UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DONG PHUONG BAKERY, INC., **Plaintiff,**	**CIVIL ACTION NO. 21-01109**
versus	**SECTION: J (1)**
THE GEMINI SOCIETY, LLC, **Defendant.**	**Judge: Barbier** **Magistrate Judge: van Meerveld**
	JURY TRIAL DEMANDED

FIRST AMENDED COUNTERCLAIM

Pursuant to Rule 15(a)(1) of the Federal Rules of Civil Procedure and in response to the Motion to Dismiss (ECF No. 54) filed on December 7, 2021, by the counterclaim defendant Dong Phuong Bakery, Inc. ("DPB"), the counterclaim plaintiff The Gemini Society, LLC ("Gemini Society") hereby files this First Amended Counterclaim as a matter of course. Because Gemini Society may amend its complaint once as a matter of course within 21 days after service of a motion under Rule 12(b) or (f), *see* Rule 15(a)(1)(B), and DPB's Rule 12(b) motion was filed on December 7, 2021, this pleading is timely.

On information and belief, and reserving its objections to personal jurisdiction, Gemini Society alleges:

INTRODUCTION

1. The Garza and Ramirez families were once close friends and social companions. For many years, they collaborated and did business together on the basis of mutual trust and confidence. In 2017, their businesses, Gemini Society and DPB, formed a joint venture in which Gemini Society invested more than four years and millions of dollars' worth of work creating brand identity, marketing, and e-commerce platforms, expanding into new markets, developing new products and business strategies, and creating new brand experiences (among other work by Gemini Society) and in which Gemini Society and DPB agreed they would both participate in the

venture's financial success over many years to come. While the venture made millions of dollars for DPB, Gemini Society lost hundreds of thousands of dollars, which the parties understood and agreed would be recouped from license fees in future years. Over the past 12 months, however, DPB concocted a scheme to renege on DPB's financial commitments to Gemini Society, cut out Gemini Society from the joint venture, interfere with Gemini Society's contracts with its existing vendors and contractors, defame and destroy Gemini Society's reputation, and kill Gemini Society's prospective business relationships. Yet even after DPB terminated its relationship with Gemini, DPB continued to enrich itself by using the materials and trade secrets that Gemini Society had created, all without paying Gemini Society. In other words, DPB wanted to have its cake and eat it too.

PARTIES

2. Counterclaim plaintiff Gemini Society is a Texas limited liability company, and all its members are individuals who reside in Austin, Texas, and are citizens of Texas. All work performed by Gemini Society and all communications sent from Gemini Society were from its offices in Austin, Texas.

3. Counterclaim defendant Dong Phuong Bakery, Inc., formerly known as Dong Phuong Oriental Bakery, Inc., is a Louisiana corporation with its principal place of business at 14207 Chef Menteur Highway, New Orleans, LA 70128.

4. Counterclaim defendant Linh Garza is the President of DPB. She resides in Dallas, Texas, and she is a citizen of Texas.

5. Counterclaim defendant Huong Tran is the Vice President of DPB and the sole shareholder of DPB. She resides in New Orleans, Louisiana, and she is a citizen of Louisiana. She supervises and oversees the day-to-day operations of DPB.

JURISDICTION

6. Under 28 U.S.C. §§ 1331 and 1338(a), the court has subject matter jurisdiction over Gemini Society's claims that arise under the laws of the United States, including the Defend Trade Secrets Act ("DTSA"), 18 U.S.C. § 1836, *et seq*., and federal trademark law, including the Lanham Act, 15 U.S.C. § 1051, *et seq*. Under 28 U.S.C. §§ 1367 and 1338(b), the Court also has jurisdiction over Gemini Society's state law claims because those claims are so related to Gemini Society's federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts and/or they are claims of unfair competition that are being joined with a substantial and related claim under federal trademark laws.

BACKGROUND

I. History of Collaboration and Friendship Between the Ramirez and Garza Families

7. For nearly 20 years before this litigation, Deziderio Ramirez and Ruben Garza had been close friends and collaborators.

8. In 2002, they met while working at DSGN Associates, a Dallas-based design and architecture firm. They worked together building franchises for regional and international clients, including retail, movie, and restaurant chains. On their projects, Mr. Ramirez handled brand identity work, and Mr. Garza handled architectural design.

9. In 2006, Mr. Ramirez and his wife, Nelly Paulina Ramirez, decided to leave Dallas and make a new home in Austin, and Mr. Garza helped them move. Because Mr. Garza had attended the University of Texas at Austin, he introduced the Ramirezes to the city and his network of friends in the city.

