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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91185766
Party	Plaintiff C.F.M. Distributing Company, Inc.
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Attachments	OMFC Amended Notice of Opposition.pdf (175 pages)(4948748 bytes)

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Suzanne D. Meehle

10-15-2009

Date

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Applications:

1. Serial No. 77402411
Date of Publication: July 22, 2008; and
2. Serial No. 77497042
Date of Publication: November 4, 2008

ORIGINAL MARYLAND FRIED CHICKEN, LLC
Opposer,

vs.

THERESA COSTANTINE, as Personal
Representative of the Estate of Richard Costantine,
Applicant.

OPPOSITION NOS.: 91185766
91187377
91187378

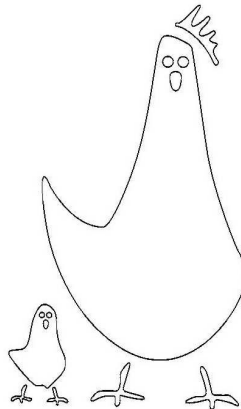
AMENDED NOTICE OF OPPOSITION

COMES NOW Original Maryland Fried Chicken, LLC, a Florida limited liability company with its principal address at 1672 South Orange Blossom Trail, Apopka, Florida 32703 (“Opposer”), by and through its undersigned attorney, hereby files this AMENDED NOTICE OF OPPOSITION to the registration of the service marks that are the subject of applications Serial Nos. 77/402,411, filed on February 21, 2008 and published for opposition on July 22, 2008, and 77/497,042, filed on June 12, 2008 and published for opposition on November 4, 2008 (the Marks”). Opposer believes that it will be damaged if registration of the Marks is granted to THERESA COSTANTINE (the “Applicant”) for the above-noted applications and in support states as follows:

1. In Application Serial No. 77402411, Applicant seeks to register the following Word and Design mark as a service mark for “restaurant services including sit-down service of food and take-out restaurant services” in Class 043:



2. In Application Serial No. 77497042, Applicant seeks to register the following Design mark as a service mark for “Restaurant services, including sit-down service of food and take-out restaurant services” in Class 043:



3. In its applications, Applicant claims a date of first use of both Marks of January 1, 1980.

4. The grounds for this Opposition, where each ground is plead either together or in the alternative, include the following:

a. That Applicant is not the rightful owner of the Marks and was not the rightful owner of the Marks at the time of filing its Applications for Registration;

b. That Applicant has committed a fraud on the United States Patent and Trademark Office by filing its Applications;

c. That if Applicant ever had rights in the Marks, such rights were lost through naked licensing and lack of quality control such that the Marks no longer identify a single source

of goods and services, and therefore no longer function as trademarks and cannot be registered; and

d. That if Applicant ever had rights in the Marks, extensive unlicensed use of the Marks by third parties has resulted in Applicant's abandonment of the Marks, which no longer identify a single source of goods and services and therefore no longer function as trademarks and cannot be registered.

5. Applicant sued Opposer alleging infringement of the Marks and for unfair competition in The Ninth Judicial Circuit Court in Orange County, Florida. The parties resolved this suit through a settlement agreement, a copy of which was attached as Attachment "B" to Applicant's Notice of Termination of Civil Action filed with this Board. Pursuant thereto, Applicant voluntarily dismissed the action with prejudice.

6. Said settlement agreement restricted Opposer from operating a Maryland Fried Chicken restaurant in Lake County, Florida; this agreement does not prevent or restrict Opposer from offering its restaurant services under the Marks at its Maryland Fried Chicken restaurant in Apopka, Orange County, Florida.

7. Opposer has operated its Maryland Fried Chicken restaurant in Apopka, Orange County, Florida and used the Marks for its restaurant services since its inception in July 2006.

8. Opposer is not a licensee, a franchisee, or in any other way affiliated with Applicant.

9. However, Applicant Theresa Costantine and the deceased Applicant Richard Costantine are the parents of Robert Costatine, who is an owner of Opposer.

10. Applicant does business as Maryland Fried Chicken and operates a restaurant located at 708 North 14th Street, Leesburg, Florida 34748. Applicant's sons, Anthony Costantine and Michael Costantine, continue to operate the Leesburg restaurant as a family business.

11. According to Anthony Costantine, he is an owner, manager, employee and director of the Maryland Fried Chicken restaurant in Leesburg, Florida. See p.5 of Deposition of Anthony Costantine (Dec. 4, 2008), attached hereto as Exhibit "A."

12. Not only did owner, manager, employee and director, Anthony Costantine, know about the existence, operation and use of the Marks for restaurant services in Opposer's Apopka Maryland Fried Chicken restaurant, but he also sought not to compete directly with Opposer when selecting an additional location for a new Maryland Fried Chicken restaurant after July 2006. See Exhibit "A," pp. 42 and 87 (Dec. 4, 2008).

13. Specifically, Anthony Costantine stated that "[w]e looked at -- we were looking at Apopka, the other side of Apopka. We looked at Mt. Dora. We thought that [Apopka] would be too close to Bob [Robert Costantine]. But then just driving to work one day, I saw this little strip

over here. And I thought it was a decent location and called them up, and that's how it [Mt. Dora] all got started." See Exhibit "A," p. 42:12-42:17.

14. Later in the same deposition, Anthony Costantine continued to explain that he did not seek to open an additional Maryland Fried Chicken on the other side of Apopka near the new Home Depot because "it was too close to Bobby's [Robert Costantine's] store." See Exhibit "A," p. 87:16-87:23. The new Apopka location was "only five miles from Bobby's store." See Exhibit "A," p.88:23.

15. Anthony Costantine knew of the existence, operation, location and Marks' usage for restaurant services by other nearby Maryland Fried Chicken restaurants as well, including, but not limited to a Maryland Fried Chicken restaurant located on Edgewater Drive in Orlando, Orange County, Florida. See generally, Exhibit "A," pp. 42 and 88.

16. Applicant Theresa Costantine similarly knew about the existence, operation and use of the Marks for restaurant services in Opposer's Apopka Maryland Fried Chicken restaurant and did not object to Opposer's use of the Marks from Opposer's first use of the Marks. See Exhibit "B," pp. 14 and 15 (Dec. 4, 2008).

17. Specifically, Theresa Costantine stated that she and her husband, the deceased Applicant, visited Opposer's Maryland Fried Chicken restaurant "[n]ot [at] the opening, but I think a couple of weeks later" See Exhibit "B," p. 14:17-23.

18. Upon information and belief, approximately thirty-eight (38) other Maryland Fried Chicken restaurants use the Marks for restaurant services in the United States; and twelve (12) such other Maryland Fried Chicken restaurants operate within the State of Florida.

19. Upon information and belief, the Maryland Fried Chicken restaurant located at 748 21st Vero Beach, Florida 32960 ("Vero") is not affiliated in any way with Applicant, and has operated continuously since at least 1964, sixteen (16) years before Applicant's claimed first use on January 1, 1980. Vero is approximately one-hundred forty (140) miles from Applicant's restaurant.

20. Upon information and belief, the Maryland Fried Chicken restaurant located at 13675 W. Colonial Drive, Winter Garden, Florida 34787 ("Winter Garden") is not affiliated in any way with Applicant, and has operated continuously since at least 1965, fifteen (15) years prior to Applicant's claimed first use on January 1, 1980. Winter Garden is approximately thirty-on (31) miles from Applicant's restaurant.

21. Upon information and belief, the Maryland Fried Chicken restaurant located at 9710 E. Colonial Drive, Orlando, Florida 32817 ("Union Park") is not affiliated in any way with Applicant, and has operated continuously since at least 1968, twelve years before Applicants claimed first use on January 1, 1980. Union Park is approximately fifty-three (53) miles from

Applicant's restaurant. Applicant's nephew, Danny Costantine, operates the Union Park restaurant.

22. Upon information and belief, Applicant Richard Costantine was an owner and officer of Maryland Fried Chicken, Inc., a Delaware corporation that was formed in or about 1960 and dissolved in or about 1979 ("MFCI"). MFCI originally franchised the Maryland Fried Chicken restaurants identified above to their respective owners, but each of the above-noted restaurants has operated independently since the dissolution of MFCI in or about 1971.

23. Upon information and belief, as an owner and officer of MFCI, Applicant was aware of the Vero, Winter Garden and Union Park Maryland Fried Chicken restaurants, whose continuous use of the Marks predates Applicant's use and whose restaurants are in close proximity of Applicant's location, when Applicant filed its Applications on February 22, 2008 and June 1, 2008, respectively. Applicant has therefore committed a fraud on this Office.

24. Applicant has never owned, controlled, approved, franchised or licensed the Marks to any of the other thirty-eight (38) Maryland Fried Chicken restaurants, which use the Marks in the United States; and Applicant's use of the Marks does not entitle Applicant to rights in a geographic area beyond Applicant's restaurant in Leesburg, Florida. See Exhibit "A," p. 105:5-105:21 (Applicant, Richard Costantine, did not have to approve each and every Maryland Fried Chicken restaurant that used the Mark in commerce; instead, the closest Maryland Fried Chicken restaurant to the newest proposed location would give permission to a new potential location).

25. C.F.M. Distributing Company, Inc., a Florida corporation with its principal address at 352 Commercial Street, Casselberry Florida 32707 ("CFM"), has used the Marks on food products and on packaging products that it distributes to Maryland Fried Chicken restaurants throughout the United States, including both Applicant and Opposer. CFM also opposes Application Serial No. 77402411 in this consolidated proceeding.

26. Upon information and belief, CFM was originally formed by the owners of MFCI, before its dissolution, as a distributor of products to MFCI's franchisees. Though MFCI initially licensed rights to distribute products bearing the Marks to CFM, CFM has continuously and independently distributed products bearing the Marks to the various independent Maryland Fried Chicken restaurants since the dissolution of MFCI in or about 1979.

27. Upon information and belief, CFM has continually operated its business providing products bearing the Marks to Maryland Fried Chicken restaurants throughout the United States without any control exercised by Applicant or any other party since the early 1970s (well before Applicant's claimed first use on January 1, 1980) and is not owned or controlled by or a franchisee or licensee of Applicant.

28. Upon information and belief, as an owner and officer of MFCI and as a customer of CFM since at least January 1, 1980, Applicant was aware of CFM's rights in the Marks when Applicant filed its Applications on February 22, 2008 and June 1, 2008, respectively. Applicant has therefore committed a fraud on this Office.

29. Upon information and belief, when any person or entity wants to open a new Maryland Fried Chicken restaurant and use CFM's food and/or packaging products bearing the Marks, CFM contacts the Maryland Fried Chicken restaurant that is the closest geographically and that uses CFM's products to ensure that CFM's existing customer does not object to the proposed new location. See generally, Exhibit "A," pp. 42 and 88. If there is no objection, CFM will sell its products bearing the Marks to the person or entity opening the new location. There is not another person or entity that exercises any sort of control over the opening of a new Maryland Fried Chicken restaurant, including Applicant.

30. Before opening its Maryland Fried Chicken restaurant, Opposer contacted CFM to obtain approval to use the Marks, and CFM approved Opposer's use of the Marks. CFM sells food product and packaging products bearing the Marks to Opposer.

31. CFM exercises no control over the quality of the goods sold or services provided in the various independent Maryland Fried Chicken restaurants, including Applicant's and Opposer's restaurants, beyond selling its food products to some of its customers who choose to use CFM's packaging products bearing the Marks.

32. Any Maryland Fried Chicken restaurant can serve any menu items it desires, and, in fact, some Maryland Fried Chicken restaurants offer Greek, Mexican and/or Asian food. In fact, there is no requirement that any Maryland Fried Chicken restaurant serve the identical fried chicken product or even that it sell fried chicken at all. Therefore, consumers can get one product and product selection from one Maryland Fried Chicken and something entirely different at another Maryland Fried Chicken location.

33. Therefore, for over thirty (30) years, the Marks have been used by numerous independent users without any exercise of control by Applicant or any other user of the Marks, except for the very limited control exercised by CFM. Any ownership interest held by Applicant, if there ever was any ownership interest held by Applicant at all, has been abandoned because Applicant has failed to prosecute and police the Marks, causing the Marks to lose all of its strength to the point of abandonment.

34. The Opposer is likely to be damaged by the existence of a registration of the Marks as it casts a cloud on Opposer's right to use the Marks in its restaurant.

WHEREFORE, Opposer, ORIGINAL MARYLAND FIED CHICKEN, LLC, respectfully requests that this opposition be sustained and that the registration of the Marks, Application Serial Nos. 77/402,411 and 77/77/497,042, to the Applicant be refused.

Respectfully submitted on this 15th Day of October 2009,



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Attorneys for Original Maryland Fried
Chicken, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via prepaid U.S. First Class Mail this 15th day of October, 2009 to: MATTHEW G. McKINNEY, ESQ., McKinney Law, LLC, 121 S. Orange Ave., Suite 1500, Orlando, Florida 32801; and TERRY M. SANKS, ESQ. and AMBER L. NIELSON, ESQ., Beusse Wolter Sanks Mora & Maire, P.A., 390 N. Orange Ave., Suite 250, Orlando, Florida 32801.



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EXHIBIT "A"

Deposition of Anthony Costantine
December 4, 2008

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IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN
AND FOR ORANGE COUNTY, FLORIDA

CASE NO.: 48-2008-CA-004422-0

THERESA COSTANTINE, as personal
Representative of the Estate of
RICHARD COSTANTINE, an individual,

Plaintiff,

vs.

CERTIFIED COPY

ORIGINAL MARYLAND FRIED CHICKEN, LLC,
a Florida limited liability company;
ROBERT COSTANTINE, an individual; and
CAM VAN, an individual,

Defendants.

The deposition of ANTHONY COSTANTINE taken
pursuant to Notice on behalf of the Defendants on
Thursday, December 4, 2008, beginning at 2:45 p.m., at
390 North Orange Avenue, Suite 2300, Orlando, Florida,
before Lisa McCormack, Registered Merit Reporter and
Notary Public, State of Florida at Large.

A P P E A R A N C E S:

MATTHEW G. MCKINNEY, ESQUIRE
McKinney Law, LLC
390 North Orange Avenue, suite 2300
Orlando, Florida 32801

For the Plaintiff,

1 A P P E A R A N C E S:

2 STEPHANIE L. KNOTT, ESQUIRE, and
3 ARTHUR J. RANSON, III, ESQUIRE
4 Shuffield, Lowman & Wilson, P.A.
5 1000 Legion Place, Suite 1700
6 Orlando, Florida 32801

7 For the Defendants.

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11 ALSO PRESENT: Robert Costantine
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I N D E X

TESTIMONY OF ANTHONY COSTANTINE

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S T I P U L A T I O N S

It is hereby stipulated and agreed between
counsel for the representative parties and the
witness that the reading and signing of the
deposition be reserved.

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ANTHONY COSTANTINE

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. KNOTT:

Q. Could you please state your name.

A. Anthony Costantine.

Q. Anthony, I'm Stephanie Knott, and I represent the defendants in this case. I'm going to be asking you some questions. If you don't understand the question, please ask me to rephrase it and I'll be happy to. If you could try to give verbal responses, it make for a lot better record and the court reporter. It's hard for her to take down nodding of the head. It's a lot easier if you give verbal answers. What is your address?

A. 161 Spring Chase Circle, Altamonte Springs.

Q. What is your date of birth?

A. 6/16/62.

Q. What is your educational background?

A. High school. And I didn't graduate college, but four years of college.

Q. Where did you go?

A. Tennessee Tech University.

Q. Are you employed?

A. Yes.

Q. Where are you employed?

1 A. Maryland Fried Chicken Leesburg.

2 Q. What is your position there or your title?

3 A. It's a family business so --

4 Q. Would you be an employee or --

5 A. Well, it's a family business, so I'm kind of an
6 owner/manager/employee, you know, whatever you want to
7 call it. We have an understanding.

8 Q. Is there any documentation that reflects your
9 title or titles at Maryland Fried Chicken in Leesburg?

10 A. I believe I'm listed as a director somewhere.
11 But as far as -- it's a family business. There doesn't
12 need to be. Our word of mouth is word.

13 Q. When you say a "director," what corporation
14 would that be for? What would be the title of the
15 corporation?

16 A. You're going to have to talk to Matthew about
17 that. I don't know.

18 Q. So you're not aware of the -- let me back up.
19 Who was -- who first opened the restaurant in
20 Leesburg?

21 A. My father, Richard.

22 Q. Did he -- he was the first one to own and
23 operate a restaurant in Leesburg?

24 A. Oh, in Leesburg he was the first one?

25 Q. Uh-huh.

1 A. It was originally a Burger Queen.

2 Q. A Burger Queen?

3 A. Burger Queen. And then in the '60s, the
4 corporation -- when it became a Maryland Fried Chicken,
5 it was under the corporation. I guess they franchised it
6 out. My father didn't own it directly. Kind indirectly
7 through the corporation.

8 Q. All right. Well, then what was the name of the
9 company that originally started the Maryland Fried
10 Chicken restaurants?

11 A. Maryland Fried Chicken.

12 Q. That was the name of the company, Maryland Fried
13 Chicken?

14 A. Uh-huh.

15 Q. And do you know who the officers or members,
16 directors of that company were?

17 A. Yes. Richard Costantine and my two uncles,
18 Albert and Angel.

19 Q. And do you know when that company was formed?

20 A. That was formed, to my best knowledge, around
21 '61, '60, '61.

22 Q. And how many -- what Maryland Fried Chicken
23 locations were operated under this corporation?

24 A. Well, originally, it was Costantine's Restaurant
25 on the Trail, 441. That was the first one. That's where

1 my grandfather invented the recipe.

2 Q. So your grandfather's name was?

3 A. Alfonso.

4 Q. Costantine?

5 A. Correct.

6 Q. So when did he start -- it was called

7 Costantine's?

8 A. It was called Costantine's Restaurant.

9 Q. And where was it located?

10 A. On the trail.

11 Q. On Orange Blossom Trail?

12 A. Orange Blossom Trail, uh-huh.

13 Q. Do you know when he opened that restaurant?

14 A. I think in '59. 1959. I'm pretty sure it was
15 1959.

16 Q. Did he operate that with anyone else or by
17 himself, the Costantine's Restaurant?

18 A. Originally, it was Albert Costantine and Alfonso
19 were the first two in that restaurant. And it was just
20 Costantine's Restaurant.

21 Q. So Alfonso and Albert operated Costantine's
22 originally?

23 A. Yeah. I mean, it was -- they had lots of other
24 help.

25 Q. I'm sorry, what did you say?

1 A. Alfonso and Costantine, yes, as far as in the
2 family, yes.

3 Q. Was there anyone else that operated it, the
4 Costantine's Restaurant?

5 A. I don't know.

6 Q. Do you know if Albert and Alfonso operated it
7 under a corporation's name or just themselves?

8 A. I don't know.

9 Q. Okay. So Albert and Alfonso Costantine are
10 operating Costantine's around 1959?

11 A. Uh-huh.

12 Q. When did the Maryland Fried Chicken -- when did
13 it become a Maryland Fried Chicken? Or did it become a
14 Maryland Fried Chicken, I guess, that location?

