CONDOMINIUM AND TIMESHARING PROJECTS:**

Holiday may consider granting a franchise in connection with a condominium or timesharing hotel development project. Because such projects are complex and unique, each project must be considered by Holiday individually. Holiday will determine, according to the unique facts of each proposed development, to what extent variations and additions to the License terms and provisions, including without limitation additional royalties and other fees, are warranted. Therefore, it is probable that Holiday will vary materially License terms and provisions for condominium or timesharing hotel developments, but at this time there is no formal program or guidelines with general applicability.

In September 2008, Holiday entered into license agreements and other agreements with Orange Lake Country Club, Inc. and certain of its affiliates (collectively, “OLCC”). Among other things, the agreements provide for OLCC’s use of the Holiday Inn Club Vacations® brand in connection with the branding of certain timeshare resorts developed and/or operated by OLCC and the sales and marketing of timeshare interests in such resorts, and the agreements permit OLCC to use the Holiday Inn Club™ service mark in connection with the branding and operation of OLCC’s timeshare exchange program. The licensing arrangement grants OLCC certain exclusive rights to use the Holiday Inn Club Vacations® and Holiday Inn Club® service marks (the “Service Marks”) within the United States and certain other territories and prohibits Holiday from franchising the Holiday Inn Club Vacations® brand or allowing third parties to use the Service Marks while OLCC’s exclusivity rights are in effect, subject to the conditions of the licensing arrangement. Accordingly, Holiday does not offer franchises involving timeshare properties. As of the date hereof, OLCC’s exclusivity rights were in effect and Holiday and OLCC had entered into license agreements for the branding by OLCC of ten timeshare resorts located within the United States. All of those resorts were developed and/or are operated by OLCC.

**THE MARKET:**

The market for hotel services is highly developed. The lodging industry is very competitive. You will compete with a wide range of facilities offering various types of lodging and related services (including other hotel brands that Holiday or its affiliates franchises or manages). These facilities include various other types of operations, some of which belong to large national and international companies. You will offer services to a broad range of the traveling public, which will vary based on your choice of Hotel brand. Your ability to compete in your market will depend upon factors such as your geographic area, specific site location, general economic conditions and the capabilities of your management and service team.
The franchise offered in this disclosure document is for the rights to own and/or operate a COMFORT INN®, COMFORT SUITES® or COMFORT INN & SUITES® ("COMFORT") hotel business.

The total investment necessary to convert an existing hotel and begin operation of an 80-room COMFORT INN, COMFORT INN & SUITES, or COMFORT SUITES hotel franchise is between $297,750 and $2,087,599. The total investment necessary to begin operation of a newly constructed hotel franchise is between $4,145,182 and $6,900,975. This includes an affiliation fee of $500 per room ($50,000 minimum); a property management system software license and systems training fee of between $10,250 and $14,250; and orientation and hospitality training fees of between $0 and $2,349 per person, all of which must be paid to the Franchisor or its affiliates. These sums do not include the cost of purchasing or leasing land or any real estate taxes.

This disclosure document summarizes certain provisions of your franchise agreement and other information in plain English. Read this disclosure document and all agreements carefully. You must receive this disclosure document at least 14 calendar days before you sign a binding agreement with, or make any payment to us or our affiliates in connection with the proposed franchise sale or grant. Note, however, that no governmental agency has verified the information contained in this document.

Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as "A Consumer's Guide to Buying a Franchise," which can help you understand how to use this disclosure document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. You can also visit the FTC's home page at www.ftc.gov for additional information. Call your state agency or visit your public library for other sources of information on franchising.

There may also be laws on franchising in your state. Ask your state agencies about them.

Issuance Date: April 1, 2014
ITEM 4

BANKRUPTCY

No bankruptcy information is required to be disclosed in this Item.

ITEM 5

INITIAL FEES

AFFILIATION FEE

You must pay us, for the rights granted to you in the COMFORT INN, COMFORT INN & SUITES or COMFORT SUITES franchise agreement, an affiliation fee of $500 per room, with a $50,000 minimum. The entire affiliation fee is due no later than at the time you sign the franchise agreement and is non-refundable following our signing of the franchise agreement. If for any reason we do not grant you a franchise, or a franchise agreement is not counter signed by us, the affiliation fee, less a $2,500 application fee, will be refunded to you. Financing information is in Item 10. In the past, we have agreed to reduce the affiliation fee in certain instances for multiple unit franchisees, franchisees with larger properties, franchisees with whom we have previously dealt, franchisees that are departing other hotel chains or franchised systems and joining our system, and franchisees in other special circumstances. However, we do not always negotiate the affiliation fee even for franchisees possessing these characteristics, and we may freely choose not to negotiate with you, even if you possess some or all of these characteristics. During the 12 months ending December 31, 2013, the affiliation fees ranged from $0 to $40,000 for new COMFORT INN and COMFORT INN & SUITES franchise agreements and the affiliation fees ranged from $2,500 to $50,000 for new COMFORT SUITES franchise agreements.

EXTENSION FEE

If you do not begin construction within 12 months after both you and we sign the franchise agreement or if you do not complete renovations to an existing franchised hotel within the time required under your franchise agreement, you may apply for an additional 3 months in which to begin construction or complete renovations. If we agree to grant an extension, you must pay us an additional $5,000 per extension. In special circumstances we may waive the extension fee, but we are not obligated to, and any decision to waive an extension fee will be determined solely by us.

PROPERTY MANAGEMENT SYSTEM

You are required to install, maintain, and use full functionality of the choiceADVANTAGE® property management and reservation system as specified by us. You must purchase from us, an initial software license to use choiceADVANTAGE. The software license includes up to three interfaces to choiceADVANTAGE and you may install additional optional interfaces to choiceADVANTAGE for an additional fee. You will receive training in choiceADVANTAGE at your hotel and your General Manager, sales, marketing and front office staff must attend this training. The fees for the software license and the choiceADVANTAGE systems training and project management is between $10,250 and $14,250 depending on the size of the hotel and whether you install additional optional interfaces to choiceADVANTAGE. The initial software license and training fees do not include the monthly choiceADVANTAGE support fee to cover ongoing remote software support (see Item 6). There will be a rescheduling fee of between $500 and $2,100 if you need to reschedule training or if training is not completed due to circumstances that are within your control.
When a franchised hotel undergoes a 50% or greater change in its ownership and the new owners sign a franchise agreement with Choice (known as a "re-licensing"), the hotel is also required to have a customized remote, webinar training session with a Choice trainer. The fee for the re-licensing training is $500. For re-licensed hotels that prefer a Choice trainer on-site, a 2 day option is available for an additional $2,600.

**ORIENTATION / HOSPITALITY TRAINING**

We provide required training programs that you, your General Manager, or other key employees must complete before opening your hotel in the Choice franchise system. The total training fees you must pay for orientation and hospitality training is between $0 and $2,349 per person, plus travel, lodging and meals for you and your General Manager. Training consists of a 5 day Choice orientation program at our headquarters in Maryland, as well as an online and 3.5 day hospitality training program at regional locations across the United States. Some or all of the training may not be required if you have previously owned a Choice branded hotel, obtained Choice Hotels training certification for another existing hotel and/or the General Manager has earned a Certified Hotel Administrator ("CHA") or Certified Lodging Manager ("CLM") designation from the American Hotel & Lodging Educational Institute; or if you are the General Manager and have a Certified Hotel Owner ("CHO") designation from the Asian American Hotel Owners Association. You or your General Manager may also have an opportunity to test out of some of the training.

For new owners that have minimal experience in hospitality and franchise based businesses, we may require that you participate in an additional customized 5 day on-site Performance Engagement Training visit from a Choice Senior Trainer. The owner, the General Manager, and various members of the hotel staff may be required to attend this additional training requirement and the Performance Engagement Training Fee is $4,500.

Attendance is mandatory at the training programs identified in this Item 5. Failure to attend within the prescribed time frame may result in formal default, and failure to cure the default could result in the termination of your franchise agreement. For more detailed information on each training program, see Item 11.

* * *

Except as identified in this Item 5, the affiliation fee, extension fee, property management system fees and training fees are uniform, are fully earned by us when paid by you, and we have no obligation to refund these fees. Except as set forth in Item 10, we do not offer financing for any part of the affiliation fee, and we do not offer financing for any other initial fees paid to us.

**ITEM 6**

**OTHER FEES**

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<td>Royalty Fee</td>
<td>5.65% of the preceding month's Gross Room Revenues (&quot;GRR&quot;) (Note 2).</td>
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Exhibit 7
ALPHAGRAPHICS® PRINTSHOPS
FRANCHISE AGREEMENT

Charles J. Stempler
FRANCHISEE

MAY 1, 2001
DATE OF AGREEMENT

ADDRESS OF PRINTSHOP
AlphaGraphics Printshops Of The Future No. 297
402 Cedar Street
Seattle, Washington 98121

© AlphaGraphics, Inc., 2000
ALL RIGHTS RESERVED

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FRANCHISEE will have ninety (90) days within which to accept or reject any of the above-described offers from COMPANY. If FRANCHISEE rejects or fails to timely accept COMPANY's offer to sell any such part of the Printing Business located within the Protected Area to FRANCHISEE, COMPANY may convert such part of the Printing Business to an ALPHAGRAPHERICS® Printshop to be operated by COMPANY, one of its Affiliates or another franchisee of COMPANY.

Notwithstanding anything to the contrary contained in this Section 1.L., FRANCHISEE acknowledges and agrees that COMPANY is not obligated to make any of the above described options or offers available to FRANCHISEE if FRANCHISEE is not in substantial compliance with the terms of this Agreement or any other ALPHAGRAPHERICS® Printshop franchise agreement to which FRANCHISEE is a party.

2. ACQUISITION OF SITE AND DEVELOPMENT OF PRINTSHOP.

A. ACQUISITION OF SITE.

FRANCHISEE acknowledges and agrees that FRANCHISEE is responsible for obtaining a site for the PRINTSHOP acceptable to COMPANY. If FRANCHISEE has not located and COMPANY has not approved a site for the PRINTSHOP as of the date of execution of this Agreement, FRANCHISEE agrees that, within ninety (90) days of the date of execution of this Agreement, it will select a site to be approved by COMPANY and obtain lawful possession of the Site, through lease or purchase, within the general territory described in Exhibit C attached hereto (the "General Territory"). Upon approval of the site of the PRINTSHOP, COMPANY will, in accordance with its standard practices, determine FRANCHISEE's Protected Area and complete Exhibit A to this Agreement, describing the location of the Site and the boundaries of the Protected Area. FRANCHISEE acknowledges that the General Territory may be different from the Protected Area granted to FRANCHISEE.

COMPANY will provide FRANCHISEE with certain site selection assistance, including providing FRANCHISEE with general demographic information with respect to the proposed site(s) at which FRANCHISEE desires to operate the PRINTSHOP, and general site selection guidelines and site selection criteria. FRANCHISEE agrees to submit complete site report information to COMPANY on the site selected by FRANCHISEE within ninety (90) days of the date of execution of his Agreement, as described above. Within thirty (30) days after COMPANY receives the complete site report information and other materials it requests, COMPANY will, by delivery of written notice to FRANCHISEE, approve or disapprove a location FRANCHISEE proposes for the PRINTSHOP. If FRANCHISEE is unable to locate a Site acceptable to COMPANY within the time specified above, COMPANY may terminate this Agreement at any time thereafter. FRANCHISEE understands and agrees that if COMPANY terminates this Agreement as provided herein, the Initial Payment (defined below) is not refundable under any circumstances.
B. PRINTSHOP LEASE PROVISIONS.

If FRANCHISEE is leasing the Site or the PRINTSHOP, FRANCHISEE agrees that the lease, in form satisfactory to COMPANY, will:

(1) provide for notice to COMPANY of, and COMPANY's right to cure, FRANCHISEE's default under said lease;

(2) provide for FRANCHISEE's right to assign his interest under said lease to COMPANY without the lessor's consent;

(3) authorize and require the lessor to disclose to COMPANY, upon COMPANY's request, any information pertaining to the PRINTSHOP or the Site furnished to the lessor by FRANCHISEE;

(4) provide that, upon termination of this Agreement, COMPANY will have the right to assume said lease (provided that COMPANY agrees to exercise such right to assume said lease only if COMPANY has the right to acquire the PRINTSHOP in accordance with Section 17.E.); and

(5) provide that the lessor has consented to FRANCHISEE's use of COMPANY's required signage for ALPHAGRAPHICS® Printshops.

If FRANCHISEE leases the Site, FRANCHISEE agrees to deliver a true and complete copy of the signed lease to COMPANY within three (3) business days after the date of execution of the lease for the Site. FRANCHISEE may not execute or agree to any modification of the lease without the prior written approval of COMPANY.

If FRANCHISEE purchases an existing ALPHAGRAPHICS® Printshop owned and operated by COMPANY or its Affiliate or franchisee, or converts an existing Printing Business to a franchised ALPHAGRAPHICS® Printshop, FRANCHISEE agrees that any new, amended or restated lease for the Site of the PRINTSHOP will include the terms and conditions required to be included in a lease for a new PRINTSHOP, as described in this Section 2.B.

C. FINANCING.

FRANCHISEE acknowledges and agrees that FRANCHISEE has the sole responsibility for securing all financing necessary for FRANCHISEE to construct, develop and operate the PRINTSHOP. COMPANY agrees to suggest sources of financing to FRANCHISEE and, at FRANCHISEE's request, to assist FRANCHISEE in completing the necessary applications for such financing.
D. PRINTSHOP DEVELOPMENT.

FRANCHISEE agrees to be responsible for constructing and developing the PRINTSHOP. COMPANY will furnish to FRANCHISEE mandatory and suggested plans and specifications for an ALPHAGRAPHICS® Printshop, including requirements for dimensions, design, image, interior and exterior layout, building materials, decor, equipment, signs, fixtures, furnishings and color scheme. FRANCHISEE agrees that it is his responsibility to have prepared all required construction plans and specifications and to insure that such plans and specifications comply with applicable ordinances, building codes and permit requirements.

FRANCHISEE agrees, at his sole expense, to do or cause to be done the following with respect to constructing and developing the PRINTSHOP at the Site:

(1) obtain all required permits, licenses and approvals for construction, development and operation of the PRINTSHOP;

(2) construct, develop and decorate the PRINTSHOP in compliance with plans and specifications approved by COMPANY;

(3) purchase and install all equipment, fixtures, furnishings and signs required for the PRINTSHOP; and

(4) purchase all products, materials and supplies required for the operation of the PRINTSHOP.

If FRANCHISEE purchases a Printing Business currently operating as an ALPHAGRAPHICS® Printshop, or FRANCHISEE converts an existing Printing Business to an ALPHAGRAPHICS® Printshop, FRANCHISEE agrees to make any and all necessary repairs or improvements to the Site and the Printing Business to conform to COMPANY’s then-current standards for franchised ALPHAGRAPHICS® Printshops.

E. PRINTSHOP OPENING.

FRANCHISEE agrees not to open the PRINTSHOP for business until:

(1) COMPANY has approved the PRINTSHOP;

(2) pre-opening training of the Managing Owner has been completed to COMPANY’s satisfaction;

(3) COMPANY has been furnished with copies of all insurance policies required by this Agreement, or such other evidence of insurance coverage and payment of premiums as COMPANY requests; and

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(4) FRANCHISEE has paid to COMPANY all amounts advanced to or on behalf of FRANCHISEE for equipment, fixtures, furnishings and supplies for the PRINTSHOP, plus any other amounts due and owing COMPANY.

FRANCHISEE agrees to comply with these conditions and to be prepared to open the PRINTSHOP for business within one hundred fifty (150) days after the date of this Agreement, or within one hundred fifty (150) days after the date of execution of the lease for the Site if a site has not been approved by COMPANY prior to or concurrently with the execution of this Agreement. FRANCHISEE further agrees to open the PRINTSHOP for business within five (5) days after COMPANY notifies FRANCHISEE that the conditions set forth in this Paragraph have been satisfied.

3. LICENSE OF SOFTWARE.

FRANCHISEE shall, throughout the term of this Agreement, license from the COMPANY the PrintSmith™ Software Program or a successor program designated by the Company in writing. In connection therewith, FRANCHISEE shall execute a separate license agreement with the COMPANY. A copy of the PrintSmith™ License Agreement is attached hereto as Exhibit D.

4. TRAINING AND SUPPORT.

A. INITIAL TRAINING.

Prior to the opening of the PRINTSHOP, COMPANY agrees to furnish an initial training program on the operation of an ALPHAGRAPHICS® Printshop to the Managing Owner, and one other employee of FRANCHISEE.

Approximately three (3) to four (4) weeks of training will be furnished at one or more of COMPANY's designated training centers or an ALPHAGRAPHICS® Printshop owned and operated by COMPANY, one of its Affiliates or a designated franchisee. The Managing Owner and one other employee of FRANCHISEE will attend and complete all phases of the initial training program to COMPANY's satisfaction and participate in all other activities required to operate the PRINTSHOP. FRANCHISEE agrees to replace any Managing Owner or employee who does not complete the training program to the satisfaction of COMPANY.

FRANCHISEE acknowledges and agrees that:

(a) the Managing Owner (or any replacement Managing Owner) must successfully complete the initial training program prior to the opening of the PRINTSHOP; and

(b) the employee (or any replacement employee) designated by FRANCHISEE to attend the initial training program must successfully complete the training program within one hundred eighty (180) days after the opening of the PRINTSHOP.

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If COMPANY determines that the Managing Owner (or any replacement Managing Owner) or such designated employee (or any replacement employee) has not successfully completed the initial training program, COMPANY will have the right to terminate this Agreement and retain the Initial Franchise Fee (defined below).

COMPANY agrees to reimburse FRANCHISEE for all reasonable travel, living and related expenses in accordance with COMPANY's reimbursement policy that the Managing Owner and one other employee incur in connection with the initial training program. COMPANY will have the right to charge fees for training replacement Managing Owners, replacement employees and other employees designated by FRANCHISEE from time to time.

B. BASE LEVEL SUPPORT.

During the term of this Agreement, COMPANY agrees to furnish support to FRANCHISEE in connection with:

1. methods, standards and operating procedures utilized by ALPHAGRAPHICS® Printshops;
2. purchasing required equipment, fixtures, furnishings, products, signs, materials and supplies;
3. marketing programs;
4. administrative, bookkeeping, accounting, inventory control, and general operating and management procedures; and
5. developing annual profit plans for the PRINTSHOP.

Such support will be furnished in the form of:

1. COMPANY's operating manuals ("Operating Manuals");
2. bulletins;
3. electronic transmission; and
4. consultation by telephone or in person at COMPANY's offices, at the PRINTSHOP or other agreed upon location.

COMPANY agrees to provide FRANCHISEE, during each year of the term of this Agreement, a minimum of forty-eight (48) hours of support in the form of consultation by telephone or in person at COMPANY's offices, at the PRINTSHOP or other agreed upon location, and meetings and seminars.
C. **SPECIAL TRAINING AND OTHER OPTIONAL SERVICES.**

If special training of PRINTSHOP personnel or other assistance in operating the PRINTSHOP is requested by FRANCHISEE and must take place at the PRINTSHOP, FRANCHISEE agrees to pay COMPANY's per diem charges for such training or assistance, and travel and living expenses of COMPANY personnel. COMPANY may also from time to time offer programs relating to specific elements of the operation of ALPHAGRAPHICS® Printshops, which will be offered at a per diem charge plus expenses. Such training and assistance ("Optional Services") will be available to FRANCHISEE at his option. A description of Optional Services offered by COMPANY will be published from time to time in the Operating Manuals. As described in Section 4.D., FRANCHISEE may use Universal Service Credits (defined below) to purchase Optional Services. COMPANY reserves the right to periodically modify the Optional Services available to FRANCHISEE under this program.

D. **UNIVERSAL SERVICE CREDITS.**

1. **Right to Earn Universal Service Credits.**

Subject to the terms and conditions of this Agreement, FRANCHISEE will be able to earn up to twenty-five (25%) of FRANCHISEE's Royalties (defined below) ("Universal Service Credits") timely paid by FRANCHISEE. Universal Service Credits may be earned by FRANCHISEE provided FRANCHISEE:

   (a) is current in payment of Royalties and all other amounts due COMPANY and its Affiliates;
   
   (b) is current on submission of all financial reports due COMPANY; and
   
   (c) is in substantial compliance with the terms and conditions of this Agreement.

If FRANCHISEE receives a notice of default under this Agreement as provided in Section 16.B., FRANCHISEE will not be entitled to use his Universal Service Credits or convert them to cash until such default is cured to COMPANY's satisfaction.

2. **Use of Universal Service Credits.**

Subject to the terms and conditions of this Agreement, FRANCHISEE may use Universal Service Credits:

   (a) to pay for Optional Services;
   
   (b) to pay for local marketing brochures, pamphlets and other materials prepared by COMPANY for use by FRANCHISEE in connection with a COMPANY approved marketing program; and

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Exhibit 8
Exhibit 8
The franchisee will establish and operate a hotel under the Holiday Inn®, Holiday Inn® & Suites, Holiday Inn Express®, Holiday Inn Express® & Suites or Holiday Inn® Resort brand.

The total investment necessary to begin operation of a typical 143-room Holiday Inn or Holiday Inn & Suites hotel, excluding land costs and other matters, ranges from $12,710,770 to $17,300,935 ($88,887 to $120,986 per guest room) or more (see Item 7), including between $127,520 and $153,935 or more that must be paid to the franchisor or affiliate (see Item 5). The total investment necessary to begin operation of a typical 93-room Holiday Inn Express or Holiday Inn Express & Suites hotel, excluding land costs and other matters, ranges from $7,200,120 to $10,014,535 ($77,421 to $107,683 per guest room) or more (see Item 7), including between $136,870 and $164,035 or more that must be paid to the franchisor or affiliate (see Item 5). The total investment necessary to begin operation of a typical 180-room Holiday Inn Resort hotel, excluding land costs and other matters, ranges from $17,381,020 to $23,695,935 ($96,561 to $131,644 per guest room) or more (see Item 7), including between $227,520 and $298,935 or more that must be paid to the franchisor or affiliate (see Item 5).

This disclosure document summarizes certain provisions of your franchise agreement and other information in plain English. Read this disclosure document and all accompanying agreements carefully. You must receive this disclosure document at least 14 calendar days before you sign a binding agreement with, or make any payment to, the franchisor or an affiliate in connection with the proposed franchise sale. **Note, however, that no government agency has verified the information contained in this document.**

You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact Patricia Womack, Franchise Sales at Holiday Hospitality Franchising, LLC, at Three Ravinia Drive, Suite 100, Atlanta, Georgia 30346 and (770) 604-2912.