10. At some point, Mr. Garza began dating Linh Garza (then Linh Tran). Mr. Ramirez first met her at a holiday party for DSGN Associates, where Mr. Garza had brought her as his date. They later married, and the Garzas and Ramirezes remained close.

11. At the time, Mrs. Garza's primary job was to work with Head Start grants and grantees, serving as a consultant and providing technical assistance on financial management systems and real property activities. Eventually, she would join the staff of the Head Start Real Property Facilities Initiative of the University of Massachusetts at Amherst, where she worked remotely from Dallas, Texas.

12. Mr. Ramirez eventually left DSGN Associates, and he began working in-house at a leading international technology company.

13. In 2012, Mr. Ramirez and James Martis co-founded Gemini Society. Since its founding, Gemini Society has worked with world famous brands to create unique brand experiences, brand identity, marketing and e-commerce platforms. Gemini creates comprehensive strategies for new and emerging markets, social media, product design and development, merchandizing, go-to market plans, e-commerce platforms, and other business information. Such development work and business strategies are generally treated as confidential and proprietary business information, including (among other reasons) because they would be highly valuable to the competitors of Gemini Society's clients.

14. At this time, Mrs. Garza's family owned Dong Phuong Oriental Bakery, Inc. (i.e., DPB) and Orient Dong Phuong Restaurant, Inc. ("DP Restaurant"). For many years, DPB was operated by Mrs. Garza's parents, husband and wife Trung Tran and Huong Tran. After Mr. Tran passed away, Mrs. Garza became the President of DPB in 2004. Mrs. Garza retained her full-time job in Dallas, Texas, and performed her duties as President of DPB on a part-time basis.

15. Throughout this period and up until the time of the present dispute, Mr. Garza and Mr. Ramirez remained friends and Mr. Garza referred work to Mr. Ramirez.

16. In late 2019, Mr. Garza and Mr. Ramirez met at Gemini Society's offices in Austin, Texas. By then Mr. Garza had left DSGN Associates, and he was drafting architectural plans for DPB to expand its building. Like old times, Mr. Garza and Mr. Ramirez discussed possibilities for the build-out and brand experiences.

II. DPB and Gemini Society Form a Joint Venture

17. In November 2016, the Garzas and Ramirezes attended the Texas Book Festival together.

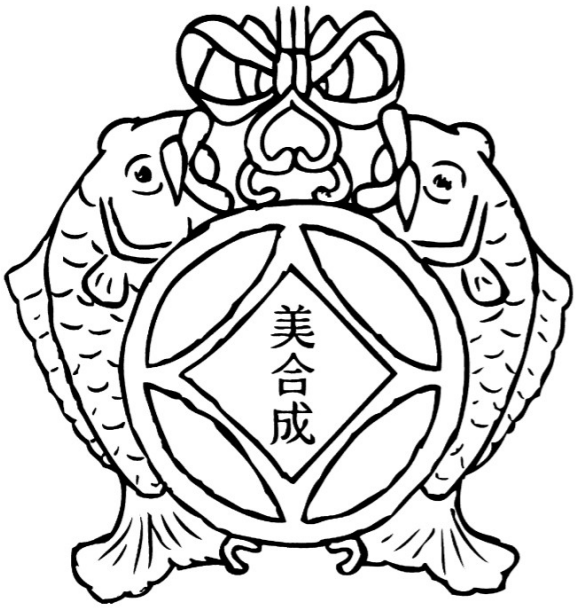
18. While at the festival, Mrs. Garza asked Mr. Ramirez for branding advice for her family bakery, which was then still called Dong Phuong Oriental Bakery, Inc.

19. Mrs. Garza told Mr. Ramirez that the bakery had operated for decades without investing in branding. DPB sold its King Cakes in generic boxes and sold banh mi sandwiches in plastic bags.

20. Although the bakery had a good reputation in the Vietnamese community in New Orleans, sales had plateaued, and she felt the bakery needed a new brand that would appeal to them and grow beyond its Vietnamese roots. She wanted to expand wholesale sales and to wrap vans with the new logos to increase the visibility of the bakery's wholesale business.

21. In 2016, DPB had no brand strategy, no social media strategy, no product design and development pipeline, and no e-commerce strategy or platform. It also lacked a full-time President, because Mrs. Garza continued to work full time at her other job in Dallas, Texas.

22. At the time, DPB and DP Restaurant used the following logo (the "Two Fish Logo"):



23. In 2016, a simple, static website was used by both DPB and DP Restaurant. The website did not have an e-shop or e-commerce functionality. Customers could not place orders online.

24. As of 2016, DPB had annual sales of less than $1 million, and its sales were stagnant.

25. Following the discussion at the 2016 Texas Book Festival and continuing into early 2017, Mrs. Garza met with the principals of Gemini Society to discuss how DPB and Gemini Society could work together.