15 A. It became a Maryland Fried Chicken in '60 -- I
16 think '61, when Albert called his two brothers, Angel and
17 Richard, to come down. He said he had a good idea. He
18 wanted to form a corporation. And so that's what
19 happened. At the Costantine's Restaurant, they sold all
20 kinds of food. It wasn't just chicken. But Albert,
21 Alfonso, Richard, and Angel. It was actually Alfonso who
22 invented the recipe. That's where they experimented with
23 it.

24 Q. Alfonso invented what recipe?

25 A. The Maryland Fried Chicken recipe.

1 Q. The recipe you mean the breading? Or what do
2 you mean by "recipe"? How you make the chicken?

3 A. Yes. The breading, the technique, everything.

4 Q. So Alfonso Costantine invented that, okay. Then
5 you said they formed the corporation Maryland Fried
6 Chicken?

7 A. Correct.

8 Q. Okay.

9 A. A couple years later. But that was actually the
10 first Maryland Fried Chicken they put up the sign. I
11 actually got a picture of it. There is the address and
12 everything (tenders document). That was the first -- in
13 fact, it still says "Costantine's Restaurant." And they
14 had just put up the Maryland Fried Chicken logo. That's
15 my mother right there in the picture.

16 MS. KNOTT: Can I go ahead and mark this as
17 Exhibit A? Do you want me to make a copy of it so
18 you can have it back?

19 THE WITNESS: Definitely.

20 (A recess was had.)

21 (The question was read back by the reporter.)

22 MS. KNOTT: I'm marking as Exhibit A the picture
23 that Mr. Costantine was just referring to.

24 (Whereupon, Defendants' Exhibit A was marked.)

25 Q. Okay. Let me ask you, when did the Costantine's

1 sign come down and when did it become just a Maryland
2 Fried Chicken?

3 A. I don't know.

4 Q. Who was the first person to own and operate
5 another Maryland Fried Chicken after the one that Albert
6 and Alfonso were operating on Orange Blossom Trail?

7 A. Who? I don't know who. I think the store on
8 Edgewater was either the second after this or the third.
9 But I don't know who as in the person. I don't know who
10 they sold that store to.

11 Q. As Maryland Fried Chicken began to expand --
12 back up.

13 Do you know the process someone had to go
14 through to open a Maryland Fried Chicken?

15 A. No.

16 Q. Do you know if they had to get a particular
17 person or entity's permission to open a Maryland Fried
18 Chicken?

19 A. I don't know. I was born in '62. This was
20 in --

21 Q. Do you know if Albert or Alfonso had any
22 franchise or license agreements with anyone to open and
23 operate a Maryland Fried Chicken?

24 A. I know that they -- Alfonso and Albert called
25 Angel and Richard down from Delaware, and they moved

1 their families down to start a corporation Maryland Fried
2 Chicken.

3 Q. What Maryland Fried Chicken locations did
4 Richard operate?

5 A. Richard actually operated this location on the
6 Trail.

7 Q. With Albert and Alfonso or who did he operate it
8 with?

9 A. In the beginning, with them. And then he
10 eventually operated it with just Angel, and then by his
11 self.

12 Q. Around what time did Albert and Alfonso cease to
13 be associated with the Maryland Fried Chicken on Orange
14 Blossom Trail?

15 A. They were never -- they never ceased. They
16 started a corporation. They were all in this together.

17 Q. When did they stop operating the Maryland Fried
18 Chicken on Orange Blossom Trail, Albert and Alfonso?

19 A. I don't know.

20 Q. At some point in time, Richard and Angel began
21 to operate it?

22 A. But it was all under the same -- they were a
23 corporation. They were all the same.

24 Q. Right, I understand. But I'm just trying to
25 understand who's operating it. I understand the

1 ownership you're saying was the corporation. I'm trying
2 to understand who was operating it at what time.

3 A. I don't know the time, the exact times.

4 Q. Other than Orange Blossom Trail, what other
5 restaurants did Richard operate?

6 A. I don't know. I think Apopka at that time. I'm
7 not sure. I know he operated Apopka at some point.

8 Q. Richard?

9 A. Uh-huh. But they were all -- I mean, it was a
10 corporation. They were all together.

11 Q. Did Richard individually, Richard Costantine,
12 did he approve the opening and location of each Maryland
13 Fried Chicken that opened after Orange Blossom Trail?

14 A. No. They did that together.

15 Q. Who?

16 A. The corporation. The three brothers.

17 Q. So every individual and/or entity that opened a
18 Maryland Fried Chicken got the approval of the
19 corporation?

20 A. Correct.

21 Q. You just said that the corporation approved the
22 opening and location of each Maryland Fried Chicken. Is
23 that from inception of Maryland Fried Chicken to the
24 present date?

25 A. The corporation approved of all these locations.

1 I think there was some more while they were a
2 corporation.

3 Q. So what time frame -- I'm trying to understand.
4 What time frame did the corporation approve the opening
5 of each and every Maryland Fried Chicken? First, let's
6 back up. When did the corporation cease to exist?

7 A. In, I believe, '71, '72. Early '70s. '71 or
8 '72. I think '71.

9 Q. So is your testimony that until 1971, when the
10 corporation ceased to exist, that the corporation
11 approved the opening of each and every Maryland Fried
12 Chicken restaurant?

13 A. Say that again.

14 Q. Sure. During the corporation's Maryland Fried
15 Chicken's existence, did it approve the opening of each
16 and every Maryland Fried Chicken restaurant?

17 A. Yes.

18 Q. And the corporation ceased -- when did the
19 corporation cease to exist?

20 A. I think in '71 or '72. There was a big court
21 case, lawsuit.

22 Q. From 1971 or '72, whenever the corporation
23 ceased to exist, up until the present date, was there a
24 company or entity that approved the opening of each and
25 every Maryland Fried Chicken restaurant?

1 A. Whenever somebody wanted to open a Maryland
2 Fried Chicken restaurant, they always went to my dad.

3 Q. From what time period are we talking about?

4 A. There have only been three that's opened in the
5 state of Florida in the last two years.

6 Q. I'm talking from 1971 to the present.

7 A. I thought you said --

8 Q. Your testimony is that -- well, you said prior
9 to 1971 it was the corporation that approved the opening?

10 A. Uh-huh.

11 Q. Post 1971 to the present, is your testimony that
12 Richard Costantine approved the ownership and location of
13 each and every Maryland Fried Chicken that has operated
14 since 1971?

15 A. No. My testimony is that since 1971, of the
16 three that I know that have opened -- and Sammy
17 Endelicato didn't open one on his own but-

18 Q. Sammy did what?

19 A. Sammy Endelicato did not open one, a new one, on
20 his own.

21 Q. He did or didn't?

22 A. He did not. So excluding Sammy -- when he
23 wanted a Maryland Fried Chicken -- I live in the same
24 neighborhood as my parents. And every day when I would
25 go over there, or every other day, I saw Sammy there.

1 Q. Okay. Hold on. Let's back up. Answer my
2 question and we'll get to Sammy in a minute.

3 A. All right.

4 Q. So your testimony is that since 1971, Richard
5 Costantine has approved the opening of three Maryland
6 Fried Chickens?

7 A. Well, the only three that I know that have
8 opened up have been Daytona -- actually, two that I know
9 that he approved was Daytona and Casselberry. They both
10 came to him to get their selves -- they wanted a Maryland
11 Fried Chicken.

12 Q. Who came to him for Daytona?

13 A. Mark Costantine.

14 Q. And what relationship is he to Richard?

15 A. His grandson.

16 Q. Whose?

17 A. And the other guy --

18 Q. Whose father? I'm trying to get the family
19 tree.

20 A. His father is Rick Costantine, who is deceased.

21 Q. And how is Rick related to you?

22 A. Brother.

23 Q. While we're on the subject, how many brothers do
24 you have?

25 A. Three.

1 Q. What are their names?

2 A. Bobby, Ricky, and Michael.

3 Q. Michael, okay. And Mark Costantine is Rick's
4 son?

5 A. Correct.

6 Q. And he went to Richard and asked him permission
7 to open the Daytona location?

8 A. Yeah.

9 Q. Then you said Casselberry?

10 A. Uh-huh.

11 Q. Who opened and operated the Casselberry?

12 A. Scott Roberts.

13 Q. Okay. Is he related to the Costantine's?

14 A. No.

15 Q. Family, blood-line related?

16 A. No.

17 Q. Okay. Is that still in operation?

18 A. No.

19 Q. Who is Scott Roberts? How did he meet Richard
20 Costantine?

21 A. I don't know how they met.

22 Q. What was the nature of their relationship?

23 A. He is their bookkeeper.

24 Q. He is the bookkeeper for whom or who?

25 A. Maryland Fried Chicken Leesburg.

1 Q. How long has he been the bookkeeper there?

2 A. Well, I can't tell you because his mother was
3 the bookkeeper for many years. And she retired, and then
4 he became the bookkeeper.

5 Q. What's his mother's name?

6 A. Carol. Carol Roberts.

7 Q. And when did she retire and Scott become --

8 A. I don't know. Probably within the last -- I'd
9 say within the last five, six, seven years.

10 Q. Okay. Let me backtrack for a minute. You
11 mentioned a lawsuit in 1971 or around 1971, '72. What
12 lawsuit are you referring to there?

13 A. There was a lawsuit -- I don't know enough about
14 that to tell you the details.

15 Q. What do you know about that?

16 A. What do I know about that?

17 Q. (Nods head.)

18 A. There was a lawsuit -- when Maryland Fried
19 Chicken, the corporation, my father, uncle, two uncles,
20 merged with a group of insurance agents out of Georgia,
21 they actually merged.

22 Q. Who merged?

23 A. The corporation, Richard --

24 Q. The corporation that Richard --

25 A. -- Albert and Angel.

1 Q. Maryland Fried Chicken.

2 A. And at that time, Rose and Alfonso,
3 grandparents.

4 Q. So Maryland Fried Chicken merged with who?

5 A. I can't remember the name of the insurance
6 company, but a group of insurance agents out of Georgia,
7 Macon, Georgia.

8 Q. They merged to form what?

9 A. They merged -- there was one contract that was
10 signed that was really good for the family. But they
11 weren't happy with it, and they made him -- they got them
12 to sign another contract.

13 Q. A contract to do what?

14 A. To merge. They just merged.

15 Q. They had a contract to --

16 A. Do business together.

17 Q. -- merge and start to do business together?

18 A. Right.

19 Q. Okay. And what happened?

20 A. The first contract that they signed was really
21 good for the family.

22 Q. For the Costantines?

23 A. For the Costantines. And they weren't happy
24 with that contract.

25 Q. The insurance group?

1 A. The insurance group. So they had another
2 contract written up, which everyone signed except my
3 father for like three or four days. He actually went
4 missing because he didn't want to sign a contract. But
5 they needed him to sign that contract, so they put
6 pressure on him, Albert and Angel and Rose.

7 Q. Who? Rose?

8 A. Albert. My Uncle Albert, my Uncle Angel, my
9 Grandmother Rose, my Grandfather Alfonso.

10 Q. Okay.

11 A. They put pressure on him to sign that contract.

12 Q. And Rose is married to?

13 A. Alfonso. That's grandma and grand pop. So he
14 eventually did sign that contract against his will. And
15 there was a clause in that contract that held the
16 corporation responsible for any and all monies that they
17 spent. And they apparently spent -- they bought cars and
18 furniture.

19 Q. You mean the merged corporation?

20 A. The merged company from Georgia. They bought I
21 think possibly even a home, cars, and furniture. And
22 they ended up bankrupting the company. That's actually
23 what the big lawsuit was about that I was referring to.
24 That was a big court case. And that's where they
25 actually lost the corporation at that time.

1 Q. Do you remember who the parties --

2 A. They lost the corporation as it was, but then
3 they started another -- there were five restaurants that
4 they kept. I can't remember what they called that.

5 Q. So back up a couple things. So who was party
6 lawsuit? It was whom? Who sued who, do you know?

7 A. Well, I don't know. When they --

8 Q. Where was the lawsuit filed?

9 A. I believe in Florida.

10 Q. Florida. You don't recall who the parties were,
11 who sued whom?

12 A. It was the corporation, Maryland Fried Chicken
13 Corporation.

14 Q. Sued the insurance group --

15 A. I don't know.

16 Q. -- or whoever they were?

17 A. I don't know.

18 Q. Do you have a copy of the contract that you were
19 talking about that held them responsible, the corporation
20 responsible, for any and all monies spent? Do you have a
21 copy of that?

22 A. I do not, no.

23 Q. Do you know who has a copy of it?

24 A. I do not.

25 Q. Do you know what the outcome of that lawsuit

1 was?

2 A. They ended up losing the corporation. And they
3 ended up -- they got five stores out of that lawsuit.

4 Q. When you say they lost the corporation --

5 A. They actually lost the corporation and -- they
6 lost the corporation.

7 Q. When you say lost it, did they just dissolve it
8 or it was court ordered that --

9 A. I don't know.

10 Q. But after this lawsuit, we now have -- did they
11 start another company to operate? You said there was
12 five remaining restaurants. What were those locations?

13 A. The Trail, Apopka, the one on 50, Sanford. I'm
14 not sure what the other one was. It might have been
15 Edgewater.

16 Q. Was there a corporation formed subsequently to
17 operate these five restaurants?

18 A. There was.

19 Q. What was the name of that corporation?

20 A. I don't remember. My dad knew. I don't
21 remember. He told me.

22 Q. Was it the same individuals that formed that
23 corporation that formed the prior corporation?

24 A. I don't know. I believe that one was just --
25 actually that was Angel and Richard.

1 Q. Just Angel and Richard you think?

2 A. Yes. They were trying to protect -- they didn't
3 want to put Albert on it.

4 Q. why?

5 A. I don't know.

6 Q. what happened?

7 A. To protect their interest.

8 Q. what were they trying to protect do you think?

9 A. I don't know. But I just know they didn't want
10 Albert on that.

11 Q. what happened to Albert at that point in regard
12 to Maryland Fried Chicken? If he wasn't involved in the
13 corporation, he wasn't -- what was his role after that?

14 A. well, my dad got the store on the Trail. Albert
15 got a store in Sanford. Angel ran the store out on 50
16 out by UCF. And they owned Apopka together at that time.

17 Q. I thought the corporation owned all of them?

18 A. They lost the corporation.

19 Q. But I thought they formed a new corporation and
20 that corporation owned these restaurants?

21 A. well, they set it up under that corporation, but
22 they had individual ownership.

23 Q. so they set up -- when you say set up, what do
24 you mean they set them up under a corporation?

25 A. I just know that they formed a new corporation

1 under those five restaurants. I don't know all the
2 details that you're asking.

3 Q. So did Albert Costantine own Sanford or did the
4 corporation own Sanford?

5 A. I can't say a hundred percent.

6 Q. What about Orange Blossom Trail, did Richard own
7 Orange Blossom Trail or the company?

8 A. Richard did a hundred percent.

9 Q. Okay.

10 A. But it was in the corporation. I'd have to say
11 Albert did own Sanford. Now that I think about it, he
12 did own Sanford. And Angel owned Highway 50, Union Park.

13 Q. They were individually owned?

14 A. Correct.

15 Q. So they formed this new corporation, but they
16 were individually owned and operated, the restaurants?

17 A. Right.

18 Q. All five. What about Apopka again, did you say?

19 A. Apopka was -- now, my dad had 25 percent
20 interest. Uncle Angel had 25 percent interest. And then
21 my grandmother had like 50 percent.

22 Q. Rose?

23 A. Rose and Albert, Uncle Albert, had, I believe,
24 50 percent of that store.

25 Q. Is there any documentation that you're aware of

1 to reflect the ownership interests in each of these five
2 restaurants?

3 A. Not that I know of.

4 Q. Okay. Let's back up to -- we were talking about
5 the three restaurants that you knew that Richard
6 Costantine approved since 1971?

7 A. Uh-huh.

8 Q. And you had mentioned Scott Roberts opened the
9 Casselberry restaurant. Do you know when, around what
10 time that was?

11 A. It was probably -- let's see, we're in '08.
12 That had to be in '07, early '07.

13 Q. And when did it close?

14 A. You know, about that store, my dad had a meeting
15 together with me and my brother, Michael, and wanted us
16 to vote on whether he thought he should let Scott open
17 that store. And Mike and I both said no, absolutely not.
18 But he made the decisions and he went against us.

19 Q. And what happened to the Casselberry restaurant?

20 A. What happened to it?

21 Q. You said it closed?

22 A. They're out of business now.

23 Q. Did your dad have any part in that closing down
24 or did Scott Roberts just close it down?

25 A. That was Scott Roberts.

1 Q. Did your dad -- after the Casselberry restaurant
2 opened, what was your dad's involvement with the
3 Casselberry restaurant?

4 A. After it opened?

5 Q. After it opened.

6 A. None.

7 Q. What was your dad's involvement in the Daytona
8 restaurant that Mark Costantine operated?

9 A. Back to that store, my dad had a soft heart. He
10 went to Scott Roberts and told him we took a vote, me and
11 my kids. He said it's not a good idea. We don't want
12 you to open up a Maryland Fried Chicken. Scott Roberts
13 started crying. And like I said, my dad had a soft heart
14 and changed his mind and said all right, Scott, you can
15 do it.

16 Q. Okay. What was your dad's involvement in the
17 Daytona Maryland Fried Chicken after it opened?

18 A. After it opened?

19 Q. After it opened.

20 A. My nephew, Mark, who -- his involvement? He did
21 not work there at the store.

22 Q. Did he operate it or did he have any -- did he
23 attempt to control how it was operated?

24 A. Mark just went to my dad for a lot of advice, as
25 well as myself and Mike. Mark, he worked at the Leesburg

1 restaurant for a couple years.

2 Q. When did he work there?

3 A. I don't know. When he got back from Iraq. I
4 can't recall exactly.

5 Q. What is the third restaurant you said that
6 Richard Costantine approved the opening of?

7 A. That was mistaken. Well, actually, he didn't
8 approve -- the only one he didn't approve of or even know
9 anything about was the one that just opened in Apopka.

10 Q. Before we talk about that, what happened to the
11 -- we were just talking about the five restaurants that
12 remained after the corporation, whatever happened to it.
13 It went away and they formed a new corporation. What
14 happened to the Apopka restaurant that was opened in part
15 by Richard Costantine?

16 A. They sold it.

17 Q. Who did they sell it to?

18 A. John Garza.

19 Q. Who is John Garza?

20 A. He's just a guy who bought it from him. He was
21 one of their managers.

22 Q. At the Apopka restaurant?

23 A. I'm not sure. I believe so.

24 Q. Is he related to the Costantines, to the family?

25 A. No, no.

1 Q. Do you know when around when they sold it to
2 him?

3 A. No.

4 Q. Do you know how long John Garza operated the
5 Maryland Fried Chicken in Apopka?

6 A. How many years, no.

7 Q. After Richard and Angel and everyone who owned
8 the Apopka restaurant, after they sold it to Mr. Garza,
9 did they have any affiliation with it?

