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I. INTRODUCTION

At Lantz Law Group, we primarily serve small to mid-sized private businesses. As a company grows, important decisions frequently arise regarding expansion. This can involve establishing related businesses, subsidiaries, and franchises. Critical choices must be made when expanding a business to ensure the most effective strategy is implemented. Any business should seek knowledgeable legal counsel, as well as accounting and tax professionals, along with other advisors. The following information provides a basic overview of franchise laws.

II. PURPOSE OF THIS WHITE PAPER

It is crucial for businesses considering expansion or brand growth to understand the process. Franchises can offer substantial opportunities, but any parties involved in such agreements may face significant legal liability if they enter a contract without understanding the regulations and requirements of a franchise agreement under federal and state law. Moreover, while this paper provides an informational and educational analysis of the law, it should not be considered legal advice. The stakes are high, and the possibilities created through franchises are great.

III. WHAT IS A FRANCHISE?

A franchise is a business agreement between a franchisor and a franchisee. The franchisor is the owner of an established business. The franchisee is an independent party or individual who purchases the right to operate a business using the franchisor's brand and system. Through a franchise agreement, the franchisor grants the franchisee the rights to use a trademark, service mark, trade name, logo, or other commercial symbols. This white paper addresses both franchisee and franchisor components of the relationship, as Lantz Law Group's clientele comprises both parties.

As a franchisee, one invests in an established business and receives specific instructions and directives for its operation. Moreover, a franchisee should receive ongoing support and training to ensure both the business's success and the franchisor's reputation. Franchisees are obligated to follow the franchisor's system, branding, and operating procedures. Additionally, many franchise agreements grant the franchisee rights to operate within a specific territory, and the franchisee is typically restricted from conducting business outside of that designated area. Franchise agreements may distinguish territories as exclusive and non-exclusive territories.

The franchisor is dedicated to (a) overseeing the manner and method of operation of the franchisee's

business, (b) providing support such as training, marketing, and operational guidance, and (c) protecting the brand's reputation by ensuring consistency across all franchise locations.

IV. WHAT IS A LICENSE?

Business owners often confuse licensing agreements with franchise agreements. In a licensing agreement, the licensee acquires a specific item. A license agreement enables the licensee to use, reproduce, and sell a design, name, logo, or idea for a specified fee. It grants a limited right concerning a specific asset and does not extend to the entire business. Notably, the licensing agreement does not grant the licensor the authority to control or dictate the licensee's overall business operations.

In contrast, a franchise typically involves the franchisor exercising significant control over, or providing substantial assistance to, the franchisee's method of operation. Additionally, unlike franchises, licenses typically do not impose restrictions regarding territory or market for the exclusive use of the licensee, and licenses are generally not subject to the same regulatory requirements that apply to franchises. In this paper, the authors primarily address franchising. See FAQ – I want to have more control over my licensees, is it easy to convert a license to a franchise?

V. PROBLEMS MAY ARISE IF A LICENSE ACTS LIKE A FRANCHISE

It is crucial for any business considering whether to license a particular item or offer a franchise to seek competent legal counsel and an accountant well-versed in licensing, franchising, and tax matters. Problems arise if the rights granted under a license are substantial enough to be deemed a franchise, but the proper legal procedures for granting a franchise are not followed. See, e.g., *Community Tele-Communications, Inc. v. Heather Corp.*, 677 P.2d 330, 338 (Colo. 1984); *Employment Television Enterprises, LLC v. Barocas*, 100 P.3d 37, 49–50 (Colo. 2004). For instance, legal disputes may arise regarding the nature of the agreement and the obligations of the parties involved. *Employment Television Enterprises, LLC v. Barocas*, 100 P.3d 37, 49–50 (Colo. 2004).