26. Since Mr. Ramirez and Mr. Garza had worked for national and international franchises during their time at DSGN Associates, Mrs. Garza expressed interest in franchising DPB's recipes and positioning the business for a sale, which would allow her mother, Mrs. Tran, to retire.

27. In a typical franchise agreement, the brand owner licenses to franchisees the brand and proprietary and confidential business information, and, in return, the franchisees pay franchise

fees and royalties based on the franchisees' sales. There is no expectation that the franchisees own the licensed brand or business information.

28. While Mrs. Garza was interested in franchising DPB's business, she knew that such a plan would be difficult to carry out without assistance. Mrs. Garza even tried herself to open a second Dong Phuong bakery in Dallas, Texas, but she failed.

29. DPB needed help. But DPB could not afford Gemini Society's services at the rates Gemini Society normally charged its clients. On many matters, Gemini Society charged six-figure fees for projects ranging 1 to 3 months. For work spanning many months or years, Gemini Society would need to charge an arms-length client seven-figure fees, not only to cover Gemini Society's costs but also because of the opportunity cost of forgoing projects from other clients willing to pay Gemini Society's full rates.

30. So, instead of retaining Gemini Society on an arms-length fee-for-service basis, in early 2017 DPB and Gemini Society formed a joint venture. In essence, Gemini Society agreed to create a franchise-capable platform, which Gemini Society would license to DPB, and DPB agreed to license Gemini's Materials (defined below) and pay Gemini Society fees, including a percentage of its sales. On the basis of the decades' long relationship between the Garzas and Ramirezes, this established a special relationship of confidence and trust between the parties to act primarily for the other's benefit.

31. As set forth in a 2017 exchange between Gemini Society and DPB, one of the purposes of the joint venture was to "appeal to investors, while the business [DPB] places itself in a position to sell or franchise."

32. Under the joint venture, Gemini Society and DPB shared economic risks and benefits. DPB risked that its sales would not increase enough to justify the fees it agreed to pay

Gemini Society, and Gemini Society risked that it could take many years for Gemini Society's fees to allow it to recoup its investment plus a reasonable profit. DPB also shared in Gemini Society's losses with the understanding that DPB (and other future licensees and franchisees) would pay fees to Gemini Society in current and future years to offset such losses. On the other hand, because Gemini's fees were based in part on a percentage of DPB's sales, both parties stood to benefit from increased sales by DPB. DPB fulfilled food orders placed through the e-shop, set product prices, and paid fees to Gemini Society.

33. The business that DPB and Gemini co-owned included the e-shops for King Cakes and banh mi and other goods, the Reseller Program (defined below), and future opportunities to market boxed products and franchises.

34. Gemini Society granted a limited licenses to the brands created by Gemini Society to DPB in early 2017 and to Licensed Resellers beginning in November 2020, and such uses by DPB and Licensed Resellers inured to the benefit of Gemini. For the duration of the joint venture and subject to DPB's compliance with Gemini Society's quality standards and payment of all fees due to Gemini Society, Gemini Society granted a limited license for DPB to use Gemini's Materials, and DPB agreed it could not use Gemini's Materials except as permitted by Gemini Society.

35. Gemini Society treated DPB like a joint venture partner by sharing with DPB access to its vendors and other business relationships, confidential business information, and other trade secrets.

36. In communications to these and other third parties, Gemini Society routinely introduced DPB as its business partner. For example:

A. On April 17, 2018, Gemini contact a clothing vendor, copying Mrs. Garza, writing, "I wanted to introduce you to my good friend and business partner Linh Garza, President of Dong Phuong Bakeshop in New Orleans. She and I have been working on rolling out the new brand over the past year with my team in Austin."

B. On July 17, 2018, Gemini contacted a box vendor, copying Mrs. Garza, repeating the introduction, "I wanted to introduce you to my good friend and business partner Linh Garza, President of Dong Phuong Bakeshop in New Orleans. She and I have been working on rolling out the new brand over the past year with my team in Austin."

C. On November 9, 2018, Gemini contacted a vendor for van wraps, copying Mrs. Garza, writing, "Please meet my good friend and business partner Linh Garza, President of Dong Phuong Bakeshop."

D. On November 16, 2018, Gemini contacted another packaging vendor, copying Mrs. Garza, writing, "Please meet my good friend and business partner Linh Garza, President of Dong Phuong Bakeshop."

E. On December 21, 2018, Gemini contacted a printing vendor, copying Mrs. Garza, writing, "Please meet my good friend and business partner Linh, President of Dong Phuong Bakeshop."