10 A. No.

11 Q. What happened to the restaurant in Union Park
12 that was owned or operated by Angel?

13 A. His son is running it.

14 Q. What's his son's name?

15 A. Danny Costantine. Uncle Angel deceased.

16 Q. When did he pass away?

17 A. Three years ago, maybe five. Maybe even five,
18 five years ago.

19 Q. What happened to the restaurant that Richard
20 owned/operated in -- I guess that was OBT. I guess that
21 was the OBT restaurant.

22 A. He sold it.

23 Q. Who did he sell it to?

24 A. I don't know.

25 Q. Do you know when he sold it?

1 A. In the '70s.

2 Q. Did he maintain any relationship with that
3 restaurant after he sold it?

4 A. No. I don't know. I actually don't know if he
5 did or not.

6 Q. Are there any other Maryland Fried Chicken
7 restaurants that you're aware of that Richard Costantine
8 approved the ownership and location of?

9 A. Back to Sammy, Sammy was over at my dad's house
10 probably, I don't know, four or five days a week for a
11 couple weeks, maybe a month. And they went and looked at
12 the Melbourne location together.

13 Q. Sammy and Richard?

14 A. Yeah, Sammy and Richard, before -- this was
15 before me and Sammy ever talked about doing anything
16 together. And they went and looked at that location
17 together a couple times.

18 Q. Before we get on Sammy, I want to go back to my
19 question before. Other than Sammy -- and we'll get into
20 that and Mount Dora -- are there any other Maryland Fried
21 Chicken restaurants that you're aware of that Richard
22 Costantine approved the location and ownership of?

23 A. No. There were many people that inquired him,
24 but he did not let anyone else.

25 Q. Are you aware of a Maryland Fried Chicken

1 located at 3500 Curry Ford Road, Orlando, Florida 32806?

2 A. I'm aware there was one or is one.

3 Q. Did Richard Costantine approve the opening and
4 operation of that restaurant?

5 A. I don't know.

6 Q. Are you aware that there is a -- or is there a
7 Maryland Fried Chicken, to your knowledge, located at
8 5003 Edgewater Drive, Orlando, Florida 32810?

9 A. Yes.

10 Q. Did Richard Costantine approve the opening and
11 location of that restaurant?

12 A. Originally, the corporation did, yes.

13 Q. Okay. Originally, the corporation approved an
14 ownership of a Maryland Fried Chicken at that address.

15 A. Correct.

16 Q. Has it been open consistently since that time?

17 A. Uh-huh.

18 Q. Has it changed ownership? When we say
19 "corporation," the corporation I'm referring to is the
20 original Maryland Fried Chicken corporation that --

21 A. When I say "corporation," I'm referring to the
22 Maryland Fried Chicken --

23 Q. Go ahead.

24 A. Uncle Albert, Richard, and Uncle Angel.

25 Q. And what was the name of that corporation?

1 A. Maryland Fried Chicken.

2 Q. Was it registered with the State of Florida?

3 A. I don't know.

4 Q. When you're talking about corporation, are you
5 referring to the corporation that existed prior to the
6 lawsuit in 1970 to '71 or post the lawsuit in '70 or '71?

7 A. No. I'm talking about prior. Because this was
8 -- Edgewater, the store you asked me about, was either
9 the second or third Maryland Fried Chicken. So when I
10 say "corporation," I'm talking about the family business.

11 Q. Well, I guess "corporation" and "family
12 business" aren't the same thing. Corporation I mean a
13 corporation that's registered with the State of Florida
14 or another state.

15 A. Correct.

16 Q. As to the Edgewater restaurant, you said that
17 the corporation approved the opening of that restaurant.
18 By "corporation," you meant the corporation that existed
19 prior to 1970 and '71 when that lawsuit occurred or post
20 lawsuit?

21 A. Prior.

22 Q. Prior. Okay. To your knowledge, has the
23 Edgewater restaurant changed ownership since that time?

24 A. Yes.

25 Q. Do you know if Richard Costantine approved the

1 change of ownership?

2 A. I don't know.

3 Q. Are you aware of a Maryland Fried Chicken
4 located at 13675 West Colonial Drive, Winter Garden,
5 Florida 34787?

6 A. Yes.

7 Q. Did Richard Costantine approve the ownership and
8 operation of that restaurant?

9 A. Yes.

10 Q. When did he approve that?

11 A. That was pre '71 through the corporation.

12 Q. So Richard Costantine individually. You're not
13 saying he approved it; you're saying the corporation
14 pre '71?

15 A. Correct.

16 Q. And that corporation was dissolved after the
17 lawsuit or ceased to exist?

18 A. Correct.

19 Q. Do you have any documents or evidence that
20 Richard Costantine approved -- or the corporation, I'm
21 sorry. The corporation pre-1970 approved the opening of
22 the restaurant in Winter Garden?

23 A. Documents? No. Evidence? Verbal from my
24 father.

25 Q. Do you know Paul Dion?

1 A. No.

2 Q. Are you familiar with Maryland Fried Chicken
3 restaurants in the states of Georgia, South Carolina,
4 Virginia, Pennsylvania, Michigan, anywhere outside of
5 Florida?

6 A. Yes.

7 Q. Did your dad, Richard Costantine, approve the
8 ownership and operation and location of each of those
9 restaurants?

10 A. Pre '71.

11 Q. What about post '71?

12 A. I don't know.

13 Q. And when you say pre '71, you're still talking
14 about the corporation, not Richard Costantine
15 individually? You're talking about the corporation?

16 A. Well, Richard was -- when I say the
17 "corporation," it's the three officers. I'm talking
18 about my dad and my two uncles.

19 Q. So he did it as a representative of the
20 corporation?

21 A. Correct.

22 Q. Are you saying he did it as a representative of
23 the corporation?

24 A. Yes.

25 Q. Or are you saying he did it individually?

1 A. Through the corporation.

2 Q. Can you think of any reason why Richard
3 Costantine, your father, denied having enough knowledge
4 of these Maryland Fried Chicken restaurants -- well, let
5 me rephrase that. We'll come back to that.

6 So is it your testimony -- did Richard
7 Costantine individually, not through a corporation,
8 approve the opening and location of each and every
9 Maryland Fried Chicken that exists today?

10 A. I don't know. I'd have to say no, definitely
11 not.

12 Q. When did Richard Costantine start operating the
13 Maryland Fried Chicken in Leesburg?

14 A. In 1979..

15 Q. Did he purchase it from somebody or was he the
16 first one to operate in Leesburg?

17 A. He purchased it.

18 Q. Who did he purchase it from?

19 A. I don't know her name. I forgot her name.

20 Q. Was she affiliated with anyone -- was she
21 affiliated with any corporation or was she an individual,
22 do you know?

23 A. I don't know.

24 Q. Do you know when the Leesburg restaurant first
25 opened?

1 A. My dad said it was in early to mid '60s.

2 Q. Did Richard Costantine -- did your father
3 individually approve the opening of the Leesburg
4 restaurant at its inception when it first opened?

5 A. The corporation did.

6 Q. Did he individually approve it?

7 A. I would have to say yes through the corporation.

8 Q. Well, no, that's not the same thing. Did he
9 individually, not through a corporation, approve the
10 opening of that restaurant?

11 A. I can't say. I can't say whether he did or did
12 not.

13 Q. So the corporation is what your testimony --

14 A. Yeah. But they went out and scouted out and --

15 Q. I understand. Did he approve it in his
16 individual capacity unrelated to a corporation?

17 A. I don't know.

18 Q. Did the corporation approve its opening?

19 A. Yes.

20 Q. Did anyone else other than the corporation
21 approve its opening?

22 A. Not to my knowledge.

23 Q. So then Richard in his individual capacity did
24 not approve the opening of the Leesburg location?

25 A. I don't know.

1 Q. Was it not just your testimony that the
2 corporation approved the opening of it and no one else?

3 A. Yes, that is my testimony, that my dad through
4 the corporation --

5 Q. Through the corporation?

6 A. Correct. And Uncle Albert and Uncle Angel.

7 Q. Through the corporation, though, not as
8 individuals? Together as a corporation, that's your
9 testimony?

10 A. That is, yes, because I don't know which one of
11 them actually went out to that location. It actually
12 could have been my dad.

13 Q. But your testimony is that it was through the
14 corporation?

15 A. I know through the corporation a hundred
16 percent.

17 Q. So Richard you said began operating Leesburg
18 when?

19 A. 1979.

20 Q. Did he operate the Leesburg location through a
21 corporation or as an individual?

22 A. In '79?

23 Q. Uh-huh.

24 A. As an individual.

25 Q. Did he ever operate -- was it ever operated in

1 any other fashion, through a corporation? Or was it --

2 A. A partnership.

3 Q. What was the name of the partnership?

4 A. I don't remember.

5 Q. Who were the partners in the partnership?

6 A. There was -- I think my mother answered that
7 question. Michael and my dad.

8 Q. Do you know if there were ever any -- would the
9 partnership have ever registered with the State of
10 Florida or with any other state?

11 A. I don't know.

12 Q. When was this partnership formed?

13 A. I'd have to say I can't tell you a hundred
14 percent. I don't know.

15 Q. Do you have a rough time period?

16 A. No.

17 Q. How long did the partnership operate the
18 Leesburg restaurant?

19 A. I don't know exactly how long.

20 Q. Who currently -- up until the time that your
21 father passed away, when he passed away, who was
22 operating the Leesburg restaurant?

23 A. Myself and my brother, Mike. It's a family
24 business.

25 Q. I understand.

1 A. So I'm not -- on paper, I know that when -- I
2 always knew when my parents passed that the restaurant
3 would be mine and my brother's. But as far as on paper,
4 I'm not on -- it's a family business so we just kind of
5 -- our verbal agreement is solid.

6 Q. So the restaurant in Leesburg was first operated
7 by Richard individually. Then a partnership was formed
8 you said?

9 A. Well, I know that there is a partnership. There
10 was a partnership.

11 Q. Okay.

12 A. I don't know exactly when the partnership was
13 formed.

14 Q. Did the partnership --

15 A. In 1979 I was --

16 Q. -- operate the business until your father passed
17 away or did he begin to operate it as an individual at
18 some point in time?

19 A. As an individual?

20 Q. I'm trying to ask, did the partnership cease to
21 exist at some point?

22 A. I know they've talked about changing it to a
23 corporation. They've talked about it recently in the
24 past five years or so.

25 Q. So at the time when your father passed away,

1 would you say it was being operated by him just as it was
2 in the beginning, just Richard?

3 A. Richard was owner.

4 Q. Right. I understand that. He was owner from
5 the time he took over in Leesburg until when?

6 A. Until the day he ceased. Now, he actually did
7 work at the store until my mother had a heart attack in
8 2000. And then he never came back to work.

9 Q. Your testimony is -- did he own the store? He
10 was the sole owner --

11 A. Yes. The sole owner?

12 Q. -- or did a corporation own it? Did a
13 corporation own it or did he own it individually?

14 A. It was through a partnership. My mom and dad
15 owned the Maryland Fried Leesburg store. How they did it
16 exactly --

17 Q. Do they own the property, the restaurant?

18 A. They do.

19 Q. Whose name is the property in?

20 A. My dad's and my mother's.

21 Q. During the time that your father operated the
22 restaurant in Leesburg, did he ever own or operate
23 another Maryland Fried Chicken?

24 A. No.

25 Q. Was your father aware that Robert Costantine was

1 going to open a restaurant in Apopka?

2 A. Not until the sign went up.

3 Q. Was that prior to its opening? I mean, when did
4 the sign go up? I need a time frame.

5 A. The sign went up I guess two years ago in the
6 summer, I think.

7 Q. But he was aware of it opening prior to its
8 ownership -- I mean, prior to its opening?

9 A. When the sign went up, that clued us in.

10 Q. Do you know if he attended or ever visited the
11 restaurant in Apopka?

12 A. I know a few weeks after it opened that he did.
13 Him and my mother did.

14 Q. Do you know if your father disapproved of Robert
15 Costantine opening the restaurant in Mt. Dora?

16 A. In Mt. Dora or Apopka?

17 Q. I mean, I'm sorry, Apopka.

18 A. I don't know.

19 Q. Did he ever voice disapproval for the opening of
20 the restaurant in Apopka?

21 A. No.

22 Q. Who is Sammy Endelicato?

23 A. He's a friend of the family's. He was actually
24 my oldest brother Ricky's best friend. They went to
25 school together. He was just a close friend of the

1 family. They all had a band together, Bobby and Ricky
2 and Sammy. Just a long-time friend of the family.

3 Q. And did you and Sammy intend at one time on
4 opening a Maryland Fried Chicken in Mt. Dora?

5 A. We did.

6 Q. When? When was the time in this -- back up.
7 who first had the idea -- who first had the idea
8 to open the Maryland Fried Chicken in Mt. Dora?

9 A. I did.

10 Q. Did you approach -- did you then approach Sammy
11 about the idea of opening a Maryland Fried Chicken in
12 Mt. Dora?

13 A. No. I was actually looking for -- I was looking
14 for a spot for a good 12 months before Sammy ever came
15 into the picture.

16 Q. How did Sammy come into the picture?

17 A. He just started showing up at my parents, my mom
18 and dad's house a lot. It wasn't unusual for him to come
19 by once in a while every so many years, but he was over
20 there all the time. And I found out why, because he
21 wanted a Maryland Fried Chicken. And so he talked to my
22 dad about how he could get one.

23 Q. Did you suggest that he join you in trying to
24 open one in Mt. Dora?

25 A. No. He went out to Melbourne. He was

1 contemplating buying the Melbourne store. And he was
2 looking around. And me and actually my brother, Mike,
3 had always wanted to get a little closer to home. And I
4 always liked Mt. Dora or even a little further towards
5 Apopka.

6 Q. So Sammy, he decided not -- he didn't pick
7 Mt. -- what happened after? You said he was looking in
8 Mt. Dora. What happened next?

9 A. Sammy -- when I would drive to work -- one day I
10 was driving to work, and I talked to Sammy about it. I
11 said, "Sammy, you know, I always wanted to maybe get
12 another Maryland Fried Chicken when my kids got older."
13 And I said, "What would you think about going in
14 together?" We talked about that first, about going in as
15 a partner together. And he said he wanted to pray about
16 it.

17 And the next day he called me and said that
18 sounds really good. That would be good. And I told him
19 I liked the Mt. Dora area because I wanted to keep it
20 close enough to the Leesburg store so we could build off
21 our good name that we built for many years. So it was
22 like a natural choice because I was going to --

23 Q. Let me ask you --

24 A. Go ahead.

25 Q. Go ahead.

1 A. That's all right.

2 Q. You said expand, but you stated you work at the
3 Maryland Fried Chicken in Leesburg. But who actually
4 owned Maryland Fried Chicken in Leesburg at the time that
5 you were looking in Mt. Dora?

6 A. It's a family business.

7 Q. Who actually owned it?

8 A. On paper, my dad does. But I know it's
9 inevitable.

10 Q. So you and Sammy decide to open a Maryland Fried
11 Chicken restaurant in Mt. Dora?

12 A. We looked at -- we were looking at Apopka, the
13 other side of Apopka. We looked at Mt. Dora. We thought
14 that would be too close to Bob. But then just driving to
15 work one day, I saw this little strip over here. And I
16 thought it was a decent location and called them up, and
17 that's how it all got started.

18 Q. Okay.

19 A. We actually signed the lease.

20 Q. Is this the lease that you're referring to
21 (tenders document)?

22 A. Yes.

23 MS. KNOTT: Can you mark this as Exhibit B?

24 (Whereupon, Defendants' Exhibit B was marked.)

25 Q. Who were the parties to this lease?

1 A. That actually signed the lease?

2 Q. Yes.

3 A. Myself and Sammy, Antonio Endelicato.

4 Q. Antonio Endelicato is Sammy Endelicato?

5 A. Right, correct. After we definitely got the
6 approval from my father, though.

7 Q. Why was Richard Costantine not a party to the
8 lease?

9 A. Because at his age, he was 80 years old. I
10 didn't want him to be.

11 Q. Can you explain a little more? I'm not sure
12 what you mean.

13 A. I just didn't want him to have any -- you know,
14 everything he had was paid off. And I just didn't want
15 him to be a party to the lease.

16 Q. As you stated --

17 A. But me and Sammy were going in business
18 together.

19 Q. You and Sammy Endelicato?

20 A. My dad wanted to be like a silent partner with
21 me. I didn't want him to be. It was understood the only
22 reason we could open up in Mt. Dora was because -- I
23 mean, that location was only 20 minutes from the Leesburg
24 location. I pass by it every day to work. I could get
25 there in 20 minutes.

1 Q. Are there any documents to reflect his -- that
2 he had any affiliation with the Mt. Dora restaurant you
3 and Sammy were planning on opening?

4 A. No documents. The only way -- and after Sammy
5 backed out, had a change of heart --

6 Q. I'm going to get there. Just answer the
7 questions so I can get --

8 A. No, he was strictly silent. Sammy didn't even
9 know anything about that.

10 Q. But there was no documents to reflect any
11 interest that he -- scratch that.

12 A. And I wasn't going to let him --

13 Q. After taking over the operation -- let me back
14 up a little bit. After Richard took over the operation
15 of the Leesburg Maryland Fried Chicken in 1979, did he
16 ever seek open a Maryland Fried Chicken anywhere else?

17 A. He always talked about it, but he never signed
18 anything.

19 Q. Did he ever take any affirmative steps to open a
20 Maryland Fried Chicken anywhere other than Leesburg after
21 1979?

22 A. After Sammy backed out, he wanted to --

23 Q. Okay. Let me --

24 A. You said after 1979, right? That's the only way
25 I know how to answer that question.

1 Q. I'm sorry to interrupt you. Go ahead.

2 A. After Sammy backed out, he wanted to buy the
3 whole thing on his own, which we came close to doing.
4 But we went out there and looked at it one more time
5 before we made that decision, and it turned out he didn't
6 like the location and the fact -- the huge fact that it
7 didn't have a drive-through.

8 And we actually -- I was pretty good -- I had a
9 pretty good relationship with the builder, and they said
10 that they owned the property going down a little bit next
11 to the Chili's and that they would -- after they filled
12 this up, they were going to build another strip center,
13 and they would build us one on the end with a
14 drive-through.

15 Q. Did you ever enter into any formal agreements --
16 did Richard or yourself ever enter into any formal
17 agreement -- I'm sorry, what was the name of the builder?

18 A. Vaughn was his last name. But Carl is the --
19 Carl and his father, who passed away, are the two guys
20 that I spoke to the most.

21 Q. Were there ever any formal agreements entered
22 into between Richard or yourself and Mr. Vaughn or an
23 entity affiliated with him as to opening --

24 A. With the Mt. Dora store?

25 Q. As to opening a Maryland Fried Chicken in

1 Mt. Dora?

2 A. We decided we didn't like that location.

3 Q. Right. Was there any formal agreements drawn up
4 regarding opening another location in Mt. Dora?

5 A. Just verbally.

6 Q. Describe this verbal agreement.

7 A. The verbal -- Carl said that when they start
8 building on their next project, which was right next to
9 that one, that they would definitely build us an -- it
10 was too far into the process for this particular plaza to
11 have an end unit with a drive-through. And they said in
12 the next project they would do that for us.