The terms of your contract will govern your franchise relationship. Don't rely on the disclosure document alone to understand your contract. Read all of your contract carefully. Show your contract and this disclosure document to an advisor, like a lawyer or an accountant.

Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as “A Consumer’s Guide to Buying a Franchise,” which can help you understand how to use this disclosure document is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW, Washington, DC 20580. You can also visit the FTC's home page at www.ftc.gov for additional information. Call your state agency or visit your public library for other sources of information on franchising.

There may also be laws on franchising in your state. Ask your state agencies about them.

Issuance Date: April 3, 2014
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<th>Column 4: Projected New Company-Owned Outlet in the Next Fiscal Year</th>
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Attached as Exhibit F-1 is a list of the names of all operational Holiday Inn and Holiday Inn Express licensees under a License Agreement with Holiday as of March 1, 2043, and the addresses and telephone numbers of their units.

The name, city, state, current business telephone number or, if not available, the last known home telephone number, and principal correspondent of the franchisee or the franchisee's corporation of each franchisee that has had an outlet terminated, canceled, not renewed or otherwise voluntarily or involuntarily ceased to do business under the License as of March 1, 2014, or that has not communicated with Holiday within 10 weeks of the application date are listed on Exhibit F-2 of this disclosure document.

If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.

The IHG Owners Association (IHG Owners Association) was created by Holiday's predecessor in interest in 1956. The IHG Owners Association is endorsed by Holiday and SCH and receives some sponsorship from SCH. Under the terms of the License, you, other System licensees, and Holiday are eligible for membership in the IHG Owners Association and are entitled to vote at its meetings on the basis of one hotel, one vote. The IHG Owners Association represents the franchisee community of Holiday's various franchise systems and, through a series of committees, give advice and counsel to Holiday regarding the expenditures for the marketing, reservations and IHG Rewards Club Rewards funds. Holiday and SCH personnel administer the system funds and report system funds activities to the IHG Owners Association. The IHG Owners Association also provides educational opportunities to its members, organizes regular meetings and provides additional membership benefits. The address,
telephone number, and web address of the IHG Owners Association are Three Ravinia Drive, Suite 100, Atlanta, Georgia 30346, (770) 604-5555 (or toll free 1-866-826-5808), and www.owners.org.

ITEM 21

FINANCIAL STATEMENTS

Exhibit G-1 to this disclosure document includes Holiday's audited Financial Statements for the fiscal years ended December 31, 2013, December 31, 2012 and December 31, 2011.


ITEM 22

CONTRACTS

The following copies of all proposed agreements regarding the franchise offering are attached and made a part of this disclosure document:

Exhibit A     Application Letter Form
Exhibit B     License Agreement & State Addenda
Exhibit C     Master Technology Agreement & Joinder Agreement
Exhibit H     IHG Merlin Terms and Conditions
Exhibit I     Ancillary Agreements
              I-1  IHG Voice Reservation Service Agreement
              I-2  Revenue Management for Hire Agreement
              I-3  Sporting News Grill Agreement
              I-4  Coca-Cola Participation Agreement

ITEM 23

RECEIPTS

Exhibit K contains two copies of a detachable receipt.
Exhibit 9
Choice Hotels Allots $40 Million To Jumpstart Comfort Brand Overhaul

May 15, 2013 - 12:35 PM ET

By Michael B. Baker

Choice Hotels International is putting up $40 million to accelerate renovations across its Comfort Inn and Comfort Suites brands, the company announced on Tuesday.

Choice last year launched its Comfort Re-Imagined strategy, a four-year renovation program in which the chain assesses renovation needs at each Comfort property—possibly including new carpeting, furniture or mattresses—and sets a property improvement plan with which each property must comply. The company in 2012 also increased qualitative guest-satisfaction survey score thresholds required for Comfort properties and became more aggressive in removing hotels that were not meeting brand standards, according to Choice senior vice president of brand strategy and marketing Alexandra Jaritz.

Brand requirements include bedding, Comfort’s breakfast program, flat-screen televisions and, for Comfort Suites properties, fitness and business centers.

"This is not a program designed to make every Comfort Inn look exactly the same," Jaritz said. "It's ultimately to get everyone to the same level of consistency."

http://www.businesstravelnews.com/Hotel-News/Choice-Hotels-Allots-$40-Million-To-Jumpstart-Co...
The newly announced $40 million incentive program enables hotels to fund renovation through promissory notes, which will be forgiven once work is completed and if hotels then remain in the Comfort system for a set amount of time, said Comfort domestic head of brand management Mike Varner. Any hotel wishing to tap into the $40 million must meet its property improvement plan's deadline, the latest of which will be Sept. 30, 2014, for hotels using the funding, he said.

More than 2,500 properties worldwide are branded as Comfort Inn or Comfort Suites, according to Choice.
Exhibit 10
Exhibit 10
BK to Help Struggling Franchisees

Burger King Corporation today announced the launch of the Burger King Franchisee Financial Restructuring Initiative to address the financial challenges of financially distressed franchisee operations. The initiative will assist a number of franchisees as they restructure their business so they can meet their financial obligations, focus on restaurant operational excellence, reinvest in their business and return to profitability.

"Clearly one of the most pressing issues facing the Burger King system today is the financial distress of a number of our franchisees," said Brad Blum, chief executive officer, Burger King Corporation. "Addressing this issue and turning it into an opportunity to recapitalize these franchisees and enable them to emerge stronger with more robust financial structures will set us up for success. This is a top priority to enable us to focus on quality and on delivering an outstanding experience to our customers."

To accelerate this process, the company has hired Trinity Capital, LLC, to work with BK franchisees, their creditors, and Burger King Corporation.

"To help our franchisees bring resolution to these issues -- which include short-term liquidity, the ability to meet franchisee obligations and the need to reinvest in their business -- we have hired Trinity Capital, whose expertise in these areas is widely recognized," Blum said. He added that Burger King Corporation is working in cooperation with BK's franchisee association, called the National Franchise Association, on the initiative.

Trinity will act as a neutral third party and negotiate the quickest possible resolution among the franchisees, lenders, and Burger King Corporation. Burger King Corporation is paying the professional and administrative fees for Trinity's services.

Blum stressed that the implementation of this program is an important first step in enabling the company's franchisees to meet their financial and capital spending obligations and focus on delivering operational excellence to the consumer.

"Franchisees must reinvest in their restaurants to keep them fresh and relevant for our customers," he said. "We must significantly improve the quality and the consistency of what we offer the consumer, as well as upgrade the appearance of our restaurants in order to be successful. The aim of this program is to help franchisees with financial restructuring so they can meet their obligations and become profitable again."
"We welcome this timely initiative to further strengthen our franchisee operations," said Julian Josephson, chairman of the National Franchise Association. "This is a significant step for the future of the Burger King brand, and a win-win opportunity for everyone involved."

Trinity Capital is a Los Angeles-based financial services firm that specializes in restructuring financially troubled franchise companies. Trinity Capital has helped restructure more than 3,000 restaurants and approximately $2.5 billion of franchise-related obligations for other companies.


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Exhibit 11
Exhibit 11
Quiznos' CEO fills a tall order

After turning around Continental Airlines and Burger King, Greg Brenneman takes on disgruntled franchisees.

By ASSOCIATED PRESS
Published July 18, 2007

DENVER - Greg Brenneman, who relishes a challenge, is applying his turnaround expertise - first with Continental Airlines and then Burger King - to the troubled sandwich chain Quiznos, whose dissatisfied franchise owners have complained about low profits, company operating requirements and franchisee recruiting.

Since jumping into the fray as CEO in January, Brenneman has worked to reduce food costs by as much as 4 percent, open communication channels with franchisees and test new products, like a Quiznos taco, to boost profits.

"In these situations, the biggest challenge is always identifying what the few things you can do to really improve profitability for the franchise owners are and then doing them quickly," Brenneman said.

Some owners are pleased with the changes, especially the lower food costs. Others remain skeptical.

Through a roller-coaster ownership ride, the chain expanded quickly, to at least 5,000 stores. But Quiznos' success has come with growing pains.

Lawsuits filed by attorney Justin M. Klein, representing franchise owners in Illinois, Michigan and Wisconsin, allege the company draws in prospective owners, who pay $25,000 for a franchise, but doesn't give them complete facts about restaurant locations and business operations.

Klein contends many franchisees sign contracts, only to wait a year or more for the company to build a restaurant. The suits accuse the company of requiring franchise owners to buy all supplies from Quiznos at higher prices than if they bought locally.

"It's common in the industry to have restrictions on certain suppliers, mandated suppliers, but it has to relate to quality standards," said Klein of Red Bank, N.J. "When it doesn't relate to quality standards it's merely an abuse."

The company denies the allegations and filed motions to dismiss the suits.

Brenneman, meanwhile, has reached out to franchisees and targeted their food and other costs. If he can cut food costs by 3 percent and coupon discount offers by 4 percent, Brenneman thinks he can add $25,000 to $30,000 in profits for franchisees.

Quiznos has hired a new advertising agency, Cliff Freeman and Partners, to produce edgier ads that showcase upscale food at a lower cost. Its marketing budget is about $80-million a year, Provost said, targeting adults looking for a step up from traditional fast food and young adults who have "gotten bored with chicken strips."

Brenneman has met with franchise owners, delivers a weekly voice mail call to discuss operating developments, and spends late-night hours answering franchisee e-mails. He also created a Web site to assist franchisees and plans to give each a free computer to help them with a new online ordering program.

"There's unbelievable enthusiasm coming back into the system," Brenneman said.

Fast Facts:

About Quiznos

Founded: In 1981 in Denver. Its mission was to set itself apart from other sub shops with a made-to-order, warm sandwich.

Ownership: In 1991, franchise owner Rick Schaden and his father, Dick Schaden, bought the company and its 18 restaurants. They took it public but converted it to a private operation in 2001. Last year, JPMorgan Partners LLC became an ownership partner and Greg Brenneman later became a partner through his company, TurnWorks Inc.

CEO: Greg Brenneman, 45, was named CEO, president and partner in January, and remains in charge of his Houston private equity firm. Last year, he stepped down as CEO of Burger King after leading its revitalization. He previously helped Continental Airlines turn profitable after 16 consecutive years of losses, including two bankruptcies.

Sales: Technomic, an industry consulting firm, ranks Quiznos third behind Subway and Arby's. Quiznos has average sales of about $425,000 a year per store where Subway has average sales of about $375,000 per store.
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERNATIONAL FRANCHISE ASSOCIATION, INC.; CHARLES STEMPLER; KATHERINE LYONS; MARK LYONS; MICHAEL PARK; and RONALD OH,

Plaintiffs,

vs.

THE CITY OF SEATTLE, a municipal corporation; and FRED PODESTA, Director of the Department of Finance and Administrative Services,

Defendants.

I, Scott Shane, declare as follows:

1. I am over 18 years of age, am competent to testify about matters set forth herein, and submit the testimony below based on personal knowledge and information.

2. I am the A. Malachi Mixon III Professor of Entrepreneurial Studies, in the Department of Economics, Weatherhead School of Management, at Case Western Reserve University, where I conduct research and teach on economics and entrepreneurship, including franchising. Prior to coming to Case Western Reserve University in 2003, I was associate...
professor of entrepreneurship and professor of entrepreneurship at the Robert Smith School of Business at the University of Maryland from 1999 to 2003, assistant professor of entrepreneurship at the Sloan School of Management at Massachusetts Institute of Technology from 1996 to 1999, and assistant professor of entrepreneurship at the School of Management of Georgia Institute of Technology.

3. I received my Ph.D. in Applied Economics from the Wharton School of the University of Pennsylvania in 1992. I also hold a Master’s Degree in Management from the Wharton School of the University of Pennsylvania, a Master’s Degree in Foreign Service from Georgetown University and a Bachelor’s Degree in History from Brown University.

4. I have written or edited 15 books, 85 scholarly articles, 9 book chapters, 17 conference proceedings, and 18 commentaries, editor’s notes, or dialogues.


6. I am the author of nine scholarly articles on business format franchising, and a book entitled From Ice Cream to the Internet: Using Franchising to Drive the Growth and Profits of Your Company (Financial Times Press 2005).

7. I also write a regular monthly column on business format franchising for Franchisegrade.com, a website devoted to the franchise industry, and have provided consulting services to several companies seeking to franchise their businesses.

8. I have been retained by the City of Seattle to offer expert testimony in this case.

In preparation for drafting this declaration, I have reviewed the theoretical and academic literature on franchising; databases of franchise documents and statistics; the plaintiffs’

DECLARATION OF SCOTT SHANE (14-cv-00848RAJ) - 2
preliminary injunction motion and the declarations of Charles J. Stempler, David Meinert, Dean Heyl, John Reynolds, Katherine Lyons, and Ronald Oh; and the franchise agreements and other documents produced by plaintiffs.

9. The plaintiffs have claimed that "small franchise businesses are like other small businesses." Plaintiffs' Motion for Preliminary Injunction, p. 4; Reynolds Declaration, ¶ 25. I disagree with this claim for a number of reasons. As discussed below, there are a number of fundamental economic and structural differences between operating as a franchise and operating as an independent business. Participation in a franchise system often affords franchisees more profit than they would earn as individual business owners. As Roger Blair and Francine Lafontaine write in The Economics of Franchising (Cambridge University Press 2005), "individuals eager to develop a small local business, benefit from the interconnection that franchising affords them. Franchisors and their franchisees thus cooperate with one another in a kind of partnership. In many regards, the interests of the franchisor and its franchisees are mutually compatible. Their cooperation increases value for both parties: both earn more profit than they would absent this cooperation."1

10. Franchisees derive significant economic benefits from participation in a franchise system that provides advantages that are not available to small independent businesses. While the specific benefits depend on the type of business and the terms of the franchise agreement, these benefits typically include access to numerous things not available to independent businesses, such as access to brand valuable names, advertising, trade secrets, software, volume purchasing, site selection assistance, financing, operational training, human resource guidance and assistance, human resource policies and handbooks, ongoing training and operational

1 Blair and Lafontaine, p. 2.
assistance, member rewards programs that increase the customer base, legal and accounting
updates, and access to franchise associations that provide forums for exchanging ideas.

11. Purchasing a franchise allows a business owner to operate under a brand name
that will attract customers that they otherwise would not attract to their business establishments.
That access can be very valuable. The experiences of franchisees that have left the
McDonald’s franchise system illustrate the value of access to a franchisor’s brand name. For
example, in Canterbury et al. v. Commissioner of Internal Revenue, 99 T.C. 223 (1992), the
United States Tax Court looked at evidence of sales of fast food establishments that were once
part of the McDonald’s franchise system but later operated in the same location in the same
manner by the same owners after exiting from the McDonald’s system. Despite being operated
in the same place, in the same way, by the same people, sales at the businesses tended to
decline substantially and the companies tended to go out of business after the outlets exited the
McDonald’s system. The Tax Court concluded that the ability to operate under the
McDonald’s brand name accounted for all of the goodwill in the businesses.

12. Purchasing a franchise can provide access to trade secrets that allow business
owners to provide a product or service that they otherwise could not provide. For example, the
business owners who purchase a KFC franchise get access to a recipe for fried chicken that
they could not otherwise access.

13. Purchasing a franchise can also provide the franchisee with assistance in finding
the best location for a business. For example, according to its website, Dunkin Donuts offers
franchisees “real estate and construction experts” to assist when franchisees are seeking to
“identify and develop [a] restaurant’s physical space.”


DECLARATION OF SCOTT SHANE (14-cv-00848RAJ) - 4
14. Purchasing a franchise often provides the franchisee with access to financing from the franchisor or third-party lenders. Lenders find it easier to assess credit risk with franchised outlets than with independent businesses, because the franchise systems have information that makes assessing the credit risk easier.

15. Purchasing a franchise can also allow the franchisee to obtain raw materials at a lower cost through the franchisor’s volume purchasing. As Pizza Ranch explains on its website, “successful (and growing) franchises like Pizza Ranch are in a unique position to negotiate major contracts with vendors based on volume usage. Although we are still considered a mid-scale chain, our growth rates have put us on the radar with major distributors in the restaurant supply industry and larger demand often ensures a more competitive cost of goods. Pizza Ranch negotiates directly with suppliers of major approved products and equipment in order to provide franchisees with competitively priced cost-of-goods – just another advantage of franchising with Pizza Ranch.”

16. Purchasing a franchise can allow the franchisee to obtain access to management training that he or she could otherwise not obtain. For instance, AlphaGraphics Print Shop owners receive three to four weeks of training from the franchisor prior to the opening of their business, something that is not provided to independent print shop owners.

17. Because of the economic benefits of franchising, franchisors are able to demand, and franchisees are willing to pay to the franchisor, a franchise fee and an ongoing royalty (usually calculated as a percentage of the outlet’s gross sales revenue) for participation in the system. Franchisees are willing to make those payments because they receive value for them.

http://www.pizzaranchfranchise.com/purchasing-power.html

4 AlphaGraphics Printshops Franchise Agreement (IFA-0006 through IFA-0102), Section 4.
The claim in Mr. Reynolds’s declaration (at ¶ 26) that franchisees make the same types of payments as any small business owner is therefore not accurate.

18. The economic benefits of franchising also explain why franchisees seek renewable franchise agreements and choose to renew their contracts when they expire. As explained in a document titled “Expanding a Business by Franchising” produced by the International Franchise Association: “From the perspective of a franchisee, a long term, renewal rights and reasonable transfer rights make the franchise more valuable…. Renewal rights, even when subject to preconditions, enhance the value of a franchise to the franchisee and the marketability of the franchise.”5 The fact that the option to renew a franchise agreement is valuable to franchisees indicates that participation in the system also must be valuable to franchisees.

19. “Conversion franchising” is based explicitly on the notion that being part of a system is more valuable to a business than operating as an independent business. Conversion franchises are franchise systems that seek to convince already existing independent businesses to join their chains. The Best Western hotel chain, for example, tries to persuade independent hotels to buy a Best Western franchise. The fact that independent hotels join franchise systems is evidence that hotel owners believe that being a small franchise business is not like being an independent small business.

20. Moreover, the fact that existing independent businesses join franchise systems through conversion franchises means that the owners of those businesses believe that the benefits of joining a franchise system exceed the cost of the franchise fees and royalties that they pay to join the system.

5 IFA-0610 through IFA-0797, at pp. 51-52.
21. In his declaration (at ¶ 27), Mr. Reynolds says that "franchisees are merely licensees of franchisors' brands and methods of doing business and that is their sole difference from other independently owned small businesses." In fact, there are many other differences that Mr. Reynolds does not mention.

22. Franchisors exert significant influence over franchisees in ways that no third party does for independent small businesses. As Blair and Lafontaine explain, franchise contracts "include statements about how the franchisee is expected to run the franchise, whether or not the franchisee has an exclusive territory, who owns or leases the property, the duration of the agreement and the circumstances under which the franchisor or franchisee may terminate it, when and where the franchisee may open another business, and so on." The Economics of Franchising, p. 79. These types of provisions are found in the franchise agreements produced by plaintiffs in this case. Independent small businesses are not required to adhere to these types of provisions.

23. Franchisors may assure quality of their products by requiring franchisees to purchase certain inputs from them. For instance, Baskin Robbins franchisees are required to purchase their ice cream from the franchisor or approved suppliers, while an independent ice cream shop can purchase its ice cream from any source. Such requirements aim to protect the consistency of the product. A consistent product protects the reputation of the brand, which, in turn, engenders customer loyalty. A loyal customer base is one of the ways the franchise model benefits the franchisee.

24. Franchisors may assure investment in the development of the business's brand name by requiring the franchisees to advertise. As Blair and Lafontaine explain (at p. 69),

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6 http://www.sec.gov/Archives/edgar/data/1357204/000119312511172042/dex1030.htm

DECLARATION OF SCOTT SHANE (14-cv-00848RAJ) - 7
“many franchisors also stipulate in their contracts that the franchisee must make contributions
to support national, regional, and/or local advertising.” These types of provisions are found in
the franchise agreements produced by some of the plaintiffs in this case. Independent
businesses are not required to make contributions to support national, regional or local
advertising. The fees a franchisee pays to a collective advertising pool provide that franchisee
with more buying power than an independent business, because the economies of scale in
advertising would permit it to advertise at a lower per-customer cost than its non-franchise
competitors. For example, the national television and Internet advertising conducted by
Holiday Inn is likely conducted at a much lower per-hotel guest cost than any national
television and Internet advertising conducted by an independent hotel in Seattle.

25. Franchisors may also take steps to assure the quality of operations at a
franchisee. For example, McDonald’s says, “The franchisee assumes the responsibility of
operating their restaurant in accordance with McDonald’s standards of quality, service and
cleanliness. As part of the agreement, McDonald’s regularly checks the quality of each
franchise’s output, and failure to maintain standards could threaten the franchisee’s license.”

These quality control requirements aim to protect the value of the brand, so that a McDonald’s
has the same experience in Washington, D.C. as in Washington State. The ability to provide a
known, reliable experience helps franchisees attract customers.

26. Mr. Reynolds states (at ¶ 28) that franchisees are like independent small
businesses because “franchisors and franchisees are separate business entities.” However, in
the Canterbury case cited above, the Tax Court specifically recognized that “franchisees are
part of a larger organization.”

7 http://www2.mcdonalds.com/static/pdf/aboutus/education/mcd franchising.pdf

DECLARATION OF SCOTT SHANE (14-cv-00848RAJ) - 8

PETER S. HOLMES
Seattle City Attorney
600 Fourth Avenue, 4th Floor
P.O. Box 94769
Seattle, WA 98124-4769
(206) 684-8200
27. Moreover, franchisors influence the behavior of the employees of franchisees in ways that independent small businesses typically do not. Blair and Lafontaine note (at pp. 129-30) that most franchise agreements contain clauses that outline acceptable outlet “appearance, hours of operation, location, and product quality.” The contracts typically allow franchisors to conduct “inspections, audits, mystery shopper programs, and so on” of the franchisees. This is not the case with independent businesses.

28. As an example, McDonalds says, “To ensure uniformity throughout the world, all franchisees must use standardized McDonald’s branding, menus, design layouts and administration systems. The license agreement also insists the franchisee uses the same manufacturing or operating methods and maintains the quality of the menu items.”