F. The same day, using the same introduction, Gemini introduced Mrs. Garza to its vendor for banners.

G. On November 19, 2019, Gemini contacted a photography vendor, copying Mrs. Garza, writing, "I wanted to introduce you to my good friend and business partner Linh, President of Dong Phuong Bakeshop."

37. DPB never objected to Gemini Society's references to their partnership, either to Gemini Society or in communications with third parties. Rather, DPB commercially benefitted from these relationships and from holding itself as a business partner of Gemini Society.

38. In addition to Gemini's and DPB's agreements and understandings reached orally and via email communications, their written agreements included Statements of Work dated January 24, 2017, June 23, 2017, March 8, 2018, December 16, 2019, and January 29, 2021, the Change Order dated May 4, 2020, and the Reseller Program License Terms and Agreement.

III. Under the Joint Venture, Gemini Society Creates Millions of Dollars of Value and DPB's Sales More than Double In The First Two Years

39. At great expense, Gemini Society created a new DP Bakeshop and Dong Phuong Banh Mi & Baked Goods brand identity and management strategy.

40. In 2017, Gemini Society developed a new brand identity and direction and brand vision for the joint venture with DPB. Execution of this strategy by Gemini Society included roll-outs for new branded retail bags, van wraps, the DPBakeshop.com website, signature King Cake box designs, and a social media campaign for mooncakes.

41. Because DPB had never invested in its branding or packaging before, Gemini Society's work raised the profile of DPB and reach new markets beyond its regular customers. The artwork and ornamentation of the DPBakeshop.com website and King Cake box designs also enhanced the customer experience in comparison to DPB's prior static website.

42. In March 2017, DPB discovered that its in-store credit card machine was not working properly, forcing DPB to charge in-store customers for credit card transactions from December 2016 to March 2017. Mrs. Garza's and Mrs. Tran's failure to detect this problem for months was emblematic of their apparent indifference towards DPB's day-to-day operations at the time, in part because Mrs. Garza spent most of her time on her other full-time job.

43. In early 2018, Gemini Society designed and launched the King Cake e-shop and a social media campaign to showcase DPB's King Cakes and Gemini Society's new King Cake box designs. The e-shop allowed DPB's customers for the first time to place advanced pick-up and shipping orders for King Cakes before and throughout the King Cake season, generated custom reports detailing daily sales for pick-up and shipping, and blacked-out dates when sales totals were reached.

44. Gemini Society used the Shopify platform for its e-shops because of its ease of use and customization. By contrast, Square, a point-of-sale service provider used by retailors in-store, would not offer a competing ecommerce solution until March 2019. Gemini Society's Shopify-based e-shops generated reports that synced with DPB's payment systems at the time.

45. Gemini Society also purchased inventories of branded merchandise and other goods that Gemini Society sold directly to customers via the e-shop.

46. Gemini Society's work also began appearing in DPB's retail store. In 2018, Gemini Society designed and rolled-out new staff uniforms, an in-store digital menu, the Journey East Mural, retail signage, and window art. This created continuity and enhanced customer experiences, leveraging the artwork and brand identity that Gemini Society had created and cultivated online.

47. Also in 2018, Gemini Society designed mooncake boxes, a mooncake social media campaign, and a Shopify-based e-shop for mooncakes.

48. In 2019, Gemini Society designed banh mi boxes, stickers, and window art, and a Shopify-based e-shop for banh mi. But Gemini Society was unable to launch these initiatives in 2019 because of lack of support and delays caused by DPB.

49. E-shop sales of King Cakes steadily increased year after year. By the 2019 King Cake season, Gemini Society had developed a second version of the Shopify-based e-shop for

King Cakes and launched a new social media campaign to promote them. New features included new reporting capabilities, the ability to ban customers that abused the platform, blackout notifications, and shipping options. For the 2020 King Cake season, Gemini Society developed and launched a third version of the Shopify-based e-shop for King Cakes, implementing further improvements. Under the parties' joint venture, 2020 King Cake e-shop revenues were split with 8% to Gemini Society and 92% to DPB.

50. DPB received hundreds of thousands of dollars of revenues from Gemini's e-shops. This was an entirely new sales channel and revenue stream that did not exist before the parties' joint venture.

51. Beginning in March 2020, the pandemic caused by the novel coronavirus caused the City of New Orleans to shutter restaurants, forcing them to rely more heavily on take-out orders. DPB pleaded with Gemini Society that it could no longer afford paying the 8% fee for e-shop orders, and Gemini Society agreed to reduce the fee to 5% through the end of the first quarter of 2021.

52. In 2020 Gemini Society designed and launched an e-shop for Banh Mi & Baked Goods and banh mi banners, buttons, coupons, and social media campaign. Gemini Society also designed and launched a new version of its mooncake store and the "baked good box" concept with an accompanying social media promotion.