13 Q. When were they set to build that next strip?

14 A. That was -- when they leased out the one they
15 have now, the one that the Maryland Fried Chicken is at
16 in Mt. Dora, when they completely leased that out, they
17 were going to build another one. But that one is still
18 not leased out. I mean, with the market turn I mean --

19 Q. No. Let me back up.

20 A. I'm sorry.

21 Q. You stated that they were going to build another
22 strip mall?

23 A. This was just verbally. I talked to Carl a lot
24 about it.

25 Q. They were going to build another strip mall and

1 give you space in that; is that what your testimony was?

2 A. Correct. They owned the property.

3 Q. When were they set to build that?

4 A. At the time, they said probably within a year.
5 But that never happened because of the way the market
6 changed.

7 Q. When did these verbal conversations take place?

8 A. When I decided not to do the lease in Mt. Dora,
9 when I backed out.

10 Q. When was that?

11 A. That was in -- that was either -- that was in
12 October or November.

13 Q. Did any of these verbal conversations,
14 agreements -- was there ever any option contract put into
15 place or was there any contract put in writing? Was
16 there any contract put in writing?

17 A. No. Carl's dad reminded me a lot of my dad.
18 They actually met, and they were similar in many ways.
19 But, no, it was just verbal. He was very trustworthy.

20 Q. Did you or your father pay him any money to
21 secure a place in this new strip mall?

22 A. Yeah.

23 Q. After the strip mall, you said -- you stated
24 that you thought it was going to open in about a year's
25 time. Let's back up.

1 A. I thought that they -- he said that they would
2 start building like in about a year. They thought that
3 that was going to sell out quick, the strip center that
4 exists today that the Maryland Fried is at in Mt. Dora.
5 But it didn't. It's still vacant. There is still many
6 vacancies.

7 Q. Can you identify this document (tenders
8 document)?

9 MR. MCKINNEY: This agreement appears to have a
10 confidentiality clause. Did you see that, regarding
11 nondisclosure?

12 MR. RANSON: I thought we signed an agreement
13 that any document that's pertinent to this case is
14 confidential as to the case.

15 MR. MCKINNEY: That's true. I'm just saying
16 that Sammy Endelicato, he's not a party to that
17 confidentiality agreement. And Charles Vaughn, also.

18 Q. Why did you and Sammy decide not to open the
19 Mt. Dora Maryland Fried Chicken together?

20 A. Sammy wanted to have a meeting with me and my
21 mother and father, and he didn't like something that my
22 father said.

23 Q. What did he say?

24 A. He told him that this is a gift.

25 Q. What was a gift?

1 A. To let him go to Mt. Dora. He said the only
2 reason that you can go to Mt. Dora is because Tony is
3 involved. And that didn't sit well with Sammy.

4 Q. Okay. So what happened to the lease agreement
5 that you and Sammy had entered into?

6 A. Sammy and I talked about -- we got out of it.
7 We talked about how we could get out of it. Sammy wanted
8 out. And I said, okay, let's get out of this lease. And
9 we managed to do that, because of -- only because of the
10 kind of people that Carl and his father and the Vaughns
11 are.

12 Q. Do you know what Sammy Endelicato -- did Sammy
13 Endelicato, to your knowledge, open another Maryland
14 Fried Chicken after the arrangement between the two of
15 you didn't work out in Mt. Dora?

16 A. He bought a Maryland Fried Chicken.

17 Q. Where?

18 A. Melbourne.

19 Q. Did he get your father's permission to purchase
20 the Melbourne restaurant?

21 A. He got my father's approval by driving my father
22 out there two or three times, and he definitely wanted
23 his approval.

24 Q. Did he get your father's approval after you and
25 -- after you and Sammy decided not to open Mt. Dora

1 restaurant, did he get your father's approval to then go
2 open the Maryland Fried Chicken in Mt. Dora?

3 A. I don't know if they spoke after that. I don't
4 think they did.

5 Q. Around what time did you and Sammy -- when did
6 you and Sammy get out of the lease? Around what time?

7 A. I think it was November.

8 Q. Of what year?

9 A. of '07. October or November.

10 MS. KNOTT: Do you mind if we take a quick
11 break?

12 MR. MCKINNEY: Yeah.

13 (A recess was had.)

14 Q. In conjunction with your deposition today, you
15 were sent a subpoena duces tecum. I'm going to go down
16 the requests that were in that subpoena and the documents
17 that were requested.

18 The first request was for you to "provide any
19 and all correspondence that you have sent to any
20 restaurant individual or entity concerning the use of the
21 mark from January 1st, 2002, to the present." Did you
22 bring any documents responsive to this request?

23 A. No.

24 Q. Do you know if any documents exist responsive to
25 this request?

1 A. No. I don't think so.

2 Q. Can you identify this (tenders document)?

3 A. It's a Maryland Fried Chicken logo.

4 Q. Would you say -- is that the mark -- is it your
5 understanding that that is the mark at issue in this
6 lawsuit?

7 A. Yes. The big chicken and the little chicken.

8 Q. For purposes of my questioning, I'm just going
9 to refer to this as the mark.

10 MR. MCKINNEY: Is this going to be Exhibit C?

11 MS. KNOTT: Yes.

12 (Whereupon, Defendants' Exhibit C was marked.)

13 Q. No. 2 was, "Please provide any and all documents
14 or correspondence which support the assertion that
15 Richard Costantine or his estate owns the mark." Did you
16 provide any documents responsive?

17 A. I didn't provide any. Just the fact that he
18 owns that restaurant in Leesburg for 30 years.

19 Q. Is there any documentation other than his
20 ownership of the restaurant in Leesburg that supports the
21 position that he or his estate owns the mark?

22 A. I state that he owns the mark through his
23 30 years of business in Leesburg.

24 Q. But there aren't any documents that you brought
25 that are reflective of him owning the mark outside of

1 that?

2 A. I didn't bring the deed to the restaurant, no.

3 Q. The next one is, "Please provide a copy of any
4 and all invoices and receipts from CFM Distributing in
5 your possession from January 1st, 2002, to the present."
6 Did you bring those receipts?

7 A. I just grabbed a stack, like the last month or
8 two.

9 Q. Is that these right here?

10 MR. MCKINNEY: Uh-huh.

11 A. We could certainly -- I mean, I just grabbed a
12 little stack of them.

13 MS. KNOTT: We can go off the record for a
14 second.

15 (Off-the-record discussion was had.)

16 (Whereupon, Defendants' Exhibit D was marked.)

17 Q. I've marked as Exhibit D the documents
18 responsive to Request No. 4. And can you tell me what
19 those documents are?

20 A. These are the CFM invoices.

21 Q. Who is CFM?

22 A. They're a company that we buy some products from
23 for the restaurant.

24 Q. What products do you buy from them?

25 A. Paper products.

1 Q. With the mark on them?

2 A. Yes, uh-huh.

3 Q. What else?

4 A. Paper products, breading, wax paper, slaw
5 dressing, lots of paper products.

6 Q. Is the breading the same breading that Albert
7 Costantine or Alfonso Costantine created the recipe for?

8 A. It's close. It's not exact.

9 Q. Who started CFM?

10 A. It was originally MFC. Who started CFM?

11 Q. Yes, CFM.

12 A. I don't know.

13 Q. Who currently owns CFM?

14 A. Mary Jo. .

15 Q. Do you know who owned it before she did?

16 A. I want to say Charlie. I don't know his last
17 name.

18 Q. To your knowledge, was there ever any agreement
19 between -- written agreement between Richard Costantine
20 and CFM regarding the mark?

21 A. Be more specific. I don't know what you mean.

22 Q. Was there ever any written agreement whereby
23 Richard Costantine attempted to or granted CFM a right to
24 use the mark to sell the products with the mark on it,
25 the logo?

1 A. I don't know.

2 Q. Is there any document of any kind which gave
3 Richard a right to approve or disapprove the opening of
4 any Maryland Fried Chicken restaurant from the conclusion
5 of the big lawsuit in around 1970 to '72 to the present?

6 A. I don't know. Just from the fact that he owns
7 -- he was one of the original founders. Is there a
8 document? I don't know.

9 Q. Not that you're aware of?

10 A. Not that I'm aware of, no.

11 Q. Tell me again what this document is or this
12 brochure.

13 A. This was a menu.

14 Q. From which restaurant?

15 A. This was the corporation's menu back in the
16 '60s.

17 Q. Pre the lawsuit in 1970, 1972?

18 A. Correct.

19 Q. Was it used by all of the Maryland Fried
20 Chickens that existed prior to that lawsuit?

21 A. I believe so. I'm not for sure.

22 Q. So you're not sure of the date when this was
23 printed?

24 A. No.

25 Q. These Maryland Fried Chicken locations -- did

1 the corporation pre 1970, '72, did that corporation
2 approve the opening and operation of each and every one
3 of these restaurants?

4 A. Yes. The corporation: my dad, my uncle, Angel,
5 and Uncle Albert.

6 Q. The corporation?

7 A. My dad Richard, my Uncle Angel, and Uncle
8 Albert.

9 Q. Did they approve -- let me go ahead and stop for
10 a minute. Let me mark this as Exhibit E.

11 (Whereupon, Defendants' Exhibit E was marked.)

12 Q. Did the corporation pre -- the corporation
13 meaning the one pre 1970, '72, did it --

14 A. When I say "corporation," I'm referring to Uncle
15 Albert, Uncle Angel, and Richard Costantine, my dad.

16 Q. Did you believe -- did you not testify that that
17 corporation was named Maryland Fried Chicken?

18 A. I did.

19 Q. And that that existed prior to the lawsuit in
20 1970 to '72?

21 A. I did.

22 Q. And that's the corporation that we're referring
23 to?

24 A. Right. But the corporation is the three
25 founders.

1 Q. Are you saying those are the directors or the
2 members of the corporation?

3 A. Yeah. I'm saying that they were the
4 corporation. They made up the corporation. They were
5 the --

6 Q. Okay. I understand. Did the corporation --

7 A. The corporation didn't approve these
8 restaurants; these three individuals did.

9 Q. Who approved the opening of the restaurant in
10 Denver, Colorado?

11 A. I don't know. Which one?

12 Q. But your testimony is that one of the members of
13 the corporation approved the opening?

14 A. If this was pre '71, yes.

15 Q. Okay. The restaurants, the Maryland Fried
16 Chicken restaurants, that came into existence post '70,
17 '71, did Richard Costantine approve the opening of each
18 of those locations?

19 A. Which locations are you talking about?

20 Q. All of them. Did he approve each and every one
21 of them?

22 A. The ones I know of are the Daytona and the --

23 Q. So the only ones you have knowledge that he
24 approved of were the three restaurants Casselberry,
25 Daytona, and --

1 A. Post '71?

2 Q. Post '71.

3 A. They're the ones that I know in Florida. Out of
4 state, I know there are some other ones that have opened
5 that he wasn't even aware of.

6 Q. Say that again, I'm sorry.

7 A. I know there was another -- other Maryland Fried
8 Chickens that have opened up post '71 that my father was
9 not aware of.

10 Q. Do you know when the Maryland Fried Chicken
11 restaurants that you're aware of -- when did this menu
12 stop being used?

13 A. I don't know.

14 Q. Is there currently a set menu that all Maryland
15 Fried Chicken restaurants in existence must use?

16 A. No.

17 Q. Are all Maryland Fried Chicken restaurants free
18 to select their own menu?

19 A. They are.

20 Q. Are there -- is there a manual or guide that all
21 Maryland Fried Chicken restaurants must follow in
22 operating their location?

23 A. Not that I'm aware of, no.

24 Q. Is there -- to your knowledge, is there a
25 requirement that every Maryland Fried Chicken restaurant

1 order their products, paper products and breading, from
2 CFM Distributing?

3 A. No.

4 Q. Do you know is there another company that
5 distributes Maryland Fried Chicken products other than
6 CFM Distributing?

7 A. Yes.

8 Q. What is the name of that company?

9 A. I don't know.

10 Q. Do you know who started it, anything about it?

11 A. I know that there is other companies that
12 distribute the breading, but that's all I know.

13 Q. What about the paper products with the mark on
14 them, do you know if another company distributes those
15 items?

16 A. I don't know for sure, but I would say there
17 probably is. Restaurants -- like, for instance, I could
18 go through whoever and get the trademark on our boxes.

19 Q. Did Richard Costantine approve every distributor
20 that distributes Maryland Fried Chicken products?

21 A. Post '71?

22 Q. Post '70 to '72.

23 A. No.

24 Q. Prior to your father's death, if someone wanted
25 to open a Maryland Fried Chicken -- scratch that.

1 Did your father control who CFM distributed
2 their products to, Maryland Fried Chicken products to?

3 A. No.

4 Q. Let's return to the subpoena duces tecum for a
5 minute. No. 5 requests "Any and all design and franchise
6 information you have regarding Maryland Fried Chicken
7 restaurants from the 1970s to the present." Did you
8 provide any documentation responsive to that request?

9 A. There is a draft of the architectural design.
10 One of them. There is like nine other ten. I just
11 grabbed one and brought it.

12 MR. MCKINNEY: It's over there.

13 MS. KNOTT: I guess you have to tell me because
14 I don't know what I'm looking for.

15 A. This is just one of them. Like I said, there
16 were at least ten of them, designs. I just grabbed one.

17 Q. What is this a design of?

18 A. That's a design of the -- this is a shell of the
19 Mt. Dora location. And this is the design of the
20 restaurant that we were going to put there in Mt. Dora.

21 Q. Well, let me mark this. Then we'll discuss it.

22 A. That's just one of the designs. There were like
23 ten.

24 MR. KNOTT: This is F.

25 (Whereupon, Defendants' Exhibit F was marked.)

1 Q. This was -- tell me again, I'm sorry, what this
2 was.

3 A. This was one of the designs for the layout of
4 the Mt. Dora store.

5 Q. Who designed it?

6 A. I did and Antonio Endelicato. And also, the
7 architect was Matt Cavanaugh -- Mike Cavanaugh.

8 Q. I was getting ready to say, you have quite some
9 architectural skills. So this is -- okay. Do you have
10 any other documents with you today that provide any
11 franchise information you have regarding Maryland Fried
12 Chicken restaurants?

13 A. Any what?

14 Q. Any franchise agreements or information related
15 to any franchising that went on pre or post 1970 -- well,
16 actually, just post 1970? Do you have any franchise
17 agreements or --

18 A. No.

19 Q. Stop me if there is something responsive that
20 I'm not -- I mean, I know you have the stuff there. And
21 I don't know if --

22 MS. KNOTT: Can we go off the record for one
23 second?

24 (Off-the-record discussion was had.)

25 Q. Actually, No. 5 I read to you. Would it help if

1 you read it (tenders document)?

2 A. Yeah.

3 Q. No. 5.

4 A. Just what I gave you. That's all I have.

5 Q. Okay. No. 6 requests "Any and all manuals,
6 documents, instructions, checklists regarding operating a
7 Maryland Fried Chicken restaurant."

8 A. I don't have any.

9 Q. Do any exist, to your knowledge? Manuals or
10 instructions?

11 A. No.

12 Q. No. 7 is, "Provide any and all correspondence
13 you or your father had with any other Maryland Fried
14 Chicken restaurant owners or operators in the state of
15 Florida from January 2000 to the present.

16 A. I don't have any documents.

17 Q. Do you know if any documents exist that are
18 responsive to this request?

19 A. I don't think they do.

20 Q. No. 8, "Please provide a copy of any and all
21 correspondence between the Leesburg restaurant and CFM
22 Distributing."

23 A. I don't have any. Like my mother said, we just
24 -- you have the invoices. That's pretty much it.

25 Q. How do you place an order with CFM?

1 A. They call us, and we just tell them our order by
2 phone.

3 Q. By phone?

4 A. Uh-huh.

5 Q. Who is your contact with CFM that you order
6 from?

7 A. Carol.

8 Q. Do you know her last name?

9 A. No, I don't.

10 Q. Has there been anyone else that was your main
11 contact at CFM?

12 A. Jim.

13 Q. Do you know his last name?

14 A.. No, no. I've known him for years. I don't know
15 his last name.

16 Q. So you aren't aware of any correspondence,
17 e-mails, letters, anything of that sort, between Leesburg
18 and CFM Distributing?

19 A. Nothing on paper.

20 Q. No. 9 requests "A copy of any and all lease
21 agreements you or Richard Costantine contemplated and/or
22 executed in the past eight years with regard to a
23 restaurant location outside Leesburg."

24 A. I don't have anything.

25 MR. MCKINNEY: With Mt. Dora?

1 THE WITNESS: That one. I already gave her
2 that.

3 Q. Right, what's marked as Exhibit B. Is there any
4 other lease agreements responsive to No. 9 that you
5 entered into or Richard entered into other than that?

6 A. Outside of -- no.

7 Q. No. 10, "Any and all agreements you have with
8 anyone else, whether it's an individual or business
9 entity, that provides for an ownership interest in the
10 Leesburg restaurant."

11 Is there any -- let me ask it another way.

12 Do you have any documentation of anyone other
13 than Richard and your mother, as you mentioned, having an
14 ownership interest in the Leesburg restaurant?

15 A. No, I don't.

16 Q. We requested -- No. 11 requests "A customer list
17 for the Leesburg restaurant." Did you bring a customer
18 list?

19 A. I wish I did have a list of all the customers.

20 Q. Does it exist?

21 A. There is not one. Of every customer? We don't
22 have a customer list, unfortunately. We have just the
23 declarations that we got when business was really slow.

24 Q. No. 12 is, "Provide any documents or
25 correspondence that you have regarding the opening of a

1 Maryland Fried Chicken in Mt. Dora. Do you have any
2 documents?

3 MR. MCKINNEY: In your restaurant?

4 A. The Mt. Dora restaurant?

5 MR. MCKINNEY: Yeah.

6 A. Yeah, there is some documents in here. Some
7 e-mails. Where are they at? (Tenders documents).

8 MS. KNOTT: I'm going to mark this as Exhibit G.
9 (Whereupon, Defendants' Exhibit G was marked.)

10 Q. I'm handing you Exhibit G. Can you tell me who
11 Linda Pierce is?

12 A. This was one of the restaurant supply companies.
13 She was the contact person.

14 Q. And this correspondence is in relation to --
15 what restaurant was this -- or potential restaurant was
16 this correspondence related to?

17 A. Mt. Dora.

18 Q. When you say "Mt. Dora," was that --

19 A. The Eustis location.

20 Q. When Sammy -- did this take place during the
21 time when you and Sammy Endelicato were contemplating
22 opening the restaurant in Mt. Dora?

23 A. Yes. After we signed the lease, uh-huh.

24 Q. Is there a requirement that all Maryland Fried
25 Chicken restaurants use certain vendors?

1 A. No.

2 Q. Did you enter into a formal agreement with
3 Restaurant Equipment World, Inc.?

4 A. No.

5 Q. Was this just a quotation?

6 A. That was just a quote. We had four or five.

7 Q. Can you tell me who are the parties to this
8 correspondence?

9 A. It's from John DiMasi, who is an attorney that
10 my wife and I know. Rhonda Costantine is my wife. This
11 was just -- we were having one of our attorneys, DiMasi,
12 look over the lease before we signed it.

