

1 Mark E. Ellis – 127159
Daniel D. McGee – 218947
2 Maria S. Rosenfeld – 186116
ELLIS, LA VOIE, POIRIER, STEINHEIMER & MCGEE LLP
3 555 University Avenue, Suite 200 East
Sacramento, CA 95825
4 Tel: (916) 283-8820
Fax: (916) 283-8821
5

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Superior Court Of California,
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amacias
By _____, Deputy
Case Number:
34-2010-00081992

6 Attorneys for Plaintiff SULTAN HAMEED
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SACRAMENTO

10 SULTAN HAMEED,

Case No :

11 Plaintiff, individually and on behalf of
those similarly situated,

**COMPLAINT FOR UNJUST
ENRICHMENT; ACCOUNTING;
VIOLATION OF THE UNFAIR
COMPETITION LAW (CAL. BUS. & PROF.
CODE §§17200 *et. seq.*); BREACH OF
CONTRACT; DECLARATORY RELIEF**

12 v.

13 IHOP FRANCHISING, LLC; IHOP
14 PROPERTIES, LLC; INTERNATIONAL
HOUSE OF PANCAKES, INC.; IHOP
15 RESTAURANTS, INC; IHOP PROPERTIES,
INC.; DINEEQUITY, INC.

JURY TRIAL DEMANDED

16 And DOES 1-1500,

[CLASS ACTION]

17 Defendants.
18

Department
Assignments
Case Management 35
Law and Motion 54
Minors Compromise 14

19
20 COMES NOW Plaintiff SULTAN HAMEED, and pleads as follows:

21 1. Plaintiff SULTAN HAMEED (“HAMEED”) is an INTERNATIONAL HOUSE OF
22 PANCAKES (“IHOP”) franchisee. He brings this action on behalf of himself and as a class
23 representative on behalf of all other similarly situated IHOP franchisees pursuant to Code of Civil
24 Procedure § 382, and, as such, HAMEED seeks to represent IHOP franchisees similarly affected by
25 certain common, unfair, unlawful, and/or deceptive business practices imposed on HAMEED and
26 other franchisees by IHOP.
27
28

1 **PARTIES**

2 2. Plaintiff HAMEED, is a resident of Sacramento, California, and has been an IHOP
3 "purchase program" franchisee since approximately 1998, operating the same, single IHOP restaurant
4 located at 3800 Northgate Blvd. in Sacramento, California (also known as IHOP # 1717).

5 3. Defendant IHOP FRANCHISING, LLC is a Delaware limited liability company with its
6 principal place of business in Glendale, California. Plaintiff is informed and believes IHOP
7 FRANCHISING, LLC is the successor in interest to INTERNATIONAL HOUSE OF PANCAKES,
8 INC.

9 4. Plaintiff is informed and believes the entity known as IHOP RESTAURANTS, INC.
10 previously merged into INTERNATIONAL HOUSE OF PANCAKES, INC.

11 5. Defendant IHOP PROPERTIES, LLC is a Delaware limited liability company with its
12 principal place of business in Glendale, California. Plaintiff is informed and believes IHOP
13 PROPERTIES, LLC is the successor in interest to IHOP PROPERTIES, INC.

14 6. Plaintiff is informed and believes that defendant DINEEQUITY, INC. is the successor
15 corporation of the IHOP entities named above, and the ultimate parent of all named defendants, with
16 its principal place of business and corporate headquarters in Glendale, California.

17 7. Each named defendant and fictitiously named defendant acted as the agent of the
18 remaining defendants. Defendants are collectively referred to herein, as "IHOP defendants."

19 8. Plaintiff is unaware of the true names of the defendants sued herein as DOES 1 through
20 1,500, and therefore sues these defendants by fictitious names. Plaintiff will seek leave to amend this
21 complaint to allege their true names and capacities when ascertained. Plaintiff alleges on information
22 and belief that DOES 1 through 1,500 are in some way responsible for the events, injuries, and
23 damages alleged in this complaint.

24 9. Each franchisee, as that term is used in this Complaint, consists of a franchisee who has
25 executed one or more franchise agreements with Defendant(s).

26 **JURISDICTION AND VENUE**

27 10. This Court has subject matter jurisdiction over this class action pursuant to California
28 Code of Civil Procedure § 382; the California Unfair Competition Law (California Business and
Professions Code §§ 17200, *et. seq.*); and because defendants do business within the State of
California.

1 17. Plaintiff HAMEED has substantially performed all contractual obligations required of
2 him under the Franchise Agreement and Equipment Lease.

3 18. The Franchise Agreement requires that every five years, "at Franchisee's sole cost and
4 expense," franchisee shall "refurbish, remodel and improve" the restaurant in accordance with
5 franchisor's current standards. (See **Exhibit A**, attached, Franchise Agreement § 4.03(b)). To date,
6 HAMEED has performed at least two remodels at IHOP # 1717.