53. By the 2021 King Cake season, Gemini Society had designed and launched a fourth version of its Shopify-based e-shop for King Cakes and rolled out the Reseller Program (discussed below). Also in 2021 Gemini Society designed and was prepared to re-launch a new version of the Banh Mi & Baked Goods e-shop, but DPB terminated the parties' relationship before it was launched. Under the parties' joint venture, e-shop revenues were split with 5% to Gemini Society

and 95% to DPB until the second quarter of 2021, when the split would revert to 8% to Gemini Society and 92% to DPB. DPB also agreed to pay Gemini Society $1 per box used for King Cakes, mooncakes, and baked goods boxes, which featured Gemini Society's original designs.

54. To summarize the foregoing, the "Gemini's Materials" included:

A. the DP Bakeshop Mark and the Dong Phuong Banh Mi & Baked Goods logo;

B. the mural painted on the building shared by DPB and DP Restaurant, van wraps, King Cake Box designs, Moon Cake Box designs, Bahn Mi Box designs, the DPBakeshop.com website, and website splash pages for King Cakes, Moon Cakes, and Bahn Mi;

C. e-commerce platforms, including e-shops for King Cakes, mooncakes, and banh mi and other goods;

D. strategies for social media, creative and art direction, product and product packaging design and development, product labeling, product naming and positioning, merchandizing, and digital experiences; and

E. product pipeline plans and methods, go-to market strategies, market research, naming strategies, product life-cycle strategies, and vendor relationships and other proprietary and confidential business information that Gemini Society developed, managed, and implemented.

55. Over the course of the joint venture, Gemini Society developed roadmaps for DPB's products to focus sales and marketing efforts and for establishing naming, market positioning, product cross-selling opportunities, and strategies to boost DPB's sales and create new markets and marketing opportunities.

56. Such proprietary and confidential business information and other trade secrets were not generally known and are valuable because they boosted DPB's sales, enhanced customer brand experiences, created continuity across sales channels and marketing efforts, and increased the marketability of the Gemini Society's brands to other potential licensees and franchisees. DPB understood and agreed to limit use and disclosure of Gemini Society's trade secrets, and DPB agreed not to use them except with Gemini Society's permission.

57. Gemini Society's confidential business information and other trade secrets were not generally known and valuable because they: opened new markets to DPB's products outside its primary market in New Orleans East, created crossover appeal from King Cakes to other products, increased the number and value of transactions from DPB's customers, created continuity across DPB's online and in-store presence, developed and maintained relationships with printers and other vendors, and allowed the joint venture to launch the Reseller Program, increasing customers' access to DPB's products beyond its footprint in New Orleans East.

58. DPB agreed and acknowledged that Gemini Society retained ownership of all intellectual property in the brands and other Gemini Materials created by Gemini Society. In anticipation of future franchising and licensing opportunities, DPB understood that Gemini Society owned all Gemini Materials and retained all associated intellectual property rights, which Gemini Society would need in order to license to future franchisees and other licensees. DPB agreed not to use Gemini's Materials except with Gemini's permission.

59. Mrs. Garza never told her mother, Mrs. Tran, that DPB did not own the Gemini Materials.

60. Gemini never assigned its intellectual property rights in Gemini's Materials to DPB or the joint venture, and DPB never received an assignment of intellectual property rights from Gemini, in a written instrument or otherwise.

61. As the sole author of Gemini's Materials, Gemini Society owns all copyrights in all works that form part of Gemini's Materials. Gemini Society has also registered the copyrights in some of Gemini's Materials, including:

A. Reg. No. VAu001446658 for the DP Bakeshop Website, which includes and features the DP Bakeshop logo, Mooncake splash page, Banh Mi splash page, King Cake (2018) splash page, and King Cake (2020) splash page; and

B. Reg. Nos. VAu001435493 and VA0002258630 for King Cake Box designs.

62. Gemini Society acquired trademark rights in the DP Bakeshop Mark and the Dong Phuong Banh Mi & Baked Goods logo through its direct sales of branded merchandise and other goods to customers and through uses by its licensees, DPB and the Licensed Resellers.

63. To help offset the cost of Gemini Society's upfront investments, DPB promised to pay license fees based on what it could afford to pay plus a fee based on a percentage of DPB's sales. The parties also understood and agreed that the relationship would continue over several years.

64. For example, in June 2017 Gemini Society asked how much DPB could invest for the year. In response DPB said it could budget $50,000, and "Whatever we don't get to, can be rolled into next year."

65. These fees aligned the financial interests of Gemini Society and DPB. This meant that increasing DPB's revenue and total profits – thereby making DPB more attractive to potential franchisees and investors – increased Gemini Society's fees and licensing revenue.