13 Q. Is John DiMasi -- has he represented you before?

14 A. No, no. Not me.

15 Q. What did you hire him -- for what purpose did
16 you hire him?

17 A. Just to look over the -- I can't remember the
18 exact details. But Sammy and I had a question on the
19 lease. And we've known him well enough -- actually, my
20 wife knows him well enough to where he looked over it for
21 us. I can't remember the exact details why. It was a
22 long time ago. I can't remember the issue we had.

23 Q. Who is Billy Patrick?

24 A. Billy Patrick works for John DiMasi.

25 Q. Okay.

1 MR. MCKINNEY: Are you going to mark that as
2 Exhibit H?

3 MS. KNOTT: Yes.

4 (Whereupon, Defendants' Exhibit H was marked.)

5 Q. Can you tell me what this drawing is?

6 A. This was just one of the floor plans for the
7 Mt. Dora store.

8 Q. Is it different from what we've marked as
9 Exhibit F?

10 A. Yes.

11 Q. What's the main difference between the two?

12 A. The main difference would be the design, where
13 we put the cookers, the fryers and the henny pennies.
14 There is a lot of differences. They're completely
15 different. The kitchen area from the back is different.
16 Mostly just in the kitchen area.

17 Q. Was this design also prepared in conjunction
18 with you and Sammy opening a Maryland Fried Chicken in
19 Mt. Dora?

20 A. Yes.

21 MS. KNOTT: Can you mark this as Exhibit I?

22 (Whereupon, Defendants' Exhibit I was marked.)

23 Q. The last request on the subpoena duces tecum
24 asks that you provide any documents or correspondence
25 that reflect your ownership interest, if any, in the

1 mark. Do we have any documents responsive to that
2 request?

3 A. No.

4 Q. Do any documents exist that are responsive to
5 that request?

6 A. No. I'm not aware of any.

7 MS. KNOTT: I'll mark the third amended notice
8 of taking notice with the subpoena duces tecum
9 attached as Schedule A as Exhibit J.

10 (Whereupon, Defendants' Exhibit J was marked.)

11 Q. Do you want to hand me what's left, I guess?

12 MR. MCKINNEY: (Tenders documents.)

13 Q. Can you identify what this is, this document?

14 A. Yes.

15 Q. What is it?

16 A. It's a guide that's on the internet of all the
17 restaurants in Lake County.

18 Q. Who do you know who makes the guide or puts it
19 together?

20 A. The Department of -- I would imagine the Lake
21 County Department of Tourism and Business Relations.

22 Q. Is there a date on that document?

23 A. On this one?

24 Q. Or do you know when it was printed?

25 A. If I remember correctly, it was 2006. I saw

1 that date somewhere. Yeah, 2006.

2 Q. What was your purpose for bringing this document
3 today?

4 A. Just to look -- going on the internet and seeing
5 what restaurants show up in Lake County.

6 Q. What Maryland Fried Chicken restaurants show up
7 on the restaurant guide that you're holding?

8 A. The Leesburg store.

9 Q. And this restaurant guide was in 2006. Was that
10 before the current Mt. Dora restaurant was open?

11 A. Yes.

12 Q. Did Richard Costantine pay for advertisement in
13 this guide?

14 A. No. I don't believe so.

15 MS. KNOTT: Can we mark this as Exhibit K?

16 (Whereupon, Defendants' Exhibit K was marked.)

17 Q. Can you identify what this is, this document?

18 A. This was also a restaurant guide for Lake
19 County.

20 Q. What's the date on that restaurant guide?

21 A. 2007.

22 Q. What, if any, Maryland Fried Chicken restaurants
23 are listed on that restaurant guide?

24 A. Just the Leesburg store.

25 Q. Was that before or after the opening of the

1 current Mt. Dora location?

2 A. This was in 2007. what day is it on?

3 Q. Do you know when they opened the current

4 Mt. Dora location?

5 A. I think it was in March of '08.

6 Q. So --

7 A. Yeah. So, yeah, that would be before, yeah.

8 Q. What was your purpose for bringing this document
9 today?

10 A. To show the restaurants that pop up when you go
11 to Lake County on the internet and look.

12 Q. Okay.

13 MS. KNOTT: I'm going mark this as Exhibit L.

14 (Whereupon, Defendants' Exhibit L was marked.)

15 Q. Can you identify the document that I'm handing
16 to you?

17 A. Yes.

18 Q. Do you know who prepared the document?

19 A. Yes.

20 Q. Who?

21 A. Matthew.

22 Q. Last name? Matthew?

23 A. McKinney.

24 Q. Do you know when it was prepared?

25 A. No.

1 Q. For what purpose was it prepared?

2 A. To show our customer base which -- to show of
3 the customers that signed the declarations, to show where
4 they live.

5 MS. KNOTT: Let me mark it, and then I'll take a
6 look. Can you mark this as Exhibit M?

7 (Whereupon, Defendants' Exhibit M was marked.)

8 Q. Can you define the geographic limits of
9 Leesburg's customer base?

10 A. We have -- that's hard to do because we have --
11 the customers that I know that come from way outside this
12 radius here, I didn't -- they didn't sign this or the
13 declaration. We have several customers that come from
14 Clermont, from Ocala, from Orlando, so it would be hard
15 to say the radius.

16 We have one customers that drives from Warner
17 Robins, Georgia, on a regular basis. It's a four-hour
18 drive. So that mark -- I kind of took offense when you
19 guys say that mark has no value. People travel a long
20 ways to find that mark.

21 Q. Is it your position that all Maryland Fried
22 chicken restaurants operating between here and -- was it
23 Merrill Robins, Georgia?

24 A. Warner Robins, Georgia.

25 Q. Sorry. Warner Robins, Georgia, are infringing

1 on any -- are infringing on the mark, on Richard
2 Costantine's right in the mark?

3 A. It's my position that for whatever -- our mark
4 in Leesburg draws customers from a long ways away.

5 Q. Is it your position that --

6 A. That it's taken us 30 years to build.

7 Q. Is it your answer that --

8 A. Okay. What's the question?

9 Q. Let me ask the question again. Is it your
10 position that all Maryland Fried Chicken restaurants
11 operating between Leesburg and Warner Robins, Georgia,
12 are infringing on the plaintiff's mark or alleged right
13 to the mark?

14 A. No. My statement was we have a customer that
15 drives four hours to come find that mark.

16 Q. Is your answer to the question yes or no? Yes,
17 you believe they're infringing or no?

18 A. The answer is, no, that we're not infringing
19 with all Maryland Fried Chickens between Warner Robins
20 and Leesburg, no.

21 Q. Tell me what this document is.

22 A. This is a document that shows some customers
23 that wrote their phone number, name, address down.

24 Q. How did you obtain the information on this
25 document that you've brought with you?

1 A. When the Mt. Dora store opened up, our phone
2 would -- the week that it opened or the first month, I'm
3 not sure exactly when, our phone rang off the hook
4 saying, what is the phone number to your other location?
5 And I said, we don't have another location.

6 And customers would call in. I mean, just this
7 past Monday morning I get a complaint. Our customers and
8 everybody that associates Lake County think that we're
9 affiliated with the Mt. Dora restaurant. So I get calls
10 and complaints either on the phone or they come in
11 complaining about -- you know, I have to tell them we
12 have no affiliation with that restaurant. We have
13 nothing to do with it.

14 Q. Let me state my question. That doesn't really
15 answer the question.

16 A. So some customers, I said -- some customers that
17 came in complaining I just said, hey, write your name and
18 number down and a comment if you'd like. That's kind of
19 -- that's only -- so many called, so many come in that
20 complained that that's just a -- I mean, I don't even --

21 Q. When did you have them write down this
22 information?

23 A. Actually, I didn't personally have them write it
24 down. The customers would come in. Sometimes some of
25 them I may have said, Hey, want to write your name and

1 phone number down? When?

2 Q. Which ones?

3 A. I don't remember which ones I did. It happened
4 so much. This happened probably over the summer.

5 Q. Summer of?

6 A. '08. That these were written down, I guess.

7 Q. Which ones did you --

8 A. Personally make? I don't remember. I really
9 don't know.

10 Q. Who helped -- who else took down this
11 information or helped obtain this information?

12 A. We were getting so many complaints and calls
13 that I told -- I said, hey, get their names and phone
14 number. Let's get a name and a number. Have them write
15 something. This is ridiculous. So on a couple occasions
16 we actually did. Most of the time we don't.

17 Q. Is this the handwriting of the customers
18 themselves?

19 A. Yes.

20 Q. Or did somebody else take down the information?

21 A. That's the customers themselves. Let me see
22 here. I could be -- I'm pretty sure these are the
23 customers themselves. I could be a hundred percent if I
24 had the original documents. This is the customers
25 themselves. I'm 99.9.

1 Q. Is this not reflective of the original document?

2 A. Well, the original document was -- yes, it's
3 reflective of the original document, yes.

4 Q. What is different about it that would make your
5 memory clearer on --

6 A. The piece of paper that it was written on was
7 like soiled. And, you know, it was just -- I'm just
8 saying I could be a hundred percent.

9 Q. How would seeing the original make you a hundred
10 percent sure?

11 A. Just to compare them.

12 Q. You stated that -- okay. Did these individuals
13 physically come into the restaurant and write this down?

14 A. Yes.

15 Q. Did they come in on -- did they come in on their
16 own or did someone request --

17 A. We never bring up the Mt. Dora store.

18 Q. When they called on the phone --

19 A. Lots of angry customers call us or show up. It
20 still happens.

21 Q. Did these individuals just show up or did they
22 call first?

23 A. They just showed up.

24 Q. Did they call you on the phone first?

25 A. No. They wanted somebody -- when somebody calls

1 me on the phone, I just apologize and say we have nothing
2 to do with that location. We're not affiliated at all.

3 Q. So it's your testimony that each of these
4 individuals came into the restaurant, and that's when
5 they wrote this down for the first time?

6 A. Correct.

7 Q. That's when you spoke to them for the first time
8 or whoever did?

9 A. Uh-huh.

10 Q. Over what period of time did these individuals
11 come into the restaurant and write down what's on this --

12 A. I don't know.

13 Q. Can you give me some range, from what year --
14 from what date to what date?

15 A. Since I'd have to say from March to now.

16 Q. March of this year?

17 A. Yeah. March of '08 until now.

18 Q. When was the last time? What was the most
19 recent one?

20 A. The most recent? I'd have to say probably the
21 most recent that we let them write something down would
22 be probably August or July.

23 Q. Did you discuss this lawsuit with any of these
24 individuals when they came into the restaurant and wrote
25 down this information?

1 A. Yes.

2 Q. Who?

3 A. I said there is a lawsuit going on with -- well,
4 Cedric Brenson, there is so many Brensons, I'm not sure
5 if this is actually the person I have in mind. But one
6 of the Brenson boys who actually knew Bobby said there is
7 a lawsuit going on.

8 Q. Did you say anything other than that there was a
9 lawsuit going on?

10 A. No.

11 Q. Did you tell them your position on --

12 A. No.

13 Q. Or opinions?

14 A. No.

15 Q. So it's your testimony you simply stated to them
16 that there was a lawsuit?

17 A. Yeah. Because they asked questions like, "So
18 they're not you?" And I say, "Well, there is a lawsuit."
19 I say, "There is a lawsuit." That's all I say. I don't
20 go into any detail.

21 Q. Did you have any conversation with any of the
22 other individuals in this document regarding the lawsuit?

23 A. I don't think so, no.

24 Q. Do you know?

25 A. Actually, you know what? This guy Demetrius, I

1 think I mentioned there is a lawsuit to him. On that
2 last page.

3 Q. Can you tell me, that name Demetrius, what's the
4 last name?

5 A. I don't know. I only know him by Demetrius.

6 Q. Is he a regular customer in the Leesburg store?

7 A. He comes in. I haven't seen him in a while.

8 Q. How much would you say?

9 A. Probably -- I'm not there every day. I see him
10 probably once a month.

11 Q. Was he in -- when he wrote this down on a piece
12 of paper, was he physically present in the Leesburg
13 restaurant?

14 A. I don't know. I didn't have him write that. I
15 don't know.

16 Q. Was it received in the mail or did he --

17 A. No. It was in the restaurant. We didn't --

18 Q. Was he in for a regular visit when he gave it to
19 you? Did he eat?

20 A. I think my brother, Mike, got that one. So I
21 don't know. I can't answer the question.

22 Q. When you say he "got that one," you mean --

23 A. I don't remember getting that one. I only got
24 -- most of the time a customer would come in complaining,
25 and the girls would give them that piece of paper and

1 they'd write their name down. It's not something we
2 solicited. And most of the time we didn't even bother to
3 have them write anything down.

4 Q. I thought you stated you talked to Demetrius
5 about the lawsuit?

6 A. Right.

7 Q. And that was separate from him writing down this
8 information?

9 A. That was after -- that was actually after that.
10 He's like, what's -- I said there is a lawsuit.

11 Q. Did you say anything else about the lawsuit?

12 A. No, not that I recall.

13 Q. Do you know Lori Goodwin?

14 A. No.

15 Q. Anthony Eubanks?

16 A. No.

17 Q. Who is Pat Brenson?

18 A. Brenson, I know the Brenson name. There is a
19 lot of Brensons.

20 Q. And that person is related to?

21 A. I don't know Pat.

22 Q. Is that person related to Cedric Brenson?

23 A. I don't know. There is a lot of Brensons in
24 Leesburg.

25 Q. Do you know Willy Subs?

1 A. I do know Willy.

2 Q. How do you know him?

3 A. As a customer.

4 Q. How frequently does he come into the restaurant,
5 the Leesburg restaurant?

6 A. Willy probably comes in there -- it depends.
7 Sometimes once a week, sometimes four times a week,
8 sometimes twice a month.

9 Q. Did you have any conversations with Willy Subs
10 regarding the lawsuit?

11 A. He knows there is a lawsuit.

12 Q. Is that because you told him?

13 A. That's correct.

14 Q. Did you tell him anything about the lawsuit
15 other than it existed?

16 A. Nothing. Anybody that would ask me something,
17 I'd say there is a lawsuit. That's it.

18 Q. Who is Terry Brooks?

19 A. I don't know.

20 Q. Who is Donny Goodwin?

21 A. I don't know him.

22 Q. Do you know if any of these were taken down or
23 written down at the same time?

24 A. No.

25 Q. Do you know Leslie Baldwin?

1 A. No.

2 Q. Do you know Shawn Caldwell?

3 A. No.

4 Q. Did you ever give anything in exchange for the
5 things that were written down in this document?

6 A. No.

7 MS. KNOTT: I'm going mark this as N.

8 (Whereupon, Defendants' Exhibit N was marked.)

9 Q. Is it your testimony that you did not talk to
10 the individuals on Exhibit N about the lawsuit until
11 after they had written down what they wrote in this
12 document?

13 A. I don't know exactly when they were written
14 down, so I don't know -- if they said, you know, I may
15 have mentioned -- when I mentioned it, I don't know if it
16 was before or after. But if they said, what's going on?
17 I said there is a lawsuit.

18 Q. So you're not sure if these individuals wrote
19 down what is on Exhibit N before or after you talked to
20 them, if you talked to them, about the lawsuit?

21 A. No, I'm not sure.

22 Q. Can you -- how did you obtain the information on
23 the declaration forms that you brought with you today?

24 A. When business was really slow, like in the
25 middle of the day, the girls would ask a customer to read

1 this. And if they agree with what they read, if they
2 would sign it. When we were really busy, we'd never --

3 Q. What time frame did these declarations range?
4 what dates?

5 A. They're on here. The dates are on here. It
6 looks like --

7 Q. I guess, over how many days do you recall in
8 general? Because I can look through --

9 A. I can tell you we spent very little time getting
10 those. We only did it in our very slow time.

11 Q. That doesn't answer the question. How many days
12 did you --

13 A. How many days? There is the 28th.

14 Q. I'm just saying a range. Three days? Seven
15 days?

16 A. I'd say probably five days, maybe seven. But
17 very little time was spent on that.

18 Q. Who prepared the preprinted forms?

19 A. Matthew.

20 Q. Who spoke with each person who signed these
21 declarations?

22 A. Probably 90 percent of them would be the girl --
23 our counter girls.

24 Q. What's her name? What's their names?

25 A. Jessica.

1 Q. Last name?

2 A. I don't know it. I don't know her.

3 Q. Is she a regular employee?

4 A. Yes, she is.

5 Q. How long has she been an employee there?

6 A. Probably like three years. I don't know her

7 last name.

8 Q. And you're not aware of her last name?

9 A. No.

10 Q. Who does know her last name?

11 A. I can get it for you. I can get all the last
12 names for you. Kayla.

13 Q. How do you spell Kayla?

14 A. Kayla, was she -- K-A-Y-L-A. I don't know her
15 last name.

16 Q. Anyone else?

17 A. Patricia Crawford.

18 Q. How long has Patricia worked there?

19 A. Patricia has worked there for maybe three years.

20 Q. How long has Kayla worked there?

21 A. Kayla has worked there probably a year, year and
22 a half.

23 Q. Did you or anyone else give these individuals
24 any instructions regarding the declarations?

25 A. No.

1 Q. So you walked up to them and handed it to them
2 and said nothing and walked away?

3 A. I made sure -- when I did it personally, I said
4 if you don't want to sign this, please don't. You don't
5 have to.

6 Q. That's not my question. My question was, as to
7 Jessica, Kayla, and Patricia, did you give them any
8 instructions regarding these declarations?

9 A. Just when it's slow, when we're really slow, if
10 you have time, have a customer read this. And if they
11 agree with it, let them fill it out.

12 Q. Did you tell them -- back up.

13 For what purpose did you decide to have -- for
14 what purpose did you give them these declarations to hand
15 out?

16 A. Let me see that. To see if they agreed with the
17 information and then for them to sign it and date it.

18 Q. Did you instruct any of the individuals who were
19 handing out the declarations to advise the individuals
20 that chose to sign them of anything particular in the
21 declaration?

22 A. No. We just told the girls if they showed any
23 inkling of not wanting to sign it, take it from them and
24 don't let them sign it.

25 Q. Did you instruct them to advise the individuals

1 who signed this what it meant -- what this sentence
2 means: "Under penalties of perjury, I declare that I
3 have read the foregoing"?

4 Did you explain to them what it means "under
5 penalties of perjury" or have someone explain to them?

6 A. No.

7 Q. Do you know for sure that everyone who signed
8 these is aware that a restaurant recently opened in
9 Mt. Dora as is stated on the declaration form?

