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**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA**

RestoPros Franchising, LLC,

Plaintiff,

v.

SFTS Services, Inc., Dale L. Bailey, and
Brandy M. Bailey,

Defendants.

Case No.

VERIFIED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

Plaintiff, RestoPros Franchising, LLC (“RestoPros”), for its Complaint against Defendants, SFTS Services, Inc. d/b/a Renew & Restore Professionals (“SFTS Services”), Dale L. Bailey (“Dale Bailey”) and Brandy M. Bailey (“Brandy Bailey”) (collectively, SFTS Services, Dale Bailey and Brandy Bailey are referred to collective as the “Defendants”), states as follows:

PRELIMINARY STATEMENT

1. This action arises from Defendants’ willful trademark infringement and deceptive trade practices resulting from their unauthorized use of RestoPros’ registered and common law trademark rights in and to RESTOPROS and related marks (together, the “RESTOPROS Marks”) for identical services, and Defendants’ willful violation of their restrictive covenants and other defaults under their franchise agreement with RestoPros. Although RestoPros worked in good faith to resolve this dispute without the intervention of the courts, Defendants have ignored RestoPros’ cease-and-desist letters and any attempt to resolve this matter.

JURISDICTION AND VENUE

2. This is an action for breach of contract, trademark infringement, and unfair competition under the Lanham Act (15 U.S.C. § 1501 *et seq.*); and misappropriation and unfair competition under Indiana common law. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331 (federal question pursuant to 15 U.S.C. § 1121 *et. seq.*) and 28 U.S.C. § 1332(a) (diversity). RestoPros' state law claims are properly before this Court pursuant to 28 U.S.C § 1367 (supplemental jurisdiction) and 28 U.S.C. § 1338(b) (original jurisdiction over unfair competition claims related to federal trademarks claims).

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because Defendants reside in this district, a substantial part of the events giving rise to RestoPros' claims occurred in this district and/or this is the judicial district in which Defendants are subject to personal jurisdiction. Further, Defendants' unlawful conduct out of which RestoPros' claims arise occurred primarily in Indiana, directly affected Indiana consumers (including and especially those within this District) and caused the brunt of RestoPros' injury within this District.

THE PARTIES

4. RestoPros is a North Carolina limited liability company with its principal place of business at 14301 South Lakes Drive, Charlotte, North Carolina.

5. Alex Blair is the sole member of RestoPros. Mr. Blair is a resident of South Carolina.

6. SFTS Services is an Indiana corporation with its principal place of business at 6177 Grove Walk Court, Noblesville, Indiana 46062.

7. Dale Bailey is an Indiana resident with an address of 6177 Grove Walk Court, Noblesville, Indiana 46062.

8. Brandy Bailey is an Indiana resident with an address of 6177 Grove Walk Court, Noblesville, Indiana 46062.

FACTUAL BACKGROUND

The RestoPros Franchise System

9. RestoPros has developed a unique and proprietary business system for providing restoration and mold remediation services to residential and commercial properties, including but not limited to mold remediation, water damage restoration, and fire mitigation.

10. RestoPros provides its unique services to the general public through authorized franchisees that meet RestoPros' qualifications to be awarded a RestoPros' franchise, which all together make up RestoPros' franchise system (the "Franchise System").

11. To ensure the quality of services provided by its authorized franchisees, RestoPros, among other things, provides it authorized franchisees: uniform standards and operational procedures for all RestoPros' franchised businesses; standards for presentation and use of the RESTOPROS Marks; initial and ongoing training concerning the operation of a RestoPros' franchise; unique processes to track and document customer work orders and projects; and ongoing operational support and assistance to franchisees, among other things.


12. Since at least as early as 2017, RestoPros has continuously marketed, advertised, and sold its restoration and mold remediation services under the RESTOPROS Marks.

13. RestoPros has expended substantial time, money, and resources marketing, advertising, and promoting the services offered under the RESTOPROS Marks continuously since at least as early as 2017. By virtue of extensive sales, advertising, and promotion, RestoPros has built up extremely valuable goodwill in the RESTOPROS Marks, which is recognized by the consuming public and in the restoration and mold remediation industry as a source identifier for RestoPros' goods and services.

14. As a result of RestoPros' widespread, continuous, and exclusive use of the RESTOPROS Marks to identify and distinguish itself as the source of its restoration and mold remediation services, the RESTOPROS Marks are distinctive. In addition, its widespread, continuous, and exclusive use of the RESTOPROS Marks has resulted in RestoPros' ownership of valid and subsisting federal statutory and common law rights in and to the RESTOPROS Marks.