Under the Federal Trade Commission's ("FTC") Franchise Rule and many state laws, a franchise relationship is legally created — regardless of the agreement's title — if three elements are present: (a) the licensee has the right to use the licensor's trademark or trade name; (b) the licensor exercises significant control over, or provides significant assistance to, the licensee's method of operation; and (c) the licensee pays a required fee to the licensor. If all three elements are satisfied, the arrangement is considered a franchise, even if the parties intended to create only a license.

Parties risk unintentionally triggering franchise law when, for example, the licensor: (a) imposes detailed operational requirements (e.g., uniforms, signage, pricing); (b) provides mandatory training programs or marketing assistance; (c) requires the licensee to make recurring payments for marketing or support services. Failure to comply with franchise disclosure and registration requirements can result in severe consequences, including civil penalties, rescission of the agreement, lawsuits by the licensee, and potential personal liability for company officers.

Accordingly, careful structuring of licensing relationships and early legal review is essential to avoid the costly mistake of unintentionally creating an unregistered, unlawful franchise.

VI. GROUNDING, DEVELOPMENT, AND PROTECTION OF THE TRADEMARK AND BRAND SYSTEM

In our experience, many clients who seek our franchise services are inspired by conferences or shows like “Shark Tank,” where they come to conclude that creating franchises as a franchisor or stepping out as a franchisee would almost instantly make them rich. Ultimately, franchises may be very lucrative, but it is naïve to think they are a simple and inexpensive route to riches. See FAQ – I’ve heard that creating a franchise agreement is easy and inexpensive. Is this true?

VII. THE REASON FOR REGULATION OF FRANCHISES

In the United States, the FTC regulates franchises. As outlined in the introduction to 16 CFR parts 436 and 437, Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunities (the “Franchise Rule”), along with the 2007 amendment of the FTC’s Trade Regulation Rule (16 C.R.F. §§ 436.1-436.11), the FTC provided the reasons for regulating franchise offerings:

[The FTC] found widespread deception in the sale of franchises and business opportunities through both material misrepresentations and nondisclosures of material facts. Specifically, the [FTC] found that franchisors and business opportunity sellers often made material misrepresentations about: the nature of the seller and its business operations, the costs to purchase a franchise or business opportunity, and other contractual terms and conditions under which the business would operate, the success of the seller and its purchasers, and the seller’s financial viability. The [FTC] also found other unfair or deceptive practices pervasive: franchisors’ and business opportunity sellers’ use of false or unsubstantiated earnings claims to lure prospective purchasers into buying a franchise or business opportunity, and franchisors’ and business opportunity sellers’ failure to honor promised refund requests. The [FTC] concluded that all of these practices led to serious economic harm to consumers.

Consequently, since franchise offerings are and have been susceptible to widespread fraud and deception, the FTC mandates specific disclosures when offering a franchise opportunity. The requirements outlined below are designed to help prospective franchisees make informed investment decisions. Additionally, the Franchise Rule seeks to prevent deceptive and unfair trade practices in the offering and sale of franchises in the U.S.

VIII. MANDATED REQUIREMENTS – FEDERAL

In 1978, the FTC first introduced the **Franchise Rule**, requiring franchisors to provide prospective franchisees with an offering circular disclosing key information about the franchise opportunity.[1]

In 2007, the FTC amended the Franchise Rule, discontinuing the Uniform Franchise Offering Circular (“UFOC”) format and replacing it with the **Franchise Disclosure Statement (“FDD”)**. The FDD retained many

of the original disclosure requirements but also introduced additional mandates to: (a) ensure more complete and standardized disclosures, (b) prevent material misrepresentation and nondisclosure of material facts, and (c) minimize inconsistencies with varying state disclosure regimes.

The FDD must disclose **23 specific categories of information** (referred to as “Items”), including details about the franchisor’s business background, litigation history, initial and ongoing fees, territory restrictions, financial performance representations (if made), and audited financial statements. Franchisors must provide the FDD to a prospective franchisee **at least fourteen (14) calendar days** before the prospective franchisee: (a) signs any binding agreement with the franchisor or its affiliates; or (b) makes any payment to the franchisor or its affiliates.