10 A. That's what they wrote, so yes.

11 Q. That is not what they wrote. This was -- who
12 prepared this form?

13 A. Matthew did.

14 Q. Did anyone write anything other than what is in
15 the blank areas on this form?

16 A. Some of them would eagerly grab it and say that
17 restaurant is nothing like yours.

18 Q. That's not my question. Did anyone write
19 anything other than where there are blank spaces on these
20 forms?

21 A. No.

22 Q. So how are you sure that each person that signed
23 this is aware that a restaurant recently opened in
24 Mt. Dora?

25 A. Because they read the paper. And if they

1 weren't aware of it, they wouldn't sign it. There was a
2 few people that didn't sign it.

3 Q. Do you know the names of those people?

4 A. No.

5 Q. Did they state a reason why they didn't sign it?

6 A. The people that didn't sign it said they weren't
7 familiar with that restaurant.

8 Q. That's what each of them said?

9 A. They said, I can't sign this, I didn't know
10 there was one.

11 Q. Who did they say that to?

12 A. Me. Or the girl would come back and tell me and
13 say they didn't know this -- you know, they never heard
14 of it.

15 Q. That was only reason that you know of that
16 people did not sign the form?

17 A. That's the only reason I heard when they didn't
18 sign it is because they didn't -- they had never
19 frequented, never been in that store. And again, this
20 was only a very limited time at our slow time did we try
21 to -- did the girls ever even mention it or show them the
22 paper. If it was busy --

23 Q. Do you know if any of the individuals who signed
24 these declarations actually ever visited the Mt. Dora
25 restaurant?

1 A. Yes, I do.

2 Q. Which ones?

3 A. I don't know which ones. I just know by the
4 comments that they made.

5 Q. What comments? Is there a section for comments
6 on this declaration?

7 A. No. When they would hand it back in, sometimes
8 they would -- they'd see me and they'd hand it back in
9 and they'd say -- they would have a negative comment
10 about the store. So obviously they had been in it.

11 Q. What were the names of these individuals?

12 A. I don't know.

13 Q. You would agree there is no comment section on
14 the form? There is no section on the form where an
15 individual can put their own comments that are not
16 preformed?

17 A. There is some free space, but I don't see a
18 comment space.

19 Q. If anyone had a question about anything on this
20 declaration, did you give instructions for them to ask
21 for anyone to answer such questions?

22 A. They either signed it -- they read it and signed
23 it or they handed it back.

24 Q. Answer my question.

25 A. I wasn't there when the girls said -- okay.

1 what's the question?

2 Q. My question was, did you give instruction to
3 anyone who was giving out these forms, these
4 declarations, of who they should refer the individuals to
5 if they had any questions about anything on the
6 declaration?

7 A. No.

8 Q. Was there anyone in the Leesburg restaurant who
9 was a notary or someone who could have put these
10 individuals under oath in conjunction with signing these
11 declarations?

12 A. No.

13 MS. KNOTT: I'm going to have this marked as
14 Exhibit O.

15 (Whereupon, Defendants' Exhibit O was marked.)

16 Q. Earlier, you mentioned that you and Sammy did
17 not pursue a restaurant location near Apopka because it
18 was too close to Bobby. What did you mean by that?

19 A. Sammy mentioned a spot on the other side of
20 Apopka where that -- where the new Home Depot is,
21 relatively new. There was a strip center back there.
22 Sammy talked to the agent or whatever. But it was too
23 close to Bobby's store.

24 Q. Why was that a problem for you?

25 A. Because when you go into business, you want not

1 only yourself to be successful, but you don't want to
2 hurt anybody else if you're in the same business.

3 Q. So you had no problem with Bobby operating the
4 Apopka restaurant?

5 A. I felt bad for the guy that owned Edgewater. It
6 was pretty close to Bobby's store. I felt for that guy,
7 because my only problem was he was a little close to the
8 Edgewater store.

9 Q. Why were you concerned about being too close
10 to --

11 A. I wasn't too close. I thought Bobby was.

12 Q. Well, then why were you concerned about getting
13 too close to Bobby in the Mt. Dora restaurant? Why were
14 you concerned that going into Apopka would be too close
15 to Bobby if you were worried about the guy in Edgewater?

16 A. No. When Bobby went into his spot, I
17 immediately thought he's right up the road from
18 Edgewater.

19 Q. Well, going back to my question --

20 A. Why did I not like the spot in Apopka on the
21 other side?

22 Q. Yes.

23 A. Because it's only five miles from Bobby's store.

24 Q. Why is that a problem?

25 A. Because I know from having a business, a

1 Maryland Fried Chicken business, that we have customers
2 that come a long ways a away. Five miles is ridiculous,
3 in my opinion.

4 MS. KNOTT: Can we take a break?

5 MR. RANSON: Just a couple minutes.

6 (A recess was had.)

7 Q. Do you know anyone by the name of Paul Dion?

8 A. No.

9 Q. So you are not aware that he operated a Maryland
10 Fried Chicken in Mt. Dora?

11 A. No.

12 Q. Do you know anyone by the name of Jack Veatch?

13 A. No.

14 Q. Do you know Doug Barthlow?

15 A. No.

16 Q. To your knowledge, did Richard Costantine spend
17 any money on advertising in any form, print form or media
18 outlet?

19 A. Yes.

20 Q. what outlets?

21 A. The coupon book is something that we're in every
22 so many months, which we happen to be in right now.

23 Q. Do you know what that coupon book is called?

24 A. I forgot to bring the one that's actually
25 current right now that we're in. That's no problem

1 getting that. It's a Lake County coupon book. The book.
2 we've been in that a lot.

3 Q. Anything else?

4 A. Yeah.

5 Q. Like what?

6 A. We sponsor programs for Leesburg High School.
7 we sponsor football teams in Leesburg, Little League,
8 football teams, Pop Warner. Those are the most recent
9 things.

10 Q. Do you sponsor any -- does the Leesburg
11 restaurant sponsor any events in Mt. Dora?

12 A. No.

13 Q. How about --

14 A. We've been asked to but --

15 Q. How about Eustis?

16 A. No. Again, we've been asked to.

17 Q. How about Umatilla?

18 A. No.

19 Q. Do you sponsor anything located outside of
20 Leesburg, any event -- has Leesburg sponsored any event
21 -- has Maryland Fried Chicken in Leesburg sponsored any
22 event outside of Leesburg?

23 A. Well, the only thing that we've sponsored is the
24 Pop Warner football and the Leesburg High School. That's
25 it.

1 Q. Okay. To your knowledge, did -- are you aware
2 that Albert Costantine attempted to sell the mark to a
3 third party?

4 A. I am.

5 Q. Who was the third party?

6 A. It was a lady in Georgia. He actually did sell.
7 He didn't attempt to. He actually got paid and sold the
8 mark to a lady in Georgia.

9 Q. How much was he paid?

10 A. He told me. I can't remember if it was ten or
11 15,000.

12 Q. Do you know when he --

13 A. When he sold that? I don't know the exact. I
14 don't know when.

15 Q. What was your understanding that he sold?

16 A. He sold the -- she thought she was buying the
17 trademark rights was my understanding. And, in fact,
18 actually CFM went to court over that. And according to
19 Jim, who works at CFM, the Court ruling was that that
20 paper wasn't worth the paper it was written on. That's
21 how Jim put it to me.

22 Q. So my question was, what is your understanding
23 that Albert Costantine sold to her?

24 A. Well, she thought she was getting the rights to
25 Maryland Fried Chicken for the state of Georgia was my

1 understanding.

2 Q. what did he think he was selling?

3 A. well, I hate to talk about my Uncle Albert like
4 this, but he knew it wasn't worth anything.

5 Q. Did Richard have any rights greater than the
6 rights Albert Costantine had in the mark?

7 A. I believe so, absolutely.

8 Q. what superior rights and why?

9 A. Richard owned a Maryland Fried Chicken for
10 30 years, owner operated it for 30 years. Albert did not
11 presently and at the time did not own a Maryland Fried
12 chicken.

13 Q. Referring to the restaurant in Leesburg?

14 A. Referring to Albert's in Sanford and Richard's
15 in Leesburg, correct. So absolutely.

16 Q. How long did he operate that one in Sanford?

17 A. He operated it as Maryland Fried Chicken for, I
18 want to say, maybe five years. And then he changed his
19 name to Mr. C's. He changed the name. I don't even know
20 if it was five years, to be honest, after the corporation
21 dissolved.

22 Q. who invented the drawing that's marked as
23 Exhibit C?

24 A. which drawing?

25 Q. (Tenders document.)

1 A. I don't know. My dad said they hired an
2 architect or an artist to come up with the logo. Who it
3 was, I have no idea.

4 Q. Other than Richard's owner operation of the
5 Leesburg restaurant for 30-plus years, is there anything
6 else you can think of that gives him superior rights to
7 that of Albert Costantine?

8 A. No.

9 Q. Are you aware of any instance where Richard
10 Costantine tried to sell someone any rights in the mark
11 identified as Exhibit C?

12 A. No.

13 Q. The lawsuit you mentioned, who were the parties
14 in that lawsuit, do you know?

15 A. In which --

16 Q. The lawsuit you mentioned --

17 A. The old one?

18 Q. No. In conjunction with Albert selling a third
19 party rights.

20 A. It was the lady who actually bought the piece of
21 paper in Georgia.

22 Q. Who did she sue?

23 A. The lawsuit, I don't know who sued who or what.
24 But it was CFM and the lady who actually -- I think she
25 tried to sue CFM, I think. I'm not a hundred percent.

1 But that's who was involved in the lawsuit. I do know
2 that.

3 Q. What was your understanding why CFM was involved
4 in what happened between the third party -- the person in
5 Georgia and Albert?

6 A. I don't know.

7 Q. So you're not sure why CFM became involved in
8 that?

9 A. No, they never told me why.

10 Q. Were they a party to this transaction between
11 Albert and this individual?

12 A. Let me think. You're talking about a long time
13 ago. The lady in Georgia I believe initiated the
14 lawsuit. She thought she had rights, and I believe she
15 tried to sue CFM over -- you know what? I don't know.
16 I'm not going to -- I can't speculate on it. I don't
17 know the facts.

18 Q. Who is authorized to make decisions regarding
19 this lawsuit that's at issue here today for the
20 plaintiff?

21 A. Originally, my father.

22 Q. Today who is authorized?

23 A. Today? To make decisions regarding the lawsuit?

24 Q. (Nods head.)

25 A. That would be my mother, myself, my brother,

1 Mike. We're just carrying on what we know our dad would
2 want or what he started.

3 Q. What was Richard's reason for suing Robert
4 Costantine?

5 A. He thought it was really dirty that he helped
6 somebody set up one 20 minutes away from his family's
7 store.

8 Q. He was upset --

9 A. I mean 20 minutes away. So in between is only
10 like ten minutes, though. You get there quick, real
11 quick, when there is one highway, 441.

12 Q. It's your testimony that he sued Robert
13 Costantine because he was upset about the opening of a
14 restaurant in Mt. Dora?

15 A. Absolutely.

16 Q. What has -- other than what we just discussed,
17 what has Robert Costantine done -- what has Bobby done
18 that is illegal or improper?

19 MR. MCKINNEY: Object to the form.

20 Q. In your opinion?

21 A. I don't know.

22 Q. In your opinion, you don't know what you think
23 Bobby has done that is illegal or improper?

24 MR. MCKINNEY: Object to the form. You can
25 answer.

1 A. Improper? Business ethics.

2 Q. Other than what we've already discussed, is
3 there anything else that you feel Robert has done
4 improper, that is improper?

5 A. I'm not here to -- do I think there is anything
6 that Robert did improper?

7 Q. Other than what we already discussed.

8 A. I already stated that going five miles from
9 another Maryland Fried Chicken on Edgewater I thought was
10 pretty unfortunate.

11 Q. So is the only thing that, in your opinion,
12 Robert has done that is improper is assisting in opening
13 the Maryland Fried Chicken restaurant in Mt. Dora?

14 A. Well, you know, there is a whole can of worms I
15 can open there. Improper? I don't even want to go down
16 that road. His last words with my dad weren't too
17 pleasant. So when you say "improper," there is a long
18 history here. Bobby is estranged.

19 Q. In your opinion, why is that?

20 A. It's his choice. He's got a lot of pride and
21 arrogance, and he refuses to succumb to it.

22 Q. Other than the --

23 A. My father was loved by hundreds, hundreds.
24 There was standing room only at his funeral. You
25 couldn't get in. He chose not to show up or not to be a

1 part of their lives. Why is that? It's his choice. He
2 didn't want to build a relationship with his parents.
3 I'm sorry, I got kind of sidetracked there. I didn't
4 really want to go down that road.

5 Q. As far as this lawsuit is concerned, is Robert
6 assisting in the opening of the Mt. Dora restaurant the
7 reason for this suit, in your opinion?

8 MR. MCKINNEY: Object to the form.

9 A. We would hear little tidbits of things that
10 Robert would say about -- he always referred to his
11 family as "them people." And he would tell people things
12 that would always come back to us, that I'm going to put
13 them people out of business, I'm going to open one in The
14 Villages, Lake Square Mall. We're talking right up the
15 road now.

16 So when he got his chance, even as underhanded
17 and slimy as it was, when he got his chance to go in or
18 put somebody in -- I don't know who owns the Mt. Dora
19 store, I don't care. But when he could get close, he
20 jumped on that opportunity and didn't bother to ask --
21 he's the only one that I know of that didn't bother to
22 ask.

23 Q. Is it your testimony --

24 A. At CFM, Jim told me there is an unwritten -- I
25 mean, we've been in existence for 30 years. And we

1 always had an unwritten rule the Maryland Fried Chickens
2 that were already existing, if you want to open up
3 another Maryland Fried Chicken, you get permission from
4 the closest Maryland Fried Chicken. And that code of
5 ethics, that standard, has been lived by for the past 20,
6 30 years. There is only one time that's been broken, and
7 that's why we're here.

8 Q. So is it your testimony that in the past 20 to
9 30 years, Robert Costantine and the Mt. Dora location are
10 the only two locations that have opened without your
11 father's permission?

12 A. That I'm aware of, yes, in our geographic area.

13 Q. What would you define to be your geographic
14 area?

15 A. I define it to be pretty big, because I know
16 that by working there and talking to the customers that
17 come in. And it amazes me every time they tell me where
18 they're from and that they really just came just to come
19 eat our chicken.

20 Q. So is it your testimony that any Maryland Fried
21 Chicken operating in any geographic area where a customer
22 of yours resides is infringing on the rights -- on the
23 plaintiff's rights?

24 MR. MCKINNEY: Object to the form. Did you
25 understand the question?

1 THE WITNESS: You objected to the form, so I
2 didn't answer it.

3 MR. MCKINNEY: You can answer it if you
4 understand it.

5 A. Say it again.

6 MS. KNOTT: Can you read it back?

7 (The question was read back by the reporter.)

8 A. No. I'm just saying that our customer base is
9 very wide, large. The only reason I know that is because
10 I talk to -- people tell me how far they drive to get
11 there. They tell the help and they come tell me.

12 Q. What do you believe is the geographic area in
13 which the plaintiff has the exclusive rights to use the
14 mark?

15 MR. MCKINNEY: Object to the form.

16 A. I don't think -- he's only been in the business
17 a couple of years.

18 Q. The plaintiff is your father's estate.

19 A. The plaintiff? I thought you were talking about
20 the defendant. Based on from what I know about our
21 customer base, I'd say a good 30-mile radius. That's my
22 opinion.

23 Q. So is the Maryland Fried Chicken in Winter
24 Garden infringing on the plaintiff's rights?

25 A. No. They were already there. They were

1 existing.

2 Q. When you say they were already there, you mean
3 they were already there when?

4 A. That's part of the original corporation.

5 Q. So if another Maryland Fried Chicken were to
6 open in Winter Garden, would that infringe on the
7 plaintiff's rights?

8 A. I believe so.

9 Q. Why would that be different than the Maryland
10 Fried Chicken that's operating in Winter Garden now?

11 A. Because they're already there. They're
12 existing.

13 Q. Do you know who the owner is of the Maryland
14 Fried Chicken restaurant in Winter Garden?

15 A. No, no.

16 Q. Did your father approve the current owner of the
17 Maryland Fried Chicken in Mt. Dora?

18 A. No.

19 Q. Do you believe that the Casselberry store when
20 it was open infringed on the plaintiff's rights?

21 A. Not the plaintiff's right. But I believe that
22 it infringed on other Maryland Fried Chickens' rights.
23 That's why I voted no.

24 Q. What is your understanding of how a Maryland --
25 of the rights that a Maryland Fried Chicken owner has?

1 A. Well, in the old -- my understanding --

2 Q. Since 1970.

3 A. Because that was definitely outlined pre '71.
4 But by their years in service and the customer base
5 they've established and by their success. And like I
6 said, Jim -- I mean, it was always known to the current
7 owners, to open up a Maryland Fried Chicken store, you
8 had to call the closest Maryland Fried Chicken and see if
9 they opposed.

10 Q. Those things that you mentioned, the length of
11 service and those things, what is your understanding that
12 those things give that Maryland Fried Chicken owner the
13 right to do?

14 A. The right to do?

15 Q. You stated that those things is what gives a
16 Maryland Fried Chicken owner certain rights. What
17 rights?

18 A. The right to be protected.

19 Q. From?

20 A. From predators.

21 Q. Such as?

22 A. A Mt. Dora store opening up 13 miles away and
23 that you can get there in 20 minutes, which many of our
24 customers are closer to it than us.

25 Q. So the rights you mentioned protect other

1 Maryland Fried Chicken owners from not -- I don't
2 understand your answer.

3 A. You're asking me what I think.

4 Q. Right.

5 A. I'm telling you.

6 Q. Well, you didn't answer the question. What do
7 you think that those items that you mentioned -- the
8 length of time in business, those sort of things, what do
9 you think what sort of rights that gives them
10 geographically, a Maryland Fried Chicken owner?

11 A. We've been -- we have -- we've had that mark in
12 Leesburg for 30 years, and it existed longer than that.
13 We have people that stop on the side of the road and get
14 out and take a picture of our sign. That mark goes -- I
15 can't tell you how many people come in and tell us when
16 they were a kid they remember. Do I know how far out it
17 goes? I don't know. But I know it carries a lot of
18 weight.

19 Q. Where was the mark, in your opinion, used
20 outside Leesburg?

21 A. Here, you can look at it yourself (tenders
22 document). There is all the locations.

23 Q. Let me rephrase. Where did Richard Costantine
24 use the mark outside Leesburg after he began running the
25 restaurant in Leesburg?

1 MR. MCKINNEY: Object to the form. Do you
2 understand the question? Use of the mark, I guess.

3 A. It's like I said, our customer base is very
4 wide.

5 Q. You said you voted no to the Casselberry
6 restaurant.

7 A. That's correct.

8 Q. Who voted for it?

9 A. Actually, my dad didn't vote. Me and Mike both
10 voted no, so he didn't have to vote because it was two
11 against one regardless what he voted.

12 Q. But it opened anyway? Did it open?

13 A. Yeah, it opened, because like I said, there were
14 a lot of tears shed and because of the -- my dad was
15 soft, soft-hearted. And they had a relationship because
16 he was their bookkeeper. And my dad came back and said I
17 couldn't say no to them. Their dad and their two kids
18 were crying. So he did the wrong thing, but he did it.
19 He let them open it. He regretted that later, but he did
20 let them open it.