15. As evidence of the strength and fame of the RESTOPROS Marks, the United States Patent and Trademark Office has issued the following U.S. Federal Registrations to RestoPros:

Mark/Name	App. No./Reg. No.	Full Goods/Services
<u>R and Design</u>	RN: 7180472 SN: 97548894	Int'l Class: 37, 40 (Int'l Class: 37) Building restoration; Renovation and restoration of buildings;

Mark/Name	App. No./Reg. No.	Full Goods/Services
		Restoration services in the field of water, smoke and fire damage (Int'l Class: 40) Mold remediation services
<u>RESTOPROS</u>	RN: 6122218 SN: 88523519	Int'l Class: 40 (Int'l Class: 40) Mold remediation services
<u>RESTOPROS</u>	RN: 6454092 SN: 90319166	Int'l Class: 37 (Int'l Class: 37) Building restoration; Restoration services in the field of water, smoke and fire damage; Renovation and restoration of buildings

16. RestoPros has built substantial goodwill in the RESTOPROS Marks through years of exclusive use of the Marks in connection with the services being provided and has utilized the Marks in interstate commerce.

17. As part of the Franchise System, RestoPros owns certain confidential and proprietary information and trade secrets not available to the public, such as but not limited to all information, knowledge, trade secrets or know-how utilized or embraced by RestoPros in the operation of its services to customers, or that otherwise concerns the operations, programs, services, products, customers, practices, books, records, manuals, computer files, databases or software, all Manuals, RestoPros' standards and specifications, and other information described in the Franchise

Agreement (the “Confidential Information”), which is provided to authorized franchisees.

18. In order to gain access to the Confidential Information, all franchisees are required to sign the Franchise Agreement, including a Personal Guaranty, which includes certain restrictive covenants prohibiting disclosure of such Confidential Information.

19. RestoPros’ Franchise System benefits from its collective, exclusive access to and use of such standards, operational procedures, training, and other information that is confidential to RestoPros and its franchisees.

20. The Franchise System relies on each authorized franchisee to comply with its contractual obligations and the System is undermined when a franchisee decides to unilaterally operate a directly competitive business and uses the RESTOPROS Marks in connection with that competing business.

The Franchise Agreement and Defendants’ Obligations

21. On August 4, 2022, Dale Bailey and Brandy Bailey entered into a Franchise Agreement with RestoPros (the “Franchise Agreement”). Under the Franchise Agreement, the Baileys were granted an exclusive marketing territory located in portions of Marion and Hamilton Counties (the “Marketing Territory”) and had the right to solicit and market their franchised business only in that Marketing Territory. A true and accurate copy of the Franchise Agreement is attached hereto as *Exhibit A*.

22. On August 4, 2022, the Baileys executed an “Entity Transfer Addendum” (the “Entity Addendum”) that transferred the Franchise Agreement to SFTS Services, which is a corporate entity owned 50% by Dale Bailey and 50% by Brandy Bailey. The Entity Addendum is part of the Franchise Agreement. A true and accurate copy of the Entity Transfer Addendum is attached hereto as ***Exhibit B***.

23. Attachment B to the Entity Addendum is a “Personal Guaranty” signed by both Dale Bailey and Brandy Bailey, whereby the Baileys agreed to, jointly and severally, guarantee all SFTS Services’ performance and obligations under the Franchise Agreement.

24. On December 12, 2022, SFTS Services and RestoPros entered into an “Addendum to the RestoPros Franchising, LLC Franchise Agreement” (the “Territory Addendum”) which amended the Marketing Territory granted to SFTS Services under the Franchise Agreement. A true and accurate copy of the Territory Addendum is attached hereto as ***Exhibit C***.

25. As part of signing the Territory Addendum, SFTS and the Bailey’s signed a release of any and all claims that they may have had against RestoPros up through and including the date of signing the Territory Addendum—December 12, 2022.

26. Under the Franchise Agreement, Defendants were authorized to use the RESTOPROS Marks only in connection with Defendants’ franchise; only if Defendants were in compliance with their obligations under the Franchise Agreement; and only in the manner prescribed by RestoPros in writing.

27. Defendants' use of the RESTOPROS Marks was expressly conditioned upon its compliance with the Franchise Agreement.

28. Under Section 6.1 of the Franchise Agreement, Defendants agreed to pay a non-refundable monthly royalty fee (the "Royalty") to RestoPros throughout the term of the Franchise Agreement.

29. Under Section 7.2 of the Franchise Agreement, Defendants agreed to pay a monthly Corporate Marketing Fund Fee (the "Marketing Fee") throughout the term of the Franchise Agreement.

30. Under Section 6.5 of the Franchise Agreement, Defendants agreed to pay a late fee in the amount of ten percent (10%) of the amount due if Defendants fail to pay the Royalty Fee and/or Marketing Fee within ten (10) days of the due date.

31. Under Section 10.8 of the Franchise Agreement, Defendants agreed to implement and use a Technology Platform prescribed by RestoPros and pay a technology fee in connection with such Platform (the "Technology Fee") throughout the term of the Franchise Agreement.

32. Defendants authorized RestoPros to collect such Royalty, Marketing Fee and Technology Fee by means of an Electronic Funds Transfer ("EFT").