29. Mr. Reynolds claims in his declaration (at ¶ 25) that franchisees are like independent small businesses because they “make all of their own human resource decisions.” However, independent small business owners have greater latitude over their human resource decisions than franchisees, whose decisions are influenced by the terms of their franchise agreements. For instance, an independent print shop business owner can decide on the amount of time that he or she would like to devote to “outside sales calls.” By contrast, the AlphaGraphics franchise agreement produced by the plaintiffs shows that a franchisee is required to “spend a minimum of forty (40) hours per week on outside sales calls (i.e., direct face-face-to-face selling) to new and existing customers.” Moreover, even when franchisors do not control the human resource decisions of their franchisees, they often provide optional guidance and assistance. Franchisors may provide recommended staffing models and wage

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8 http://www2.mcdonalds.com/static/pdf/aboutus/education/mcd_franchising.pdf
9 AlphaGraphics Printshops Franchise Agreement (IFA-0006 through IFA-0102), Section 1(E).
scales, make available sample employment policies and handbooks, and distribute legal
updates. These are resources that benefit the franchisee and that are not necessarily available to
an independent business.

30. In addition, an independent business owner can decide to conduct business at any
location without the permission of another party. That is typically not the case with
franchisees. For example, the AlphaGraphics franchise agreement produced by plaintiffs
restricts the franchisee from conducting business at any location other than the approved site
without the consent of the franchisor.

31. Businesses operating under a franchise model are also subject to legal rules and
restrictions that do not apply to independent businesses. Many states have statutes and
administrative rules applicable only to franchisors. For example, in the state of Washington,
franchisors wishing to do business in the state must adhere to the Washington Franchise
Investment Protection Act (RCW 19.100) and rules for franchises (WAC 460-80) and franchise
brokers (WAC 460-82). Businesses not using a franchise system are not subject to these laws
and rules. The existence of these statutes and administrative rules indicates that legislators and
regulators understand that franchisors are able to influence the business operations of
franchisees.

32. Mr. Reynolds, citing the declarations submitted by Mr. Stempler, Mr. Oh and
Ms. Lyons, claims (in ¶ 29 of his declaration) that “the ordinance will give a competitive
advantage to their similarly situated non-franchise competitors; increase their labor costs; force
them to raise prices; and cause them to lose customers.” This is speculation. There is no way
to know whether the ordinance will in fact give a competitive advantage to the independent
businesses. The only conceivable short-term competitive advantage that could result from the

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ordinance is lower cost. (The ordinance would not, for instance, provide a brand-name
advantage to the non-franchise competitors, or provide any of the other franchise benefits
described above.) But the ordinance will not necessarily even give non-franchisees a cost
advantage. The non-franchisee competitors of the plaintiff franchisees may face pressure to
raise their wages to a level comparable to that of the franchisees, in order to attract high quality
workers who would otherwise have an incentive to seek employment with the franchisees. If
the non-franchisees in fact raise wages in response to the higher wages being paid by
franchisees, any wage differential between the two types of companies would be negated.

33. There are other reasons that the ordinance may not place franchisees at a
competitive disadvantage. While the circumstances will vary based upon the terms of each
franchise agreement, certainly some franchisees will have lower costs of inputs that come from
their participation in a franchise system that allows access to volume purchasing. Some
franchisees will have lower costs of attracting customers because the economies of scale in
advertising would permit them to advertise at a lower per customer cost than their non-
franchise competitors. Franchisees may therefore have lower costs of operations even during
the phase-in period of the ordinance, keeping the ordinance from giving non-franchisees a cost-
based competitive advantage.

34. Moreover, nothing in the ordinance will "force" the plaintiff franchisees "to raise
prices." The ordinance does not require businesses to do anything other than pay a particular
minimum wage to their employees. Nor does the ordinance compel businesses to maintain
their current profit margins or to refrain from cutting other costs of their operations.
Consequently, there is no evidence that the ordinance will cause franchisees to "lose" price-
sensitive customers.

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35. Economic theory suggests that the ordinance may actually provide a competitive advantage and bring new customers to franchisees paying higher wages. The economic theory of efficiency wages holds that companies will sometimes pay high wages because those wages improve productivity. Companies that pay their workers more than their competitors tend to have less worker turnover, a higher quality applicant pool, and harder working employees. There is also economic evidence that some customers have a preference for businesses that pay a “living wage.” Mr. Oh’s declaration (at ¶ 17) suggests this when he states that his business has appeared on a “boycott list” of businesses challenging the minimum wage ordinance. The existence of such a list indicates that there are customers who will choose to patronize businesses that pay higher wages.

36. The bottom line is that no one can say with certainty what competitive effects the ordinance will have during the period of time when the higher wages are being phased in. But any claims that the ordinance will “force” the plaintiff franchisees to raise their prices, to lose customers, or to otherwise operate at a competitive disadvantage to non-franchise competitors, are inconsistent with economic theory and evidence.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 28th day of September, 2014 at Cleveland, Ohio.

[Signature]

Scott Shane

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I. INTRODUCTION

On June 3, 2014, the City of Seattle ("the City" or "Seattle"), enacted Ordinance Number 124490 ("the Ordinance"), which establishes a $15 minimum hourly wage. In doing so, Seattle joined dozens of other cities nationwide that have increased the minimum wage beyond both federal and state minimums. The City's stated reason for

(San Jose, $10.15; Santa Fe, $10.66; Washington, DC, $11.50; Oakland $12.25; Chicago, $13.00; San Francisco $15.00).
increasing the minimum wage was to reduce income inequality. Additionally, the increased minimum wage was intended to “promote the general welfare, health, and prosperity of Seattle by ensuring that workers can better support and care for their families and fully participate in Seattle’s civic, cultural and economic life.” Ordinance, WHEREAS clauses 1-12, § 1.

The current minimum wage in Seattle is $9.47. Although the Ordinance goes into effect on April 1, 2015, the shift to a $15 minimum wage will not happen overnight. There are two phase-in schedules under the Ordinance: a faster phase-in, applicable to large businesses and a slower phase-in, applicable to small businesses. Large businesses will be required to incrementally raise the minimum wage to $15 in just three years (i.e., reaching $15 by January 1, 2017) whereas small businesses will be allowed seven years (i.e., reaching $15 by January 1, 2021). Ordinance, § 4. Small businesses were given this extra time because they lack the same resources as large businesses and will face particular challenges in implementing the law. Ordinance, § 1, ¶ 9; (Feldstein Decl.) Dkt. # 63, ¶ 10.

Seattle’s power to raise the minimum wage to $15 is not at issue in this lawsuit. Indeed, the plaintiffs accept that eventually all Seattle employers will be required to pay their employees at least $15. The issue the court has been asked to address relates solely to how fast this increase will happen for employees of a specific type of business model: franchises (e.g., your local Subways, McDonald’s, and Holiday Inns, among many others).

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3 Robert Feldstein is the Director of the Office of Policy and Innovation in the Mayor’s Office.

4 It is well settled that raising the minimum wage is within the City’s police power. See, e.g., RUI One Corp. v. City of Berkeley, 371 F.3d 1137, 1150 (9th Cir. 2004) (acknowledging that “[t]he power to regulate wages and employment conditions lies clearly within a state’s or municipality’s police power”).
The crux of this lawsuit is the Ordinance's categorization of franchisees as large businesses. Because these businesses are considered large, they will be subject to the faster three-year phase-in schedule. The plaintiffs object to this categorization. Although franchisees are connected to large franchisors, they are technically separate entities under the law. Additionally, individual franchisee outlets often employ only a handful of workers. According to plaintiffs, this makes them more similar to small businesses and equally likely to suffer challenges in implementing the new law. (Compl.) Dkt. # 1, ¶ 3, 4; (Pls.’ Mot.) Dkt. # 37, p. 18.

Plaintiffs are the International Franchise Association (“IFA”), which is an organization of franchisors, franchisees, and suppliers, and five individual franchisee owners and/or managers. Together, they are seeking a preliminary injunction compelling the City to treat franchisees as “small” businesses rather than “large” businesses. They do not seek to invalidate the entire Ordinance; rather, they ask only that franchisees be subject to the slower (seven year) phase-in schedule applicable to small businesses.

Defendants are the City of Seattle and Fred Podesta, the Director of the Department of Finance and Administrative Service (“the Department”). The Department and its Director are responsible for implementing and enforcing the Ordinance. Defendants will be referred to collectively as “the City” or “Seattle.”

For the reasons stated below, the court DENIES plaintiffs’ motion for a preliminary injunction.5

II. BACKGROUND

A. History of the Ordinance

Shortly after taking office, the Mayor of Seattle assembled an Income Inequality Advisory Committee (the “Advisory Committee”), which consisted of twenty-four

5The court heard oral argument in this matter on March 10, 2015. Neither party requested an evidentiary hearing.
members, including representatives of business interests and labor unions. Ordinance, § 1, ¶ 6. The Mayor formed the Advisory Committee to “address the pressing issue of income inequality in Seattle” and to seek input regarding a potential increase in the minimum wage. Ordinance, § 1, ¶ 6, 7; (Feldstein Decl.) Dkt. # 63, ¶ 8. The Advisory Committee reviewed scholarly studies on the impact of minimum wage laws in other cities and hosted numerous public engagement forums, including industry-specific forums. Ordinance, § 1, ¶ 8. In May 2014, the Advisory Committee transmitted its formal recommendation to the Mayor. The recommendation advocated for a phased increase in the minimum wage and acknowledged that small businesses should be subject to a slower phase-in schedule. Ordinance, § 1, ¶ 9; (Feldstein Decl.) Dkt. # 63, ¶¶ 10, 11. The recommendation said nothing specific about the categorization of franchisees.

B. The Franchise Business Model

The term “franchise business model” refers to a long-term business relationship in which one company (the franchisor) grants other companies (the franchisees) the right to sell products under its brand, using its business model and intellectual property, generally in exchange for ongoing royalty payments and other fees. (Gordon Decl.) Dkt. # 70-2, ¶ 6. Although franchisees are part of the larger organization of the franchisor, they are legally separate entities. (Shane Dep.) Dkt. # 81-4, p. 9. This business model provides the franchisor with the benefits of vertical control over retail units without the investment in assets required by full integration. Mick Carney and Eric Gedajlovic, Vertical Integration in Franchise Systems: Agency Theory and Resource Explanations, 12 Strategic Mgmt. J. 607 (1991). The employees of a franchisee are not employees of the franchisor. (Shane Dep.) Dkt. # 81-4, p. 10. Franchisees manage the day-to-day aspects

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6 John A. Gordon is a franchise business consultant and has provided the court with an expert declaration in support of the amicus brief of OPEIU Local 8 et al.
7 Scott A. Shane is an economics professor and has provided the court with an expert declaration in support of the City’s opposition to this motion.
of their business, including making decisions regarding which workers to hire, how many to hire, the benefits they will offer, and how much to pay their employees. *Id.*, p. 19.

Despite this legal separateness, however, franchisees are not free to do as they please. Most franchise agreements heavily regulate the conduct of the franchisee and include statements about how the franchisee is expected to run the franchise, whether or not the franchisee has an exclusive territory, and when and where the franchisee may open another business. (Shane Decl.) Dkt. # 62, ¶ 22. Franchise agreements also contain clauses that outline acceptable outlet "appearance, hours of operation, location, and product quality" and typically allow franchisors to conduct "inspections, audits, mystery shopper programs, and so on" of the franchisees. (Shane Decl.) Dkt. # 62, ¶¶ 22-31.

Franchisees accede to the franchisor's restrictions because being part of a larger network provides significant benefits. Participation in a franchise system often affords brand recognition and customer loyalty, as well as access to, advertising, trade secrets, software, lower material costs, site selection assistance, financing, and extensive operational support and training. (Shane Decl.) Dkt. # 62, ¶ 10. Participation in this system also often affords franchisees more profit than they would earn as individual business owners. (Shane Decl.) Dkt. # 62, ¶ 9. In addition to these factors, franchisors also have the ability to use their greater financial resources to support the franchise by aiding franchisees during time of business stress, including identifying and responding to changed business conditions. (Gordon Decl.) Dkt. # 70-2, ¶ 9.

C. Mechanics of the Ordinance

1. The Two Phase-In Tracks: "Large" and "Small" Businesses

The Ordinance goes into effect on April 1, 2015. The law provides for two core tracks leading to the $15 minimum wage. The first track applies to Schedule One or
"large" businesses (defined as those with 500 or more employees nationwide). These businesses will have three years to implement the new law. Large businesses also have the opportunity to take advantage of an alternative Schedule One track if they choose to offer certain health benefits to their employees. If they offer a qualifying health plan, they will be given four years to implement the new law.

The second track applies to Schedule Two or "small" businesses (defined as those with 500 or fewer employees nationwide). These smaller businesses will have seven years to implement the new law. The exact incremental increases for each track are set forth below:

Schedule One -- large employers (> 500 employees)
- April 1, 2015 -- $11
- January 1, 2016 -- $13
- January 1, 2017 -- $15

Schedule One -- large employers offering health benefits
- April 1, 2015 -- $11
- January 1, 2016 -- $12.50
- January 1, 2017 -- $13.50
- January 1, 2018 -- $15

Schedule Two -- small employers (≤ 500 employees)
- April 1, 2015 -- $10
- January 1, 2016 -- $10.50

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8 "Schedule 1 Employer" means all employers that employ more than 500 employees in the United States, regardless of where those employees are employed in the United States, and all franchisees associated with a franchisor or a network of franchises with franchisees that employ more than 500 employees in aggregate in the United States." Ordinance § 2.

9 "Schedule 2 Employer" means all employers that employ 500 or fewer employees regardless of where those employees are employed in the United States. Schedule 2 employers do not include franchisees associated with a franchisor or network of franchises with franchisees that employ more than 500 employees in aggregate in the United States." Ordinance, § 2.
• January 1, 2017 -- $11
• January 1, 2018 -- $11.50
• January 1, 2019 -- $12
• January 1, 2020 -- $13.50
• January 1, 2021 -- $15

Ordinance § 4.

By 2021, all employers will be subject to a minimum wage of at least $15 per hour.

2. Franchisees and Integrated Enterprises

Under the law, a wholly independent business with more than 500 employees falls into the “large” category and a wholly independent business with 500 or fewer employees falls into the “small” category. Certain types of businesses, however, are not considered independent: franchisees and integrated enterprises.

A franchisee is considered a “large” business if its franchisor and/or its network of franchisees employ more than 500 employees in aggregate in the United States. Ordinance, § 3. This means that the owner of a Subway outlet with only 10 employees will be considered a “large” employer because of his relationship with the Subway franchisor and other Subway franchisees.

Additionally, entities that appear separate but in fact form an “integrated enterprise” are also considered “large” businesses under the Ordinance. Separate entities are considered an “integrated enterprise” if there is a significant degree of: (1) interrelation between the operations of the entities, (2) common management, (3) centralized control over labor relations, and (4) common ownership or financial control over the entities. There is a presumption, however, that separate entities are actually separate employers if: (1) the entities operate substantially in separate physical locations from one another, and (2) each entity has partially different ultimate ownership. Ordinance, § 3. This test applies only to non-franchise businesses.
III. LEGAL STANDARD

Plaintiffs seek a preliminary injunction compelling the City to treat franchisees as small businesses under the new law. "A preliminary injunction is an extraordinary and drastic remedy; it is never awarded as of right...." Munaf v. Geren, 553 U.S. 674, 689 (2008) (citation and internal quotation marks omitted). To obtain a preliminary injunction, the moving party must establish that: (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in its favor; and (4) an injunction is in the public interest. Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008).

Alternatively, "serious questions going to the merits" and a balance of hardships that tips sharply towards the plaintiffs can support issuance of a preliminary injunction, so long as plaintiffs also show that there is a likelihood of irreparable injury and that the injunction is in the public interest. Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011).

IV. ANALYSIS

Plaintiffs allege a number of claims against the City, including: (1) violation of the Commerce Clause, (2) violation of the Equal Protection Clause, (3) violation of the First Amendment, (4) Lanham Act preemption, (5) ERISA preemption, and (6) violation of the Privileges and Immunities Clause of the Washington State Constitution. The court will address the merits of each claim below.

A. The Dormant Commerce Clause

The Constitution was framed upon the theory that "the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division." Baldwin v. G.A.F. Seeling, Inc., 294 U.S. 511, 523 (1935). Thus, the Court "has consistently held that the Constitution's express grant to Congress of the power to 'regulate Commerce ... among the several States,' Art. I, § 8, cl.3,
contains, 'a further, negative command, known as the dormant Commerce Clause ....' "


The dormant Commerce Clause bars state and local governments from erecting taxes, tariffs, or regulations that favor local businesses at the expense of interstate commerce. Lewis v. BT Inv. Managers, Inc., 447 U.S. 27, 35 (1980). One of its core purposes is to prevent states from engaging in economic protectionism -- i.e., shielding local markets from interstate competition. Dep’t of Revenue of Ky. v. Davis, 553 U.S. 328, 337-38 (2008) (citing New Energy Co. of Ind. v. Limbach, 486 U.S. 269 (1988)).

The dormant Commerce Clause’s two-tiered analytical framework is well settled: (1) the anti-discrimination test -- which involves heightened scrutiny and (2) the Pike balancing test -- a lower bar. The anti-discrimination test involves a two-step inquiry. The first step is to ask whether the statute discriminates facially, has a discriminatory purpose, or has a discriminatory effect against interstate commerce. Nat’l Ass’n of Optometrists & Opticians LensCrafters, Inc. v. Brown, 567 F.3d 521, 525 (9th Cir. 2009). If it does, at the second step, the burden shifts to the state to justify that discrimination by showing the discrimination is necessary to achieve a legitimate local purpose and that there is no reasonable non-discriminatory means for accomplishing the same objective. See, e.g., Maine v. Taylor, 477 U.S. 131, 138 (1986).

A determination that the law is non-discriminatory under the first tier, however, does not end the analysis. The court must move on to the second tier and apply the Pike balancing test when the non-discriminatory law nevertheless has some burden on interstate commerce. Nat’l Ass’n of Optometrists, 567 F.3d at 528. Under Pike, the law will only be invalidated if plaintiffs can show that the burden on interstate commerce is
clearly excessive in relation to the putative local benefits. \(^{10}\) *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

1. Tier One: The Anti-Discrimination Test

   a. *Does the Ordinance discriminate on its face?*

      To determine which wage schedule applies, the Ordinance counts all employees of a particular employer nationwide without regard to geographic location. Indeed, the Ordinance’s faster phase-in schedule applies to franchises with headquarters here in Washington. Accordingly, the language of the Ordinance does not facially discriminate against out-of-state entities.

   b. *Does the Ordinance have a discriminatory purpose?*

      Discriminatory purpose exists when a state or local statute is “motivated by an intent to discriminate against interstate commerce.” *Family Winemakers of Cal. v. Jenkins*, 592 F.3d 1, 13 (1st Cir. 2010). The words of the legislative body itself, written contemporaneously with the passage of the law in question, are the most persuasive source of legislative purpose. See, e.g., *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 463 n. 7 (1981) (“[T]his Court will assume that the objectives articulated by the legislature are actual purposes of the statute, unless examination of the circumstances forces us to conclude that they ‘could not have been a goal of the legislation.’”). The

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\(^{10}\) The court notes that the decisions interpreting the dormant Commerce Clause appear somewhat difficult to reconcile. See, *W. Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 210 (1994) (Scalia, J., concurring) (“[O]nce one gets beyond facial discrimination our negative-Commerce-Clause jurisprudence becomes (and long has been) a quagmire.”) (internal quotation marks omitted); see also Brannon P. Denning, *Reconstructing the Dormant Commerce Clause Doctrine*, 50 Wm. & Mary L. Rev. 417, 423 (2008) (noting that “a number of the Court’s [ ] cases are, in fact, impossible to reconcile...”). Nevertheless, the Court has attempted to apply the framework to serve the purpose of the dormant Commerce Clause -- i.e., to prevent barriers to the flow of interstate commerce -- while keeping in mind the “residuum of power” in a municipality to make laws governing matters of local concern. *S. Pac. Co. v. State of Ariz.*, 325 U.S. 761, 767 (1945).
legislature's stated purpose, however, is not dispositive. Several additional factors have been recognized as probative of discriminatory intent: (1) evidence of a consistent pattern of actions by the decision-making body disparately impacting members of a particular class of persons; (2) historical background of the decision, which may take into account any history of discrimination by the decision-making body or the jurisdiction it represents; (3) the specific sequence of events leading up to the particular decision being challenged, including any significant departures from normal procedures; and (4) contemporary statements by decision-makers on the record or in minutes of their meetings. See, e.g., Village of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 267-68 (1977); Waste Mgmt. Holdings, Inc. v. Gilmore, 252 F.3d 316, 336 (4th Cir. 2001).

Here, the stated legislative purposes for increasing the minimum wage included reducing income inequality and promoting the general welfare, health, and prosperity of Seattle by allowing low-wage workers to better support themselves and to participate in the City's civic and economic activities. Ordinance, WHEREAS clauses 1-12, § 1. The rationale for differentiating between large and small businesses was the recognition that "some employers, in particular small businesses and not-for-profit organizations, may have difficulty in accommodating the increased costs." Ordinance, § 1, ¶ 9.

Plaintiffs do not contend that the City has engaged in a consistent pattern of actions disparately impacting out-of-state franchises, nor do they contend that the City has a history of discriminating against out-of-state franchises. Rather, to show discriminatory purpose, they point only to comments from one member of the Advisory Committee and isolated statements made by three lawmakers.¹¹

¹¹ In the entirety of the legislative history, plaintiffs object to a total of five emails and five public statements. (Exs. to Groesbeck Decl. iso Pls.' Mot.) Dkt. ## 38-2, 38-3, 38-10, 38-11, 38-12, 38-15, 38-16, 38-17, 81-1, and 81-2. The court reviewed and
Plaintiffs focus mainly on the comments of Nick Hanauer, a private citizen on the Mayor’s Advisory Committee. Mr. Hanauer made statements in email correspondence to other members of the committee and to the City Council, such as:

[F]ranchises like subway and McDonalds really are not very good for our local economy...A city dominated by independent, locally owned, unique sandwich and hamburger restaurants will be more economically, civically and culturally rich than one dominated by extractive national chains.

Dkt. # 38-2, p. 2.

He also stated:

...[F]ranchises dominate their niches, not because they are intrinsically better, but mostly because they benefit massively from the scale of their parent operations. Cheaper ingredients. Cheaper equipment. Better lease terms. Better training. Better and more advertising. Well known brand. etc, etc, etc....I have nothing against these companies. They have a right to operate. But our city has no obligation to continue policies that so obviously advantage them and disadvantage the local businesses that benefit our city and it’s [sic] citizens more.

Dkt. # 38-10, p. 2.