21 Q. In your opinion, did Richard Costantine have the
22 exclusive right to use the mark in the entire United
23 States?

24 MR. MCKINNEY: Object to the form.

25 A. I don't think so. I mean, I don't know. I

1 never really thought about that. I just know in his
2 common law --

3 Q. So in your opinion, did he have the right to use
4 it in all of the United States, use the mark?

5 MR. MCKINNEY: Object to the form.

6 A. He was one of the original founders, so he
7 certainly could have used it wherever he wanted.

8 Q. Was he the only one, in your opinion, that could
9 use the mark in the entire United States?

10 MR. MCKINNEY: Object to the form.

11 A. My Uncle Angel could have and my Uncle Albert
12 could have.

13 Q. Anyone outside the Costantine family?

14 A. No.

15 Q. In your opinion, was Richard Costantine or
16 anyone in your family the only one that could open a
17 Maryland Fried Chicken anywhere in the United States?

18 A. No. Like I said, if they called the closest
19 Maryland Fried Chicken and it was okay with them, that
20 was pretty much the unwritten rule.

21 Q. So your understanding was they had to get
22 permission from the closest Maryland Fried Chicken?

23 A. Correct.

24 Q. But not necessarily in particular Maryland Fried
25 Chicken or the Original Maryland Fried Chicken? Did they

1 have to get permission from the original Maryland Fried
2 Chicken or from --

3 A. What do you mean the original? What do you
4 mean?

5 Q. Did they have to get permission from the
6 Leesburg restaurant or from Richard?

7 A. They had to get permission from the closest
8 Maryland Fried Chicken to wherever they wanted to open up
9 a location. So whoever owned that would be the person
10 they needed to talk to.

11 Q. Did your father have the right to approve each
12 and every Maryland Fried Chicken restaurant that uses the
13 mark in commerce?

14 A. Everybody always came to him. I mean, everybody
15 always called him on the phone. People would show up
16 wanting to talk to him about getting a Maryland Fried
17 Chicken.

18 Q. In your opinion, did he have to approve each and
19 every Maryland Fried Chicken restaurant that uses the
20 mark in commerce?

21 A. No. In my opinion, it was the closest one.

22 MS. KNOTT: That's all I have.

23 MR. MCKINNEY: I have just like two
24 questions.

25

CROSS-EXAMINATION

1 BY MR. MCKINNEY:

2 Q. For at least the last 15 years that your dad has
3 been operating the Leesburg restaurant, has he controlled
4 the use of his trademark and what you would consider the
5 Leesburg restaurant geographic area?

6 A. No doubt about it. Absolutely, yeah.

7 Q. Okay. Before there was some testimony about
8 Sammy Endelicato. Did Sammy open a Maryland Fried
9 Chicken restaurant by himself in Mt. Dora after things
10 didn't work out between you guys?

11 A. No.

12 Q. Would he have been able to open up a Maryland
13 Fried Chicken by himself in Mt. Dora?

14 A. No.

15 MS. KNOTT: Objection. Speculation.

16 A. I mean, it's obvious. He went to Melbourne.

17 Q. Okay. So in your opinion, your father has
18 controlled the use of the trademark in his geographic
19 area related to the Leesburg restaurant?

20 A. Absolutely, absolutely.

21 MS. KNOTT: Objection. Speculative.

22 MR. MCKINNEY: What's speculative about it?

23 MR. RANSON: How do you know what Richard
24 thought his geographic area was?

25 A. I spoke to Richard on a daily basis.

1 Q. Is Mt. Dora in Leesburg restaurant's geographic
2 area?

3 A. Yes.

4 Q. Did your father, for at least the last 15 years,
5 control the use of that mark in Mt. Dora?

6 A. Yes.

7 Q. Okay.

8 MR. MCKINNEY: That's it.

9 REDIRECT EXAMINATION

10 BY MS. KNOTT:

11 Q. I have one redirect. You said he controlled the
12 use of the mark in the Mt. Dora area. What did he do to
13 exercise control over the mark in that area?

14 A. We've had people many people that wanted to put
15 a Maryland Fried Chicken up in the Mt. Dora area within
16 the last 10 to 20 years.

17 Q. Can you -- go ahead.

18 A. We've had many people contact us about putting
19 Maryland Fried Chickens up in Lake County, all over Lake
20 County.

21 Q. Can you give me the names of those people?

22 A. No. But you asked me what --

23 Q. Name one.

24 A. We weren't interested in letting them do it, so
25 we pretty much ended the conversation with, no, that's

1 not possible.

2 Q. Can you name one?

3 A. Can I name one off the top of my head? Let me
4 think. I could get their names. There's customers that
5 come in all the time that want to, but I don't know their
6 first and last name, no.

7 Q. So you don't know the name of a single person
8 that wanted to open a Mt. Dora restaurant?

9 A. I could get their name. I could get several
10 people that wanted -- that did want to and still want to.

11 Q. But as you sit here today, you don't know the
12 names?

13 MR. MCKINNEY: Object to the form. Asked and
14 answered three times.

15 A. I don't know.

16 MS. KNOTT: Okay.

17 MR. MCKINNEY: We'll read.

18 (The proceedings concluded at 6:16 p.m.)
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CERTIFICATE OF OATH

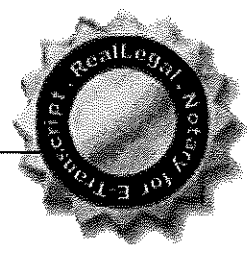
STATE OF FLORIDA:

COUNTY OF ORANGE:

I, LISA MCCORMACK, RMR, the undersigned authority, certify that ANTHONY COSTANTINE personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 14th day of December 2008.

Lisa McCormack
LISA MCCORMACK, RMR
Commission No. DD662469
Expires May 13, 2011



1 CERTIFICATE WITH ACKNOWLEDGEMENT

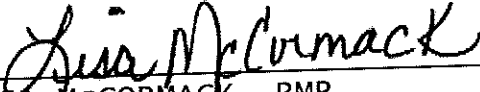
2 STATE OF FLORIDA:

3 COUNTY OF ORANGE:

4
5 I, LISA MCCORMACK, RMR, do hereby certify that I
6 was authorized to and did stenographically report the
7 deposition of ANTHONY COSTANTINE, that a review of the
8 transcript was requested; and that the foregoing
9 transcript, Pages 1 through 111, inclusive, are a true
10 and correct record of my stenographic notes.

11 I FURTHER CERTIFY that I am not a relative,
12 employee, attorney, or counsel of any of the parties, nor
13 am I relative or employee of any of the parties,
14 attorneys or counsel connected with the action, nor am I
15 financially interested in the outcome of the action.

16
17 DATED this 14th day of December 2008.

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20 LISA MCCORMACK, RMR

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ERRATA SHEET

DEPOSITION OF: ANTHONY COSTANTINE - DECEMBER 4, 2008
CASE STYLE: THERESA COSTANTINE VS. ORIGINAL MARYLAND
FRIED CHICKEN
CASE NO.: 48-2008-CA-004422-0

At the time of the reading and signing of the
deposition, the following changes were noted:

PAGE #	LINE #	CORRECTION	REASON

Under penalties of perjury, I have read my deposition
in this matter and it is true and correct, subject to any
changes in form or substance as reflected above.

Dated: _____

Signed: _____

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EXHIBIT "B"

Deposition of Theresa Costantine
December 4, 2008

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IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN
AND FOR ORANGE COUNTY, FLORIDA

CASE NO.: 48-2008-CA-004422-0

THERESA COSTANTINE, as personal
Representative of the Estate of
RICHARD COSTANTINE, an individual,

Plaintiff,

CERTIFIED COPY

vs.

ORIGINAL MARYLAND FRIED CHICKEN, LLC,
a Florida limited liability company;
ROBERT COSTANTINE, an individual; and
CAM VAN, an individual,

Defendants.

The deposition of THERESA COSTANTINE taken
pursuant to Notice on behalf of the Defendants on
Thursday, December 4, 2008, beginning at 1:30 p.m., at
390 North Orange Avenue, Suite 2300, Orlando, Florida,
before Lisa McCormack, Registered Merit Reporter and
Notary Public, State of Florida at Large.

A P P E A R A N C E S:

MATTHEW G. MCKINNEY, ESQUIRE
McKinney Law, LLC
390 North Orange Avenue, Suite 2300
Orlando, Florida 32801

For the Plaintiff,

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A P P E A R A N C E S:

STEPHANIE L. KNOTT, ESQUIRE, and
ARTHUR J. RANSON, III, ESQUIRE
Shuffield, Lowman & Wilson, P.A.
1000 Legion Place, Suite 1700
Orlando, Florida 32801

For the Defendants.

ALSO PRESENT: Anthony Costantine
Robert Costantine

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I N D E X

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S T I P U L A T I O N S

It is hereby stipulated and agreed between counsel for the representative parties and the witness that the reading and signing of the deposition be reserved.

1 THERESA COSTANTINE

2 having been first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. KNOTT:

5 Q. Good afternoon, Ms. Costantine. My name is
6 Stephanie Knott. And I represent the defendants in this
7 case. I'm going to be asking you some questions. If you
8 could first please try to give verbal answers. It's
9 easier for her to take down verbal answers than a nod of
10 the head. If you don't understand a question, just ask
11 me to rephrase it, and I'll be happy to do so. First,
12 could you please state your name?

13 A. Theresa Costantine.

14 Q. What is your address?

15 A. 153 Variety Tree Circle, Altamonte Springs.

16 Q. What is your educational background?

17 A. High school.

18 Q. Are you employed?

19 A. No.

20 Q. Were you previously employed anywhere?

21 A. You mean years ago?

22 Q. Uh-huh.

23 A. Yes.

24 Q. Where?

25 A. At a hotel. Sales director.

1 Q. Sales director. Did you ever work at the
2 Maryland Fried Chicken in Leesburg?

3 A. Did I ever work there? No.

4 Q. Did you play a role at all in the Maryland Fried
5 Chicken in Leesburg?

6 A. What do you mean?

7 Q. Did you -- let me back up.

8 what was your relationship to Richard
9 Costantine?

10 A. My husband.

11 Q. What was Richard Costantine's relationship with
12 the Leesburg restaurant?

13 A. We owned the Leesburg restaurant.

14 Q. Did you own it under a corporation or
15 individually?

16 A. Partnership, I guess.

17 Q. It was a partnership. Who were the partners?

18 A. My husband and Michael were partners.

19 Q. Michael Costantine?

20 A. Yes.

21 Q. I'm going to inquire a little into family
22 history here. Who is Albert Costantine?

23 A. My husband's brother.

24 Q. Did Albert Costantine -- let me back up.

25 Did Albert Costantine ever own any restaurants?

1 A. Did he ever own any restaurants?

2 Q. Uh-huh.

3 A. Of course he did.

4 Q. What restaurants did he run and operate?

5 A. Did Albert run and operate? This is many, many
6 years ago. I don't remember.

7 Q. Do you remember any of them?

8 A. I don't remember. No, I don't.

9 Q. Okay. Do you know if Albert Costantine ever had
10 a registration with the United States Patent and
11 Trademark Office?

12 A. Why are you saying Albert Costantine?

13 Q. I'm just trying to get some family history and
14 background.

15 A. I guess he did. I don't know. How do I know?

16 Q. Who started the Maryland Fried Chicken
17 restaurants?

18 A. I don't really know.

19 Q. What was the first Maryland Fried Chicken
20 restaurant that Richard Costantine ran and operated?

21 A. At one time, they were all together.

22 Q. Who was all together?

23 A. The group. They're brothers.

24 Q. Which was Albert --

25 A. Albert, Angel, and Richard.

1 Q. When you say "they were all together," what do
2 you mean?

3 A. The corporation at that time. That's many years
4 ago.

5 Q. What was the name of the corporation?

6 A. I do not know. Probably Maryland Fried Chicken.

7 Q. Okay.

8 A. I don't know.

9 Q. And what restaurants did they operate under that
10 corporation? What locations?

11 A. I think they had like 200 and some stores. But
12 they were franchised out, most of them.

13 Q. When you say "franchised out," did they have
14 franchise -- like written franchise agreements or what
15 was the franchising system?

16 A. I do not know.

17 Q. As for the 200 stores you just mentioned, can
18 you recall the locations of any of those stores?

19 A. I don't remember.

20 (Robert Costantine enters the room.)

21 Q. You said Richard Costantine operated the
22 Maryland Fried Chicken in Leesburg. How long was he in
23 Leesburg in that restaurant?

24 A. How many years?

25 Q. Approximately. It doesn't have to be exact.

1 A. 30.

2 Q. Did he purchase that Maryland Fried Chicken from
3 someone else or was he the first one to start it there in
4 Leesburg?

5 A. Oh, did we buy it from another person?

6 Q. Uh-huh.

7 A. Yeah, we did.

8 Q. Do you recall who that was?

9 A. I don't remember.

10 Q. And prior to the Leesburg restaurant that
11 Richard operated, what Maryland Fried Chicken, if any,
12 did he operate prior to that one? What location?

13 A. What are you talking about? I don't understand.

14 Q. Did he operate another Maryland Fried Chicken
15 restaurant before that, before Leesburg?

16 A. You mean himself?

17 Q. Yes.

18 A. No. I mean, with the corporation, yes.

19 Q. Under the corporation, what was the restaurant
20 he was located at prior to Leesburg?

21 A. You're talking about how many years ago? I
22 don't remember.

23 Q. You don't remember?

24 A. Uh-uh.

25 Q. Did Richard ever expand outside the Leesburg

1 restaurant during the 30-year period he was operating the
2 restaurant in Leesburg? Did he open any other Maryland
3 Fried Chickens?

4 A. No.

5 Q. To your knowledge, did he plan on opening other
6 Maryland Fried Chickens?

7 A. No.

8 Q. Did Richard approve each and every Maryland
9 Fried Chicken that is open in the Central Florida area?

10 A. Did he approve it?

11 Q. Did he approve who owned it and the opening of
12 each Maryland Fried Chicken?

13 A. The ones that had been open for years?

14 Q. All of them. The old ones and the new ones.

15 A. I guess. I don't know. I don't remember any of
16 that. I was not in the corporation.

17 Q. Do you know if Richard Costantine had a -- let's
18 scratch that and back up.

19 Do you know Paul Dion?

20 A. I don't think so.

21 Q. Do you know a gentleman by the name of Doug
22 Barthlow?

23 A. Doug Barthlow used to own a Maryland Fried
24 Chicken.

25 Q. Do you know which one?

1 A. Pine Hills, I believe, from what I can remember.

2 Q. Did he know Richard Costantine?

3 A. Uh-huh. Yes, he did.

4 Q. What was their relationship? How did they know
5 each other?

6 A. Well, Richard, Albert, and Angel owned Maryland
7 Fried Chicken. And he was a franchisee. That's how he
8 knew them.

9 Q. Do you recall around what time he opened his
10 Maryland Fried Chicken?

11 A. No.

12 Q. Do you recall if he opened any other Maryland
13 Fried Chickens other than the Pine Hills location?

14 A. I don't remember.

15 Q. Do you know anyone by the name of Jack Veatch?

16 A. No.

17 Q. Do you know anyone by the name of Jim Lacoste?

18 A. No.

19 Q. You had mentioned a franchisee. But to your
20 knowledge, are there any written franchise agreements
21 between any individual or corporation -- between the
22 franchisor and the franchisee, were there ever any
23 written franchise agreements?

24 A. I'm sure there were.

25 Q. Do you have a copy of any written franchise

1 agreements?

2 A. No.

3 Q. To your knowledge, did Richard Costantine ever
4 enter into any written franchise agreements?

5 A. I don't know.

6 Q. Do you know anyone by the name of Sammy
7 Endelicato?

8 A. Yeah.

9 Q. Do you know if he ever intended to open a
10 Maryland Fried Chicken in Mt. Dora?

11 A. Yes.

12 Q. Who did he intend on opening that restaurant
13 with?

14 A. With my son, Tony.

15 Q. Anthony Costantine?

16 A. (Nods head.)

17 Q. Do you know why that restaurant was never opened
18 by Anthony and Sammy?

19 A. Not exactly. I don't know.

20 Q. Are you aware of whether Anthony and Sammy
21 entered into any lease regarding a restaurant in
22 Mt. Dora?

23 A. That they leased it?

24 Q. Yes.

25 A. At one time I think they did together, yeah. I

1 don't know.

2 Q. Do you know if anyone else was a party to that
3 lease or if it was just Anthony and Sammy?

4 A. Nobody else, as far as I know.

5 Q. Are you aware that there are other Maryland
6 Fried Chicken restaurants in Central Florida other than
7 the one in Leesburg?

8 A. Yes.

9 Q. What relationship did Richard Costantine have
10 with those other Maryland Fried Chicken restaurants?

11 A. Years ago, I guess he -- well, I don't know.

12 Q. At the time --

13 A. I don't know anything about that, what they did
14 years ago. I don't know anything about that.

15 Q. That's okay. If you don't know, just say you
16 don't know.

17 A. I wasn't there. I don't know.

18 Q. If you don't know, it's okay. Just say you
19 don't know. I still have to ask the questions, though.

20 In the last two years, since 2004 to the
21 present, to 2008, what was Richard Costantine's
22 relationship with the Maryland Fried Chickens in Florida
23 other than Leesburg?

24 A. I don't recall.

25 Q. Did he have any relationship that you're aware

1 of with the other restaurants?

2 A. I don't know what he did.

3 Q. Are you the personal representative for Richard
4 Costantine's estate?

5 A. Yes.

6 Q. Did Richard Costantine have a will?

7 A. Yes.

8 Q. Did it make -- is there a disposition in the
9 will for ownership regarding the Leesburg restaurant?

10 A. No.

11 Q. Is there a disposition in the will for ownership
12 of any trademark?

13 A. Yes.

14 Q. What is that disposition? What is it?

15 A. Everything is turned over to me.

16 Q. Can you be more specific by "everything"
17 regarding the trademark?

18 A. No.

19 Q. Has the will been submitted to probate or filed
20 in any Court?

21 A. It doesn't have to be.

22 Q. Has it been filed in any Court?

23 A. It doesn't have to be.

24 Q. I understand. That's not my question. Has it
25 been filed with any Court?

1 A. No.

2 Q. Are you aware that there is a Maryland Fried
3 Chicken in Apopka?

4 A. Yes.

5 Q. Do you know who owns and operates that Maryland
6 Fried Chicken?

7 A. Yes.

8 Q. Who?

9 A. Bobby Costantine.

10 Q. Bobby Costantine. Were you aware prior to the
11 opening of the Apopka restaurant that Robert Costantine
12 was going to open that restaurant?

13 A. He called us and told us he opened the
14 restaurant.

15 Q. Were you happy when he opened that restaurant?

16 A. Yes.

17 Q. Did you attend the opening of the restaurant in
18 Apopka?

19 A. Not the opening, but I think a couple of weeks
20 later.

21 Q. Who was with you when you went to the Apopka
22 restaurant a couple weeks later?

23 A. My husband.

24 Q. Richard Costantine. Prior to the opening of the
25 Apopka restaurant, do you recall Richard Costantine ever

1 voicing any objections to Robert Costantine opening the
2 Apopka restaurant?