The 2007 amendments also expressly authorized franchisors to deliver the FDD electronically, provided that certain formatting and accessibility requirements are met. Failure to comply with the FTC Franchise Rule can result in enforcement actions by the FTC, including civil penalties, injunctive relief,

IX. TWENTY-THREE DISCLOSURE ITEMS AND CONTINUING UPDATES

An FDD must include disclosures in 23 categories, each of which is referred to as an “Item.” The disclosures must be in plain English and easily understood by a prospective franchisee. The FDD itself must (a) be printable as a single document and (b) contain only the information specifically required or expressly permitted under the Franchise Rule or any similar, applicable state franchise law. **Appendix A** to this White Paper sets forth the 23 categories with requisite components.

If material changes occur, franchisors must revise the FDD quarterly to reflect those changes, and the FDD must be revised annually within 120 days of the fiscal year-end. 16 C.F.R. §436.7. With any franchise, the law firm that represents the franchisor must prepare a timeline plan for the annual strategic review of each item below to ensure that the FDD accurately reflects best practices and company policies reflecting recent changes in federal or state law. This includes an audit schedule as required by Item 19, discussed in **Appendix A**.

If the franchisor operates in states with specific franchise laws or tax laws related to franchises, it should consider the implications.**[2]** The franchisor should allow time in its strategic review plan to make contract changes or revise company policies accordingly.

X. IN ADDITION TO THE 23 ITEMS REQUIRED IN THE FRANCHISE DISCLOSURE DOCUMENT (FDD), FEDERAL LAW—SPECIFICALLY THE FTC FRANCHISE RULE—AND CERTAIN STATE LAWS IMPOSE FURTHER COMPLIANCE OBLIGATIONS ON FRANCHISORS.

A. TIMELY DISCLOSURE OF THE FDD

As stated in section VII above, under the FTC Rule, franchisors must provide the Franchise Disclosure Document (“FDD”) at least fourteen (14) calendar days before:

1. The franchisee signs any binding agreement related to the franchise; or
2. The franchisee makes any payment to the franchisor or its affiliates 16 C.F.R. § 436.2(a).

If changes are made to the franchise agreement, the updated documents must be provided at least 7 days before signing. 16 C.F.R. § 436.2(b). Disclosure must be made in a “durable medium” (e.g., hard copy or downloadable PDF) that allows the prospective franchisee to review and retain the documents. This mandatory waiting period provides prospective franchisees with sufficient time to review the franchise offering, consult with legal or financial advisors, and fully understand their rights and obligations before committing to the franchise (i.e. a “cooling off” period).

B. ACCURATE AND COMPLETE INFORMATION

All information provided in the FDD must be truthful, complete, and free from material misstatements or omissions. 16 C.F.R. §§ 436.1(b), 436.2. This includes, but is not limited to:

1. Full and accurate disclosure of all fees, initial and ongoing obligations, and operational requirements; and
2. Substantiation of any Financial Performance Representations (FPRs) made in Item 19, in accordance with 16 C.F.R. § 436.5(s). Note that FPRs are optional, but if provided, they must be based on reasonable factual foundations.

C. CONSEQUENCES FOR NON-COMPLIANCE WITH THE RULE

Providing inaccurate or misleading information not only violates federal law but also significantly erodes trust in the franchisor-franchisee relationship, and may expose the franchisor to legal consequences, including, but not necessarily limited to:

1. **FTC Enforcement Actions:** Civil penalties, injunctions, and cease-and-desist orders.
2. **State-Level Penalties:** Fines, lawsuits, and possible contract rescission under state franchise laws.
3. **Franchisee Civil Lawsuits:** Franchisees may seek damages or cancel agreements due to misleading disclosures.[3]
4. **Criminal Penalties:** In certain instances the conduct may violate criminal laws and lead to prosecution.
5. **Reputational Damage:** Legal issues can harm the franchisor’s brand and deter future franchisees.