In response to one of Mr. Hanauer’s emails, Robert Feldstein, a member of the Mayor’s staff, wrote in an email:

I like the thinking but would love some additional thinking to help think through how to answer concerns about the effect on the individual immigrant business owner who decided to open a Subway rather than a bahn mi shop. I will admit upfront that I probably know least about [the] franchise model so there might be big gaps that I don’t understand. That’s part of why I’m asking for help in thinking this through....If considered all of the emails and statements identified by the parties, despite not including a verbatim recitation of each in its opinion.
we lose franchises in Seattle, I won’t be sad – for the reasons you say. But are their ways for the cost to be born not on those franchise owners? Are they simply going to be a casualty of this transition? Are they less sympathetic or less at financial risk than I am imagining....

Dkt. # 38-3, p. 2.  

Additionally, two City Council members made comments regarding the resources flowing to franchisees from their “large” and/or “corporate” franchisors. Councilmember Kshama Sawant stated at a public hearing that:

It’s important, before we get lost in to this false idea that franchisees are somehow struggling businesses, we should look at the evidence here, which compiles McDonald’s, Burger King, and Wendy’s owners in Seattle...Just six companies own every franchised big burger chain in Seattle, and those six companies own a total of 236 locations all across the country. These are not small businesses. And a McDonald’s franchise requirement is $750,000 of personal wealth, not borrowed money, and [a] $45,000 franchisee fee, 40% of the total cost to open a new restaurant must be paid in cash. Now yes, it’s true that the McDonalds headquarters, corporate headquarters, takes away the lion’s share of the profits, but in order to be a franchisee, you have to be very, very wealthy. Just a small business person of color from Rainier Beach is not going to be able to afford to open a franchise outlet.

Dkt. # 38-11, p. 4; see also Dkt. # 38-12, p. 2 (writing on her official website, she also stated, “It’s clear that the current franchise model is rigged against workers.”); Dkt. # 38-15, p. 2 (tweeting from her official twitter account, she also stated, “Franchise owners: enough with the blame game! Organize, go to CorpHQ & renegotiate your rents.”).

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It is unclear whether Mr. Feldstein actually sent this response to Mr. Hanauer. Defendants claim it was merely a draft, but Mr. Feldstein’s declaration does not confirm this allegation. (Defs.’ Opp.) Dkt. # 61, n. 4; (Feldstein Decl.) Dkt. # 63. The court, nevertheless, considered the email as if it was sent.
Similarly, Councilmember Mike O’Brien stated the following in response to a constituent’s email objecting to the categorization of franchisees as “large” businesses:

I know a lot of franchise owners are struggling to survive under current minimum wage rules and I have met with a number of them and am sympathetic to their situation. That said, their workers are also struggling to survive at the current minimum wages too. The ones not struggling are the corporate parents of all these, and we don’t have a direct path to the parent corporations to make them treat both the employees and the franchise owners fairly. My hope is that the path we have chosen will force parent companies to treat franchise owners fairly and allow employees at these businesses to make closer to a living wage. I don’t believe that the large parent companies of these franchises will allow their businesses in Seattle to fail and give up the market to the competition and I expect over time adjustments will need to be made to accommodate the new minimum wage....Because workers at fast food franchises make up a large portion of people in Seattle currently earning minimum wage, this felt like an appropriate trade off.

Dkt. # 81-2, p. 2.

Finally, after the Ordinance was enacted, the Mayor issued the following statement in a press release:

Franchises have resources that a small business in the Rainier Valley or a small sandwich shop on Capitol Hill do not have. Franchise restaurants have menus that are developed by a corporate national entity, a food supply and products that are provided by a corporate national entity, training provided by a corporate national entity, and advertising provided by a corporate national entity. They are not the same as a local sandwich shop that opens up or a new local restaurant that opens up in the city. Our process for reaching $15 an hour in Seattle recognizes that difference.

Dkt. # 38-16, p. 2.

The court finds that these statements are insufficient to show that the law was enacted for a discriminatory purpose.
First, the court gives little weight to the comments of an Advisory Committee member. Mr. Hanauer had no part in drafting the Ordinance and, unlike a lawmaker, he had no responsibility to consider and weigh opposing viewpoints. Because he was not the ultimate decision-maker, Mr. Hanauer was free to zealously lobby for and advance his own line of thinking on this issue. 13 The same is true for other private citizens who, in fact, disagreed with Mr. Hanauer and voiced pro-franchise views. For example, David Meinert, another Advisory Committee member, stated in an email to the Mayor’s staff: “From breaking franchise agreements to outside ‘education’ of workers funded by the city, to getting rid of tips to lack of training wage. I have to speak out against these things.” Dkt. # 38-4, p. 2. MSA Worldwide, a franchise advisory firm, also wrote a detailed letter to the Mayor arguing that “[b]y its actions, the City of Seattle is statutorily denying franchisees the right to exist in Seattle....” Dkt. # 38-8, p. 2. Additionally, The Seattle Times wrote an editorial criticizing the categorization of franchisees as “large” businesses. See, Editorial: Redefine franchises under Seattle’s minimum-wage proposal, The Seattle Times, May 30, 2014 (“[The Ordinance] effectively discriminates against a business model – franchises – by giving non-franchisees a slower phase-in.”). If the court were to extend its inquiry into every statement made by every Advisory Committee member or other private person on an issue as politically charged as this one, it would surely discover a plethora of advocacy by both sides -- e.g., statements at public hearings, editorials, and letters to lawmakers -- some of which might well be discriminatory.

Second, the statements made by lawmakers do not expressly suggest an intent to discriminate against out-of-state interests. While they refer to the franchisor as the

13 The court has reviewed an email sent by Councilmember Tim Burgess to Mr. Hanauer thanking him for his “leadership on this important issue.” Dkt. # 81-1. This email, when read in context, appears to be a simple acknowledgement of Mr. Hanauer’s efforts to advance one line of thinking on the minimum wage ordinance. There is no evidence that Councilmember Burgess or any other Councilmember adopted any of Mr. Hanauer’s opinions as their own.
“corporate headquarters,” the “corporate national entity” and the “parent corporation,”
the statements, when considered in context, are reasonably read to distinguish between
entities with more resources and those with fewer resources. Indeed, each of the
statements refers to the resources of franchisees and their ability to adjust to the increased
minimum wage on an accelerated basis. Councilmember Sawant stated, “[W]e [should
not] get lost into this false idea that franchisees are somehow struggling businesses....
These are not small businesses....” Councilmember O’Brien stated, “The ones not
struggling are the corporate parents of all these, and...I expect over time adjustments will
need to be made to accommodate the new minimum wage.” Finally, the Mayor stated,
“Franchises have resources that a small business in the Rainier Valley or a small
sandwich shop on Capitol Hill do not have...They are not the same as a local sandwich
shop that opens up or a new local restaurant that opens up in the city.” Whether accurate
or not, the statements made by these lawmakers are consistent with the Ordinance’s
stated purpose of differentiating between large and small businesses -- businesses with
more resources can more easily (and more quickly) adjust to the increasing minimum
wage, while small businesses, with fewer resources, may have difficulty in
accommodating the costs.

Third, the court notes that the Ordinance passed by unanimous vote and plaintiffs
have identified no objectionable comments made by any other City Council members.
Thus, even if the aforementioned statements could somehow be construed to indicate
some impermissible motivation, isolated and stray comments by two Council members
are insufficient to override the entire City Council’s formal statements of purpose in the
Ordinance itself. Compare Allstate Ins. Co. v. Abbott, 495 F.3d 151, 161 (5th Cir. 2007)
(finding stray protectionist remarks of certain legislators were insufficient to condemn
statute under the dormant Commerce Clause where overall legislative record revealed
legitimate, nondiscriminatory purposes), with Waste Mgmt. Holdings, Inc., 252 F.3d at
336-40 (finding discriminatory purpose when comments of lawmakers expressly referred
to imposing burdens and restrictions on actors “outside” the state and sequence of events leading up to enactment of statute clearly established impermissible motive), and Family Winemakers, 592 F.3d at 7, 15-17 (finding discriminatory purpose when protectionist statements by lawmakers caused the state legislature to amend a statute to include a unique exception that would favor a particular in-state winery).

Fourth, and finally, the record does not reveal any significant departures from normal procedures in enacting the Ordinance. It is no secret that the minimum wage increase was hotly debated and that interest groups from both sides weighed in on the issue. These included both labor interests and franchise interests and both represented Seattle voters. (Exs. to Groesbeck Decl. iso Pls.’ Mot.) Dkt. ## 38-1 to 38-17; (Exs. to Grosebeck Decl. iso of Pls.’ Reply) Dkt. ## 81-1 to 81-3. Thus, the alleged statements by some union leaders, for example, indicating a desire to “break the franchise model” do not surprise the court. (Meinert Decl.) Dkt. # 37-2, ¶ 4. Even if true, such fervent remarks and lobbying efforts by interest groups cannot be imputed to the City Council. See, W. Lynn Creamery, Inc. v. Healy, 512 U.S. 186, 215 (1994) (Rehnquist, C.J., dissenting) (“Analysis of interest group participation in the political process may serve many useful purposes, but serving as a basis for interpreting the dormant Commerce Clause is not one of them.”). The City Council likely heard many opposing viewpoints leading up to the enactment of the Ordinance. In response, the lawmakers asked questions (for example, Mr. Feldstein requested additional information, stating “I will admit upfront that I probably know least about [the] franchise model so there might be big gaps that I don’t understand...Are [franchisees] less sympathetic or less at financial risk than I am imagining?”) and inquired into the financial risks facing franchisees and their potential resources. The findings by the Mayor and other lawmakers regarding the benefits flowing to these entities from their franchisors support the conclusion that
franchisees were categorized as “large” employers based upon a determination that they could handle the faster phase-in schedule, not by any protectionist motive.\textsuperscript{14}

Accordingly, the court does not find that the categorization of franchisees as large businesses was motivated by a desire to discriminate against interstate commerce.

c. Does the Ordinance have a discriminatory effect?

To prove discriminatory effect, plaintiffs have the burden of producing substantial evidence showing that the law discriminates in practice. \textit{Black Star Farms LLC v. Oliver}, 600 F.3d 1225, 1232 (9th Cir. 2010); \textit{Family Winemakers}, 592 F.3d at 11.


Although the dormant Commerce Clause protects against burdens on interstate commerce, it also respects federalism by protecting local autonomy. \textit{Nat’l Ass’n of Optometrists & Opticians v. Harris}, 682 F.3d 1144, 1148 (9th Cir. 2012) (citing \textit{Dep’t of Revenue v. Davis}, 553 U.S. 328, 338 (2008)). The Supreme Court has recognized that “under our constitutional scheme the States retain broad power to legislate protection for their citizens in matters of local concern” and has held that “not every exercise of local

\textsuperscript{14} Additionally, even if the court were to find that the law was motivated by some discriminatory purpose, that finding alone would be unlikely to violate the Commerce Clause. \textit{Alliance of Auto. Mfrs. v. Gwadosky}, 430 F.3d 30, 36 (1st Cir. 2005) (noting “[t]here is some reason to question whether a showing of discriminatory purpose alone will invariably suffice to support a finding of constitutional invalidity under the dormant Commerce Clause”); \textit{see also} Kathleen M. Sullivan & Gerald Gunther, Constitutional Law 275 (15th ed. 2004) (recognizing the analytical difficulty that arises because “a law motivated wholly by protectionist intent might fail to produce significant discriminatory effects”).
power is invalid merely because it affects in some way the flow of commerce between 
the States.” Id. (quoting Great Atl. & Pac. Tea Co. v. Cottrell, 424 U.S. 366, 371 
(1976)); see also Nat’l Ass’n of Optometrists & Opticians v. Harris, 682 F.3d 1144, 1148 
(9th Cir. 2012) (“A critical requirement for proving a violation of the Commerce Clause 
is that there must be a substantial burden on interstate commerce.”) (emphasis in 
original).

Thus, it is plaintiffs’ burden to show that the law causes local goods to constitute a 
larger share and goods with an out-of-state source to constitute a smaller share of the 
market. See Black Star Farms, 600 F.3d at 1232-33; see also Cherry Hill Vineyard, LLC 
v. Baldacci, 505 F.3d 28, 36 (1st Cir. 2007) (plaintiff claiming discriminatory effect must 
submit “probative evidence of adverse impact” and where a statutory provision “is 
evenhanded on its face and wholesome in its purpose,” a “substantial” evidentiary 
showing is required to prove discriminatory effect); Nat’l Paint & Coatings Ass’n v. City 
of Chicago, 45 F.3d 1124, 1132 (7th Cir. 1995) (discriminatory effect was not established 
where “plaintiffs did not offer any evidence”). Potential or possible discrimination is not 
sufficient, and the court is not permitted to speculate or to infer discriminatory effect 
without substantial proof. Black Star Farms, 600 F.3d at 1232, 1235. As the Ninth 
Circuit has stated, “[P]rove it, or lose it.” Id. at 1232.

Here, plaintiffs claim that the Ordinance disproportionately impacts out-of-state 
franchisors. 623 franchises operate in Seattle; 600 (or 96.3%) of those have out-of-state 
franchisors. (Reynolds Decl.) Dkt. # 37-4, ¶ 17.15 Additionally, all of the 23 in-state 
franchisors are associated with franchisees outside of the state of Washington. Id. Thus, 
plaintiffs argue, the Ordinance overwhelmingly burdens out-of-state entities. Plaintiffs

\[15\] John R. Reynolds is the President of the IFA Educational Foundation and has 
provided the court with a declaration in support of plaintiffs’ motion.
also claim that the Ordinance will put franchisees at a competitive disadvantage as compared to other similarly situated small businesses by increasing their labor costs.

As an initial matter, comparing franchisees and independent small businesses is somewhat difficult; they are not "similarly situated" in all relevant respects. It is true that they compete in the same markets and it is also true that a franchisee who owns only one outlet may share some similarities with an independent small business. That said, franchisees and independent small businesses have different business structures. See Nat'l Ass'n of Optometrists & Opticians Lenscrafters, Inc. v. Brown, 567 F.3d 521, 527 (9th Cir. 2009) ("Because states may legitimately distinguish between business structures in a retail market, a business entity's structure is a material characteristic for determining if entities are similarly situated."). The franchisee has, through his contract with the franchisor, made a business decision -- i.e., to pay royalties and fees in exchange for use of a brand name, training, advertising, established customer base, and other benefits -- presumably because he deemed this arrangement profitable. The City, however, has had no part in creating or defining this structure and has no duty to promote it or protect it.

Increasing costs for a particular type of business model, even one that involves interstate commerce, does not violate the dormant Commerce Clause without a further showing of impact on the flow of goods among the states. The Commerce Clause simply does not protect "the particular structure or methods of operation in a retail market." Exxon Corp. v. Governor of Md., 437 U.S. 117, 127 (1978). Nor does it "give an interstate business the right to conduct its business in what it considers the most efficient manner," for "the Constitution protects the interstate market, not particular interstate firms, from prohibitive or burdensome regulations." Valley Bank of Nev. v. Plus Sys., Inc., 914 F.2d 1186, 1993 (9th Cir. 1990) (citing Exxon, 437 U.S. at 127-28).

Second, even if the court were to find that franchisees are similarly situated to independent small businesses, plaintiffs have not produced substantial evidence showing discriminatory effect. Black Star Farms, 600 F.3d at 1232. Pointing to a 96.3%
connection to out-of-state entities is insufficient. See, e.g., Exxon, 437 U.S. at 125-29
(finding that even when the burden of legislation falls 100% on out-of-state entities, that fact alone “does not lead, either logically or as a practical matter, to a conclusion that the State is discriminating against interstate commerce in the retail market”); Valley Bank, 914 F.2d at 1193 (“[E]ven a disproportionate effect on out-of-state residents...does not necessarily violate the commerce clause.”). Instead, plaintiffs must show that the faster phase-in schedule will cause local goods to constitute a larger share and goods with an out-of-state source to constitute a smaller share of the market. Black Star Farms, 600 F.3d at 1233. While plaintiffs argue that this will necessarily occur, they have not presented evidence of an actual, rather than potential, impact on interstate commerce.

Identifying a correlation between franchisees and out-of-state business entities, even a very strong correlation, does not establish the further fact that a burden on franchisees in Seattle will cause a reduction in the flow of commerce across state lines.

Plaintiffs’ cases are not to the contrary. For example, in Cachia v. Islamorada, 542 F.3d 839 (11th Cir. 2008), the court considered an ordinance which stated that “[f]ormula restaurants shall not be permitted in any zoning district of [Islamorada].” 542 F.3d at 841. The court found that the ordinance had a discriminatory effect because it served as “an explicit barrier to the presence of national chain restaurants, thus preventing the entry of such businesses into competition with independent local restaurants.” Id. at 842 (emphasis added). Thus, the Cachia ordinance expressly banned formula restaurants and erected a figurative wall around the local market.

In Island Silver & Spice, Inc. v. Islamorada, 542 F.3d 844 (11th Cir. 2008), another case relied upon by the plaintiffs, the court considered an ordinance that limited formula retail establishments (e.g., Target or Walmart) to 2,000 square feet of retail space and 50 feet of frontage. 542 F.3d at 846. The parties had stipulated that this restriction “effectively prevents the establishment of new retail stores,” and “a facility limited to no more than 2,000 square feet or 50’ of frontage can not accommodate the minimum
requirements of nationally and regionally branded formula retail stores." Id. The court acknowledged that even when the burden of a regulation falls onto a subset of out-of-state retailers, that fact "does not, by itself, establish a claim of discrimination against interstate commerce." Id. (quoting Exxon, 437 U.S. at 126). The court found, however, that the ordinance's effective elimination of all new interstate retailers had the "practical effect of...discriminating against" interstate commerce. Id. at 847 (emphasis added).

Thus, the playing field was rigged so sharply against interstate retailers, it effectively eliminated them from the city -- a clear move toward economic isolation.

Similarly, in Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333 (1977), the Supreme Court found that a North Carolina produce labeling statute had "a leveling effect which insidiously operate[d] to the advantage of local apple producers." 432 U.S. at 351. North Carolina had enacted a statute which required all closed containers of apples shipped into the state to bear "no grade other than the applicable U.S. grade or standard." Id. at 335. This meant that any individual state's grading system could not be used on apple containers shipped into North Carolina. Id. At the time, Washington State was the nation's largest producer of apples, its crops accounting for approximately 30% of apples grown domestically and nearly 50% of all apples shipped in closed containers in interstate commerce. Id. at 336. Washington had its own grading system, which reflected a stringent inspection program that required compliance with quality standards that were the equivalent of or superior to the standards adopted by the United States Department of Agriculture. Id. Washington's system had become the industry standard and Washington apple containers were, of course, labeled with Washington grades. Id. at 351. North Carolina, by contrast, had never established a grading or inspection system. Thus, the North Carolina law, which prohibited the use of state grades, had no impact on North Carolina apple growers. The burden fell entirely on out-of-state entities. Id. But that fact alone was not enough to lead the Court to conclude
that the law discriminated against interstate commerce. Id.; see also Exxon, 437 U.S. at 125-29.

In Hunt, the plaintiff presented evidence that out-of-state apple growers had incurred substantial costs in complying with the law and had in fact lost accounts as a direct result of the statute. Hunt, 432 U.S. at 347. Indeed, the statute had raised the costs of doing business in North Carolina to the point where Washington apple growers were faced with abandoning the North Carolina market. Id. at 340. North Carolina apple growers, by contrast, suffered absolutely no negative impacts under the law. Thus, based upon this evidence, the Court found that North Carolina had “insidiously” rigged the playing field in a way that would cause local goods to constitute a larger share of the market. Id. at 351; see also Black Star Farms, 600 F.3d 1232 (distinguishing Hunt).

Here, unlike Cachia, plaintiffs have not shown that the Ordinance creates any barrier to the entry of franchisees into the Seattle market; unlike Island Silver & Spice, they have not shown that the Ordinance will effectively eliminate franchisees from the Seattle market; and unlike Hunt, they have not shown that the playing field has been rigged in a such way that local goods are certain, or virtually certain, to constitute a larger share of the market. The evidence of market impact in this case simply does not rise to the level of that presented in cases where a law has been found to violate the dormant Commerce Clause.

Although plaintiffs contend that by increasing franchisees’ labor costs, the City is “rigging the playing field,” akin to Hunt or the Islamorada cases, to prevail on their dormant Commerce Clause challenge, plaintiffs must present evidence that the City has done so in a way that will impact the flow of interstate commerce. See, e.g., Hunt, 432 U.S. at 349 (“Not every exercise of state authority imposing some burden on the free flow of commerce is invalid.”); Milk Control Bd. v. Eisenberg Farm Prod., 306 U.S. 346, 351-52 (1939) (“Every state police statute necessarily will affect interstate commerce in some degree, but such a statute does not run counter to the grant of Congressional power
merely because it incidentally or indirectly involves or burdens interstate commerce...”); cf. *Family Winemakers*, 592 F.3d at 11 (“Here, the totality of the evidence introduced by the plaintiffs demonstrates that the... [statute’s] effect is to significantly alter the terms of competition between in-state and out-of-state wineries to the detriment of the out-of-state wineries that produce 98 percent of the country’s wine.”).

Again, the evidence of discriminatory effect must be substantial. *See Black Star Farms*, 600 F.3d at 1233 (distinguishing *Family Winemakers* on this very point and finding that the “plaintiffs in that case, unlike the plaintiffs here, had *evidence* to prove their contentions”) (emphases added). Here, there is simply no credible evidence in the record that indicates franchisees will close up shop or reduce operations, or that new franchisees will not open up in Seattle. Although one plaintiff’s declaration indicates that the faster phase-in may cause her to go out of business, she is only speculating. *(Lyons Decl.) Dkt. # 37-5, ¶ 20.*\(^\text{16}\) Her declaration is merely anecdotal and does not include any data analysis or empirical evidence that would lead the court to believe that imposing a faster phase-in schedule on franchisees is going to impact interstate commerce. The same is true regarding the survey results presented by *amicis curiae*, in which a minority of small business owners *predicted* that they were “likely” to limit expansion in response to the wage increase. *(Br. of Am. Hotel & Lodging Ass’n et al.) Dkt. #43-1, p. 8.* The survey is based upon little more than conjecture and, in any case, fails to differentiate the responses of independent small business owners from those of franchisees.\(^\text{17}\) Further, other *amicis* have submitted contrary evidence, showing that although business owners in

\(^{16}\) Katherine M. Lyons is an individual plaintiff in this matter and the owner of a BrightStar Care franchise.