3 A. No.

4 Q. Do you recall if he stated that he had any
5 objections when he visited the restaurant with you a
6 couple weeks after it opened?

7 A. No.

8 Q. How do you think Richard Costantine felt with
9 Robert Costantine opening the restaurant in Apopka?

10 A. I don't know. I guess he never said.

11 Q. He never discussed it?

12 A. No.

13 Q. What do you think are the facts that support --
14 do you want to take a few minutes?

15 MR. MCKINNEY: We better take a break.

16 (A recess was had.)

17 MR. RANSON: I want it very clear that we are
18 taking the position that Theresa is the personal
19 representative of the estate, has now stepped into
20 the shoes of the plaintiff, Richard, her deceased
21 husband, and that we are entitled -- she is pursuing
22 this case.

23 We are trying to ask her factual questions about
24 the history of the operation at Leesburg and any
25 other Maryland Fried Chicken operation that he may

1 have been involved with at any point in time. We
2 don't know what her answers are going to be unless we
3 ask the question. She may not know anything, but she
4 might.

5 So that being the case, we have been told that
6 unless we tell opposing counsel what the questions
7 are that we're going to ask her, that he doesn't want
8 to go forward. That being the case we don't want to
9 damage her health. We understand she is upset, and
10 it's not our intention to do that.

11 But we do want to schedule a time to come back
12 and complete the depo. We'll go out to her house.
13 We'll go anywhere necessary to make it easy on her.
14 But that's what we want to do. So at this point in
15 time, we'll terminate the deposition.

16 MR. MCKINNEY: I want to put something on the
17 record as well. My name is mat McKinney, and I
18 represent the plaintiff in this matter. And our
19 position is this deposition has concluded. The
20 statements that Mr. Ranson had said about the
21 additional information from the witness -- from
22 Theresa Costantine regarding the Maryland Fried
23 Chickens history and the Leesburg restaurant have
24 been asked and answered by Mrs. Costantine. There
25 does not appear to be any other questions that they

1 need to ask of this witness.

2 Furthermore, she is the personal representative
3 of the estate. She has stated that she does not have
4 knowledge or was not involved with the corporation
5 prior and she doesn't typically have any knowledge of
6 the Leesburg restaurants' operations at this time.

7 Accordingly, we believe this deposition is
8 intended to harass and put extreme emotional duress
9 on Mrs. Costantine for no valid purpose under the
10 Rules of Civil Procedure. And our position is that
11 the deposition is concluded.

12 MR. RANSON: That's fine. We're terminating.
13 And we will take it before the Court, please. So
14 let's have a transcript as far as it goes as soon as
15 possible.

16 THE COURT REPORTER: Mr. McKinney, do you want a
17 copy of this, also?

18 MR. MCKINNEY: No.

19 (A recess was had.)

20 CONTINUED DIRECT EXAMINATION

21 BY MS. KNOTT:

22 Q. Ms. Costantine, I'm just going to ask a couple
23 more questions. I'm keep it as brief as possible. Did
24 you handle the books for the Maryland Fried Chicken in
25 Leesburg?

1 A. I have a bookkeeper.

2 Q. You're not the bookkeeper?

3 A. No.

4 Q. Were you ever the bookkeeper?

5 A. No. I always had a bookkeeper.

6 Q. Did you handle the accounts receivable, accounts
7 payable, any of the accounting?

8 A. I'd make out checks, payroll.

9 Q. Okay. Do you write the checks to the vendors as
10 well?

11 A. Yeah.

12 Q. What else do you do as a --

13 A. That's it.

14 Q. Your only role is to write the checks to the
15 vendors and the employees --

16 A. That's it.

17 Q. -- for the restaurant? What about other
18 Maryland Fried Chickens that Richard Costantine operated
19 prior to Leesburg, did you --

20 A. No, I never did.

21 Q. Did you write checks to --

22 A. No.

23 Q. -- CFM for Leesburg?

24 A. Of course.

25 Q. Who is CFM?

1 A. Who is CFM?

2 Q. Uh-huh.

3 A. We get all our products from them.

4 Q. Have you always gotten -- has the Leesburg
5 restaurant always gotten their products from CFM
6 Distributing?

7 A. Yes.

8 Q. Do you know who started CFM?

9 A. Maryland Fried Chicken started CFM.

10 Q. The corporation?

11 A. The corporation started CFM.

12 Q. Do you know when they -- did they sell that CFM
13 Distributing?

14 A. They didn't sell it to the owners now. They
15 sold it to the ones before that.

16 Q. Do you know who that was?

17 A. I'm trying to think. Let me think.

18 THE WITNESS: Do you remember?

19 A. God. He used to work in our office up in
20 Fern Park, but I don't remember. I don't remember his
21 name.

22 Q. That's okay. Do you know who the current owner
23 of CFM Distributing is?

24 A. Yeah. I think her name is --

25 THE WITNESS: What is her name, Bobby?

1 ROBERT COSTANTINE: Leslie.

2 A. Leslie. I don't know.

3 Q. That's okay. Can you tell me what facts you
4 believe support Richard Costantine's position that he
5 owns a common law trademark?

6 MR. MCKINNEY: Object to the form. You can
7 answer.

8 A. I don't know what you're talking about.

9 Q. What facts do you think support the plaintiff's
10 position in this lawsuit?

11 MR. MCKINNEY: Object to the form.

12 ANTHONY COSTANTINE: If he objects, you don't
13 have to answer.

14 MR. MCKINNEY: You can answer if you know the
15 facts.

16 A. I don't know what they're talking about. I
17 don't know.

18 Q. What do you know about the lawsuit that's been
19 filed in case?

20 A. Not too much.

21 Q. What is your understanding of --

22 A. It was between my husband and them. Whatever.

23 Q. What is your understanding of why Richard
24 Costantine filed the lawsuit?

25 A. I believe the Mt. Dora store is too close to the

1 Leesburg store.

2 Q. Do you know who runs the Maryland Fried Chicken
3 in Mt. Dora?

4 A. No. I don't know the people. Never met them.

5 Q. What makes you believe that the Mt. Dora store
6 is too close to the Leesburg store?

7 A. I know it is.

8 Q. What sort of -- one second. What limit do you
9 think -- what limit was there -- scratch that.

10 Did Richard Costantine ever communicate to you
11 what the geographical limit he thought was for Maryland
12 Fried Chicken restaurants? Did he ever communicate with
13 you at all about that?

14 A. No. I didn't talk to him about it.

15 Q. Do you know if he thought that ten miles was too
16 close to Leesburg if there was a Maryland Fried Chicken
17 ten miles away?

18 A. Ten miles would be too close, yeah.

19 Q. In your opinion or --

20 A. In my opinion. Fifteen would be too close, in
21 my opinion.

22 Q. Why?

23 A. But that -- you know, that's my opinion.

24 Q. That's what I want to hear.

25 A. 25 would be too close, in my opinion.

1 Q. What would be the appropriate distance, in your
2 opinion?

3 ANTHONY COSTANTINE: You don't know?

4 A. I don't know.

5 Q. Did you object to Bobby opening his store in
6 Apopka?

7 A. Did I object? No.

8 Q. Tell me again why you think -- I think the last
9 mileage was 25. Why you think 10, 15, or 25 would be too
10 close to the Leesburg restaurant.

11 A. That's my opinion.

12 Q. Okay. What harm do you think -- what harm is
13 there in one being 10, 15, or 25 miles away from the
14 Leesburg restaurant?

15 A. We had many customers from Mt. Dora.

16 Q. What evidence do you have of your customer base
17 in Mt. Dora?

18 A. What evidence?

19 Q. Uh-huh.

20 A. I have quite a bit of evidence.

21 Q. For example?

22 A. That they've been in the Mt. Dora store. They
23 don't like the product in the Mt. Dora store, and that
24 hurts our business.

25 Q. Earlier you had mentioned that you knew that

1 Tony and Sammy were going to open a restaurant in
2 Mt. Dora. Would that have been too close?

3 A. Tony is part of Leesburg. That would have been
4 part of Leesburg.

5 Q. How is Tony affiliated with Leesburg?

6 A. Well, he's going to be owner one day of
7 Leesburg, him and his brother.

8 Q. What is his current affiliation with Leesburg?
9 Title?

10 A. He works there.

11 Q. He's an employee?

12 A. Right.

13 Q. So is there -- was there to be any corporation
14 or monetary affiliation between Leesburg and Mt. Dora?

15 A. If Tony was probably involved.

16 Q. Is there any evidence of that intent, for
17 Leesburg and Mt. Dora to have been connected or related?

18 A. I don't know. You have to ask Tony.

19 Q. If Tony had opened the restaurant in Mt. Dora,
20 would that have taken business away from the Leesburg
21 restaurant?

22 A. It possibly -- no, it probably wouldn't because
23 we have the same customers. So if it's affiliated with
24 it, it wouldn't hurt it, would it?

25 Q. What exactly was your understanding of how it

1 would be affiliated?

2 A. well, my husband was intending to go in with --
3 if Tony had it, if Tony was in. If Tony was involved
4 with the Mt. Dora store, he was going to take over and
5 pay for that.

6 Q. why was Richard then not a party to the lease
7 agreement that Tony and Sammy entered into in Mt. Dora?

8 A. Because there was something happened between the
9 two of them. I don't know. My husband looked at that
10 property. It was not on the right -- he went up there,
11 looked at the property. He said it's not on -- my
12 husband knows all about where Maryland Fried Chickens
13 should be, where the locations should be. And it was on
14 the wrong side of the street. And he said it didn't have
15 a drive-through, it isn't going to make it. And that's
16 why they -- part of the reason, I guess, they backed out.

17 Q. Did Richard scout out each and every location of
18 the Maryland Fried Chickens that are operating in
19 Orlando?

20 A. It's been years since those places were open.
21 Years. And he probably was part of it.

22 ANTHONY COSTANTINE: He opened up the three that
23 opened in the last year.

24 A. Oh, he did. Yeah, he was.

25 MS. KNOTT: Tony, you've got to wait until it's

1 your turn.

2 A. Yeah, he did.

3 Q. What about the Maryland Fried Chicken in Winter
4 Garden, did Richard select that location?

5 A. I don't know. Probably did years ago. I have
6 no idea what they did then. I wasn't involved.

7 Q. I'm almost finished here. Do you know anything
8 about Albert Costantine attempting to sell the rights in
9 the trademark to a third party?

10 A. Did he ever do that? Is that what you're asking
11 me?

12 Q. Do you know if he ever did that?

13 A. I believe he did to somebody in Georgia, but it
14 wasn't -- I don't know what happened. Something
15 happened. I have no idea.

16 Q. Do you know why he did that?

17 A. Why he did that? I don't know. You have to ask
18 Albert.

19 Q. Did he get any money, do you know, for doing
20 that personally?

21 A. I have no idea.

22 Q. Did Richard ever try to sell any rights --

23 A. No.

24 Q. -- he thought he had in Maryland Fried Chicken
25 to anyone else?

1 A. No.

2 Q. Did he ever receive any money --

3 A. No.

4 Q. -- from anyone to operate a Maryland Fried
5 Chicken?

6 A. No. Never did.

7 Q. Did Richard and Albert have any agreement about
8 who owned the trademark Maryland Fried Chicken?

9 A. At that time, I don't know. I have no idea what
10 they did together. I wasn't with them all the time.

11 Q. Do you know if Richard and Albert ever had a
12 disagreement about the trademark or the Maryland Fried
13 Chicken restaurants or locations?

14 A. No. I didn't know anything about that.

15 Q. Lastly, I'm just going to run through -- as part
16 of your deposition, you were sent a subpoena duces tecum.
17 I'm just going to run through and ask you about the
18 documents in this subpoena. The first is we asked you to
19 "Provide any and all correspondence you or Richard sent
20 to any restaurant individual or entity concerning the use
21 of the mark from January 1st, 2002, to the present." Did
22 you bring any of those documents?

23 A. No.

24 Q. Are there -- did you attempt to locate any of
25 these documents?

1 A. No. I don't have any.

2 Q. Are there any?

3 A. I don't have any.

4 Q. The second was to "Please provide any and all
5 documents or correspondence which support the assertion
6 that Richard Costantine or his estate owns the mark."
7 Did you bring any of those documents?

8 A. No.

9 Q. Are there any documents in existence in response
10 to that?

11 A. I don't know.

12 Q. Next is, "Please provide a copy of any and all
13 invoices and receipts from CFM Distributing from
14 January 1st, 2002, to the present." Did you bring any
15 invoices or receipts from CFM Distributing?

16 A. Yeah.

17 Q. Yes?

18 A. Yes.

19 Q. May I see them?

20 MR. MCKINNEY: (Tenders documents.)

21 MS. KNOTT: First, can I have the subpoena duces
22 tecum marked as Exhibit A.

23 (Whereupon, Defendants' Exhibit A was marked.)

24 Q. Did you handle -- first of all, can you just
25 identify this stack of documents, what they are (tenders

1 document)?

2 A. They're all from CFM.

3 Q. And they are -- what are they?

4 A. Invoices.

5 Q. They're invoices. Did you handle the payment of
6 a portion or all of these invoices?

7 A. Yes, I did.

8 MS. KNOTT: Can I have this marked as Exhibit B?
9 (Whereupon, Defendants' Exhibit B was marked.)

10 Q. No. 5 on the subpoena is, "Please provide any
11 and all design and franchise information regarding
12 Maryland Fried Chicken restaurants from the 1970s to the
13 present." Did you bring any documents responsive to this
14 request?

15 A. No, I didn't.

16 Q. Are there any documents --

17 A. I don't have anything.

18 Q. -- in existence? Just let me finish the
19 question. We're almost done. No. 6 is, "Please provide
20 any and all manuals, documents, instructions, or
21 checklists regarding opening a Maryland Fried Chicken."
22 Did you bring any documents responsive to this request?

23 A. No, I didn't.

24 Q. Are there any in existence?

25 A. No.

1 Q. No. 7 is, "Please provide any and all
2 correspondence you or Richard had with any other Maryland
3 Fried Chicken restaurants, restaurant owners or operators
4 in the State of Florida." Did you bring any documents
5 responsive to this request?

6 A. No, I didn't.

7 Q. Are there any in existence?

8 A. I don't know.

9 Q. No. 8 is, "Please provide a copy of any and all
10 correspondence between the Leesburg restaurant and CFM
11 Distributing." Did you bring any documents responsive to
12 this request?

13 A. What?

14 Q. Any correspondence between the Leesburg
15 restaurant and CFM Distributing.

16 A. We don't write letters to each other.

17 Q. Well, in the course of business, did you write
18 any -- are there any correspondence?

19 A. No, we didn't.

20 Q. So there is none in existence?

21 A. No.

22 Q. No. 9, "Please provide a copy of any and all
23 lease agreements you or Richard contemplated or executed
24 in the last eight years with regard to a restaurant
25 location outside of Leesburg." Did you bring any

1 documents responsive to this request?

2 A. For what?

3 Q. Any lease agreements you or Richard had or
4 executed with regards to a restaurant.

5 A. I don't understand the question.

6 Q. Any leases that you or Richard were a party to
7 regarding a restaurant location outside of Leesburg.

8 A. No. We have nothing.

9 Q. There is nothing responsive to that. No. 10 is,
10 "Please provide any and all agreements you or Richard had
11 with anyone else that provided for an ownership interest
12 in your Leesburg restaurant." Is there any documents
13 showing anyone else having an ownership interest?

14 A. No.

15 Q. We requested a customer list for the Leesburg
16 restaurant. Did you bring a customer list?

17 A. We did.

18 ANTHONY COSTANTINE: Well, the customer list
19 doesn't exist.

20 THE WITNESS: I thought you had that -- those --

21 MR. MCKINNEY: We have a stack of declarations.
22 But are you asking for something independent of the
23 declarations?

24 MS. KNOTT: Yeah.

25 Q. Is there a list of customers that exists?

1 A. Why would you do that?

2 Q. It's relevant to the suit and we're entitled to
3 it for discovery if it exists, if you have a customer
4 list. Is there one in existence?

5 A. No. I don't have one.

6 Q. No. 12 is, "Provide any documents or
7 correspondence regarding the opening of a Maryland Fried
8 Chicken in Mt. Dora." Do you have any documents
9 responsive to this request?

10 A. I don't understand.

11 Q. Any documents regarding the opening of a
12 restaurant in Mt. Dora.

13 A. Do I have any evidence?

14 Q. Any documents that --

15 A. Documents?

16 Q. -- relate to anyone trying to open in Mt. Dora?

17 A. I don't have anything. I have nothing to do
18 with that.

19 Q. Thirteen is, "Any documents that reflect your
20 ownership interest in the mark 'Maryland Fried Chicken.'"
21 Do you have any documents responsive to that request?

22 A. Do we have any documents that we own the mark?

23 Q. Evidence that you own the mark, or Richard?

24 A. That Richard owns the mark?

25 Q. That he owned the mark, yes.

1 A. Don't you think that's obvious?

2 Q. No, I don't. But are there any documents that
3 are reflective of that?

4 A. No.

5 Q. Are you aware of any documents, formal
6 documents, filed with the United States Patent and
7 Trademark Office regarding the Maryland Fried Chicken
8 mark?

9 A. If there is anything about the mark or whatever,
10 my husband, he's the one that took care of that. I
11 didn't. I don't know anything about it. That's it.

12 MS. KNOTT: That's it. Thank you so much for
13 coming.

14 MR. MCKINNEY: We'll read.

15 (The proceedings concluded at 2:33 p.m.)
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CERTIFICATE OF OATH

STATE OF FLORIDA:

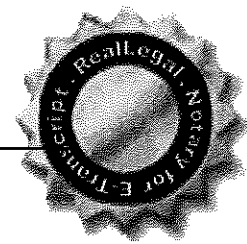
COUNTY OF ORANGE:

I, LISA MCCORMACK, RMR, the undersigned authority, certify that THERESA COSTANTINE personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 14th day of December 2008.

Lisa McCormack

LISA MCCORMACK, RMR
Commission No. DD662469
Expires May 13, 2011



1 CERTIFICATE WITH ACKNOWLEDGEMENT

2 STATE OF FLORIDA:

3 COUNTY OF ORANGE:

4
5 I, LISA MCCORMACK, RMR, do hereby certify that I
6 was authorized to and did stenographically report the
7 deposition of THERESA COSTANTINE, that a review of the
8 transcript was requested; and that the foregoing
9 transcript, Pages 1 through 35, inclusive, are a true and
10 correct record of my stenographic notes.

11 I FURTHER CERTIFY that I am not a relative,
12 employee, attorney, or counsel of any of the parties, nor
13 am I relative or employee of any of the parties,
14 attorneys or counsel connected with the action, nor am I
15 financially interested in the outcome of the action.

16
17 DATED this 14th day of December 2008.

18
19
20 
21 LISA MCCORMACK, RMR

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