7 19. On or about July 8, 1998, plaintiff HAMEED also signed a standardized form
8 Equipment Lease (**Exhibit C**) wherein HAMEED is the lessee and IHOP is the lessor. The relevant
9 terms of this agreement are as follows:

10 Lessor hereby leases to Lessee, and Lessee rents from Lessor the restaurant
11 fixtures, equipment and expendables, in accordance with that certain inventory
12 taken and agreed upon by the parties...together with any replacements thereof or
13 additions thereto...During and after the term of this Lease, the Personal Property
14 shall be and remain the sole property of Lessor." (**Exhibit C**, Equipment Lease §
15 I)

16 The term of this Lease shall commence on the date of possession by Lessee of the
17 IHOP restaurant and continue for a term coincident with that of the Sublease
18 executed concurrently herewith." (*Id.* at § III).

19 Lessee shall pay to Lessor... as rent for the use of the Personal Property each
20 week during the term hereof the sum of \$740.00... Lessee shall pay, as additional
21 rent, any and all personal property taxes, sales and/or use taxes assessed against
22 the Personal Property through the term hereof. (*Id.* at § IV)

23 20. IHOP has also imposed obligations upon Franchisees in the form of so-called
24 Operational bulletins and related policy updates (known as "Standard Operating Procedures")
25 requiring Franchisees to update and/or upgrade equipment in the restaurants. Between obligations
26 imposed by the Franchise Agreement, and/or Operational bulletins, and/or other Standard Operating
27 Procedures, virtually all of the equipment listed in HAMEED's Equipment lease has been required to
28 be replaced by HAMEED at his own expense, and is no longer leased by HAMEED from the IHOP
defendants. Instead, most of the equipment is now owned outright by HAMEED and/or leased by him
from third parties. Notwithstanding these circumstances, where IHOP has no ownership or other
interest in the equipment, IHOP continues to enforce HAMEED's equipment lease, obligating
HAMEED to pay IHOP \$740.00 per week. This continuing obligation under these circumstances is

1 illusory, is not supported by consideration, is unfair, illegal, deceptive and in violation of public policy.
2 IHOP defendants should be ordered to disgorge monies wrongfully collected as equipment rent, and/or
3 pay damages regarding the same.

4 Advertising Fund

5 21. HAMEED as an IHOP franchisee has made regular weekly contributions to the IHOP
6 defendants for advertising services pursuant to his Franchise Agreement based on a percentage of gross
7 sales.

8 22. Pursuant to ¶ 7.01(b) of the Franchise Agreement, the IHOP defendants are obligated to
9 administratively segregate the National Advertising funds on their books and records, together with the
10 aggregate of: (i) National Advertising Fees payments made by all franchisees of IHOP restaurants; (ii)
11 Payments equal to 1% of the Gross Sales of IHOP Restaurants operated by Franchisor and its
12 Affiliates; and (iii) All Table Allowances received by Franchisor or its Affiliates.

13 23. National Advertising funds are to be used by IHOP defendants to develop advertising,
14 public relations, and promotional campaigns designed to promote and enhance the image, identity or
15 patronage for the benefit of IHOP restaurants within the IHOP franchise system, including
16 HAMEED's IHOP #1717, and restaurants of similarly situated Class members.

17 24. HAMEED has not received the proper, required documentation accounting for how
18 National Advertising funds or local advertising funds transferred to the National Advertising fund,
19 have been used, or disbursed.

20 Development Impact Assistance Program ("DIAP")

21 25. HAMEED as an IHOP franchisee is entitled to the benefit of IHOP's Development
22 Impact Assistance Program ("DIAP").

23 26. The Development Impact Assistance Program provides monetary aid to an affected,
24 existing Franchisee (whose restaurant has been open and in operation at least six months prior to a
25 "new" IHOP restaurant opening) whenever a "new" IHOP restaurant is opened in proximity to the
26 existing Franchisee restaurant under certain conditions where:

27 a. the "new" IHOP restaurant is located five miles or less from an existing IHOP
28 restaurant or,

b. the newly opened IHOP restaurant and existing IHOP restaurant are located
adjacent to a freeway (within 1000 feet of an off-ramp or exit from a freeway or directly visible from

1 the freeway) and within 10 minutes from each other at the posted speed limit.

2 27. If the "new" restaurant falls within these parameters, and if the "new" IHOP restaurant
3 causes a sales decline to the affected, existing IHOP restaurant of greater than three percent (3%) after
4 the first month following the opening of the new restaurant, IHOP is obligated to compensate the
5 owner of the affected, existing restaurant.

6 28. In or around March 2009, IHOP proposed plans to build a new IHOP in West
7 Sacramento, California, at 779 Ikea Court.

8 29. HAMEED opposed the planned new restaurant on the grounds it would negatively
9 impact HAMEED's business.

10 30. HAMEED requested that IHOP conduct an "impact study" in line with the DIAP
11 implemented and supervised by IHOP during the March 2009 timeframe and all relevant times
12 thereafter, but none was performed by IHOP.

13 31. Instead, the IHOP defendants authorized the building of the new IHOP restaurant at 779
14 Ikea Court in West Sacramento, California.

15 32. In or around June of 2009, the IHOP defendants asserted that HAMEED's restaurant
16 did not qualify for the DIAP, when, in fact, HAMEED did so qualify.

17 33. HAMEED was wrongfully denied eligibility in the DIAP.