66. From the beginning, the parties understood and expected that DPB and future franchisees would pay for access to and licenses for Gemini's Materials, which would allow the Gemini Society to recoup its investment and make a reasonable profit.

67. Each year, DPB and Gemini Society negotiated minimum fees that DPB would pay that year, which were memorialized in written Statements of Work. This "friends and family" pricing was unique to DPB, because Gemini would have charged arms-length customers multiple times the amount of fees it collected from DPB between 2017 and 2021 and beyond for the same work.

68. DPB and Gemini agreed the venture would continue for several years beyond 2021, so that Gemini could recoup over time its costs plus a reasonable profit. This is one of the reasons why the parties' agreed in the 2020 Statement of Work and 2021 Statements of Work to set minimum license fees for "subsequent calendar years."

69. Gemini's strategies worked, and DPB benefited from its access to and use of Gemini's Materials. DPB's sales increased as Gemini Society's strategies expanded DPB's consumer base through retail, wholesale and online channels with new brand identity systems, e-commerce and marketing platforms. Whereas DPB previously sold virtually all its products through local retail and wholesale channels, Gemini Society's strategies helped DPB expand their sales to a nationwide audience through e-commerce and online marketing. Gemini's Materials also increased and enhanced DPB's customer engagement through curated brand experiences, both in store and online.

70. Over the course of the joint venture, while Gemini Society created millions of dollars of value, it suffered losses. This is because Gemini Society's fees were based on DPB's purported ability to pay, which DPB consistently hid and misrepresented to Gemini Society. In

discovery in this case, Gemini Society learned that by 2018 DPB's annual revenues had reach approximately $2.5 million dollars, more than double DPB's annual revenues before DPB began the joint venture with Gemini Society. DPB continued to earn millions of dollars annually in each of the years 2019, 2020, and 2021.

71. DPB's success since it began working with Gemini Society is striking because Linh Garza had served as President of DPB for many years, during which DPB had never invested in marketing, packaging materials, or its website. Garza and DPB would not have received the notoriety, recognition, or success it has achieved since 2017, but for the work of Gemini Society.

IV. Gemini Society Establishes the Reseller Program

72. By 2020 DBP had not yet made the investments necessary for the joint venture to establish a formal franchising program for third parties. So instead, with DPB's knowledge and support, Gemini Society created a reseller program for third parties to establish branded shops within their retail locations and to access certain of Gemini's Materials to promote and sell branded products, all pursuant to Gemini Society's online Reseller Program License Terms and Agreement (the "Reseller Program").

73. The Reseller Program was an extension of DPB's and Gemini Society's prior discussions about franchising that had continued since the beginning of their relationship, but without the formal franchising cost structure requiring large up-front investments from Gemini Society, DPB, and would-be franchisees. In effect, Gemini Society created the Reseller Program to multiply and extend the impact of work Gemini Society had already performed, including branding and product positioning for DPB's products, while increasing opportunities for customer engagement with Gemini Society's brands. This, in turn, increased revenues for DPB and license fees for Gemini Society.

74. To join the Reseller Program, Licensed Resellers agreed to Gemini Society's online Reseller Program License Terms and Agreement and paid Gemini Society a one-time fee of $300. In exchange, Licensed Resellers received a limited license to DP Bakeshop King Cake marketing materials, social media content, and brand identity systems. Licensed Resellers could also advertise to their social media followers and customers that they could buy DPB's King Cakes at the Licensed Resellers' retail locations.

75. The Reseller Program's first products were King Cakes for the 2021 King Cake season. Licensed Resellers placed orders for King Cakes via Gemini Society's King Cake e-shop, and DPB filled such orders placed by Licensed Resellers. Under the parties' joint venture, King Cake e-shop revenues were split with 5% to Gemini Society and 95% to DPB. DPB also agreed to pay Gemini Society $1 per King Cake box, which featured Gemini Society's original designs.

76. While the Reseller Program was conceived, developed, and executed by Gemini Society, there were many reasons DPB supported and agreed to participate in it. Indeed, DPB referred potential resellers to the Reseller Program.

77. First, the Reseller Program created consistency and continuity for customers' experience and engagement with Gemini Society's brands, art work, and design language, which, in turn, increased sales of King Cakes. For example, customers saw the same artwork, branding and other Gemini Materials across DPBakeshop.com (which was created by Gemini Society), social media posts and advertisements by Licensed Resellers (which were created by Gemini Society and distributed through the Reseller Program), in-store signage used by Licensed Resellers (which were created by Gemini Society), and the product packaging and boxes used by DPB and brought home by customers (which were created by Gemini Society). This created a "halo effect" for DPB's King Cakes that boosted its sales of other products.