33. Under Section 10.12 of the Franchise Agreement, Defendants agreed to timely pay all obligations and, under Section 6.8 of the Franchise Agreement, Defendants agreed to pay interest on any amounts due to RestoPros, beginning on the 11th day after such payment became due at the rate of one-and one-half percent (1.5%) per month, or the maximum rate permitted by applicable law. Moreover,

Defendants agreed to pay RestoPros' attorneys' fees incurred in collecting any unpaid amounts.

34. Under Section 8.4 of the Franchise Agreement, Defendants agreed to continuously operate the franchised business through the end of the term of the Franchise Agreement, and pursuant to Section 15.2.10 of the Franchise Agreement, Defendants are automatically in default under the agreement if they fail to actively operate the franchised business for five (5) consecutive days.

35. Under Section 9.5 of the Franchise Agreement, the principal operator of the franchise is required to register and attend RestoPros' annual conference.

36. Under Section 10.5 of the Franchise Agreement, Defendants agreed to use certain computer hardware, software, and other equipment (the "Information System") required by RestoPros in the operation of the franchise and to always allow RestoPros access to the Information System.

37. Under Article 13 of the Franchise Agreement, Defendants agreed to make all financial books and records available to RestoPros and to produce all such financial statements, reports, and other information that RestoPros required Defendants to produce.

38. Under Sections 10.16, 10.17 and Article 11 of the Franchise Agreement, Defendants acknowledged that they would receive Confidential Information of RestoPros and Defendants agreed to treat such information in confidence and never to, directly or indirectly, engage in, misappropriate or disclose the Confidential

Information they received; any such use and disclosure was strictly limited to the operation of the franchised business.

39. Under Section 17.1 of the Franchise Agreement, Defendants agreed that they will not, directly, or indirectly, during the term of the Franchise Agreement have any involvement with a competing restoration and remediation business. Moreover, under Section 17.2 of the Franchise Agreement, Defendants agreed that such restrictions continued for two (2) years after the expiration or termination of the Franchise Agreement within the Marketing Territory or within twenty (20) miles of any other RestoPros business.

40. Under the Guaranty, the Bailey's each personally guaranteed all of SFTS Services' obligations under the Franchise Agreement.

Defendants' Defaults and Violation of Restrictive Covenants

41. In July 2024, RestoPros received a report that the Defendants' neighboring franchisee may have been soliciting sales and marketing in Defendants' Marketing Territory.

42. RestoPros investigated and determined that both the neighboring franchisee and Defendants were both violating their Franchise Agreements by visiting customers for marketing and solicitation purposes in the others' marketing territory. RestoPros also discovered that Defendants collected \$4,148 from a project that came about from soliciting in the neighboring franchisee's territory.

43. Therefore, pursuant to the terms of the Franchise Agreement, on September 18, 2024, RestoPros sent Defendants a notice which required Defendants

to pay \$4,148 to the neighboring franchisee. Defendants refused to do so. A true and accurate copy of the September 18, 2024, Notice is attached hereto as ***Exhibit D***.

44. Defendants' defaults under the Franchise Agreement continued.

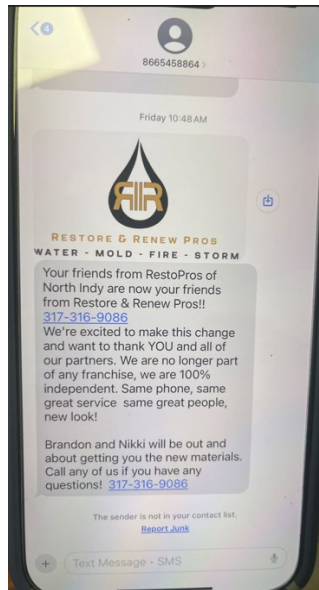
45. On November 14, 2024, RestoPros sent a Notice of Default ("Default Notice") to Defendants notifying them of their multiple material defaults under the Franchise Agreement and Guaranty. These material defaults included, but are not limited to, (a) failure to provide to RestoPros access to financial records and failure to report revenue to RestoPros; (b) failure to report leads, jobs and sales; (c) disconnecting RestoPros' access to all previously-reported data and reports regarding leads, jobs, sales and revenue; (d) failure to pay the Royalty, Marketing Fee and Technology Fee when due; (e) failure to allow RestoPros to collect payments due through EFT; (f) failure to use required software, systems and technology; (g) failure to attend RestoPros' annual conference in October 2024 and pay the registration fee; and (h) breach of the marketing territory restrictions and encroaching on a neighboring franchisee. A true and accurate copy of the Default Notice is attached hereto as ***Exhibit E***.

46. After sending the Default Notice, RestoPros discovered that the Baileys had essentially shut down and abandoned their franchised business and immediately started a new, competing restoration and remediation business—Restore and Renew Professionals.