18 34. However, a different IHOP franchisee, also located near the new 779 Ikea Court
19 Franchise, was automatically issued an impact study concerning the 779 Ikea Court IHOP location, and
20 was permitted to participate in the DIAP.

21 35. Plaintiff is informed and believes that because he owns a smaller franchise, he was
22 discriminated against and denied eligibility in the DIAP, while the other IHOP franchisee qualified for
23 the DIAP under similar circumstances.

24 Property Tax

25 36. In conjunction with the standardized form Franchise Agreement (**Exhibit A**) entered
26 into by HAMEED on or about July 8, 1998, HAMEED also entered into a standardized form sublease
27 (**Exhibit B**) with IHOP PROPERTIES, INC., for the rental of the restaurant premises.

28 37. Sublessor IHOP PROPERTIES, INC. in turn acted as lessee on the master lease, with
Lessor/Land Owner, IHOP REALTY CORP.

38. Paragraph two of the Sublease subordination clause contains language whereby

1 HAMEED's Sublease obligations are not to be materially increased as a result of any sale and/or
2 sale/leaseback transaction:

3 Subtenant also hereby covenants and agrees, without the necessity of any further
4 action whatsoever, to subordinate all of its beneficial and legal right, title and
5 interest in and to this Sublease to any new lease ("New Lease") made by
6 Sublandlord, as landlord thereunder, in substitution of the Master Lease in
7 connection with any sale or sale/leaseback transaction of the Premises; provided,
8 however, that the New Lease shall not change the weekly rent by Subtenant
9 under section 2.1 of this Sublease or materially increase any of Subtenant's
10 other obligations under this Sublease. (Exhibit B, at ¶ 9.1, paragraph two,
11 emphasis added).

12 39. Pursuant to the Sublease, HAMEED has paid real estate property tax assessments on the
13 real property on which the franchise restaurant sits since July of 1998.

14 40. On or about March 27, 2008, HAMEED's IHOP restaurant # 1717 premises was sold to
15 the Ann M. Smith Trust. IHOP PROPERTIES, INC. remained the Sublessor under HAMEED's
16 Sublease.

17 41. As a result of this transaction, the real estate property taxes on the restaurant's property
18 more than doubled after a supplemental reassessment performed on the real estate property reflected
19 the March 2008 sale of the property.

20 42. The IHOP defendants, including defendant IHOP PROPERTIES, INC., "passed
21 through" these increased real estate property tax obligations to Sublessee/Franchisee HAMEED, in
22 violation of Paragraph 9.1 of the sublease subordination clause.

23 43. While HAMEED had paid real estate property tax assessments prior to the March 2008
24 property sale, neither the Sublease nor the Franchise Agreement require HAMEED to shoulder the
25 burden of increased real estate tax obligations resulting from a sale or sale/leaseback transaction of the
26 underlying property during the Sublease term.

27 44. Contrary to the terms of the Agreement, plaintiff HAMEED was forced to pay increased
28 real estate tax obligations following the sale/leaseback transaction on the underlying property.

Declaratory Relief

45. HAMEED seeks a declaration of the rights and obligations of the parties to, *inter alia*,
an accounting, participation in the DIAP, a declaration that equipment rent is not owed to IHOP for
equipment (and/or rights to equipment) owned outright and/or leased from third-party entities, and to

1 which IHOP has no ownership or other possessory interest, and a declaration that there is no
2 obligation to pay increased property taxes resulting from any sale/leaseback transaction between IHOP
3 and any other party.

4 **FIRST CAUSE OF ACTION FOR**
5 **UNJUST ENRICHMENT RE: EQUIPMENT LEASE OVERPAYMENT**
6 **(against all Defendants and Does 1-1,500)**

7 46 Plaintiff repeats the allegations in ¶¶ 1-15 and 16-20 above as if set forth within this
8 cause of action.

9 47. This cause of action is brought on behalf of named Plaintiff HAMEED, individually,
10 against all Defendants and Does 1-1,500, and as a class action on behalf of all Equipment Lease Class
11 franchisees similarly situated against all Defendants and Does 1-1,500.

12 48. Plaintiff HAMEED has complied with all obligations within, among other things, the
13 standardized form Equipment Lease and the standardized form Franchise Agreement as implemented
14 by the IHOP defendants.

15 49. Even though HAMEED now owns most of the equipment used in his restaurant, or pays
16 for leased equipment to third-party, non-IHOP lessors, IHOP continues to enforce HAMEED's
17 Equipment Lease, obligating HAMEED to pay IHOP \$740.00 per week for equipment it neither owns,
18 nor leases, to him.

19 50. HAMEED alleges that the continued collection by IHOP of payments for equipment
20 rent under the equipment lease for equipment IHOP no longer owns or leases to HAMEED is
21 unconscionable, and the continued payment terms, under the circumstances, are wholly illusory and are
22 not supported by material consideration.

23 51. Similarly situated Equipment Lease Class franchisees have likewise been charged
24 weekly equipment rent by IHOP for equipment that the franchisee owns outright and/or leases from
25 third-parties, other than the IHOP defendants, and for which IHOP possesses no ownership or
26 possessory interest. In short, IHOP is requiring its franchisees to pay something for nothing.