San Jose made similar predictions in response to that City’s minimum wage increase, “[f]ast-food hiring accelerated once the higher wage was in place.”¹⁸ (Br. of Nat’l Emp. Law Project) Dkt. # 76, p. 15. Indeed, as stated recently by the CEO of Togo’s Eateries, a sandwich franchisor that is planning an expansion into Seattle, “[the increase in the minimum wage] is what it is. Every city passes its own laws. We have a way to adjust the pricing and labor models to help us still be competitive but also make a profit.” Rachel Lerman, Fast-food eatery Togo’s will expand to Seattle (not afraid of $15 wage), Puget Sound Bus. J. (June 11, 2014). Mr. Gordon, one of the franchise experts, confirmed this possibility, stating, “[F]ranchisors also have the ability to use their greater financial resources to support the franchise by aiding franchisees during time of business stress. Because of these advantages, franchisees and franchisors are better able than independent small businesses to identify and respond to changed business conditions, including regularly scheduled minimum wage increases.” (Gordon Decl.) Dkt. # 70-2, ¶9.

Put simply, there is no evidence demonstrating whether the Ordinance will have an impact on interstate commerce one way or the other, and the court declines to infer that it will necessarily have a negative one. At most, plaintiffs have shown possible or potential discriminatory effect, and as the Ninth Circuit has already found, that showing is insufficient. See Black Star Farms, 600 F.3d at 1232, 1235 (“Courts examining a ‘practical effect’ challenge must be reluctant to invalidate a state statutory scheme…simply because it might turn out down the road to be at odds with our

¹⁸ See, e.g., Eric Morath, What Happened to Fast-Food Workers When San Jose Raised the Minimum Wage? Hold the Layoffs, Wall Street Journal, April 9, 2014; Timothy Egan, For $7.93 an hour, It’s Worth a Trip Across a State Line, N.Y Times, Jan. 11, 2007 (finding that when Washington State raised its minimum wage, businesses near the Idaho state line “prospered far beyond their expectations” and suffered no decrease in profitability).
constitutional prohibition against state laws that discriminate against interstate commerce.

2. Tier Two: The Pike Balancing Test

Because the court finds no discriminatory purpose or effect, it must move on to the Pike balancing test. Under that test, despite being non-discriminatory, a statute or regulation may be invalid if it, nevertheless, has an indirect effect on interstate commerce:

When...a statute has only indirect effects on interstate commerce and regulates evenhandedly, we have examined whether the State’s interest is legitimate and whether the burden on interstate commerce clearly exceeds the local benefits.

Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970). Under Pike, if a legitimate local purpose is found, then the question becomes one of degree. The extent of the burden that will be tolerated depends on the nature of the local interest involved. Id.

Even in weighing competing interests, however, “the Supreme Court has frequently admonished that courts should not second-guess the empirical judgments of lawmakers concerning the utility of legislation.” S.D. Myers, Inc. v. City of San Francisco, 253 F.3d 461, 471 (9th Cir. 2001) (quoting Pac. Nw. Venison Prods. v. Smitch, 20 F.3d 1008, 1017 (9th Cir. 1994)). Instead, for a facially neutral statute to violate the Commerce Clause, the burdens of the statute must so outweigh the putative benefits as to make the statute unreasonable or irrational. Id. (quoting Ala. Airlines, Inc. v. City of Long Beach, 951 F.2d 977 (9th Cir. 1991)). A challenge to the legislative judgment must establish that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decision-maker.


Here, even if the court assumes that the Ordinance will have some incidental
burden on interstate commerce, for the reasons articulated above, plaintiffs have not shown that burden will “clearly exceed” the proffered local benefit, such that the benefit is unreasonable or irrational. The Ordinance is, at least putatively, designed to assist low wage workers, to decrease the gender wage gap, and to ensure that workers can better support and care for their families and fully participate in Seattle’s civic, cultural and economic life -- objectives that are well within the scope of legitimate municipal policymaking. While the court may philosophize about ways that the Ordinance could have been more narrowly tailored to achieve these goals, it is not the court’s place to second guess the reasoned judgments of the lawmakers who studied and analyzed this issue as part of an involved legislative process. Ordinance § 1, ¶¶ 5-9. Accordingly, the court finds that the Ordinance survives the Pike balancing test as well.

B. Equal Protection

Plaintiffs also contend that the Ordinance arbitrarily and irrationally discriminates against franchisees because it treats franchisees employing only 5-10 workers as “large” employers and subjects them to the faster phase-in schedule. This results, they argue, in a disadvantage to franchisees because they compete with small independent businesses that will not be subject to the same labor costs during the phase-in of the minimum wage. (Pls.’ Mot.) Dkt. # 37, pp. 22-25.

Whether embodied in the Fourteenth Amendment or inferred from the Fifth, equal protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices. F.C.C. v. Beach Commc’n’s, Inc., 508 U.S. 307, 313 (1993). “In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against an equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.” Id. (citations omitted) (emphasis added). This standard of review is a paradigm of judicial restraint. Id. “The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be
rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted." *Vance v. Bradley*, 440 U.S. 93, 97 (1979). Thus, those attacking the rationality of the legislative classification have the burden "to negative every conceivable basis which might support it." *Id.* at 315 (citing *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973)).

Moreover, because courts never require a legislature to articulate its reasons for enacting a statute, it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature. *United States R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 179 (1980). In other words, a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data. *Vance*, 440 U.S. at 111. "Only by faithful adherence to this guiding principle of judicial review of legislation is it possible to preserve to the legislative branch its rightful independence and its ability to function." *Lehnhausen*, 410 U.S. at 365 (quoting *Carmichael v. S. Coal & Coke Co.*, 301 U.S. 495, 510 (1937)).

Here, there is certainly a "reasonably conceivable state of facts" that provides a rational basis for the classification of franchisees as large businesses. Two experts, Scott Shane and John Gordon, have provided declarations outlining the economic benefits flowing to franchisees as a result of the franchise relationship. *See* (Shane Decl.) Dkt. # 62; (Gordon Decl.) Dkt. # 70-2. Those benefits include, among other things, national advertising, extremely valuable and well-known trademarks, the market power of a large corporation when purchasing supplies and raw materials, and access to valuable and trustworthy information based on the experiences of other franchisees. Dkt. # 62, ¶¶ 10-17; Dkt. # 70-2, ¶¶ 10-31.

Indeed, the individual plaintiffs in this matter do not deny that their franchise relationships provide them with such benefits. For example, plaintiff Ronald Oh, a
partial owner of a Holiday Inn Express franchise, testified that through his franchise network he receives the use of a large on-line reservation system which provides at least twenty-percent of his hotel’s guests; he receives the benefit of a loyalty reward system that has 74 million members worldwide; he is able to consult with others in his franchise network and receive assistance on a host of issues. (Oh Dep.) Dkt. # 87-1, pp. 10-12, 13-14, 15, 16, 21-24. Mr. Oh’s franchise agreement identifies other benefits, including use of Holiday Inn’s trademarks, training, and certain marketing benefits. (Oh Franchise Agreement) Dkt. # 87-2, pp. 9-11.

Similarly, plaintiff Katherine Lyons, partial owner of a BrightStar Care franchise, acknowledged that her franchisor provided assistance in obtaining an SBA loan; the time-saving ability to receive assistance with various matters from a single source; a network of other franchisees who provide trustworthy business advice and whom she can trust; and a franchise-wide marketing fund. (Lyons Dep.) Dkt. # 87-3, pp. 4, 9, 13-15, 16-17. Ms. Lyons’ franchise agreement identifies the use of business software, training, trademarks, and assistance with both opening and operating the business as benefits provided by her franchisor. (Lyons Franchise Agreement) Dkt. # 87-4, pp. 18-19, 21-23, 28-30, 38-39.

A third plaintiff, Charles Stempler, confirmed at his deposition that there are benefits to becoming an AlphaGraphics franchisee, including continuous training and support, lease assistance, buying power via global contracts with major suppliers, management consultation, and ongoing regionalized field and sales support among other things. (Stempler Dep.) Dkt. # 87-5, p. 4; (Stempler Franchise Doc.) Dkt. # 87-6, p. 3. Mr. Stempler’s AlphaGraphics franchise agreement also identifies a number of benefits that AlphGraphics has contractually agreed to provide its franchisees including assistance with site selection; advice on financing; detailed plans for a print shop; three to four weeks of training; up to forty-eight hours per year of free consultation; operating
manuals; and use of trademarks. (Stempler Franchise Agreement) Dkt. #87-7, pp. 16, 17, 19-20, 23-26.

Whether these alleged “benefits” actually put franchisees in a better position to handle the faster phase-in schedule is irrelevant under rational basis review. As explained above, the court must respect the legislative branch's “rightful independence and its ability to function,” and absent some reason to “infer antipathy,” the court cannot overstep and replace its judgment for the judgment of lawmakers. Lehnhausen, 410 U.S. at 365. As long as there was a “reasonably conceivable state of facts” that supported the City’s decision, the court must leave that decision alone. See United States R.R. Ret., 449 U.S. at 179 (“Where there are plausible reasons for Congress’ action, our inquiry is at an end.”) (internal quotations omitted). If the voters are unhappy, they can, of course, resort to the democratic process.

Here, the facts presented by the two experts, along with the facts drawn from the plaintiffs’ individual depositions and franchise agreements confirm that a rational basis exists for the City’s decision to classify franchisees as “large” businesses. Based upon the benefits outlined above, the City could have “reasonably conceived” that franchisees are in a better position than independent small businesses and therefore better able to accommodate the faster phase-in schedule for the minimum wage. Again, the realistic impact of these “benefits” is not part of the court’s inquiry, as the legislature need only show “rational speculation.” See Vance, 440 U.S. at 111 (“[A] legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data.”).

Notably, no one disputes the City’s decision to draw a line defining “large” businesses as any employer with 500 or more employees. But who is to say an employer with 501 employees has more resources than one with 499? And who is to say businesses with 501 employees can actually accommodate a faster phase-in schedule? The court is in no position to answer these questions, nor is the court obliged to do so.
The City Council, based upon its research, review of historical data, legislative hearings, and communications with the public, saw fit to draw the "large" business line at 500 employees. See Beach Commc'ns, Inc., 508 U.S. at 315 ("These restraints on judicial review have added force where the legislature must necessarily engage in a process of line-drawing."). And absent a reason to infer antipathy, the court cannot second-guess the wisdom, fairness, or logic of that choice.

The Ordinance’s separate treatment of "integrated enterprises" does not change the court’s conclusion. The "state of facts" was sufficient to allow the City to "rationally speculate" that: large businesses (those with more than 500 employees) could handle the faster phase-in schedule because presumably they have more resources; that "integrated enterprises" (separate entities that share a certain degree of common control and in aggregate have more than 500 employees) could handle the faster phase-in because of their additional resources; and franchisees (separate entities that are subject to some level of control by a larger entity and receive certain benefits from that larger entity) could handle the faster phase-in because of that business model. Again, because there is a rational basis for the line-drawing, judicial intervention is unwarranted.

Finally, despite plaintiffs’ arguments to the contrary, there is no reason to infer antipathy here. The large majority of statements identified by plaintiffs as showing animus were made by Advisory Committee members and private citizens, not lawmakers. The court has already explained why it gives little weight to such statements, especially when they relate to issues as politically charged as this one. Additionally, the statements by lawmakers distinguished between entities with more resources and those with less resources. When read in context, no protectionist motive was apparent from any of the statements.

Thus, the court finds plaintiffs have neither shown a likelihood of success nor raised serious questions going to the merits of their equal protection claim.
C. First Amendment

Plaintiffs next contend that the faster phase-in schedule violates their freedoms of speech and association. They contend that the Ordinance penalizes franchisees for their association with franchisors and "their decision to engage in protected speech." (Pls.' Mot.) Dkt. # 37, p. 26. They allege that the First Amendment protects their right to engage in "coordinated marketing and advertising" and that the Ordinance will curtail this "commercial speech in at least three important respects." (Compl.) Dkt. # 1, ¶ 169.

First, by increasing the labor costs of franchisees, the Ordinance will reduce the ability of franchisees to dedicate funding to the promotion of their business and brands. Id. Second, the increased labor costs the Ordinance mandates may cause some franchisees to shut their doors, reducing the amount of relevant commercial speech they engage in to zero. Id. And third, the Ordinance will likely cause potential franchisees to forego purchasing a franchise because of the associated higher operation costs. Id.

Plaintiffs' argument is unconvincing. The Ordinance does not penalize speech or association. Rather, it uses certain factors common to franchises to identify them as one type of business subject to the faster phase-in schedule. The definition used by the City here is no different than many other federal and state laws which regulate franchises. See, e.g., 16 C.F.R. § 436.1(h) ("Franchise means any continuing commercial relationship or arrangement...in which the terms of the offer or contract specify...that the franchisee will obtain the right to operate a business that is identified or associated with the franchisor's trademark..."); R.C.W. § 19.100.010(6) ("Franchise means...the operation of the business is substantially associated with a trademark..."); Cal. Bus. & Prof. Code § 20001 ("Franchise means...the operation of the franchisee's business...is substantially associated with the franchisor's trademark..."); N.J.S.A. § 56:10-3 ("Franchise means a written arrangement...in which a person grants to another person a license to use a...trade mark..."). If the court were to accept plaintiffs' argument, it would mean that any regulation that impacts a franchisee's operation costs implicates the
First Amendment because it would necessarily reduce funds that would otherwise be available for “coordinated marketing and advertising” and other forms of commercial speech. Plaintiffs, however, cite no case to support this expansive theory of First Amendment rights.

Indeed, as recognized by the First Circuit, “the mere fact that the joint activities that define the business relationship between the franchisor and its franchisees have some communicative component cannot, in and of itself, establish an entitlement to the prophylaxis of the First Amendment.” See Wine & Spirits Retailers, Inc. v. Rhode Island, 418 F.3d 36, 51, 53 (1st Cir. 2005); see also Roberts v. U.S. Jaycees, 468 U.S. 609, 634, 638 (1984) (O’Connor, J., concurring) (“[T]here is only minimal constitutional protection of the freedom of commercial association,” and that in all events, “no First Amendment interest stands in the way of a State’s rational regulation of economic transactions by or within a commercial association.”).

Accordingly, plaintiffs have not shown a likelihood of success or raised serious questions going to the merits of this claim.

D. Lanham Act Preemption

Next, plaintiffs contend that the Ordinance is preempted by the Lanham Act. Though novel and creative, this argument is untenable. Under the Supremacy Clause, U.S. Const., art. VI, cl. 2, when a local law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,” it is preempted. Hillman v. Maretta, 133 S. Ct. 1943, 1950 (2010). Thus, where conflict is alleged between federal and state law, “the specific purpose of the federal act must be ascertained in order to assess any potential erosion of the federal plan by operation of the state law.” Golden Door, Inc. v. Odisho, 646 F.2d 347, 352 (9th Cir. 1980) (citing Mariniello v. Shell Oil Co., 511 F.2d 853 (3d Cir. 1975)). Deciphering the purposes of the Lanham Act requires no guesswork, as the Act itself includes an “unusual and extraordinarily helpful”

> “[R]egulate commerce within the control of Congress by making actionable the deceptive and misleading use of marks in such commerce; to protect registered marks used in such commerce from interference by State, or territorial legislation; to protect persons engaged in such commerce against unfair competition; to prevent fraud and deception in such commerce by the use of reproductions, copies, counterfeits or colorable imitations of registered marks; and to provide rights and remedies stipulated by treaties and conventions respecting trademarks, trade names, and unfair competition entered into between the United States and foreign nations.”


Nothing in the Ordinance conflicts with these purposes. As explained above, the Ordinance relies on trademark use as one indicator that a business is a franchise. This definition is used merely to categorize franchisees and to identify them as subject to the faster phase-in schedule. Plaintiffs cite no case that holds that such a categorization “interferes” with the use of trademarks in violation of the Lanham Act.

Indeed, there is a presumption against preemption in areas where the states have traditionally exercised their police powers. *N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995). Here, the regulation of wages is firmly within the local police power. See, e.g., *RUI One Corp.*, 371 F.3d at 1150 (acknowledging that “[t]he power to regulate wages and employment conditions lies clearly within a state’s or municipality’s police power.”). To overcome this presumption, plaintiffs must show that preemption was Congress’ “clear and manifest purpose.” *Travelers Ins., Co.*, 514 U.S. at 655. Plaintiffs have made no such showing.

Accordingly, plaintiffs have not shown a likelihood of success or raised serious questions going to the merits of this claim.

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E. ERISA Preemption

Plaintiffs next contend that certain health plan-related provisions of the Ordinance are preempted by the Employment Retirement Income Security Act ("ERISA"). These provisions allow large employers (those with more than 500 employees), who offer their employees health plans classified as "silver" or "gold" under the federal Affordable Care Act, the opportunity to take advantage of an alternative, more favorable, wage schedule. Rather than complying with the three year phase-in, these employers will be given four years to reach the $15 per hour minimum wage. Plaintiffs claim that these provisions are preempted because they "relate to" employee benefit plans that are governed by ERISA. (Pls.' Mot.) Dkt. # 37, pp. 24-26.

This argument, as a practical matter, is not relevant to the pending motion. The health plan-related provisions simply have no impact on the franchise-related provisions plaintiffs seek to enjoin. Here, plaintiffs are asking the court to enjoin the provision that requires them to comply with the three year phase-in schedule (Schedule 1) and to compel the City to allow franchisees to take advantage of the seven year phase-in schedule (Schedule 2). Thus, the validity of this alternative four-year schedule is irrelevant. Even if the court finds that the health plan-related provisions are preempted by ERISA, that finding will do nothing to advance the relief requested by the franchisees in this motion.

Nevertheless, for the sake of completeness, the court will address plaintiffs' argument. To begin with, it is important to reiterate that there is a presumption against preemption when the statute under review relates to a matter of local concern, such as the regulation of wages. See, WSB Elec., Inc. v. Curry, 88 F.3d 788, 791 (9th Cir. 1996) ("It is well settled that wages are a subject of traditional state concern, and are not included in ERISA's definition of employee benefit plan. Thus, regulation of wages per se is not within ERISA's coverage.") (internal quotation marks omitted). Nevertheless, it is possible, under certain circumstances, for ERISA to preempt local wage regulations.
ERISA preempts and supersedes any and all state laws that “relate to” any employee benefit plan. See 29 U.S.C. § 1144(a). Recognizing that the term “relate to” potentially had no limits, the Supreme Court narrowed its scope in New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Company, 514 U.S. 645 (1995) and California Division of Labor Standards Enforcement v. Dillingham Construction Company, 517 U.S. 316 (1997). Under the more narrow construction, the “relate to” criterion is analyzed by determining if the state law: (1) has a “connection with” or (2) a “reference to” employee benefits plans.

1. Does the Ordinance Have a “Connection With” an ERISA Plan?

To determine whether a state or local law has a “connection with” ERISA, courts consider (1) the objectives of ERISA and (2) the nature of the impact that the challenged law has on ERISA plans. Dillingham, 519 U.S. at 325; Golden Gate Rest. Ass’n v. City & County of San Francisco, 546 F.3d 639, 655-56 (9th Cir. 2008).

The objectives of ERISA focus on maintaining a uniform regulatory regime over employee benefit plans. Thus, one purpose of ERISA’s preemption clause is to “ensure that the administrative practices of a benefit plan will be governed by only a single set of regulations.” Golden Gate, 546 F.3d at 655. Accordingly, in considering the nature and impact local laws have on ERISA plans, courts will often find that they have an impermissible “connection with” ERISA if they require employers to have health plans, dictate the specific benefits that must be provided through those plans and/or impose certain reporting requirements which differ from those of ERISA. Id.

Here, the Ordinance does not require any employer to provide any ERISA plan; it does not dictate the contents or any administrative requirements for such a plan; it does not have any direct impact on any ERISA plan; and it does not impose reporting, disclosure, funding, or vesting requirements on any ERISA plan.

Accordingly, it does not have an impermissible “connection with” ERISA.
2. Does the Ordinance Have a “Reference To” an ERISA Plan?

A statute has an impermissible “reference to” ERISA plans if it acts immediately and exclusively upon the plans or if the plans are essential to the law’s operation. Dillingham, 519 U.S. at 324-25; S. Ca. IBEW-NECA Trust Funds v. Standard Indus. Elec. Co., 247 F.3d 920, 525 (9th Cir. 2001). Thus, the challenged statute must do more than mention ERISA to be preempted; it must have some effect upon ERISA plans. WSB Elec., Inc. v., 88 F.3d at 793.

Here, the Ordinance does not have any effect upon ERISA plans. It does not require any employer to provide benefits through ERISA plans nor does it dictate the contents of any such plan. The Ordinance merely allows large employers to take advantage of an alternative four year phase-in schedule if they happen to provide certain benefits to their employees. Thus, while ERISA plans may be optional under the Ordinance, they are certainly not required or “essential” to the law’s operation. See, e.g., WSB Elec., Inc, 88 F.3d at 793 (noting that the statute at issue did not premise any employer obligation on the existence of benefit plans, but instead merely took account of such plans if they happened to exist).

Accordingly, the Ordinance does not have an impermissible “reference to” ERISA.

F. Privileges and Immunities Under Washington State Constitution

Finally, plaintiffs contend that the Ordinance violates the privileges and immunities clause of the Washington Constitution because it infringes on their fundamental right to “carry on business” in Seattle.

Article I, section 12 of the Washington Constitution provides:

No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens or corporations.
Washington courts have often construed article I, section 12 consistent with the federal Equal Protection Clause. *Ockletree v. Franciscan Health Sys.*, 179 Wash. 2d 769, 776 (2014). However, if the matter at issue is one of particular local concern -- such as the power to regulate wages -- an independent analysis is warranted. *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wash. 2d 791, 811 (2004). This analysis involves a two-step inquiry. *Ass'n of Wash. Spirits & Wine Distrib. v. Wash. State Liquor Control Bd.*, 340 P.3d 849, 857 (Wash. 2015) (en banc). The first step is to determine whether the law in question involves a privilege or immunity; if not, then article I, section 12 is not implicated. *Id.* If there is a privilege or immunity, the second step is to determine whether the legislature had a “reasonable ground” for granting the privilege or immunity. *Id.*

1. **Does the Ordinance Involve a Privilege or Immunity?**

   Plaintiffs contend that the slower phase-in schedule is a “privilege” that is granted on unequal terms. (Pls.’ Mot.) Dkt. # 37, pp. 31-32. Although plaintiffs are correct that the slower phase-in schedule favors small independent businesses over other types of businesses in Seattle, plaintiffs fail to show that this benefit is a “privilege” that implicates the Washington Constitution.