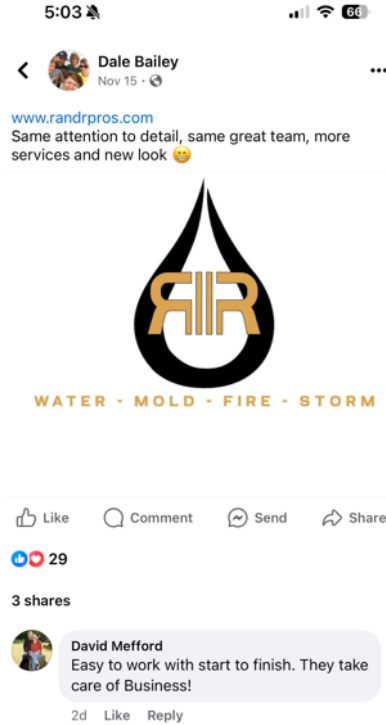
47. Restore and Renew Professionals is being operated through SFTS Services—the same entity that entered into the Franchise Agreement with

RestoPros. In fact, on November 6, 2024, Defendants filed an assumed business name of Restore and Renew Professionals under SFTS Services. A true and accurate copy of the Certificate of Assumed Business Name for SFTS Services is attached hereto as ***Exhibit F***.

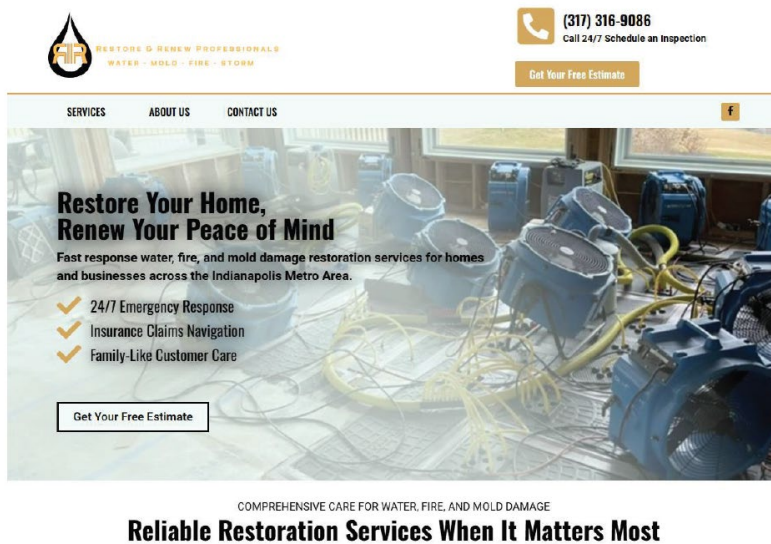
48. In or around November 15, 2024, Defendants used their franchised business phone number to send a text message to RestoPros' clients and prospects informing them that they changed their name and started a competing business. As shown below, the text message specifically states that Defendants were no longer operating as a RestoPros franchisee, and instead now operate as "Restore & Renew Pros":



49. Dale Bailey also announced the competing business on his public Facebook page:

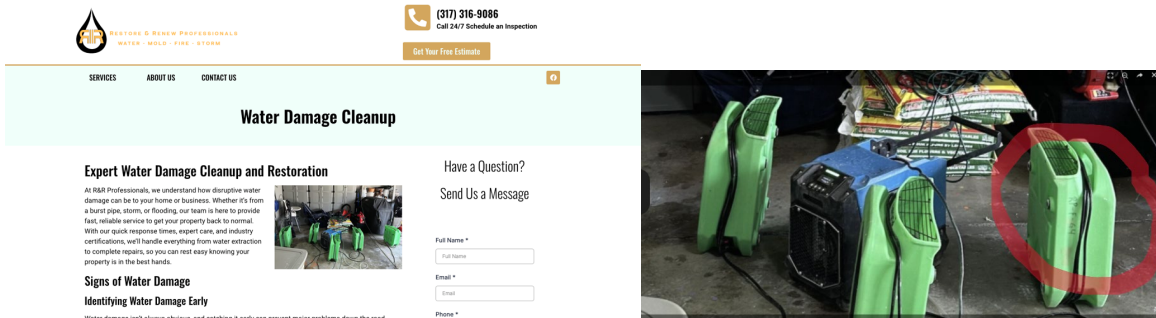


50. Defendants created a website for their new, competing business <https://randrpros.com/>. Below is a screenshot of the landing page for the new domain:



51. As shown by the website, Defendants are operating Restore and Renew Professionals using the same phone number and address used for their RestoPros franchised business.

52. The website also includes a photo that depicts RestoPros' equipment as shown by the designation "RP".



53. Defendants have also advertised their competing business through use of the franchised business' phone number through other means throughout the Marketing Territory and surrounding franchised territories:



54. Moreover, as of November 18, 2024, the social media links on the Restore and Renew Professionals’ website connected to RestoPros®-branded social media pages and sites, such as Facebook and Google business listings.