27 52. Since Plaintiff HAMEED and similarly situated Equipment Lease Class franchisees
28 have already performed fully by satisfying the requisite contractual and payment obligations set forth
in the Franchise Agreement(s) and the Equipment Lease(s), defendants should be ordered to make
restitution and/or pay damages to Plaintiff HAMEED and similarly situated Equipment Lease Class

1 franchisees, by the return of monies wrongfully collected by IHOP as equipment rent from franchisees.

2 53. If this cause of action is not certified by the Court to proceed as a class action, said
3 cause of action shall proceed, individually, on behalf of the currently named Plaintiff, SULTAN
4 HAMEED.

5 WHEREFORE Plaintiffs pray for judgment as set forth below.

6 **SECOND CAUSE OF ACTION FOR**
7 **VIOLATION OF UNFAIR COMPETITION LAW**
8 **(CAL. BUS. & PROF. CODE §§ 17200 et. seq.) : RE: EQUIPMENT LEASE OVERPAYMENT**
9 **(against all Defendants and Does 1-1,500)**

10 54. Plaintiff repeats the allegations in ¶¶ 1-20, 46-53, above as if set forth within this cause
11 of action.

12 55. This cause of action is brought by Plaintiff HAMEED, individually, against all
13 Defendants and Does 1-1,500, and as a class action, on behalf of all IHOP Equipment Lease Class
14 franchisees similarly situated against all Defendants and Does 1-1,500.

15 56. The IHOP Defendants owed Plaintiff HAMEED, and similarly situated Equipment
16 Lease Class franchisees members, a duty to not engage in illegal, fraudulent, misleading, deceptive,
17 unconscionable or unfair business practices prohibited by Cal. Bus. & Prof. Code §§ 17200, et seq.

18 57. The above actions of Defendants constitute illegal, fraudulent, misleading, deceptive,
19 unconscionable or unfair business practices in violation of Cal. Bus. & Prof. Code §§ 17200 et seq.

20 58. As more fully set forth above, collection of equipment lease payments from franchisees
21 by the IHOP defendants for equipment no longer owned by the IHOP defendants constitutes, among
22 other things, an illegal, fraudulent, misleading, deceptive, unconscionable or unfair business practice
23 within the meaning of Business and Professions Code §§ 17200, et seq

24 59. HAMEED, and similarly situated Equipment Lease Class franchisees, continue to pay
25 weekly equipment lease rent to the IHOP defendants pursuant to their respective Equipment Leases
26 even though the IHOP defendants no longer have ownership or other interest in the equipment in the
27 restaurants. Defendants continue to wrongfully collect monies for equipment no longer subject to the
28 terms of the IHOP Equipment Leases.

59. As a direct and proximate result of the above illegal, fraudulent, misleading, deceptive,
unconscionable or unfair business practice, the IHOP defendants have continued to collect monies

1 from Plaintiff HAMEED and similarly situated Equipment Lease Class franchisees for which they do
2 not owe. The IHOP defendants hold these funds in constructive trust for the benefit of HAMEED and
3 similarly situated Equipment Lease Class franchisees.

4 61. Upon information and belief, plaintiff HAMEED alleges the IHOP defendants will
5 continue this wrongful practice unless and until injunctive relief issues from this Court.

6 62. If this cause of action is not certified by the Court to proceed as a class action, said
7 cause of action shall proceed, individually, on behalf of the currently named Plaintiff, SULTAN
8 HAMEED.

9 WHEREFORE Plaintiffs pray for judgment as set forth below.

10 **THIRD CAUSE OF ACTION FOR ACCOUNTING**
11 **(against all Defendants and Does 1-1,500)**

12 63. Plaintiff repeats the allegations in ¶¶ 1-15, 21-24 above as if set forth within this cause
13 of action.

14 64. This cause of action is brought individually on behalf of named Plaintiff, SULTAN
15 HAMEED, against all Defendants and Does 1-1,500, and as a class action, on behalf of all other
16 Advertising Fund Class franchisees similarly situated against all Defendants and Does 1-1,500.

17 65. HAMEED and similarly situated franchisees seek an accounting with regard to National
18 Advertisement funds to establish whether advertisement funds have been administratively segregated,
19 and whether they have been properly utilized for permitted advertising uses.

20 66. Prior to filing suit, HAMEED demanded an accounting of advertising fund
21 contributions by the IHOP defendants in order to elicit the items of information owed to HAMEED
22 pursuant to ¶ 7.01(b) of the Franchise Agreement. The IHOP defendants have failed and refused to
23 provide such an accounting to Plaintiff HAMEED.

24 67. Until an accounting is performed, HAMEED and similarly situated franchisees cannot
25 discern whether National Advertisement funds were appropriately segregated, and/or whether funds
26 were misappropriated, misused, or diverted by IHOP defendants.

27 68. An accounting is requested for the four years prior to the filing of this complaint to the
28 time of class certification.

69. If this cause of action is not certified by the Court to proceed as a class action, said

1 cause of action shall proceed, individually, on behalf of the currently named Plaintiff, SULTAN
2 HAMEED.