XI. BEST PRACTICES FOR COMPLIANCE

Both the franchisor and the franchisee should be vigilant in setting up best practices in maintaining the franchise agreement, including, but not necessarily limited to:

1. **Ensuring the delivery and receipt of updated FDDs** annually within **120 days** of the fiscal year-end and before offering or selling any franchises.
2. **Monitoring for Material Changes** and if any occur after the annual update, promptly amend the FDD and redistribute it to prospective franchisees.
3. **Documenting the “Receipt”** of the FDD with signed acknowledgments.
4. **Verification and Substantiation** data for all financial representations and acknowledgment thereof.
5. **Maintain ongoing and thorough consultation with qualified legal counsel**, accountants, and other professionals regularly to ensure compliance with federal and state franchise laws.
6. Establish and execute training for Franchisor representatives, including franchise sales staff, and implement internal compliance protocols, such as checklists and regular reviews, to help prevent inadvertent violations of disclosure

requirements. Additionally, the franchisee should establish educational and training protocols for their management and staff.

By meeting disclosure deadlines and providing accurate information, franchisors protect themselves from legal risks and foster long-term success. From the franchisees' perspective, vigilance and follow-through with training and education are also key ingredients to a successful franchise relationship.

XII. STATE LAW CONSIDERATIONS

Franchise regulation in the United States operates under both federal and state laws. While the FTC Franchise Rule sets the baseline disclosure requirements for franchisors nationwide, individual states may impose additional regulations, including registration and disclosure obligations. Understanding these state-specific requirements is essential for legal compliance and successful franchise operations.

A. COLORADO FRANCHISE LAW

In Colorado, franchisors are governed primarily by the FTC Franchise Rule. Colorado does not require franchisors to register their Franchise Disclosure Document (FDD) with any state agency. However, general consumer protection and deceptive trade practices laws—such as the Colorado Consumer Protection Act—still apply and can impact franchise operations.^[4]

B. OTHER STATE VARIATIONS IN FRANCHISE REGULATION

While Colorado defers to federal franchise regulations, many other states impose stricter franchise laws that franchisors must navigate before offering or selling a franchise. These requirements generally fall into two categories:

1. FDD REGISTRATION (REGISTRATION STATES).

Certain states require franchisors to register their FDD with a designated regulatory agency before offering or selling franchises. These states conduct a formal review of the FDD to ensure compliance with state-specific disclosure rules.

These registration states include: California, Hawaii, Illinois, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, Wisconsin, and Puerto Rico.

2. ADDITIONAL DISCLOSURE OBLIGATIONS (FILING AND BUSINESS OPPORTUNITY STATES)

Some states do not require full registration but do mandate notice filings or business opportunity exemptions.

1. Filing states may include Connecticut and North Carolina.
2. Business opportunity states, such as Florida, Texas, Nebraska, Utah, and Kentucky, may require franchisors to file for exemption from local business opportunity laws if they meet the FTC disclosure standards.

3. FRANCHISE RELATIONSHIP LAWS

Certain states (e.g., California, Minnesota, Wisconsin) have laws regulating the franchisor-franchisee relationship. These laws may restrict how and when a franchise can be terminated or not renewed, impose notice periods, and limit encroachment or non-compete clauses.

4. LEGAL AND OPERATIONAL IMPACT OF NON-COMPLIANCE

Non-compliance with state-specific franchise laws can result in severe consequences, including, but not limited to (a) civil penalties and fines imposed by state regulators; (b) injunctions that prevent the sale of franchises until compliance is achieved; (c) rescission rights allowing franchisees to cancel agreements and seek refunds or damages; (d) reputational harm, making it difficult to expand in certain states;

5. BEST PRACTICES FOR STATE LAW COMPLIANCE

To ensure full compliance with federal and state franchise laws, franchisors should:

- 1. Verify State-Specific Laws:** Regularly consult state franchise regulations in all target markets.
- 2. Engage Legal Counsel:** Work with experienced franchise attorneys to prepare and update the FDD and supporting documents.
- 3. Maintain Proper Business Structures:** Ensure dental practices are structured in compliance with Colorado's ownership and corporate formation laws.
- 4. Monitor Regulatory Updates:** Stay informed of changes in franchise and professional licensing laws at both the federal and state levels.