55. Also, as of November 18, 2024, the Restore and Renew Professionals’ website included customer reviews directly connected to the RestoPros franchised business and that specifically referenced the Marks.

About Restore & Renew Professionals

At R&R Professionals, **“our mission is simple: treat every customer, employee, and partner like family.”** We’re committed to **“creating opportunities for our team members, being good neighbors, and always doing what’s right, simply because it’s the right thing to do.”** With a team that’s **“IICRC WRT certified,”** and holding **“certifications in mold, fire, and structural drying,”** we ensure every project is handled with expertise. **“We over-communicate, and the customer experience is always our top priority.”** Our goal is to **“provide every customer with a positive, hassle-free experience,”** and we strive to **“make a positive impact beyond our day-to-day operations.”**

[Read it all on our About Us page.](#)

Restore & Renew Professionals

[Click to Schedule an Inspection](#)

(317) 316-9086
Call to Schedule an Inspection

Based in Noblesville, we handle all your restoration needs with expert care and fast, reliable service throughout the Indianapolis Metro Area.

Dale and the rest of the crew are amazing! I have been in real estate for 18 years. I have used many restoration companies and none would I recommend more than RestoPros North Indy. And not only would I refer them, I have also been a client. Efficient, reliable, effective and honest. You can't go wrong.

Kyle F.
CLIENT

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56. On November 19, 2024, RestoPros sent Defendants a cease-and-desist letter (the “Cease and Desist Letter”) demanding that Defendants cease violations of their restrictive covenants and to comply with their obligations under the Franchise

Agreement. A true and accurate copy of the Cease-and-Desist Letter is attached hereto as *Exhibit G*.

57. To date, Defendants have refused to comply with their obligations to RestoPros under both the Franchise Agreement and Guaranty.

58. Defendants' non-compliance with the Franchise Agreement and Guaranty have caused and continues to cause significant damage to RestoPros, the Franchise System, and other franchisees in the System, including forcing RestoPros and its franchisees to compete with a business armed with inside information as to how RestoPros and its franchisees operate.

59. Defendants' non-compliance has caused and continues to cause RestoPros irreparable harm and damage to its goodwill, the RESTOPROS Marks, the System, its brand, and image, and standing in the community.

60. RestoPros' only means of enforcing the Franchise Agreement and Guaranty is by seeking injunctive relief.

COUNT I
FEDERAL TRADEMARK INFRINGEMENT (15 U.S.C. § 1114)

61. RestoPros re-alleges each and every allegation set forth in the preceding paragraphs of this Verified Complaint as if fully restated herein.

62. RestoPros owns federal trademark registrations for its RESTOPROS Marks. The federally registered RESTOPROS Marks serve to identify to the public the quality of services that are offered by RestoPros, and to assure that any restoration and mold remediation services offered in connection with the RESTOPROS Marks are offered by, sponsored by, approved by, authorized by,

associated with, or affiliated with RestoPros and its reputation for high-quality craftsmanship and service.

63. Since registration, RestoPros has extensively advertised the RESTOPROS Marks in connection with its franchised restoration and remediation services business.

64. The Franchise Agreement provides, and Defendants agreed that Defendants only have a right to use the RESTOPROS Marks in connection with the franchised business and only as prescribed in writing by RestoPros.

65. Defendants have used the RESTOPROS Marks in connection with their competitive business, Restore and Renew Professionals, which is highly likely to confuse the consuming public into thinking that this business is associated with RestoPros, as well as cause damage to the RESTOPROS Marks and to the other franchisees in the Franchise System.

66. Defendants' infringing use of the RESTOPROS Marks in commerce in connection with a business service is without RestoPros' authorization or consent.

67. As a direct and proximate result of Defendants' use of the identical Marks, RestoPros has suffered and will continue to suffer damage to its business, its corporate identity, trade, reputation, and goodwill. Consumers have already been confused, and are likely to continue to be confused, into believing that the competing services offered by Defendants are associated or affiliated with, sponsored, or endorsed by, or in some other manner connected with RestoPros.

68. Defendants' conduct is willful, deliberate, in bad faith, and undertaken with knowledge of RestoPros' prior rights and, therefore, constitutes willful infringement of the RESTOPROS Marks.

69. Defendants' unauthorized and infringing actions constitute willful infringement of RestoPros' exclusive rights in and to the RESTOPROS Marks, including RestoPros' federally registered trademarks in violation of 15 U.S.C. § 1114.

70. Defendants' acts complained of herein were knowing, intentional, willful, and made with the intent to cause confusion, mistake, or deception, or otherwise to compete unfairly with RestoPros. Defendants' acts jeopardize the goodwill symbolized by the RESTOPROS Marks, causing serious and irreparable injury to RestoPros and to the relevant consumers, as well as a likelihood of such future harm, for which RestoPros has no adequate remedy at law. Unless restrained by the Court, Defendants will continue to cause damage and irreparable injury to RestoPros. This harm constitutes an injury for which RestoPros has no adequate remedy at law.