3 WHEREFORE, Plaintiffs pray judgment as set forth below.

4 **FOURTH CAUSE OF ACTION FOR**
5 **VIOLATION OF UNFAIR COMPETITION LAW (CAL. BUS. & PROF. CODE §§ 17200, et**
6 **seq.) RE: DEVELOPMENT IMPACT ASSISTANCE PROGRAM (“DIAP”)**
7 **(against all Defendants and Does 1-1,500)**

8 70. Plaintiff repeats the allegations in ¶¶ 1-15, 25-35 above as if set forth within this cause
9 of action.

10 71. This cause of action is brought by Plaintiff HAMEED individually, against all
11 Defendants and Does 1-1,500, and as a class action on behalf of all other DIAP Class franchisees
12 against all Defendants and Does 1-1,500.

13 72. By denying eligibility in the DIAP to HAMEED, individually, and/or as to similarly
14 situated DIAP Class franchisees, while automatically granting eligibility to favored multiple restaurant
15 franchisees in the IHOP franchise system, the IHOP Defendants are engaging in illegal, fraudulent,
16 misleading, deceptive or unlawful business practices prohibited by Cal. Bus. & Prof. Code §§17200,
17 *et seq.*, and which deprive DIAP Class franchisees, such as HAMEED, from realizing the benefits
18 owed to them under their franchise agreements.

19 73. This unfair business practice continues and will continue unless and until an injunction
20 is issued by this Court. Injunctive relief should include an Order prohibiting Defendants from denying
21 eligible franchisees from participating in the DIAP, and otherwise requiring the DIAP to be managed
22 and run per industry standards.

23 74. HAMEED and other similarly situated DIAP Class franchisees are entitled to
24 disgorgement from IHOP, including but not limited to monies obtained by IHOP from “new”
25 franchisees (authorized by IHOP to build new IHOP restaurants even when existing IHOP restaurants
26 are adversely affected under the DIAP parameters) in an amount sufficient to cover that monetary
27 assistance owed to DIAP Class franchisees wrongfully denied participation in the DIAP.

28 75. If this cause of action is not certified by the Court to proceed as a class action, said
cause of action shall proceed on behalf of the currently named Plaintiff, SULTAN HAMEED,
individually.

1 WHEREFORE Plaintiffs pray for judgment as set forth below.

2 **FIFTH CAUSE OF ACTION FOR**
3 **BREACH OF SUBLEASE CONTRACT**
4 **RE: "PASS THROUGH" OF INCREASED PROPERTY TAX OBLIGATIONS**
5 **(against all Defendants and Does 1-1,500)**

6 76. Plaintiff alleges and incorporates herein by reference all of the above allegations in ¶¶
7 1-15, 36-44 of the Complaint as if set forth in full herein.

8 77. This cause of action is brought individually on behalf of Plaintiff HAMEED against all
9 Defendants and Does 1-1,500, and as a class action, on behalf of all other Property Tax Class
10 franchisees, against all Defendants and Does 1-1,500.

11 78. In conjunction with the standardized form Franchise Agreement entered into by
12 HAMEED on or about July 8, 1998, HAMEED also entered into a standardized form Sublease with
13 IHOP PROPERTIES, INC. for the rental of the restaurant premises.

14 79. The real property on which HAMEED operates his IHOP restaurant # 1717 was sold in
15 or around March 2008.

16 80. IHOP PROPERTIES, INC. remained the Sublessor under HAMEED's Sublease, though
17 a "new" Master lease reflected the property's March 2008 sale.

18 81. The real estate property taxes on the property more than doubled after a supplemental
19 reassessment performed reflected the March 2008 sale

20 82. The IHOP defendants, including defendant IHOP PROPERTIES, INC., "passed
21 through" the increased real estate property tax obligations to Sublessee/Franchisee HAMEED.

22 83. The subordination clause provision at ¶ 9.1, paragraph 2 of the Sublease Agreement
23 restricts the IHOP defendants from passing through to HAMEED the increased real estate tax liability
24 which, in HAMEED's case, more than doubled the property tax liability for which HAMEED was
25 previously obligated.

26 84. As noted above, defendants breached the Sublease, and have breached their duties under
27 the implied covenant of good faith and fair dealing by "passing through" the tax liability to Plaintiff
28 HAMEED, and forcing HAMEED to pay the increased tax obligations.

85. As a result of Defendants' breach, HAMEED has sustained damages in the form of
increased real estate property taxes paid following sale and reassessment of the underlying property.

1 86. Plaintiff is informed and believes that other similarly situated Property Tax Class
2 franchisees with same or similar subordination clauses in their Subleases, have been wrongfully forced
3 to absorb increased property tax obligations “passed through” to them following a sale and/or
4 sale/leaseback transaction of their underlying IHOP premises.

5 87. The written Sublease and Franchise agreements between the parties provide for the
6 recovery of reasonable attorney’s fees and costs by the prevailing party. If Plaintiff prevails at trial, he
7 will be entitled to recover attorney fees and costs in an amount to be determined by the Court.

8 88. If this cause of action is not certified by the Court to proceed as a class action, said
9 cause of action shall proceed on behalf of the currently named Plaintiff, SULTAN HAMEED,
10 individually.