XIII. CONCLUSION

The Franchise Agreement is designed to comply with both federal and state regulatory standards while supporting the long-term success of the franchise system. A clear understanding of these obligations—and consistent adherence to them—is essential for minimizing legal risk, maintaining brand integrity, and promoting sustainable growth.

This document provides general guidance on key compliance requirements and best practices to assist franchisors in meeting their disclosure obligations and operating within applicable legal frameworks.

LEGAL DISCLAIMER

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APPENDIX A – REQUISITE ITEMS IN THE FRANCHISE DISCLOSURE DOCUMENT

The following items are the minimum disclosure requirements mandated by the FTC. Each franchise is different and the attendant Franchise Disclosure Document (“FDD”) that is provided to the franchisee must be fashioned in such a way as to fully inform the franchisee of the opportunities, risks, obligations, threats, and requisite compliance to make an informed decision regarding the franchise offering.

The FDD contains 23 specific “items” covering the franchisor’s business experience, litigation history, financial performance, territory rights, fees, ongoing costs, and restrictions on the franchisee’s business operations. The 23 specific items are as follows:

Item 1: The Franchisor and Any Parents, Predecessors, and Affiliates.

This item includes:

1. Legal name, business history, and ownership structure.
2. Description of the franchisor’s business, including any parent companies, affiliates, and predecessors.
3. The type of business organization used by the Franchisor (e.g., corporation, LLC, partnership).
4. Any laws applicable to the franchised business, including licenses and permits (e.g., a liquor business would need a liquor license).
5. Franchisor’s agent for service. See, 16 C.F.R. § 436.5(b).

Item 2 – Business Experience.

Item 2 requires that the franchisor set out the background and professional experience of the franchisor’s directors, officers, and key management staff. 16 C.F.R. § 436.5(b).

Item 3 – Litigation.

When representing prospective franchisees, it is essential to conduct additional due diligence on the litigation front. Experience suggests that some franchisors withhold this information, leading to a surprise after the documents have been executed. While there are remedies for this, you want to ensure that your investment is not compromised by any shockwaves created by judgments or other litigation. When representing franchisors, counsel should be persistent in obtaining this information, including conducting a judgment search with the franchisor’s consent.

Matters of importance related to litigation include:

1. **Pending actions.** This includes, but is not limited to:
 - A. administrative, criminal, or material civil actions pending against the “disclosure parties” which may include the franchisor or any of its predecessors, affiliates, parents, general partners, or franchise managers alleging a violation of a franchise, antitrust, or securities law, fraud, or unfair or deceptive practices; and
 - B. any other pending material civil lawsuits involving a disclosure party.
2. **Lawsuits involving the franchise relationship.** This includes, during the prior fiscal year, any:
 - A. civil lawsuits involving a disclosure party and
 - B. franchisor-initiated lawsuits
3. **Prior lawsuits.** This requires disclosure of any actions during the immediately prior ten years involving a disclosure party that:

- A. resulted in any felony convictions or pleas to felony charges, or
- B. found that the franchisor had violated a franchise, antitrust, or securities law or was guilty of fraud or unfair or deceptive practices.

4. Current governmental injunctive or restrictive actions. This requires disclosure of any injunctions resulting from government agency actions that are in effect at the time the franchisor provides the FDD to the prospective franchisee. FTC injunctive orders do not expire, so these actions, once brought, generally remain in effect indefinitely and must be disclosed. 16 C.F.R. § 436.5(c)

Item 4 – Bankruptcy.

This item requires disclosure of any bankruptcy filings made within the past ten years by the franchisor, its affiliates, predecessors, or any individual disclosed under Item 2. 16 C.F.R. § 436.5(d).