COUNT II
FEDERAL UNFAIR COMPETITION & FALSE DESIGNATION OF ORIGIN
(15 U.S.C. § 1125(a))

71. RestoPros re-alleges each and every allegation set forth in the preceding paragraphs of this Verified Complaint as if fully restated herein.

72. RestoPros owns valid and enforceable federally registered and common law rights in various trademarks, including RESTOPROS.

73. The RESTOPROS Marks are inherently distinctive and are valid and subsisting.

74. Defendants' unauthorized use of the RESTPROS Marks in interstate commerce for Defendants' competing restoration and mold remediation services has caused, is causing, and will continue to cause a false designation of origin and/or a false affiliation with RestoPros in violation of Section 43 of the Trademark Act of 1946, 15 U.S.C. § 1125.

75. Accordingly, Defendants' acts, practices, and conduct complained of herein constitute unfair competition and false designations of origin, insofar as they are likely to cause confusion, mistake, or deception as the source, affiliation, or association of Defendants with RestoPros, or as to the origin, sponsorship, or approval of Defendants, or Defendants' services or commercial activities, within the meaning of 15 U.S.C. § 1125(a).

76. Defendants' acts complained of herein were knowing, intentional, willful, and made with the intent to cause confusion, mistake, or deception, or otherwise to compete unfairly with the RestoPros. Defendants' acts jeopardize the goodwill symbolized by the RESTOPROS Marks, causing serious and irreparable injury to RestoPros and to the relevant consumers, as well as a likelihood of such future harm, for which RestoPros has no adequate remedy at law. Unless restrained by the Court, Defendants will continue to cause damage and irreparable injury to RestoPros. This harm constitutes an injury for which RestoPros has no adequate remedy at law.

COUNT III
BREACH OF FRANCHISE AGREEMENT

77. RestoPros re-alleges each and every allegation set forth in the preceding paragraphs of this Verified Complaint as if fully restated herein.

78. The Franchise Agreement is a valid and enforceable contract.

79. Defendants have breached the terms of the Franchise Agreement by, among other things:

- a. Operating a competing business in violation of its covenant not to compete;
- b. Disclosing and misappropriating RestoPros' Confidential Information;
- c. Abandoning the franchised business;
- d. Failing to pay to RestoPros the Royalty, Marketing Fee and Technology Fee when due;
- e. Failing to allow RestoPros to collect payments due through EFT;
- f. Failing to report revenue to RestoPros;
- g. Failing to provide to RestoPros access to Defendants' financial records;
- h. Failing to report leads, jobs and sales to RestoPros;
- i. Disconnecting RestoPros' access to all previously reported data and reports regarding leads, jobs, sales and revenue;
- j. Failing to use required software, systems and technology;
- k. Failing to attend RestoPros' annual conference in October 2024 and pay the registration fee; and

1. Violating the marketing territory restrictions and encroaching on a neighboring franchisee.

80. As a direct and proximate result of Defendants' actions, RestoPros has been damaged in excess of \$75,000.00 and irreparably harmed in that RestoPros is unable to gain the benefit of its bargain under the Franchise Agreement, including the loss of customers and goodwill.

81. Under the terms of the Franchise Agreement, RestoPros is also entitled to recover its attorneys' fees in the enforcement of its rights under the Franchise Agreement.

COUNT IV
BREACH OF THE GUARANTY

82. RestoPros re-alleges each and every allegation set forth in the preceding paragraphs of this Verified Complaint as if fully restated herein.

83. The Guaranty is a valid and enforceable contract.

84. Pursuant to the terms of the Guaranty, Dale Bailey and Brandy Bailey agreed, among other things, that they would jointly and severally perform all of SFTS Services' obligations under the Franchise Agreement.

85. Dale Bailey and Brandy Baily are in default of the Guaranty, by among other things:

- a. Operating a competing business in violation of its covenant not to compete;
- b. Disclosing and misappropriating RestoPros' Confidential Information;
- c. Abandoning the franchised business;

- d. Failing to pay to RestoPros the Royalty, Marketing Fee and Technology Fee when due;
- e. Failing to allow RestoPros to collect payments due through EFT;
- f. Failing to report revenue to RestoPros;
- g. Failing to provide to RestoPros access to Defendants' financial records;
- h. Failing to report leads, jobs and sales to RestoPros;
- i. Disconnecting RestoPros' access to all previously reported data and reports regarding leads, jobs, sales and revenue;
- j. Failing to use required software, systems and technology;
- k. Failing to attend RestoPros' annual conference in October 2024 and pay the registration fee; and
- l. Violating the marketing territory restrictions and encroaching on a neighboring franchisee.