11 WHEREFORE, Plaintiffs pray for relief as set forth herein below.

12 **SIXTH CAUSE OF ACTION FOR**
13 **VIOLATION OF UNFAIR COMPETITION LAW (CAL. BUS. & PROF. CODE §§ 17200 et.**
14 **seq.) RE: “PASS THROUGH” OF INCREASED PROPERTY TAX OBLIGATIONS**
15 **(against all Defendants and Does 1-1,500)**

16 89. Plaintiff repeats the allegations in ¶¶ 1-15, 36-46, 76-88 above as if set forth within this
17 cause of action.

18 90. This cause of action is brought by Plaintiff HAMEED, individually, against all
19 Defendants and Does 1-1,500, and as a class action, on behalf of all IHOP Property Tax Class
20 franchisees similarly situated, against all Defendants and Does 1-1,500.

21 91. The IHOP Defendants owed Plaintiff HAMEED, and similarly situated Property Tax
22 Class franchisees members, a duty to not engage in an illegal, fraudulent, misleading, deceptive,
23 unconscionable or unfair business practice prohibited by Cal. Bus. & Prof. Code §§ 17200, *et seq.*

24 92. As more fully set forth above, Property Tax Class franchisees with same or similar
25 subleases have been wrongfully forced to absorb increased property tax obligations “passed through”
26 to them following a sale and/or sale/leaseback transaction of their underlying IHOP premises.

27 93. The increased property tax obligations passed through to Property Tax Class franchisees
28 are contrary to the terms of the agreements in question and constitute illegal, fraudulent, misleading,
deceptive, unconscionable or unfair business practices within the meaning of Business and Professions
Code §§ 17200, *et seq.*

1 94. HAMEED and similarly situated Property Tax Class franchisees have paid and continue
2 to pay increased property tax obligations (following sale/leaseback transactions involving their
3 underlying premises) in order to avoid potential franchisee default proceedings.

4 95. Property Tax Class franchisees were deceived in that the IHOP Defendants represented
5 in their agreements that there were terms forbidding this practice.

6 96. The IHOP defendants will continue this practice unless and until an injunction is issued
7 by this Court. Such injunctive relief should include an Order prohibiting Defendants from wrongfully
8 "passing through" increased property tax obligations in violation of Sublease subordination clauses.

9 97. If this cause of action is not certified by the Court to proceed as a class action, said
10 cause of action shall proceed on behalf of the currently named Plaintiff, SULTAN HAMEED,
11 individually.

12 WHEREFORE Plaintiffs pray for judgment as set forth below.

13 **SEVENTH CAUSE OF ACTION FOR**
14 **DECLARATORY RELIEF--RE: EQUIPMENT LEASE/**
15 **PROPERTY TAX CLAIMS/ADVERTISING CLAIM/DIAP CLAIM**
16 **(CODE CIV. PROC. § 1060)**
17 **(against all Defendants and Does 1-1,500)**

18 98. Plaintiff alleges and incorporates herein by reference all of the above allegations in ¶¶
19 1-15, 45 of the Complaint as if set forth in full herein.

20 99. This cause of action is brought by Plaintiff HAMEED, individually against all
21 Defendants and Does 1-1,500, and as a class action, on behalf of all other Declaratory Relief Class
22 franchisees against all Defendants and Does 1-1,500.

23 100. Actual controversies exist with respect to the rights and the obligations of the parties
24 under the provisions of the various agreements, including the standardized Franchise Agreements,
25 Equipment Leases, and Premises Subleases along with IHOP's DIAP policy in place at all times
26 relevant to this Complaint.

27 101. An actual controversy exists as to the rights and obligations of the franchisees as to
28 whether HAMEED, and similarly situated Equipment Lease franchisees are required to pay equipment
lease payments to IHOP even though IHOP does not own the equipment and the equipment is no
longer subject to any valid IHOP equipment lease.

102. An actual controversy exists as to the rights and obligations of HAMEED and similarly

1 situated Property Tax Class franchisees who have been required to pay increased property tax
2 obligations “passed through” to them following a sale and/or sale/leaseback transaction of their
3 underlying IHOP premises in contravention of their standardized Sublease Agreements containing
4 terms preventing any material increase of sublessee obligations in connection with a property
5 sale/leaseback transaction.

6 103. An actual controversy exists as to the rights and obligations of HAMEED and similarly
7 situated Advertising Class franchisees who have been required to pay advertising contributions but
8 who, in contravention of their standardized Franchise Agreements, have not received the proper,
9 required documentation accounting for how National Advertising funds (or local advertising funds
10 transferred to the National Advertising fund) have been used, or disbursed.

11 104. An actual controversy exists as to the rights and obligations of HAMEED and similarly
12 situated DIAP Class franchisees who meet IHOP DIAP parameters but have been denied impact
13 studies and eligibility in the DIAP, while similarly situated multiple restaurant franchisees have been
14 automatically issued impact studies and granted eligibility in the DIAP.