   The privileges and immunities clause is not violated anytime the legislature treats similarly situated businesses differently.19 *Am. Legion Post No. 149 v. Dep’t of Health*, 164 Wash. 2d 570, 607 (2008). “[N]ot every legislative classification constitutes a ‘privilege’ within the meaning of article I, section 12 but only those where it is, ‘in its very nature, such a fundamental right of a citizen that it may be said to come within the prohibition of the constitution, or to have been had in mind by the framers of that organic law.’” *Ockletree*, 179 Wash. 2d at 778. As the court found in *Ockletree*,

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19 The court has already outlined the differences between independent small businesses and franchisees.
Accepting Ockletree’s definition means recognizing a privilege anytime a statute grants a right to some but not others...As a result, we could be called upon to second-guess the distinctions drawn by the legislature for policy reasons nearly every time it enacts a statute. For example, the property tax exemptions for citizens “[s]ixty-one years of age or older” and “veterans with one hundred percent service-connected disabilities” could be challenged as unconstitutional grants of special privileges to certain classes of citizens but not others. Similarly, exemptions from emission control inspections for “[f]arm vehicles,” “[s]treet rod vehicles,” “[h]ybrid motor vehicles,” and “[c]lasses of motor vehicles exempted by the director of the department of ecology,” among others, would all be subject to challenge under article I, section 12. RCW 46.16A.060(2)(e), (f), (h), (i). We therefore reject Ockletree’s invitation to broaden the meaning of the word “privilege” for purposes of article I, section 12 and reiterate that a privilege in this context is limited to those fundamental rights of citizenship.

*Id. at 779* (emphasis added).

Plaintiffs insist, however, that a fundamental right is at issue here. They claim that allowing independent small businesses to phase-in the minimum wage at a slower pace than franchisees infringes upon the franchisees’ fundamental right to “carry on business.” (Pls.’ Mot.) Dkt. # 37, p. 31. The court disagrees.

Plaintiffs’ reliance on *Ralph v. City of Wenatchee*, 34 Wash. 2d 638 (1949) is misplaced. There, the City of Wenatchee enacted an ordinance that clearly and purposefully discriminated against itinerant photographers. *Id. at 638-39, 643*. The ordinance imposed substantial licensing fees on the photographers and prohibited them from soliciting business in public places, private homes, and private businesses (i.e., almost everywhere in the city). *Id. at 639-40, 643*. The court found that the effect of these regulations was to “substantially prohibit activity of non-resident photographers in the city of Wenatchee.” *Id. at 642* (emphasis added). Rather than reasonably regulate the activities of itinerant photographers, the city enacted significant burdens and prohibitions on “what is in itself a completely lawful business.” *Id. at 644.*
Here, nothing in the Ordinance prevents anyone from exercising their right to “carry on business.” See, e.g., Am. Legion, 164 Wash. 2d at 608 (holding that business regulations that do not “prevent any entity from engaging in business” do not involve a fundamental right). The Ordinance requires all businesses to pay the higher minimum wage. That “large” businesses must pay $1.00 more in labor costs in 2015, $2.50 more in 2016, and $4 more in 2017 does not substantially burden or prohibit those entities from carrying on business in Seattle. Accordingly, the Ordinance does not implicate a “privilege” under the Washington Constitution.

2. Did the Legislature Have a “Reasonable Ground” for Granting the Privilege or Immunity?

Even if the court were to find that the Ordinance implicates a “privilege or immunity,” plaintiffs’ article I, section 12 challenge still fails because reasonable grounds exist for the distinction between franchisees and small independent businesses. To meet the reasonable ground requirement, distinctions must rest on “real and substantial differences bearing a natural, reasonable, and just relation to the subject matter of the act.” Ockletree, 179 Wash. 2d at 783. The Ordinance readily satisfies this standard for the reasons previously stated. Franchisees enjoy certain benefits as a result of the franchise relationship and those benefits have recognizable economic value to the franchisees. These benefits support the reasonableness of the Ordinance’s distinction between franchises and independent small businesses.

Accordingly, plaintiffs have neither shown a likelihood of success nor raised serious questions regarding the merits of this claim.

G. Irreparable Harm, Balance of the Equities and Public Interest

Although plaintiffs have not shown a likelihood of success on the merits of any of their claims, the court will nevertheless address the remaining preliminary injunction factors.
1. Irreparable Harm

A preliminary injunction is an extraordinary remedy and to obtain such relief, plaintiffs must demonstrate more than a mere "possibility" of harm. Winter, 555 U.S. at 22. Indeed, the need to show "substantial and immediate irreparable injury" is especially strong when plaintiffs seek to enjoin the activity of a state or local government. Hodgers-Durgin v. de la Vina, 199 F.3d 1037, 1042 (9th Cir. 1999) ("The Supreme Court has repeatedly cautioned that, absent a threat of immediate and irreparable harm, the federal courts should not enjoin a state to conduct its business in a particular way.").

Here, plaintiffs have not met their burden of demonstrating the requisite irreparable harm. Although plaintiffs assert that they will suffer competitive injury, loss of customers, loss of goodwill, and the risk of going out of business, Dkt. # 37, p. 32, the court finds that these allegations are conclusory and unsupported by the facts in the record. It is true that "evidence of threatened loss of prospective customers or goodwill" supports a finding of irreparable harm, Stuhlbarg Int'l Sales Co. v. John D. Brush & Co., 240 F.3d 832, 841 (9th Cir. 2001), but that evidence is lacking here. Although the court is sympathetic to the concerns of franchisees, the individual plaintiffs' declarations in this matter consist only of speculation. There is no actual evidence of the alleged negative impacts that plaintiffs fear will occur as a result of the faster phase-in schedule. See Oakland Tribune Inc. v. Chronicle Pub. Co., Inc., 762 F.2d 1374, 1377 (9th Cir. 1985) (discounting conclusory statements concerning irreparable harm made by interested party); see also Am. Passage Media Corp. v. Cass Commc'ns, Inc., 750 F.2d 1470, 1474 (9th Cir. 1985) (reversing a preliminary injunction and finding that plaintiff's forecast of large losses was insufficient to show it was "threatened with extinction").
2. Balance of the Equities and Public Interest

The balance of the equities and public interest factors also weigh against the entry of a preliminary injunction. Plaintiffs' harm is speculative and does not outweigh the concrete harm that will be suffered by employees who are entitled to a Schedule 1 increase in their wages under the Ordinance. When weighing the imminent costs to franchisees (i.e., a $1 per hour differential in pay to their employees and other speculative consequential harms) against the concrete harm to those employees in the form of lost income, it is impossible for the court to find that the equities tip sharply in plaintiffs' favor.

Additionally, contrary to plaintiffs' contentions, granting injunctive relief would not maintain the status quo. Here, the status quo is the Ordinance, which the citizens of Seattle expect to go into effect on April 1, 2015. The public has an interest in ensuring that laws passed by its legislative body are implemented. See, e.g., Golden Gate Rest. Ass'n v. City of San Francisco, 512 F.3d 1112, 1116 (9th Cir. 2008) (observing that enjoining the implementation of an ordinance would disturb rather than maintain the status quo); Planned Parenthood of Blue Ridge v. Camblos, 116 F.3d 707, 721 (4th Cir. 1997) ("[T]he status quo is that which the People have wrought, not that which unaccountable federal judges impose upon them.")

H. The “Serious Questions” Test

Finally, the court finds that plaintiffs have failed to satisfy the alternative “serious questions” standard. See, e.g., Alliance for the Wild Rockies, 632 F.3d at 1135 ("[S]erious questions going to the merits’ and a balance of the hardships that tips sharply towards the plaintiff can support the issuance of a preliminary injunction...."); Sierra On-Line, Inc. v. Phoenix Software, Inc., 739 F.2d 1415, 1421 (9th Cir. 1984) (noting that a “serious question” is one on which the movant has “a fair chance of success on the merits”). Even if the court were to assume that plaintiffs raised “serious questions” regarding their dormant Commerce Clause claim, as set forth above, they have not shown
that the balance of the equities tips sharply in their favor. Accordingly, the court cannot
grant a preliminary injunction under the alternative standard.

V. CONCLUSION

For all the foregoing reasons, the court denies plaintiffs’ motion for preliminary
injunction. Dkt. # 37.

Dated this 17th day of March, 2015.

Richard A. Jones
The Honorable Richard A. Jones
United States District Judge
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERNATIONAL FRANCHISE ASSOCIATION, INC.; CHARLES STEMPLER; KATHERINE LYONS; MARK LYONS; MICHAEL PARK; and RONALD OH,

v.

CITY OF SEATTLE, a municipal corporation; and FRED PODESTA, Director of the Department of Finance and Administrative Services,

Plaintiffs,

v.

Defendants.

[PROPOSED] AMICUS CURIAE BRIEF OF MARTINA PHELPS, CRYSTAL THOMPSON, SERVICE EMPLOYEES INTERNATIONAL UNION HEALTHCARE 1199NW, OPEIU LOCAL 8, SEIU LOCAL 6, SEIU HEALTHCARE 775NW, UFCW LOCAL 21, ONEAMERICA AND WORKING WASHINGTON IN OPPOSITION TO PLAINTIFFS' MOTION FOR A LIMITED PRELIMINARY INJUNCTION

AMICUS CURIAE BRIEF IN OPPOSITION TO MOTION FOR A LIMITED PRELIMINARY INJUNCTION
CASE NO. 2:14-CV-00848-RAJ
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LAW OFFICES OF
SCHWERIN CAMPBELL
BARNARD IGITZIN & LAVITT LLP
18 WEST MERCER STREET SUITE 400
SEATTLE, WASHINGTON 98134-2971
(206) 285-2828
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INTRODUCTION

The Seattle City Council made a legislative policy judgment that franchisees associated with large franchise networks, by virtue of their franchise relationships, are generally in a better position than small, independent businesses to absorb a more accelerated minimum wage increase schedule. That decision was well within the discretion of the legislative policymakers and does not discriminate based on the location of franchises, speech or association, irrational factors, or privileges and immunities under state law. Nor is it preempted by any federal law. For these reasons, and because the harm that will result from delaying the minimum wage increases due thousands of low-wage workers far outweighs Plaintiffs’ speculative showing of harm, the preliminary injunction should be denied.

BACKGROUND

A. The Franchise Business Model

Under the franchise business model, a franchisee agrees to pay a fee to a franchisor, and often royalty payments, in return for the right to use the franchisor’s brand, products, and business practices. Although the terms of each franchise agreement differs, this fundamental bargain – purchase of the right to use business models and intellectual property – is at the heart of every franchise agreement. The franchising relationship is ongoing. Typically, franchisees make periodic payments and agree to abide by brand standards (which often impose significant constraints on how franchisees operate their business) and to submit to varying degrees of franchisor oversight. Declaration of John A. Gordon (“Gordon Decl.”) ¶6 and Exh. 3 at 5. In turn, franchisors commit to provide continuing support in the form of brand development, operational guidance, advertising, and other benefits. Gordon Decl. ¶9 and Exh. 3 at 10. As plaintiff International Franchise Association (“IFA”) boasts in its promotional materials, “[o]wning a franchise allows you to go into business for yourself, but not by yourself.” Declaration of Ann Niehaus (“Niehaus Decl.”) Exh. 1 (IFA Fact Sheet).
Franchisees are willing to pay the licensing fees and royalties required to join a franchise network because they derive meaningful benefits from the franchise relationship. These benefits place franchisees on stronger footing and make them better equipped to absorb increased labor costs than other small businesses in the same industries. Although franchise agreements differ, common benefits enjoyed by participants in the franchise relationship include: 1) extensive operational guidance, including information on best practices developed over time and on the basis of the experience of numerous similarly situated franchisees, 2) strength of brand identity, providing an established customer base built on brand recognition and loyalty, 3) cooperative advertising, often run on a national or international scale, 4) access to sophisticated market research providing guidance on topics including site selection, regional product preferences, and the most effective displays and store layouts, 5) increased access to financing, sometimes offered by the franchisor itself, or from other sources based on cachet afforded by franchise affiliation, 6) training, both prior to opening and ongoing, 7) lower purchasing costs due to volume created by joint purchasing agreements, and 8) access to a network of franchisees operating similar businesses among which best practices can be shared and common issues addressed. Gordon Decl. ¶9.

IFA’s own publications highlight the benefits of the franchise model: “A franchise provides an established product or service which may already enjoy widespread brand-name recognition. This gives the franchisee the benefits of a pre-sold customer base which would ordinarily take years to establish.” Gordon Decl. Exh. 3 at 10; see also Neihaus Decl. Exh. 1 (IFA Fact Sheet). IFA goes on to list the specific benefits of the franchise relationship: “Franchises offer important pre-opening support: [1] site selection, [2] design and construction, [3] financing, [4] training, [5] grand-opening program.” Gordon Decl. Exh. 3 at 10. IFA adds,

1 Franchisee Plaintiffs insist that they derive no significant benefits from their franchise relationships, see Stempler Decl. ¶28; Lyons Decl. ¶23-28, but fail to explain why, if that is the case, they are willing to pay the licensing and royalty fees required by their franchise agreements.

The franchisee Plaintiffs’ own agreements provide specific examples of the franchise model’s benefits. For example, Plaintiff Stempler’s AlphaGraphics franchise agreement provides:

“During the term of this Agreement, COMPANY agrees to furnish support to FRANCHISEE in connection with: (1) methods, standards and operating procedures utilized by ALPHAGRAPHICS® Printshops; (2) purchasing required equipment, fixtures, furnishings, products, signs, materials and supplies; (3) marketing programs; (4) administrative, bookkeeping, accounting, inventory control, and general operating and management procedures; and (5) developing annual profit plans for the PRINTSHOP.

Gordon Decl. Exh. 7 (IFA-0024).

Similarly, Plaintiff Lyons’ franchise agreement provides that the franchisor will provide extensive “Operating Assistance,” including access to an operations manual, assistance in purchasing business supplies, “a forecast to manage business expectations,” extensive training, sample advertisements, “[r]egular consultation and advice in response to Franchisee’s inquiries about specific administrative and operating issues,” and access to an online system for many administrative functions (e.g., sales, recruiting, payroll, billing, HR). Gordon Decl. Exh. 5 (IFA-0122 to -0124); see also Gordon Decl. ¶12-15 (discussing benefits of franchise model).

Franchisees may also benefit from participation in franchisee associations, which connect franchisees with other franchisees in the same network who sell identical products under the same brand pursuant to similar (often identical) franchise agreements. Gordon Decl. ¶25-26. These networks can provide invaluable assistance in identifying best practices, responses to changed circumstances, and important developments.  

In addition to these structural benefits, franchisees are made stronger by the potential availability of other types of franchisor assistance. For example, franchisors have the capability
to offer support such as phased-in royalty payments for franchisees with special needs, to reduce marketing fees, to restructure debt obligations and/or to decrease rents on property owned by the franchisor. \textit{Id.} ¶27-30. Similarly, franchisors can offer additional training or operational guidance for franchisees facing unforeseen problems or changing circumstances. \textit{Id.} ¶12-15, 27. A franchisor can always choose to provide assistance to a struggling franchisee, even if not compelled to do so. \textit{Id.} ¶27.²

B. The Seattle Minimum Wage Ordinance

1. Implementation of the Minimum Wage Increase

Under the Ordinance, Schedule 1 employers – those with more than 500 employees in the United States and all franchisees associated with a franchisor or network of franchisees that employ more than 500 employees in the aggregate – face more accelerated increases than smaller employers covered by Schedule 2. Dkt. 38-1 at 8.

2. Legislative History of the Franchise Provisions of the Ordinance

The decision to include the franchise provisions of the Ordinance was the product of legislative compromise and was informed by the Council members’ understanding of features of the franchise relationship that distinguish franchisees from independent small businesses.

To establish the City Council’s supposed animus toward franchisees, Plaintiffs quote a select number of comments in emails, meetings, Facebook postings, correspondence, public hearings, and newspaper editorials by members of the Income Inequality Advisory Committee ("IIAC"), city hall staff members, the Seattle Times editorial board, and IFA’s own board members, Dkt. 37 at 5-8 – none of whom are competent to establish the City Council’s intent.³

² For example, the Burger King Corporation recently offered royalty rate reductions to its franchisees to accommodate increased costs due to required restaurant remodels, and has also worked with struggling franchisees to restructure their financial obligations. See Gordon Decl. ¶¶27-30 and Exhs. 9-11 (providing additional examples).

³ The IIAC is an independent body formed by Seattle Mayor Ed Murray and comprised of representatives from the business, labor and community advocacy communities. Dkt. 63 (Feldstein Decl. ¶7). Plaintiffs acknowledge that the IIAC neither drafted the ordinance nor recommended its franchise provisions of the ordinance pertaining to franchises. Dkt. 37 at 5.

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Plaintiffs also quote several statements by city officials regarding this lawsuit. *Id.* at 11-12. But those statements were made well after the Ordinance was adopted. Moreover, those statements simply explain that the franchisees’ ongoing relationships with their franchisors and the overall franchise network distinguish them from independent small businesses and may make it easier for franchisees than for independent small businesses to adjust to any strain caused by the schedule of minimum wage increases set by the Ordinance. *Id.*

Yet Plaintiffs ignore the most relevant legislative history demonstrating why the City Council adopted that provision: the legislators’ own pre-enactment statements.

For example, at the May 22, 2014 meeting of the Select Committee on Minimum Wage and Income Inequality (“Select Committee”), Council Member Licata explained that the proposed legislation treated franchises differently than independent small businesses because of specific, salient characteristics of the franchise business model:

> [T]hey have the option of not being a franchise, be an independent restaurant, or independent fast food if they wish, but one of the reasons they often don’t is because the franchise controls so much of their business. Perhaps the food supply, the advertising, so, there is a relationship there that they obviously benefit from and, so, they may be an LLC, they may be some legal model that they sign the check as a boss, but they are part of the corporate structure and they contribute to the corporate profits.

Niehaus Decl. Exh. 3 (May 22, 2014 Select Committee Hearing).

Similarly, at an April 9, 2014 Select Committee hearing, Councilmember Clark explained her belief that franchisees differed from independent small businesses in their ability to absorb increased labor costs: “[I]t’s good to point out that we don’t have the McDonald’s, and the Olive Trees and the Pizza Huts here at the table. And to some degree, I’m ok with that because I don’t actually worry about them absorbing a fifteen dollar wage mandate in the city.” Niehaus Decl. Exh. 2 (April 9, 2014 Select Committee Hearing).

Mayor Murray released a statement explaining the franchise provisions of the Ordinance:

> Franchises have resources that a small business in the Rainier Valley or a small sandwich shop on Capitol Hill do not have. Franchise restaurants have menus that
are developed by a corporate national entity, a food supply and products that are provided by a corporate national entity, training provided by a corporate national entity, and advertising provided by a corporate national entity. They are not the same as a local sandwich shop that opens up or a new local restaurant that opens up in the city. Our process for reaching $15 an hour in Seattle recognizes that difference.

Dkt. 38-16 (June 11, 2014 Statement).

In light of the foregoing, it is clear that Plaintiff’s contention that the franchise provisions of the Ordinance were adopted for improper or irrational reasons is without merit.4

ARGUMENT

Plaintiffs seeking a preliminary injunction must establish that they are likely to succeed on the merits, that they are likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in their favor, and that an injunction is in the public interest. Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 20 (2008). Plaintiffs here can satisfy none of those four prerequisites.

A. Likelihood of Success

1. The Ordinance does not violate the Commerce Clause.

Under the “dormant” Commerce Clause, U.S. Const. art. I, §8, cl. 3, a local or state measure that “discriminate[s] against interstate commerce either on its face or in practical effect” is subject to heightened scrutiny. Black Star Farms LLC v. Oliver, 600 F.3d 1225, 1230 (9th Cir. 2009).

Indeed, the Ordinance is not even the first legislative enactment by the City of Seattle that acknowledges the significant differences between franchisees and other businesses. Any business that wishes to lease space in Seattle’s Pike Place Market, which legally is the “Pike Place Market Historic District” created by the City of Seattle under the city code, see Seattle Municipal Code (“SMC”) §25.24. is subject to the Market Historical Guidelines administered by the City of Seattle. See, e.g., SMC §25.24.030; http://www.pikeplacemarket.org/pages/commercial-leasing. Those Guidelines very specifically preclude from this opportunity any business that is part of any “franchise” operation:

2.6.8 Ownership or Control Outside the Market. The Commission may deny an application that otherwise meets the Guidelines if the owner or the business entity has an ownership interest in or controls a similar business outside the Market. Franchise ownership and chain operations especially are not allowed in the Market....  


Any determination by this Court that franchisees may not be treated differently from other businesses of the same size would render this time-honored limitation on franchises in the Pike Place Market invalid, as well.
A law "can discriminate against out-of-state interests in three different ways: (a) facially, (b) purposefully, or (c) in practical effect." National Ass'n of Optometrists & Opticians LensCrafters, Inc. v. Brown, 567 F.3d 521, 525 (9th Cir. 2009) ("Optometrists I") (internal quotation marks omitted). "Discrimination" means "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." Oregon Waste Sys., Inc. v. Department of Environmental Quality, 511 U.S. 93, 99 (1994). "Of course, the 'differential treatment' must be as between persons or entities who are similarly situated." Black Star Farms, 600 F.3d at 1230; accord Gen. Motors Corp. v. Tracy, 519 U.S. 278, 298-99 (1997). No such discrimination has been, or could be, shown here.

a. There is no facial discrimination.

The Seattle Ordinance does not treat businesses located in Washington State any more favorably than out-of-state businesses. The Ordinance implements a graduated wage schedule that allows smaller businesses additional time to absorb the economic impact of the wage increases that will lift their Seattle employees out of poverty. In determining which minimum wage increase schedule applies — the decelerated schedule for small employers or the more accelerated schedule for large employers — the Ordinance counts all employees of a particular employer nationwide. If the employer at issue is a franchisee, the Ordinance counts all employees in the franchise network. Where the franchisors and their associated franchisees are located (i.e., whether in-state or out-of-state) is wholly irrelevant to which wage schedule applies.

Plaintiffs' repeated suggestion that the applicability of Schedule 1 to a franchisee depends on whether the franchisee's network is "interstate" and/or whether the franchisor is located or headquartered in- or out-of-state, is simply false. The Ordinance makes no such distinction;
rather, it classifies all franchisees as Schedule 1 employers if the franchise's network collectively employs more than 500 employees. See SMC §§14.19.010(I); 14.19.010(K). Nor does the Ordinance discriminate against Washington franchisees that have out-of-state contacts, or make any distinction among franchisees based on the location of other members of the franchise network. See SMC §§14.19.010(I); 14.19.010(J).

b. There are no discriminatory effects.

Plaintiffs' argument that the Ordinance nonetheless has discriminatory effects because most affected franchisees happen to be affiliated with franchisors that are headquartered out-of-state, and/or because all affected franchisees are part of franchise networks with at least some out-of-state participants, fails for two independent reasons.