78. Second, Licensed Resellers were limited in number and vetted and controlled via their acceptance of online Reseller Program License Terms and Agreement. License Resellers thereby became "trusted sources" of genuine branded goods, boosting consumers' sense of the prestige and quality associated with Gemini's brands and art work. This also helped DPB to virtually eliminate unsanctioned resellers of its products in New Orleans. At Mrs. Garza's suggestion, Gemini Society created official reseller stickers for Licensed Resellers to use on their King Cakes.

79. Third, the Reseller Program prevented price gouging by establishing maximum retail prices. For example, when Mrs. Garza learned that one Licensed Reseller sought to sell its King Cakes at prices above the retail prices permitted under Gemini's Reseller Program, Mrs. Garza asked Gemini to enforce the price caps. Gemini did so, and the License Reseller complied, lowering its prices.

80. Licensed Resellers also saw value in the Reseller Program. The Reseller Program drove foot traffic, earning the Licensed Resellers additional sales. This was a time when the public was weary of in-person shopping due to concerns relating to the novel coronavirus and the COVID 19 disease it caused. Hence, interest in the Reseller Program was driven in part by a desire by Licensed Resellers to attract foot traffic into their physical establishments and to make other sales to customers of DPB's King Cakes.

81. In all, Gemini Society's Reseller Program increased customer satisfaction and brand engagement and DPB's sales. So when long-time wholesale customers of DPB asked how they could join the Reseller Program, Mrs. Garza directed them to Gemini Society and encouraged them to join. Mrs. Garza did not object to the Reseller Program or the direct one-time $300 fee charged to Licensed Resellers by Gemini Society.

82. DPB was intimately involved in the Reseller Program at every step of the process:

A. Using an email and online application created by Gemini Society, Mrs. Garza sent an email to potential resellers asking them to complete an official reseller application.

B. From a pool of applicants and Mrs. Garza vetted and approved, Gemini Society sent an email with information about the reseller program along with a link to purchase their official reseller license for $300, paid to Gemini Society, and accept Gemini Society's Reseller Program License Terms and Agreement. Licensed Resellers agreed to and paid for their official reseller license directly from Gemini Society's e-shop.

C. Licensed Resellers also received access to banners, stickers, King Cake box window decals, buttons, and online marketing materials (both images and approved copy) for use on social media, all of which was created by Gemini Society.

D. Except for banners, Licensed Resellers received all physical marketing materials directly from Gemini Society. Gemini Society sent banners to DPB, which delivered them to Licensed Resellers with King Cake deliveries.

E. Licensed Resellers were also featured on DPB's website, which Gemini Society created and maintained, listing the reseller's locations, information, and pricing to further authenticate Licensed Resellers and create awareness of new locations for customers.

F. Licensed Resellers could access a customized version of Gemini Society's e-shop featuring King Cake availability provided by DPB, including delivery days, number of King Cakes available to order, etc. Licensed Resellers were required to place all King Cake orders through the e-shop.

G. Most Licensed Resellers placed their orders all at once for the coming week via the e-shop. Gemini Society created a custom Square app that worked with the reseller e-shop that output spreadsheets of daily/weekly king cake totals by reseller to help DPB with production.

H. DPB delivered most orders to Licensed Resellers. A few Licensed Resellers arranged to pick up their orders from DPB's bakery.

83. For example, on November 16, 2021, Mrs. Garza sent an email to Gemini Society approving a dozen potential resellers and asking Gemini Society to reserve 3 slots for wholesale customers from prior years.

84. Gemini Society's Reseller Program for the 2021 King Cake season became wildly popular. Resellers who agreed to the Reseller Program included more than a dozen business in Louisiana and Mississippi:

A. Adams Street Grocery & Deli;
B. Amore Bakery and Café;
C. Bao Asia Market;
D. Bo Tea Café;
E. Bourree;
F. Caffe Latte Da;
G. Coffee Bean;
H. Flavors Snoballs;
I. Jazzy Pete's;
J. Jeanfreau's Supermarket;
K. Killer Poboys;
L. Mr. Bubbles Sandwich House;
M. Nesbit's Markets;
N. Pharmacy in Diamondhead;
O. Pho Cong Noodle & Grill;
P. Pho Grace;
Q. Waveland Pharmacy;
R. Worth Repeating;
S. Zuppardo's Family Market (collectively, the "Licensed Resellers").

85. A few Licensed Resellers had been prior wholesale customers of DPB's bread and other products, and had pre-existing relationships with DPB apart from the Reseller Program. Most Licensed Resellers, however, were selling DPB's King Cakes for the first time. In all, Licensed Resellers sold hundreds of thousands of dollars' worth of King Cakes through orders they placed and fulfilled via the e-shop without any issues.