Item 5 – Initial Fees.

This item encompasses all upfront fees required to initiate the franchise, including franchise fees, training fees, and territory fees, as well as the circumstances under which these payments are refundable. If the initial fees are paid in installments, the franchisor must disclose the installment payment terms in either Item 5 or Item 10. 16 C.F.R. § 436.5(e).

Item 6 – Other Fees.

This item includes ongoing fees such as royalties, advertising contributions, renewal fees, and transfer fees. This information must be presented in a table^[5] that specifies: (a) the type of fee, (b) the amount of the fee, (c) the due date, and (d) any formula used to calculate the fee. 16 C.F.R. § 436.5(f).

Item 7 – Estimated Initial Investment.

This item includes the estimated total costs required to open and operate the franchise for the first three months. Item 7 fees must be presented in a tabular format, accompanied by footnote explanations for each amount listed. In addition to the associated costs, the franchisor is also required to provide an assessment of the period during which each cost is expected to be incurred, starting on or before the commencement of operations and continuing through the initial phase of operations. 16 C.F.R. § 436.5(g).

Item 8 – Restrictions on Sources of Products and Services.

This item includes requirements for franchisees to purchase products or services from specific suppliers, including franchisor-approved vendors. In large measure this is to ensure consistency amongst the franchises. 16 C.F.R. § 436.5(h).

Item 9 – Franchisee’s Obligations.

This item includes a comprehensive table summarizing all operational and legal obligations, such as site selection, marketing, and compliance. 16 C.F.R. § 436.5(i).

Item 10 – Financing.

This item includes the disclosure of all financing arrangements the franchisor offers, including terms and conditions. Among other things, this disclosure will outline the annual interest rate and finance charges, the number of payments,

penalties for default, and any consideration the franchisor receives from referring the franchisee to a lender. 16 C.F.R. § 436.5(j).

Item 11 – Franchisor’s Assistance, Advertising, Computer Systems, and Training.

This item includes details on the training, support, advertising, and technology the franchisor will provide, including whether the territory is exclusive, and the circumstances under which it may be altered. 16 C.F.R. § 436.5(k).

Item 12 – Territory.

This item includes a description of the franchisee’s exclusive or non-exclusive territory and any conditions for modifying territorial rights. 16 C.F.R. § 436.5(l).

Item 13 – Trademarks.

This item includes information about the franchisor’s trademarks, service marks, and logos, including their registration status and protection. 16 C.F.R. § 436.5(m).

Item 14 – Patents, Copyrights, and Proprietary Information.

This item includes the disclosure of intellectual property rights, including patents and copyrights, and how they relate to franchise operations. 16 C.F.R. § 436.5(n).

Item 15 – Obligation to Participate in the Actual Operation of the Franchise Business.

This item addresses whether the franchisee must be directly involved in daily operations or if they can hire a manager, among other operational considerations. 16 C.F.R. § 436.5(o).

Item 16 – Restrictions on What the Franchisee May Sell.

This item includes disclosure of any limitations on the goods or services the franchisee can offer at their location. 16 C.F.R. § 436.5(p).

Item 17 – Renewal, Termination, Transfer, and Dispute Resolution.

This item includes any terms covering the franchise agreement’s renewal, termination, and transfer, as well as dispute resolution methods. 16 C.F.R. § 436.5(q).

Item 18 – Public Figures.

This item includes details of any public figures involved in promoting or managing the franchise, including compensation. 16 C.F.R. § 436.5(r).

Item 19 – Financial Performance Representations.

This item includes any earnings claims or financial performance representations, with required substantiation. 16 C.F.R. § 436.5(s).

Item 20 – Outlets and Franchisee Information.

This item includes any information on current and former franchise outlets, including growth trends, terminations, and transfers. 16 C.F.R. § 436.5(t).

Item 21 – Financial Statements.

This item includes audited financial statements of the franchisor for the past three fiscal years. 16 C.F.R. § 436.5(u).