First, alleged disparate treatment of different in-state economic interests does not establish a dormant Commerce Clause discrimination claim. In Yakima Valley Memorial Hosp. v. Wash. Dep't of Health, 731 F.3d 843, 846 (9th Cir. 2013), the Ninth Circuit rejected a Commerce Clause challenge to a state law that would have shifted business from one in-state hospital to another, reasoning that the law did not treat in-state and out-of-state entities differently. Here, Plaintiffs argue that independent businesses located in Seattle are treated more favorably than franchisees located in Seattle. As the Ninth Circuit has held, such a claim of disparate treatment between two in-state entities fails to state a Commerce Clause discrimination claim.

Second, even if disparate treatment between two in-state economic interests could amount to discrimination, Plaintiffs cannot demonstrate differential treatment of similarly situated entities. “[A]ny notion of discrimination assumes a comparison of substantially similar entities.” Dept. of Revenue of Ky. v. Davis, 553 U.S. 328, 342 (2008) (emphasis added) (internal disparate treatment of small businesses based on whether they have ties to an interstate franchise network and out-of-state businesses”), 16:13-14 (Ordinance “treat[s] small businesses differently based on whether they choose to develop ties with an interstate franchise network”) (emphasis supplied in all instances).
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quotation marks omitted); see also Tracy, 519 U.S. at 298-99; Optometrists I, 567 F.3d at 525
(“To determine whether the laws have a discriminatory effect it is necessary to compare
LensCrafters with a similarly situated in-state entity.”).

Under the controlling legal authority, franchisees are not similarly situated to independent
small businesses for purposes of a Commerce Clause discrimination claim. In Optometrists I,
the Ninth Circuit rejected the argument that businesses were similarly situated simply because
they competed in the same market, holding that differential treatment is constitutional where the
competitors have “different business structures.” 567 F.3d at 527. It went on to note that “a
state may prevent businesses with certain structures or methods of operation from participating
in a retail market without violating the dormant Commerce Clause.” Id. (citing Exxon Corp. v.
Governor of Md., 437 U.S. 117, 125-26 (1978)). As in Optometrists I, franchisees have
“different business structures” from, and enjoy some “advantages” over, their independent
competitors. 567 F.3d at 527, 528.

Nor can Plaintiffs establish discriminatory effect through evidence that most franchisors
are located out-of-state, or even that all affected franchisees happen to be part of franchises with
at least one out-of-state franchisee. Dkt. 37 at 13:28-14:1. In Exxon, plaintiff argued that a state
statute barring gasoline refiners from owning retail gas stations in Maryland discriminated
against interstate commerce because “the burden of the divestiture requirements [fell] solely on
interstate companies” (because no gasoline refiners operated in Maryland). 437 U.S. at 125
(emphasis added). The Supreme Court rejected the argument, concluding that this fact did “not
lead, either logically or as a practical matter, to a conclusion that the State is discriminating
against interstate commerce.” Id.; see also CTS Corp. v. Dynamics Corp. of Am., 481 U.S. 69,
88 (1987) (rejecting argument that “statute is discriminatory because it will apply most often to
out-of-state entities” on ground that statute imposes same burden on similarly situated in- and
out-of-state entities); Pharm. Research and Mfrs. of Amer. v. Cnty. of Alameda, __ F.3d __, 2014
WL 4814407, at *2 (9th Cir. Sept. 30, 2014) (“[A] statute that treats all private companies

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LAW OFFICES OF
SCHWERIN CAMPBELL
BARNARD IGITZIN & LAVITT LLP
18 WEST MERCER STREET SUITE 400
SEATTLE, WASHINGTON 98119-3971
(206) 285-2828
exactly the same does not discriminate against interstate commerce. This is so even when only
out-of-state businesses are burdened because there are no comparable in-state businesses.”)  
(internal quotation marks omitted); Dex Media West, Inc. v. City of Seattle, 793 F.Supp.2d 1213,
1235 (W.D. Wa. 2011), rev’d on other grounds, 696 F.3d 952 (9th Cir. 2012) (“that [an]
exemption may apply to more local than out-of-state entities does not establish that the
exemption is discriminatory in effect against interstate commerce”).

Plaintiffs assert that the Ordinance’s minimum wage schedules are “tantamount to a tariff
on interstate commerce.” Dkt. 37 at 14:8. However, a tariff “taxes goods imported from other
States, but does not tax similar products produced in State.” West Lynn Creamery v. Healy, 512
U.S. 186, 193 (1994). Thus, in West Lynn Creamery, Massachusetts imposed a tax that
ostensibly burdened all milk producers (whether in- or out-of-state) but then effectively
exempted in-state producers through a rebate that offset the tax. Id. at 190-91, 194. Here, by
contrast, there is no such discrimination between in- and out-of-state entities. Thus, even if the
Ordinance’s wage schedules could be characterized as a tax, it is not akin to a tariff because
“[t]ariff-like statutes . . . provide distinct advantages to in-state entities over out-of-state entities.”
Pharm. Research, 2014 WL 4814407, at *3. As with the ordinance that the Ninth Circuit
considered in Pharm. Research, “[g]iven that the Ordinance applies across the board, it does not
discriminate at all, let alone in the same way as a tariff.” Id.

c. There is no discriminatory purpose.

Plaintiffs assert that the Ordinance is invalid because it is based on “a forbidden interest
in protecting local enterprises.” Dkt. 37 at 15. But in evaluating dormant Commerce Clause
claims, courts must “assume that the objectives articulated by the legislature are actual purposes
of the statute, unless an examination of the circumstances forces [a conclusion] that they could
not have been a goal of the legislation.” Rocky Mountain Farmers Union v. Corey, 730 F.3d
1070, 1097-98 (9th Cir. 2013) (quoting Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456,
463 n.7 (1981)). Plaintiffs’ evidence does not compel such a conclusion.
Plaintiffs have not identified a single alleged statement of discriminatory purpose related to in-state versus out-of-state commerce uttered by a single legislator at the time of the Ordinance's enactment. See Dex Media West, 793 F.Supp.2d at 1235 ("The words of the legislative body itself, written contemporaneously with the passage of the law in question, are usually the most authoritative guide to legislative purpose."). Plaintiffs instead rely on statements by private individuals that are not indicative of legislative purpose; and they mischaracterize the two public officials' statements (one by a council member and the other by the Mayor) they cite. See supra at 5. Accordingly, Plaintiffs provide no evidence of a protectionist purpose and this Court must therefore conclude that the Ordinance's stated goals — promoting "the general welfare, health, and prosperity of Seattle" and responding "to the challenge of rising income inequality" — are its "actual purposes." Rocky Mountain Farmers Union, 730 F.3d at 1098.

d. The Ordinance's burden on interstate commerce does not clearly exceed its local benefits.

When, as is the case here, a statute "has only indirect effects on interstate commerce and regulates evenhandedly," the Court may choose to examine whether the State's interest is legitimate and whether the burden on interstate commerce clearly exceeds the local benefits. S.D. Myers, Inc. v. City & Cnty. of San Francisco, 253 F.3d 461, 466, 471 (9th Cir. 2001). As the City points out, Dkt. 61 at 6, Plaintiffs do not make this argument. And for good reason, because it would be meritless.

First, the Ordinance serves a number of important legitimate local interests, the most important of which is assuring good wages for employees working in the City of Seattle, including for franchises. Second, under Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970), "[i]f a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved...." S.D. Myers, Inc., 253 F.3d at 471 (quoting Pike, 397 U.S. at 142). Here, Plaintiffs
fail to show any burden on interstate commerce. See Indep. Training and Apprenticeship Prog. v. Cal. Dept. of Indus. Rel., 730 F.3d 1024, 1038-39 (9th Cir. 2013) (improving apprentice’s chances to obtain employment in specific trade within particular geographic area was “putative local benefit” that outweighed any burden on interstate commerce caused by apprenticeship program test); S.D. Myers, 253 F.3d at 471 (absent specific details as to how the costs of the Ordinance burdened interstate commerce, the benefit of ensuring nondiscriminatory employment benefits for City contractors was not clearly outweighed by a burden on interstate commerce); Pharm. Research, 2014 WL 4814407, at *5 (impact on commerce means impact on flow of goods into/out of the geographic area). Any balancing analysis would therefore necessarily establish that the burden on interstate commerce does not clearly exceed the Ordinance’s local benefits.

2. The Ordinance does not violate the Equal Protection Clause.

Because Plaintiffs do not allege that the Ordinance infringes a fundamental right or targets a suspect class, the City Council’s classification is subject only to rational basis review. See FCC v. Beach Comm’ns, 508 U.S. 307, 313 (1993). “[T]he wisdom, fairness, or logic of legislative choices” is thus irrelevant; a law survives rational basis review so long as “there is any reasonably conceivable state of facts that could provide a rational basis for the classification.” Id. Moreover, the Ordinance comes to this Court “bearing a strong presumption of validity,” and Plaintiffs “have the burden ‘to negative every conceivable basis which might support it.’” Id. at 314-15 (quoting Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 364 (1973) (internal citations omitted) (emphasis added)).

Plaintiffs argue that the franchisee classification is “irrational” because it will subject “businesses that are identical in all material respects” to different minimum wage requirements.

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6 Because a party challenging an economic regulation on Equal Protection grounds must negate all possible reasons for the classification, a legislature is “never require[d] . . . to articulate its reasons for enacting a statute, [and] it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature.” Beach Comm’ns, 508 U.S. at 315.
Dkt. 37 at 17. But in analogous circumstances, the Ninth Circuit upheld the extension of a local living wage ordinance to a small number of employers based on size, location, and revenue, reasoning that “[s]uch legislative decisions are ‘virtually unreviewable, since the legislature must be allowed leeway to approach a perceived problem incrementally’” by “[a]ddressing itself to the phase of the problem which seems most acute to the legislative mind.” RUI One Corp. v. Berkeley, 371 F.3d 1137, 1155 (9th Cir. 2004) (quoting Beach Comm’ns, 508 U.S. at 316). Here, the City may have concluded that franchisees have access to resources and advantages that small independent businesses do not, or that franchisees employ a disproportionate number of low-wage workers and thus should be required to increase their wages on the regular, non-decelerated timeline. See, e.g., Wine and Spirits Retailers, Inc. v. Rhode Island, 418 F.3d 36, 53-54 (1st Cir. 2005) (rejecting equal protection challenge to state law barring franchise from owning liquor licenses based on advantages enjoyed by franchisees); Woodfin Suite Hotels, LLC v. City of Emeryville, 2006 WL 2739309, at *21 (N.D. Cal. Aug. 23, 2006) (city’s minimum wage law, which applied to hotel operators based on number of rooms rather than revenues, was rational because “legislature [may] approach a perceived problem incrementally”).

Such legislative classifications need not effectuate an exact, individualized fit. Of course some franchisees may face difficulties accommodating wage increases that are similar to those faced by a small, independent business. But imperfect fit does not establish an equal protection violation, because legislators “had to draw the line somewhere . . . . This necessity renders the precise coordinates of the resulting legislative judgment virtually unreviewable.” Beach Comm’ns, 508 U.S. at 315-16.

See also Fortuna Enterprises, L.P. v. City of Los Angeles, 673 F.Supp.2d 1000, 1002 (C.D. Cal. 2008) (upholding local ordinance that created Airport Hospitality Enhancement Zone within which hotels with 50 or more guest rooms must pay employees “living wage”); compare West Coast Hotel Co. v. Parrish, 300 U.S. 379, 390, 395 (1937) (specifically approving state and local employment laws limited to particular industries) (citing Spokane Hotels v. Younger, 113 Wash. 359, 360-361 (1920), which defined special minimum wage for hotel housekeepers but no other job classifications, and Miller v. Wilson, 236 U.S. 373, 382-384 (1915), which rejected argument that maximum-hours law was unconstitutional because it applied only to hotels, not to boarding houses or domestic servants).
Finally, Plaintiffs' contention that "mere animus or a forbidden motive like local protectionism" motivated the City Council, Dkt. 37 at 19, is beside the point, in addition to being unsupported (see supra at 4-5). In RUI One Corp., plaintiff alleged that the reasons cited in the living wage ordinance's purpose section "were not the real reasons motivating the City Council's decision, but that the City Council was instead motivated by a desire to help in the unionization campaign at a Marina hotel." 371 F.3d at 1155. The Ninth Circuit rejected the argument, holding "it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature." Id. (quoting Beach Comm'ns, 508 U.S. at 315); see also Fortuna Enterprises, 673 F.Supp.2d at 1014 ("The Court will not engage in a more searching scrutiny of the legislative purposes, given the Ninth Circuit's admonition that the actual motivations are 'entirely irrelevant.'"); Goebel v. Elliott, 178 Wash. 444, 447-48 (1934) (rejecting evidence of city council's purported motives in enacting minimum wage law, because even "[a]ssuming that the wage scale was proposed by a labor union. . . there is nothing therein which can be considered by the courts. Under no consideration or circumstance will the motives of legislators . . . be inquired into by a judicial tribunal.").

3. The Ordinance does not violate the First Amendment.

Because Plaintiffs' free association claim rests upon the purported deprivation of free speech, the two claims should be analyzed together. The Ordinance does not penalize association or speech. Rather, it distinguishes between franchisees and independent businesses.
based a business arrangement that implicates speech only incidentally. Plaintiffs’ argument would mean that franchisees can never be subject to regulation (without satisfying strict scrutiny) because their business model itself “implicates” speech and association. That is not the law. 10

It does not “abridge[e] freedom of speech” to regulate a business relationship “merely because the conduct was in part initiated, evidenced, or carried out by means of language.” Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 502 (1949); see also Roberts v. U.S. Jaycees, 468 U.S. 609, 634 (1984) (O’Connor, J., concurring in part and in the judgment) (“There are, of course, some constitutional protections of commercial speech—speech intended and used to promote a commercial transaction with the speaker. But the State is free to impose any rational regulation on the commercial transaction itself.”); Ohralik v. Ohio State Bar Ass’n, 436 U.S. 447, 456 (1978) (“[T]he State does not lose its power to regulate commercial activity deemed harmful to the public whenever speech is a component of that activity”); Las Vegas Nightlife, Inc. v. Clark Cnty., Nev., 38 F.3d 1100, 1102 (9th Cir. 1994) (“Ordinary commercial activity ... is subject to government regulation without offending the First Amendment.”) (citing Ohralik’s examples of regulation of exchanges of commercial information). Here, the City is not regulating Plaintiffs’ speech or association; it is determining which wage schedule applies to which employees based on factors including size and business relationships.11

Based on such a distinction, the First Circuit rejected a free association challenge to a state law that banned stores holding liquor licenses from entering franchise relationships (defined

10 In fact, many regulations apply solely to the franchise business arrangement. Washington, like many states, directly regulates franchise relationships. See Wash. Rev. Code §19.100 et seq. As noted supra, note 5, the City of Seattle already distinguishes franchisees from independent business by allowing only the latter to operate in Pike Place Market. Pike Place Market Hist. Commission Guideline 2.6.8 (“Franchise ownership and chain operations especially are not allowed in the Market.”), authorized by SMC 25.24.030. Other cities place limits on the operation of formula restaurants. E.g., Bainbridge Island Municipal Code §§18.09.020-030 (limiting “formula take-out restaurants” to one planning zone, limiting their size to 4,000 square feet, and requiring them to share buildings with at least one business that is not a “formula take-out food restaurant”).

11 In Giboney and Ohralick, unlike here, the government regulation directly burdened First Amendment conduct. See Giboney, 336 U.S. at 497-98 (affirming injunction of labor union’s picketing); Ohralik, 436 U.S. at 448-49 (upholding state bar’s discipline of attorney for advertising at hospital).
in part based on coordinated advertising). Wine and Spirits Retailers, 418 F.3d at 50-53. The
court reasoned that “[b]usiness entities have no First Amendment right to combine operations or
coordinate market activities,” even if “communication serves as the primary instrument” of such
coordination. Id. at 51. There, as here, “the mere fact that the joint activities that define the
business relationship between the franchisor and its franchisees have some communicative
component cannot, in and of itself, establish an entitlement to the prophylaxis of the First
Amendment.” Id. at 53.

The cases cited by Plaintiffs are not to the contrary, for in those cases the government
attempted to regulate expressive activity. Dkt. 37 at 21-22. Thus, in Ashcroft v. Free Speech
Coal., 535 U.S. 234, 239, 244 (2002), the Court invalidated a federal law that directly imposed
“criminal penalties on protected speech” by outlawing possession of certain sexually explicit
images, while in Friedman v. Rogers, 440 U.S. 1, 5, 11 (1979), an optician challenged a state law
that directly outlawed “a form of commercial speech” by prohibiting “the practice of optometry
under an assumed name, trade name, or corporate name.”

4. The Ordinance is not preempted by the Lanham Act.

“In the area of trademark law, preemption is the exception rather than the rule.” JCW
Investments, Inc. v. Novelty, Inc., 482 F.3d 910, 919 (7th Cir. 2007). Plaintiffs’ challenge the
Ordinance on the ground that it “disfavor[s] a class of employers defined in significant part by
their use of a shared trademark,” Dkt. 37 at 23:17-18, but that argument has no merit.

Plaintiffs apparently concede that the Lanham Act’s express preemption provision, which
prohibits a narrow set of local actions requiring the alteration of trademarks, is inapplicable. 15
U.S.C. §1121. This provision “is powerful evidence” that Congress did not intend to preempt
laws that, like the Ordinance, fall outside its boundaries. See Wyeth v. Levine, 555 U.S. 555,

Plaintiffs’ quotation from Justice Blackmun (Dkt. 37 at 22) actually comes from the dissenting portion of his
opinion. Friedman, 440 U.S. at 22 n.3. Moreover, the Court in Friedman actually upheld the regulation. Id. at 15-

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574-75 (2009) (Congress’ express preemption regarding medical devices, but silence on prescription drugs, shows no intent to preempt); Freightliner Corp. v. Myrick, 514 U.S. 280, 288 (1995) (express preemption clause establishes inference that implied preemption claim is foreclosed); Mobil Oil Corp. v. Virginia Gasoline Marketers & Auto. Repair Ass’n, Inc., 34 F.3d 220, 227 (4th Cir. 1994) (applying presumption against preemption to law not prohibited by §1121). Moreover, where, as here, a state or locality is exercising traditional police powers, there is a presumption of non-preemption. See New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645, 655 (1995); see also Mass. v. Morash, 490 U.S. 107, 119 (1989) (regulation of wages is historic state power).

Plaintiffs’ challenge is based solely on the Ordinance’s definition of “franchise” to mean a written agreement granting certain specified rights, in return for a franchise fee, when the operation of the business “is substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol[] designating, owned by, or licensed by the grantor or its affiliate.” Dkt. 38-1, Sec. 2 (14.19.010(l)(2); see Dkt. 37 at 24:1-5. This language, of course, is taken directly from Washington State’s definition of “franchise” for purposes of determining, among other things, the applicable rules for registration, sales, and advertising of franchises. RCW §19.100.010(6)(a)(ii).

In arguing that the Lanham Act preempts the Ordinance’s use of this state law definition of franchises, Plaintiffs misleadingly quote from two cases, Golden Door, Inc. v. Odisho, 646 F.2d 347, 352 (9th Cir. 1980), and Mister Donut of Am., Inc. v. Mr. Donut, Inc., 418 F.2d 838, 844 (9th Cir. 1969). Dkt. 37 at 23:24-30. Plaintiffs fail to mention, however, that Golden Door actually “reject[s] the Mister Donut dicta” that Plaintiffs nonetheless cite as if it remains good law, and the Ninth Circuit holds in that case that the only local laws that are preempted are those that conflict with “[t]he limited intent of Congress in enacting the Lanham Act.” 646 F.2d at 352 (emphasis added). Those limited purposes are “to legislate so that the public can buy with confidence, and the trademark holder will not be pirated.” Id. (quoting Mariniello v. Shell Oil
Co., 511 F.2d 853, 858 (3d Cir. 1975)); see also New Kids on the Block v. News Am. Pub., Inc., 971 F.2d 302, 305-06 (9th Cir. 1992) (the Act’s purposes are “constant and limited: Identification of the manufacturer or sponsor of a good or the provider of a service [a]nd ... [p]reventing producers from free-riding on their rivals’ marks”).