86. As a direct and proximate result of the Defendants actions, RestoPros has been damaged in excess of \$75,000.00 and irreparably harmed in that RestoPros is unable to gain the benefit of its bargain under the Franchise Agreement, including the loss of customers and goodwill.

87. Under the terms of the Guaranty, RestoPros is also entitled to recover its attorneys' fees in the enforcement of its rights under the Franchise Agreement.

COUNT V
FALSE ADVERTISING

88. RestoPros re-alleges each and every allegation set forth in the preceding paragraphs of this Verified Complaint as if fully restated herein.

89. Defendants falsely state or suggest to consumers directly or indirectly and/or through the use of the Internet and social media that their restoration business is affiliated with RestoPros. Any such statements or implications are false.

90. Defendants falsely state or suggest that photographs displayed on their social media depict restoration and remediation jobs completed by their new, competing business. Those statements are false. The photographs depict jobs completed by a RestoPros franchised business.

91. Defendants falsely state or suggest that customers' testimonials on their websites relate to restoration and remediation services completed by their new, competing business. Those statements are false. The testimonials relate to jobs completed by a RestoPros franchised business.

92. These statements are likely to deceive consumers and influence the purchasing decision of consumers because, among other things, these statements imply that the same goods and services can be supplied by Defendants, and that Defendants operate a well-regarded business. These characteristics are often important to consumers.

93. Defendants have caused these false statements to enter interstate commerce by posting them on their websites and social media.

94. Defendants' willful and intentional actions have caused, and unless restrained or enjoined by this Court, will continue to cause irreparably harm and injury to RestoPros.

95. RestoPros has no adequate remedy at law.

COUNT VI
MISAPPROPRIATION OF TRADE SECRETS
(INDIANA UNIFORM TRADE SECRETS ACT
IND. CODE § 23-2-3-1, *ET SEQ.*)

96. RestoPros re-alleges each and every allegation set forth in the preceding paragraphs of this Verified Complaint as if fully restated herein.

97. RestoPros possesses certain trade secret information not generally known to, or readily ascertainable by, others that provides significant economic advantage to anyone desiring to set up and run a competing restoration and remediation business.

98. RestoPros takes reasonable steps to maintain the secrecy of this information by maintaining control over its circulation, requiring each franchisee to agree to and abide by certain confidentiality provisions, requiring each franchisee in turn to have its employees execute a similar confidentiality agreement, and demanding return of all copies of the Manual upon the termination or expiration of the franchise agreement.

99. The Franchise Agreement signed by Defendants requires that Defendants use the Confidential Information solely for the franchised business purposes contemplated in the Franchise Agreement and not disclose the information to anyone else or use it to compete with RestoPros during the term of the Agreement, and for a two (2) year period thereafter.

100. Defendants have begun operating a competing restoration and remediation business out of the same location as its franchised business and using the same phone number as used as a RestoPros franchisee.

101. Defendants are competing against RestoPros.

102. Defendants have retained RestoPros Confidential Information and trade secrets while operating a competing business.

103. Defendants have wrongfully used RestoPros Confidential Information and trade secrets to operate their competing business, thereby severely diminishing any ability of RestoPros to sell Defendants' Marketing Territory in the future to another franchisee.

104. Defendants' conduct constitutes misappropriation of trade secrets pursuant to Ind. Code § 23-2-3-1, *et seq.*

105. As a result of Defendants' willful and intentional actions, Defendants have caused and, unless restrained and enjoined by this Court, will continue to cause irreparable harm and injury to RestoPros.

106. RestoPros has no adequate remedy at law.

COUNT VII
MISAPPROPRIATION OF TRADE SECRETS
(DEFEND TRADE SECRETS ACT
18 U.S.C. §1836, *ET SEQ.*)

107. RestoPros re-alleges each and every allegation set forth in the preceding paragraphs of this Verified Complaint as if fully restated herein.

108. RestoPros possesses certain trade secret information not generally known to, or readily ascertainable by, others that provides significant economic advantage to anyone desiring to set up and run a competing restoration and remediation business. RestoPros developed its Confidential Information and trade

secrets at considerable expense, and such Confidential Information and trade secrets provide RestoPros with a valuable advantage over its competitors.

109. RestoPros takes reasonable steps to maintain the secrecy of this information by maintaining control over its circulation, requiring each franchisee to agree to and abide by certain confidentiality provisions, requiring each franchisee in turn to have its employees execute a similar confidentiality agreement, and demanding return of all copies of the Manual upon the termination or expiration of the franchise agreement.

110. The Franchise Agreement signed by Defendants requires that Defendants use the Confidential Information solely for the franchised business purposes contemplated in the Franchise Agreement and not disclose the information to anyone else or use it to compete with RestoPros during the term of the Agreement, and for a two (2) year period thereafter.

111. Defendants have begun operating a competing restoration and remediation business out of the same location as its franchised business and using the same phone number as used as a RestoPros franchisee.