15 105. Plaintiffs desire a judicial determination and declaration of rights and obligations under
16 the Agreements, including, but not limited to, that: (1) the Equipment Lease rent provisions are
17 unenforceable as to any equipment no longer subject to the standardized Equipment Leases; (2)
18 Subleases for IHOP properties are unenforceable as to payments for increased property tax obligations
19 “passed through” to franchisees following a sale and/or sale/leaseback transaction of the underlying
20 IHOP premises when the franchisees’ subleases contain subordination clauses precluding material
21 increase in sublessee obligations in conjunction with sale/leaseback transaction(s); (3) IHOP is
22 required, pursuant to ¶ 7.01(b) of the standardized Franchise Agreements to provide franchisees with
23 an accounting for how National Advertising funds have been used or disbursed; and (4) IHOP must
24 administer its DIAP uniformly as to all franchisees and per industry standards.

25 106. Such declarations are necessary and proper at this time so that Plaintiff and similarly
26 situated franchisees may ascertain their rights and continuing obligations under the Agreements.

27 107. If this cause of action is not certified by the Court to proceed as a class action, said
28 cause of action shall proceed on behalf of the currently named Plaintiff, SULTAN HAMEED,
individually.

WHEREFORE Plaintiffs pray for judgment as set forth below.

1 **ISSUES COMMON TO THE CLASSES**

2 108. The class definitions below are made subject to Plaintiff HAMEED's right to amend,
3 modify, limit, broaden, or clarify the same, and/or to designate one or more subclasses as may become
4 practicable, and subject to discovery and the discretion of the Court.

5 109. Plaintiff HAMEED is a representative and typical member of all pled classes.

6 110. Plaintiff HAMEED, as Class representative, will fairly and adequately protect the
7 interests of the requested Classes.

8 111. Individual prosecution is economically impractical. The requested classes are readily
9 ascertainable, as outlined below, and are otherwise so numerous that joinder of all members is
10 impractical. Class action prosecution will ensure uniformity of decisions and reduce multiplicity of
11 lawsuits on identical issues.

12 112. Common issues predominate within each of the proposed class definitions:

13 a. **Equipment Lease Class:**

14 113. Plaintiff HAMEED seeks to certify a class made up of IHOP franchisees that entered
15 into a standardized IHOP Franchise Agreement and IHOP "Equipment Lease" ("Equipment Lease
16 Class"), and who were required to make payments to IHOP for equipment which the IHOP defendants
17 no longer owned and/or no longer were leasing to the franchisees.

18 114. This class is defined as those IHOP franchisees who entered into (1) a standardized
19 IHOP Franchise Agreement (the same or similar to **Exhibit A**, attached) and (2) a standardized IHOP
20 "Equipment Lease" (the same as or similar to **Exhibit C**, attached), and who paid rent to IHOP for
21 equipment owned outright by the franchisee or otherwise leased from a third party within the last four
22 years of the filing of this complaint.

23 b. **Advertising Fund Class:**

24 115. Plaintiff HAMEED seeks to certify a class defined as those IHOP franchisees who
25 entered into a standardized IHOP Franchise Agreement, the same or similar to **Exhibit A**, attached,
26 who made national and local advertising fund contributions to IHOP ("Advertising Fund Class")
27 within the last four years of the filing of this complaint.

28 c. **DIAP Class:**

116. Plaintiff seeks to certify a class ("DIAP Class") defined as those franchisees who within
the last four years of the filing of this complaint were denied participation in IHOP's Development

1 Impact Assistance Program (“DIAP”) despite their IHOP restaurants being opened and in operation at
2 least six months prior to a “new” IHOP restaurant being opened where (1) the “new” IHOP restaurant
3 was opened within five miles or less, or (2) the existing and newly opened IHOP restaurants were
4 located (a) within 1000 feet of an off-ramp or exit from an interstate highway or freeway or directly
5 visible from the interstate highway or freeway, and (b) within 10 minutes driving time from each other
6 at the posted speed limit.

7 **d. Property Tax Class:**

8 117. Plaintiff seeks to certify a class defined as those IHOP franchisees who entered into a
9 standardized IHOP form “Sublease”, the same or similar to **Exhibit B**, attached, or other agreement
10 containing terms preventing any material increase in the franchisee’s obligations during the term of the
11 Sublease in connection with a sale and/or sale/leaseback transaction of the underlying franchisee
12 restaurant premises, but who in fact were required to pay “pass through” tax payment increases within
13 the last four years of the filing of this complaint.

14 **e. Declaratory Relief Class:**

15 118. Plaintiff seeks to certify a Declaratory Relief Class made up of the following IHOP
16 franchisees: Equipment Lease Class, Advertising Class, DIAP Class, and Property Tax Class
17 members, each of which is defined hereinabove.