Plaintiffs point to no authority supporting their assertion that the Lanham Act impliedly preempts any law that takes a trademark into consideration. See Mobil Oil Corp., 34 F.3d at 227 (rejecting preemption challenge to state law prohibiting sales quotas and other provisions in gas station franchise agreements, because the “fact that a franchisee may not sell as much product as Mobil would desire does not adversely affect Mobil’s trademark image”). In the absence of such authority, Plaintiffs argument has no merit. 13

5. The Ordinance is not preempted by ERISA.

Plaintiffs’ argument that the Ordinance’s grant of “favorable treatment” to employers that offer certain health plans violates ERISA’s preemption provision also lacks merit. The Ninth Circuit rejected a virtually identical ERISA preemption challenge to a law that reduced employers’ prevailing wage obligations based on their expenditures on benefits including those provided through ERISA plans, holding that ERISA does not preempt credits toward a wage requirement based on ERISA plan spending because such laws “do[] not force employers to provide any particular employee benefits or plans, to alter their existing plans, or to even provide ERISA plans or employee benefits at all.” WSB Elec., Inc. v. Curry, 88 F.3d 788, 793 (9th Cir.1996) (upholding prevailing wage law that gave employers credit for expenditures on benefits but did not require provision of benefits); see also S. Cal. IBEW-NECA Trust Funds v. Standard Industrial Elec. Co., 247 F.3d 920, 925 (9th Cir. 2001) (state law that “does not require

13 Compare also, e.g., JCW Investments, Inc. v. Novelty, Inc., 482 F.3d 910, 919 (7th Cir. 2007) (upholding state punitive damages remedies for trademark violations against preemption challenge); Lisa’s Party City, Inc. v. Town of Henrietta, 185 F.3d 12, 15 (2d Cir. 1999) (Lanham Act does not preempt local ordinance regulating sign aesthetics); Tonka Corp. v. Tonk-A-Phone, Inc., 805 F.2d 793, 794-95 (8th Cir. 1986) (local law providing for attorneys’ fees in trademark cases does not conflict with Lanham Act).
the establishment of a separate benefit plan, and imposes no new reporting, disclosure, funding, or vesting requirements for ERISA plans" not preempted); Ironworkers Dist. Council of the Pacific Northwest v. Woodland Park Zoo Planning & Development, 87 Wn. App. 676, 685-686 (1997) (prevailing wage law that gave credit for health plan expenditures not preempted). Here, similarly, the Ordinance does not require any employer to modify its existing health plans or to offer any new plan, because employers can comply solely through the payment of specified wages. As the Third Circuit has explained, "[w]here a legal requirement may be easily satisfied through means unconnected to ERISA plans, and only relates to ERISA plans at the election of an employer, it affects employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan." Keystone Chapter of Associated Builders & Contractors v. Foley, 37 F.3d 945, 960 (3d Cir. 1994) (internal quotations, citations and brackets omitted). 14

Nor does the Ordinance’s mere “reference” to specific types of ERISA plans render it preempted. Dkt. 37 at 25-26. As the City explains, Dkt. 61 at 23, a law has a forbidden “reference” only when it “acts immediately and exclusively upon ERISA plans” or “the existence of ERISA plans is essential to the law’s operation.” Cal. Div. of Labor Standards Enforcement, 519 U.S. 316, 325. A local law that gives credit to employers based on certain ERISA plans, but “can have its full force and effect even if no employer in the City has an ERISA plan,” is not preempted. Golden Gate Restaurant Ass’n, 546 F.3d at 657. “Where a law is fully functional even in the absence of a single ERISA plan, as it was in WSB Electric and as it

14 Plaintiffs may respond that the Ordinance incentivizes employers to modify their ERISA plans, but it does not require any covered employer to do so. That a state or local law may influence employers to change their ERISA plans does not trigger ERISA preemption. See Cal. Div. of Labor Standards Enforcement v. Dillingham Const., N.A., Inc., 519 U.S. 316, 333-34 (1997) (no preemption where state law “alters the incentives, but does not dictate the choices, facing ERISA plans”); preemption only where inducement is “tantamount to a compulsion”; Golden Gate Restaurant Ass’n v. City and County of San Francisco, 546 F.3d 639, 656 (9th Cir. 2008) (noting that Supreme Court upheld law that “exerted economic pressure” on structuring of ERISA plans); WSB, 88 F.3d at 795-96 (fact that law discourages certain ERISA plan spending does not render it preempted).
is in this case, it does not make an impermissible reference to ERISA plans.” Id. at 659.\(^\text{15}\)

In *District of Columbia v. Greater Wash. Bd. of Trade*, 506 U.S. 125, 130 (1992), the challenged law was preempts because an employer’s provision of ERISA benefits directly triggered an obligation to offer the same benefits through workers’ compensation. By contrast, here the Ordinance can operate even if no Seattle employer has an ERISA plan, and “[t]he references to ERISA plans ... have no effect on any ERISA plans, but simply take them into account when calculating the cash wage that must be paid.” *WSB Elec.*, 88 F.3d at 793.\(^\text{16}\)

6. The Ordinance does not violate the Washington Constitution.

Plaintiffs’ claim that the Ordinance violates Article, I, Section 12 of the Washington Constitution (the Privileges and Immunities Clause) will also fail because they cannot establish any “privilege or immunity” under Washington law. *See Ockletree v. Franciscan Health Sys.*, 179 Wn.2d 769, 776 (2014).

Plaintiffs erroneously argue that the Privileges and Immunities Clause “is violated if a statute treats two businesses that are similarly situated ‘differently.’” Dkt. 37 at 26 (quoting *Am.

\(^{15}\) Plaintiffs also complain that certain small employers are not required under the Affordable Care Act to offer health plans, but acknowledge that nothing prohibits them from offering such plans; and Plaintiffs do not appear to make any preemption argument based on this distinction. Dkt. 37 at 25:2-15.

\(^{16}\) Even if Plaintiffs’ challenge had merit, the proper remedy would be to strike the health plan provision, not other portions of the Ordinance. Under Washington law, when part of a statute is invalid, that provision should be severed and the remainder of the law upheld unless: 1) it cannot reasonably be believed that the law would have passed without the invalid portions; or 2) elimination of the invalid portion would render the remaining part useless to accomplish the legislative purpose. *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 227-28 (2000). Here, it can reasonably be believed that the City Council would have adopted the Schedule 1 wages even if employers with the specified health plans would be covered, and the remaining provision of the Ordinance certainly accomplishes its purposes as set forth therein. *See Dkt. 38-1 at 3-4 (“whereas” clauses setting forth intent to address income equality and to allow employees to meet basic needs, support families, and fully participate in community life). Moreover, the severability clause (see Dkt. 38-1 at 17:19-25 (Section 8, adding §14.19.070)) “provide[s] the assurance that the legislative body would have enacted remaining sections even if others are found invalid.” *Amalgamated Transit*, 142 Wn.2d at 228. That severability clause alone can “provide the necessary assurance that the Legislature would have enacted the appropriate sections of the legislation despite the unconstitutional sections.” *Gerberding v. Munro*, 134 Wn.2d 188, 197 (1998).
Legion Post #149 v. Washington State Dep't of Health, 164 Wn.2d 570, 607 (2008)). In fact, the Washington Supreme Court has expressly "rejected the notion that the privileges and immunities clause is violated any time the legislature treats similarly situated businesses differently." Ockletree, 179 Wn.2d at 781 (emphasis added). The right to carry on business is implicated only where a law "prevent[s] [an] entity from engaging in business" altogether. Id.; see also Am. Legion, 164 Wn.2d at 583, 608 (rejecting plaintiff's argument that law prohibiting smoking in some businesses but exempting others violated privileges or immunities because the law did "not prevent any entity from engaging in business" and smoking was not a fundamental right of citizenship); Dex Media West, 2011 WL 4352121 *15-16 (Privileges and Immunities Clause not "implicated" by ordinance imposing costly requirements upon businesses that published and delivered yellow pages but not those that delivered other similar publications, because law did not "prevent[] Plaintiffs from engaging in or carrying on business," but "simply imposes certain business regulations upon Plaintiffs" and "there is no fundamental right to deliver yellow pages directories to the doorsteps of residents who do not want them," nor to avoid the fees and reports required by the law).

Here, similarly, the Ordinance does not prevent Plaintiffs from engaging in business altogether, and payment of less than the Schedule 1 minimum wage is not a fundamental right. Because Plaintiffs have failed to demonstrate that the Ordinance implicates a "privilege or immunity," they will not be able to prevail on this claim. Even if that were not the case, Plaintiffs would be unlikely to succeed for the additional reason that the varied phase-in timelines rest on a "reasonable ground," Ockletree, 179 Wn.2d at 783.18

17 In the language Plaintiffs quoted from American Legion, the Washington Supreme Court was actually summarizing the plaintiff's argument. A few sentences later, the Court roundly rejected that broad reading of the Privileges and Immunities Clause, holding that the plaintiff had "misconstrue[d] the meaning of a privilege." 164 Wn.2d at 607.

18 Cf. Griffin v. Eller, 130 Wn. 2d 58, 66 (1996) (rejecting equal protection challenge to anti-discrimination law's exemption for small employers because distinction rested on "reasonable grounds"); legislature “must draw the line
B. Irreparable Harm

In light of federalism and separation-of-powers concerns, a plaintiff seeking to enjoin local or state government must meet "heightened requirements of a showing of irreparable harm," Garcia v. Lawn, 805 F.2d 1400, 1404 (9th Cir. 1986), and must establish the likelihood of "substantial and immediate" irreparable injury, Hodgers-Durgin v. de la Vina, 199 F.3d 1037, 1043 (9th Cir. 1999) (en banc). "When a plaintiff seeks to enjoin the activity of a government agency . . . his case must contend with the well-established rule that the Government has traditionally been granted the widest latitude in the dispatch of its own internal affairs." Rizzo v. Goode, 423 U.S. 362, 378-79 (1976) (internal quotation marks omitted). "This 'well-established rule' bars federal courts from interfering with non-federal government operations in the absence of facts showing an immediate threat of substantial injury." Midgett v. Tri-County Metro. Transp. Dist. of Oregon, 254 F.3d 846, 850 (9th Cir. 2001).

Plaintiffs have not come close to demonstrating the requisite irreparable harm. Their asserted injuries are purely speculative, arising not from the Ordinance itself but from an uncertain chain of events that Plaintiffs predict will come to pass. Plaintiffs posit that as a result of the Ordinance, they will have higher labor costs than non-franchised small businesses; that those higher labor costs will force them to increase prices; and that these higher prices will cost somewhere"); City of Seattle v. Rogers Clothing for Men, Inc., 114 Wn.2d 213, 235 (1990) (rejecting equal protection challenge to downtown business improvement assessment because there were "reasonable grounds" for imposing disproportionate burden upon smaller businesses); Hemphill v. Washington State Tax Comm'n, 65 Wn.2d 889, 891-94 (1965) (in rejecting Privileges and Immunities challenge, concluding there was rational basis to tax skating rinks and other recreational businesses but exclude bowling alleys); Goebel, 178 Wn. at 448 (in rejecting discrimination challenge to contractor wage law, noting city has power to "classify the different kinds of labor or to classify common labor according to the kind and character of the work involved and to provide a different wage scale for each classification"); Spokane Hotels, 113 Wash. at 360-361 (approving special minimum wage for hotel housekeepers but no other job classifications).
them customers and revenue. Dkt. 37 at 27-29. Each of these attenuated steps in the chain of causation is speculative by itself; and in combination even more so.

To take just one example, each franchisee Plaintiff simply asserts that the Ordinance will result in a gap between the higher wages they will pay and those paid by their competitors. Dkt. 37-1 ¶23; Dkt. 37-5 ¶18; Dkt. 37-6 ¶12. While the Ordinance may require those Plaintiffs to pay more than it requires Schedule 2 businesses to pay, as a practical matter the actual wage gap is not likely to be significant because both sets of businesses are competing to hire and retain workers from the same employment pool. See Gordon Decl. ¶41-42. Just as Plaintiff Stempler asserts that he will (voluntarily, rather than under compulsion of the Ordinance) raise wages even for employees outside of Seattle “to maintain an equitable pay structure,” Dkt. 37-1 ¶¶18-19, so too will many Schedule 2 businesses competing for new employees voluntarily raise wages to avoid losing qualified employees to Schedule 1 businesses.

Similarly, although the franchisee Plaintiffs complain that the Ordinance will force them to raise their prices, see Dkt. 37-1 ¶23; Dkt 37-5 ¶19; Dkt. 37-6 ¶15, the truth is that those businesses, like others, have several options for offsetting higher labor costs (to the extent that is even necessary when many competitors are paying higher wages as well). These options include: accepting lower profit margins; cutting other costs; and where possible, renegotiating their franchise relationships. See Gordon Decl. ¶36-40. Moreover, despite their bald assertions to the contrary, Plaintiffs submit no persuasive evidence that price increases resulting from the Ordinance (if any) would cause them to lose customers, see Dkt. 37-1 ¶23; Dkt. 37-5 ¶19, particularly given the many factors affecting a customer’s decision about which businesses to patronize. See Dkt. 62 (Shane Decl. ¶¶35-36). Although Plaintiff Lyons asserts that the Ordinance “definitely threatens” to put her out of business and cause her and her husband to lose their home, Dkt. 37-5 ¶20, there is simply no basis for speculating, in the complete absence of

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supporting evidence, that any loss of business will occur, let alone be enough to deprive Plaintiffs of meaningful revenue or drive them out of business.\(^1\)

The Supreme Court has made clear that the mere “possibility” of harm is insufficient to support a preliminary injunction, and Plaintiff’s allegations of harm do not rise above the level of possibility. Winter, 555 U.S. at 22; see also Flexible Lifeline Sys., Inc. v. Precision Lift, Inc., 654 F.3d 989, 996-97 (9th Cir. 2011) (same). Even under the lower “possibility” of harm standard (which the Ninth Circuit applied prior to Winter), the Ninth Circuit rejected irreparable harm arguments that relied on an attenuated chain of events or uncertain contingencies such as those urged here. See Caribbean Marine Serv. Co., Inc. v. Baldrige, 844 F.2d 668, 671-72, 675 (9th Cir. 1988) (alleged harms from allowing female observers aboard tuna boats, including lower efficiency, lost profits, and potential liability for harassment or sexual assault were “too remote and speculative to constitute an irreparable injury meriting preliminary injunctive relief”); Colo. River Indian Tribes v. Town of Parker, 776 F.2d 846, 849 (9th Cir. 1985) (“We have long since determined that speculative injury does not constitute irreparable injury.”); Oakland Tribune, Inc. v. Chronicle Pub. Co., Inc., 762 F.2d 1374, 1377 (9th Cir. 1985) (discounting conclusory statements concerning irreparable harm made by “interested party”); Wilson v. Seattle Hous. Auth., No. C09-226MJP, 2010 WL 1945740, at *4 (W.D. Wash. May 13, 2010) (rejecting request for injunction reinstating section 8 benefits and finding “[w]hatever connection there is between her loss of public benefits in 2007 and her inability to pay rent in 2010 is too attenuated to justify categorizing SHA’s conduct and regulations as the proximate cause of the ‘irreparable harm’ she claims and to further justify the extraordinary relief she seeks”); Nampa Classical Academy v. Goesling, No. 09-cv-427-EJL, 2009 WL 2923069, at *3 (D. Idaho Sept. 10, 2009)

\(^{19}\) Plaintiff Oh states that the Ordinance has caused him to lose goodwill because his hotel appears on a boycott list of those supporting this lawsuit, Dkt. 37-6 ¶17, and Plaintiff Lyons asserts that the Ordinance and the campaign to pass it have cost her goodwill by sending a “message” that franchise businesses are not welcome in Seattle, Dkt. 37-5 ¶21. Any harm caused by the campaign in support of the Ordinance is the product of a political campaign and protected speech – not the Ordinance. This cannot constitute irreparable harm supporting injunctive relief.

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("Harm that is speculative, conjectural, attenuated or remote does not constitute irreparable injury . . . ").

Finally, Plaintiffs are unable to show that any harm is imminent. See Monsanto Co. v. Geertson Seed Farms, 561 U.S. 139, 162 (2010) (injunction “not now needed to guard against any present or imminent risk of likely irreparable harm”); Amylin Pharm., Inc. v. Eli Lilly and Co., 456 F. App’x 676, 679 (9th Cir. 2011) (“To support injunctive relief, harm must not only be irreparable, it must be imminent, establishing a threat of irreparable harm in the indefinite future is not enough.”). Plaintiffs do not even allege imminent harm. Rather, they argue that they will lose revenue and, in one instance, face the risk of going out of business because more than six months from now they will face an hourly minimum wage $1 higher than other businesses with the differential growing larger over the next ten years. Dkt. 37 at 27-28.

Plaintiffs’ authority for the propositions that irreparable harm may be established by any competitive disadvantage or possible loss of customers does not withstand scrutiny. In American Passage Media Corp. v. Cass Communications, Inc., 750 F.2d 1470 (9th Cir. 1985), the Ninth Circuit reversed a preliminary injunction, finding that the plaintiff’s forecast of large losses was insufficient to show that it was “threatened with extinction.” 750 F.2d at 1474. The Ninth Circuit explained that “[e]ven if the evidence showed that [customers] were unwilling to do business with [plaintiff] because [of defendant’s actions], this would be insufficient evidence of irreparable harm.” Id. at 1473. In UBS Financial Services, Inc. v. Hergert, No. C13-1825RAJ, 2013 WL 5588315, at *2 (W.D. Wash. Oct. 10, 2013), this Court issued a limited TRO enjoining a former employee’s use of an allegedly protected client list in his new job. But the harm in that case was immediate and direct—personal solicitation of the company’s customers by a competitor—unlike the attenuated and uncertain harm alleged here. Moreover, the TRO was issued on an ex parte, time-limited basis, and the Court later declined to issue a preliminary injunction, concluding that irreparable harm had not been shown. UBS Financial Services, Inc. v. Hergert, No. C13-1825RAJ, 2013 WL 5775667, at *3 (W.D. Wash. Oct. 25, 2013). The rest
of the cases Plaintiffs cite, Dkt. 37 at 27-28, are either not on point,20 were based upon the “possibility”-of-irreparable-harm standard that has been rejected by the Supreme Court,21 or concerned regulations that completely prevented plaintiffs from doing business in certain markets – not an uncertain chain of events leading to a potential future competitive disadvantage.22

C. Balance of Equities and Public Interest

The balance of the equities and public interest also weigh against entry of a preliminary injunction. As previously explained, Plaintiffs’ showing of irreparable injury is speculative and contingent. By contrast, the City’s inability to effectuate its legitimate policy decisions will cause immediate harm to the citizens of Seattle and the democratic process. See Planned Parenthood of the Blue Ridge v. Camblos, 116 F.3d 707, 721 (4th Cir. 1997) (noting that state “has an interest in ensuring that the laws enacted by the General Assembly and signed into law by the Governor are implemented”).

Plaintiffs’ argument that the standard for issuing the preliminary injunction they seek is lower because they attempt to maintain the status quo is off-base. Dkt. 37 at 29 (quoting Rodde v. Bonta, 357 F.3d 988, 999 n.14 (9th Cir. 2004)). The Ordinance has been enacted and the implementation schedule is set. No further City action is necessary and under the current status

20 In Microsoft Corp. v. Mai, No. C09-0474RAJ, 2009 WL 1393750 (W.D. Wash. May 15, 2009), this Court found that a corporation’s violation of a contractual agreement allowed it to “undercut” legitimate distributors who were not parties to the action. Id. at ¶4, ¶14. Because of the competitive harm to non-parties, the Court found that it was in the public interest to issue an injunction; it did not rely on this competitive advantage in finding irreparable harm, which was addressed in different paragraphs of the decision. Id.


22 See Pac. Radiation Oncology, LLC v. Queen’s Med. Ctr., 555 F. App’x 730, 732 (9th Cir. 2014) (plaintiff doctors denied privileges to perform certain medical procedures at hospital were completely unable to provide necessary services to two groups of patients); Gilder v. PGA Tour, Inc., 936 F.2d 417, 423 (9th Cir. 1991) (ban on type of gold club would have “detrimental effect on [professionals’] golf game” and cause manufacturers significant costs to redesign clubs, retool its manufacturing process, and abandon market on which its reputation was built); Microsoft Corp. v. Motorola, Inc., 871 F. Supp.2d 1089 (W.D. Wash. 2012) (plaintiff would be required to completely remove certain products from entire national market).

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quo the minimum wage in Seattle will increase as provided in the Ordinance. It is Plaintiffs who seek to alter the status quo by excising a portion of an enacted law and upsetting the currently operative timetable. The situation here is similar to that in Planned Parenthood of Blue Ridge, in which the Fourth Circuit issued an emergency stay of a district court's injunction blocking implementation of a state statute prior to its effective date. The appellate court rejected the district court's reasoning that an injunction was necessary to preserve the status quo, explaining “[i]n this context, the status quo is that which the People have wrought, not that which unaccountable federal judges impose upon them.” 116 F.3d at 721.

Most importantly, granting Plaintiffs' request for a preliminary injunction will harm the public interest by depriving thousands of low-wage Seattle workers of the higher wages mandated by the Ordinance. Those workers who are employed by franchises that have more than 500 employees in the franchise network but fewer than 500 employees at their particular location, will be subject to the slower Schedule 2 schedule rather than the more accelerated Schedule 1 rate called for by the Ordinance. Over just the first six months the Ordinance is in effect, this means an employee working 40 hours a week would earn $10,400 instead of $11,440.

The harm of enjoining these enacted wage increases substantially outweighs the speculative and contingent loss of business assertions by Plaintiffs. In balancing the respective hardships to the parties, “preventable human suffering,” or “deprivation of life’s necessities,” weighs more heavily than financial loss or administrative inconvenience. Lopez v. Heckler, 713 F.2d 1432, 1437 (9th Cir. 1983); see also United States v. Midway Heights Cnty. Water Dist., 695 F.Supp. 1072, 1077 (E.D. Cal. 1988) (balancing “financial difficulties” against “preventable human suffering” and resolving stay application in favor of the latter). The Ninth Circuit has recognized that “[o]ur society as a whole suffers when we neglect the poor, the hungry, the disabled, or when we deprive them of their rights or privileges.” Lopez, 713 F.2d at 1437.

As the Seattle City Council found, “minimum wage laws promote the general welfare, health, and prosperity of Seattle by ensuring that workers can better support and care for their
families and fully participate in Seattle's civic, cultural, and economic life.” Dkt. 38-1 at 4.

Individual Seattle workers who would be impacted by Plaintiffs’ requested preliminary injunction provide the most powerful evidence of the public interest in denying the injunction and allowing workers' wages to rise as called for by the ordinance. Brittany Phelps, a McDonald's worker who currently lives with family members and supports herself and her daughter on her $9.32/hr wage explains, “[e]ven this modest increase will make a difference in my ability to live independently and have a stable income. The new minimum wage will make it easier for me to keep food in the refrigerator and to pay for living expenses for me and my daughter. I also believe it will help me to save money to get my own apartment and to eventually pursue my life goal of opening my own restaurant.” B. Phelps Decl. ¶6. Similarly, Jason Harvey, who earns $9.32/hr working at Burger King explains that the wage increase called for by the ordinance will help him afford better food, improve his apartment, and seek previously unaffordable reconstructive dental care for damage to his teeth. Harvey Decl. ¶¶3-6; see also Dkt. 19 (M. Phelps Decl. ¶¶4-5) (explaining that Ordinance will help her pay down medical debt and live on her own); Dkt. 23 (Thompson Decl. ¶¶7-9) (explaining that ordinance will help her move to a safe neighborhood and get an apartment big enough for her two children).

CONCLUSION

For the reasons discussed, Plaintiffs’ motion for a preliminary injunction should be denied.

RESPECTFULLY SUBMITTED this 2nd day of October, 2014.
SCHWERIN CAMPBELL BARNARD
IGLITZIN & LAVITT LLP

By:  s/ Dmitri Iglitzin
Dmitri Iglitzin, WSBA #17673
s/ Jennifer L. Robbins
Jennifer L. Robbins, WSBA #40861
Schwerin Campbell Barnard Iglitzin &
Lavitt, LLP
18 West Mercer Street, Suite 400
Seattle, WA 98119
(206) 257-6008
(206) 378-4132
iglitzin@workerlaw.com
robbins@workerlaw.com
Attorneys for Defendant-Intervenors

ALTSHULER BERZON LLP

By:  s/ Stacey Leyton
Stacey Leyton, CABA #203827*

s/ Michael Rubin
Michael Rubin, CABA #80618*

s/ Danielle Leonard
Danielle Leonard, CABA #218201*
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108
(415) 421-7151
(415) 362-8064
sleyton@altshulerberzon.com
mrubin@altshulerberzon.com
dleonard@altshulerberzon.com

*Admitted Pro Hac Vice

Attorneys for Defendant-Intervenors

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