Item 22 – Contracts.

This item includes copies of all contracts the franchisee must sign, including the franchise agreement, leases, and purchase agreements. 16 C.F.R. § 436.5(v).

Item 23 – Receipts.

This item includes a disclosure receipt that the franchisee must sign to acknowledge receipt of the FDD. 16 C.F.R. § 436.5(w).

Together, these 23 Items are intended to provide prospective franchisees with a comprehensive and transparent view of the franchise opportunity, enabling informed investment decisions.

[1] The offering circular was referred to as the Uniform Franchise Offering Circular (“UFOC”). The UFOC was an outline that set out the essential components to be provided in the franchise offering.

[2] State-specific franchise disclosure laws exist in 15 states at the time of this writing:

- California.
- Hawaii.
- Illinois.
- Indiana.
- Maryland.
- Michigan.
- Minnesota.
- New York.
- North Dakota.
- Oregon.
- Rhode Island.
- South Dakota.
- Virginia.
- Washington.
- Wisconsin.

[3] Please note that the FTC, only, is authorized to bring suit to enforce the Rule. *Best Choice Roofing & Home Improvement, Inc. v. Best Choice Roofing Savannah, LLC*, 446 F.Supp.3d 258, 274 (M.D. Tenn. 2020) citing to 15 U.S.C. §§ 45, 53; *United States v. Lasseter*, 2005 WL 1638735, at *1 (M.D. Tenn., June 30, 2005 (action brought by the FTC based on its statutory authority to enforce the Franchise Rule). There is no private right of action available, however, for franchisees to enforce the Rule. See, e.g., *Akers v. Bonifasi*, 629 F.Supp. 1212, 1221,-22 (M.D. Tenn. 1984); *A Love of Food I, LLC v. Maoz Vegetarian USA, Inc.*, 70 F.Supp.3d 376, 382 (D.D.C. 2014). Nevertheless, a private party franchisee may be able to sue a franchisor for fraud or negligence and potential other claims, such as:

- **Fraud Claims:** Franchisees may be able to sue for fraud if it can demonstrate:
 - Material misrepresentations or omissions in the FDD.
 - Intent to deceive or reckless disregard for the truth.
 - Justifiable reliance on the misrepresentations.
 - Resulting damages.

See, e.g., 1881 Extraction Company LLC v. Kiinja Corporation, 660 F.Supp.3d 1059, 1071 (2023).

Common fraud scenarios include false earnings claims, misrepresenting territory rights, or omitting material litigation history.

- **Negligence Claims:** These are less common but possible if the franchisor breached a duty of care in preparing or delivering the FDD, such as:
 - Failing to conduct reasonable due diligence.
 - Providing grossly inaccurate financial performance representations.
 - Negligent preparation of required disclosures.

Id.

- **State Law Variations:** Many states have franchise registration and disclosure laws that may provide additional remedies:
 - Some state laws explicitly create private rights of action.
 - Other states may also provide for attorney's fees and punitive damages.
 - Registration states (like California, New York) often have more robust enforcement mechanisms.

See, Steak N Shake Enterprises, Inc. v. Globex Company, LLC, 110 F.Supp. 3d 1057, 1073-76 (D. Colo. 2015)

Before you go running off to file a lawsuit contact a qualified attorney and realize there may be certain practical limitations and considerations, including but not limited to:

1. Franchise agreements typically contain arbitration clauses.
2. Damages must be provable and quantifiable.
3. Courts may examine whether the franchisee conducted adequate due diligence.
4. The strength of the case often depends on the specific nature and materiality of the noncompliance.

[4] For the purposes of this paper, application of federal and Colorado law are referenced, if the reader is from any other jurisdictions, it must contact counsel licensed in those jurisdictions or other resources related to those jurisdictions.

[5] Because clarity and disclosure are paramount in the FDD, the table format is generally viewed as the most reasonable and accessible way to ascertain initial expenses.