18 119. This class is further defined into the following subclasses:

19 • Subclass A: Those IHOP franchisees who entered into (1) a standardized IHOP
20 Franchise Agreement (the same or similar to **Exhibit A**, attached) and (2) a standardized IHOP
21 “Equipment Lease” (the same as or similar to **Exhibit C**, attached), and who paid rent to IHOP for
22 equipment owned outright by the franchisee or otherwise leased from a third party within the last four
23 years of the filing of this complaint (Equipment Lease Declaratory Relief Subclass);

24 • Subclass B: Those IHOP franchisees who entered into a standardized IHOP Franchise
25 Agreement, the same or similar to **Exhibit A**, attached, who made national and local advertising fund
26 contributions to IHOP (“Advertising Fund Class”) within the last four years of the filing of this
27 complaint (Advertising Fund Declaratory Relief Subclass);

28 • Subclass C: Those franchisees who within the last four years of the filing of this
complaint were denied participation in IHOP’s Development Impact Assistance Program (“DIAP”) despite their IHOP restaurants being opened and in operation at least six months prior to a “new”

1 IHOP restaurant being opened where (1) the “new” IHOP restaurant was opened within five miles or
2 less, or (2) the existing and newly opened IHOP restaurants were located (a) within 1000 feet of an
3 off-ramp or exit from an interstate highway or freeway or directly visible from the interstate highway
4 or freeway, and (b) within 10 minutes driving time from each other at the posted speed limit (DIAP
5 Declaratory Relief Subclass); and

6 • Subclass (D): Those IHOP franchisees who entered into a standardized IHOP form
7 “Sublease”, the same or similar to **Exhibit B**, attached, or other agreement containing terms preventing
8 any material increase in the franchisee’s obligations during the term of the Sublease in connection with
9 a sale and/or sale/leaseback transaction of the underlying franchisee restaurant premises, but who in
10 fact were required to pay “pass through” tax payment increases within the last four years of the filing
11 of this complaint (“Property Tax Declaratory Relief Subclass”).

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff, HAMEED, on behalf of himself, individually, and on behalf of all
14 others similarly situated, on the causes of action as set forth above, prays for judgment against
15 Defendants, and each of them, as follows:

16 **AS TO THE FIRST CAUSE OF ACTION FOR
UNJUST ENRICHMENT RE: EQUIPMENT LEASE OVERPAYMENT**

17 1. Restitution and/or disgorgement of all equipment lease rents obtained by IHOP as a
18 result of its misconduct, together with interest thereon from the date of equipment lease payment, to
19 HAMEED and/or Equipment Lease franchisee class members;

20 2. For such other and further appropriate legal or equitable relief as the Court may deem
21 proper, including a constructive trust and/or prejudgment interest;

22 **AS TO THE SECOND CAUSE OF ACTION FOR
UNFAIR BUSINESS PRACTICES ACT RE: EQUIPMENT LEASE OVERPAYMENT**

23 1. Restitution and/or disgorgement of all equipment lease rents obtained by IHOP as a
24 result of its misconduct, together with interest thereon from the date of equipment lease payment, to
25 the franchisee victims of such violations;

26 2. A Temporary Restraining Order and Permanent Injunction prohibiting IHOP
27 defendants from collecting equipment lease rent payments from HAMEED and/or Equipment Lease
28 Class franchisees for equipment no longer subject to an equipment lease;

- 1 3. For attorneys' fees and costs;
- 2 4. For such other and further relief as the Court may deem proper, including the
- 3 imposition of a constructive trust and/or prejudgment interest;

4 **AS TO THE THIRD CAUSE OF ACTION FOR AN ACCOUNTING:**

5 1. For IHOP Defendants to account to HAMEED and/or Advertising Fund Class

6 franchisees for all advertisement fund contributions received within the four years prior to the filing of

7 this Complaint to the time of class certification or as dictated by the Court;

8 2. For such other and further relief as the Court may deem proper, including

9 reimbursement as necessary, plus prejudgment interest;

10 **AS TO THE FOURTH CAUSE OF ACTION FOR**

11 **UNFAIR BUSINESS PRACTICES RE:**

12 **DEVELOPMENT IMPACT ASSISTANCE PROGRAM**

13 1. For Restitution and/or disgorgement of all franchise related fees obtained by IHOP from

14 "new" restaurant franchisees in an amount sufficient to cover monetary relief owed to HAMEED

15 and/or DIAP Class franchisees wrongfully denied participation in the DIAP;

16 2. A Temporary Restraining Order and Permanent Injunction prohibiting IHOP

17 Defendants from denying HAMEED and/or DIAP Class franchisees of their right to participate in the

18 Development Impact Assistance Program;

19 3. For attorneys' fees and costs;

20 4. For such other and further relief as the Court may deem proper; including the

21 imposition of a constructive trust and/or prejudgment interest.

22 **AS TO THE FIFTH CAUSE OF ACTION FOR**

23 **BREACH OF SUBLEASE CONTRACT---RE "PASS THROUGH"**

24 **OF INCREASED PROPERTY TAX OBLIGATIONS**

25 1. Compensatory damages according to proof;

26 2. For attorneys' fees and costs;

27 3. For such other and further relief as the Court may deem proper, including prejudgment

28 interest.

JURY DEMAND

1
2 Plaintiff HAMEED, and Class members, demand a trial by jury on all causes of action so
3 triable.

4
5 Dated: July 2, 2010

6 ELLIS, LAVOIE, POIRIER, STEINHEIMER
& MCGEE LLP

7
8 By 
9 Mark E. Ellis
Attorney for Plaintiff SULTAN HAMEED

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