112. Defendants are competing against RestoPros using the RestoPros Confidential Information and trade secrets.

113. Defendants have retained RestoPros' Confidential Information and trade secrets while operating a competing business. Defendants have and will inevitably use and rely on RestoPros' Confidential Information and trade secrets in furtherance of its competing products and services in interstate commerce.

114. Defendants have wrongfully used RestoPros Confidential Information and trade secrets to operate their competing business, thereby severely diminishing any ability of RestoPros to sell Defendants' Marketing Territory in the future to another franchisee.

115. Defendants' conduct constitutes misappropriation of trade secrets under the Defend Trade Secrets Act pursuant to 18 U.S.C. §1836 *et seq.*

116. As a result of Defendants' willful and intentional actions, Defendants have caused and, unless restrained and enjoined by this Court, will continue to cause irreparable harm and injury to RestoPros.

117. RestoPros has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, RestoPros prays for judgment against Defendants as follows:

A. Enter judgment that Defendants, as a result of their unauthorized use of the RESTOPROS Marks, have:

1. Infringed RestoPros' rights in the federally registered RESTOPROS Marks in violation of Section 32(1) of the Trademark Act of 1946, 15 U.S.C. § 1114;
2. Used a counterfeit mark in violation of Section 32(1) of the Trademark Act of 1946, 15 U.S.C. § 1114;
3. Engaged in unfair competition in violation Section 43 of the Trademark Act of 1946, 15 U.S.C. § 1125;
4. Breached the Franchise Agreement; and
5. Misappropriated RestoPros' Franchise System and trade secrets.

B. Preliminarily and permanently enjoining Defendants its officers, agents, licensees, assignees, successors, servants, employees, attorneys, and all other persons in active concert or participation with Defendants from doing any of the following acts, either directly or indirectly, and from doing any act prefatory to the prohibited acts:

1. Operating a competing business in violation of the Franchise Agreement;
2. Misappropriating the Franchise System and RestoPros' trade secrets;
3. Using and further infringing on the RestoPros' registered and common law trademarks or any mark or any designation, entity name, or trade that is confusingly similar to RestoPros' registered and/or common law marks.
4. Advertising, displaying, or promoting in any manner any product or service by using RestoPros' registered or common law trademarks, or any designation that is confusingly similar thereto in connection with restoration or mold remediation services.
5. Holding out or suggesting in any manner whatsoever, that Defendants, or their products or services, are in any way sponsored by, associated with, or affiliated with RestoPros, or RestoPros' services in any way; and
6. Engaging in any other activity constituting unfair competition with RestoPros or constituting infringement of or unfair competition with RestoPros' registered or common law marks;

C. Order Defendants to promptly file with the Court and serve upon RestoPros a report, in writing and under oath, setting forth in detail the manner in which Defendants have complied with any injunction issue by the Court, pursuant to 15 U.S.C. § 1116(a);

D. Order Defendants to deliver to the Clerk of this Court proof of destruction of any and all materials in Defendants' possession, custody, or control that depict or relate to the development, marketing, or sale of their services, or any other related materials bearing marks confusingly similar to the RESTOPROS Marks in accordance with 15 U.S.C. § 1118;

E. Order that Defendants account and pay over to RestoPros all gains, profits, and advantages derived from the conduct alleged herein, pursuant to 15 U.S.C. § 1117;

F. Order that Defendants pay RestoPros the actual damages that RestoPros has sustained by reason of the conduct alleged herein, including but not limited to compensation for its lost profits, lost goodwill, the diminution in value of its RESTOPROS brand, and the cost of corrective advertising to counteract consumer confusion, pursuant to 15 U.S.C. § 1117;

G. Order that RestoPros' recovery of damages is inadequate, and enter judgment for an increased sum as the Court finds just up to three times such amount, pursuant to 15 U.S.C. § 1117;

H. Award RestoPros treble damages or statutory damages, at its election, for willful counterfeiting pursuant to 15 U.S.C. § 1117;

I. Ordering Defendants to pay to RestoPros the costs of this action, reasonable attorneys' fees, and all damages suffered by RestoPros in an amount to be determined at trial, plus interest as allowed by law, pursuant to 15 U.S.C. § 1117(a).

J. Ordering such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff, by counsel, hereby requests a jury trial as to all matters so triable.

Respectfully submitted,

ICE MILLER LLP

By: /s/ Christina L. Fugate
Christina L. Fugate

VERIFICATION

I, Shannon Roderick, President of RestoPros Franchising, LLC, do hereby affirm, under the penalties for perjury, that the facts alleged in the foregoing Verified Complaint for Damages and Injunctive Relief are true and correct to the best of my knowledge, information and belief.

RestoPros Franchising, LLC

Signed by:
Shannon Roderick
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Shannon Rodderick, President

Dated: 12/9/2024