86. One Licensed Reseller, however, asked to pay by check. Since that was a form of payment it had used with DPB in the past, it asked to pay for its King Cakes via check, rather than pay by credit card as required by the e-shop. DPB's proposed work-around solution was to provide a discount code for the reseller to effectively bypass the e-shop's payment system. This was unworkable for two reasons.

87. First, the e-shop payment platform itself charged fees to process payments, and allowing customers to bypass the platform would violate the platform's terms of service. That could jeopardize the Reseller Program for all other Licensed Resellers and all associated point-of-sale systems linked to the same payments platform. Gemini Society would not risk – in the middle of the King Cake season -- losing its ability to accept and process King Cake orders for more than a dozen other License Resellers, most of whom had no problem paying by credit card or debit card, for a single Licensed Reseller who preferred to pay by check.

88. Second, by allowing DPB to accept orders and payments from Licensed Resellers outside of Gemini Society's e-shop platform, DPB could keep some of its orders off the books, keeping 100% of revenues rather than honoring its 5% split with Gemini Society. This allowed DPB to split the savings with its Licensed Reseller by offering discounted prices relative to other Licensed Resellers who followed the rules and placed order via the e-shop under pre-agreed pricing.

89. Despite Gemini Society's objections, DPB decided to sell to the Licensed Reseller outside of the e-shop anyway. And discovery in this case has shown that Gemini Society's concerns were justified: although the Licensed Reseller ordered more than 6500 King Cakes over the 2021 King Cake season, DPB failed to pay Gemini Society its 5% share of fees for all those sales.

90. Without Gemini Society's consent, DPB communicated with some Licensed Resellers about placing orders directly with DPB, bypassing the e-shop. This would cut out Gemini Society from its share of fees from orders placed by Licensed Resellers via the e-shop, as they were required to do under the Reseller Program.

91. DPB sold King Cakes to other Licensed Resellers outside of the e-shop to avoid sharing fees with Gemini Society. So far, discovery in this case has shown that DPB hid sales of tens of thousands of dollars in King Cakes to Licensed Resellers without paying fees to Gemini Society.

V. DPB's Payments to Gemini Were Tied to Its Profitability, Which DPB Hid and Misrepresented to Gemini

92. Each year, DPB and Gemini Society negotiated minimum fees that DPB would pay that year, which were memorialized in written Statements of Work. The fees set forth in Statements of Work were minimum fees due to Gemini Society, not a full accounting or cap on the consideration that Gemini Society expected to receive for its work with DPB or under the parties' joint venture.

93. Gemini Society did not charge DPB fees at arms-length prices, because the parties were operating as a joint venture. Gemini Society trusted DPB to be honest with Gemini Society about what it could afford to pay from year to year.

94. For example, the 2018 Statement of Work reflected minimum fees of $50,000. Yet, because Gemini Society's work made DPB highly profitable that year, DPB paid an additional $10,000 in licensing fees to Gemini in December 2018.

95. Each year DPB agreed to pay the same or higher minimum annual license fees than the year before.

96. Beginning in 2020, DPB agreed the license fees would include 8% of e-shop net sales. DPB also agreed this "Percentage of e-shop Net Sales [was] to remain in effect for subsequent calendar years until scope, fees, expenses, invoicing, and new terms are mutually agreed upon."

97. At all times, Gemini Society treated DPB with due care and consideration one usually extends to friends and family. For example, in 2020, when DPB claimed it could not afford to pay the full 8% fee, Gemini Society agreed to reduce the fee to 5% for the remainder of the year.

98. In 2021, DPB recommitted to the same terms as were agreed in 2020, including the 8% fee plus a $1 per box fee for custom boxes including for King Cakes, bahn mi boxes, mooncakes, and other baked goods boxes.

99. By contrast, even as Gemini Society's work caused DPB's profits to soar, DPB consistently pleaded poverty, hiding its profits and imposing arbitrary caps on fees it represented it could afford to pay Gemini Society. For example, DPB resisted higher fees, claiming its bakery could not make more than 40,000 to 45,000 King Cakes per year, when in reality it could and did produce a far greater number of King Cakes, keeping for itself the extra profits.

100. In discovery in this case, Gemini Society discovered that DPB failed to pay all fees due under the parties' agreements.

VI. After Mrs. Garza's Requests Cause Rework and Delays for Gemini Society, She Agrees to Pay For Gemini Society's Losses

101. Mrs. Garza took responsibility for delays, rework and changes in direction and agreed to pay Gemini Society for losses caused by such delays, rework, and changes in direction.

102. Examples of uncompensated work performed by Gemini Society and losses suffered by Gemini Society due to delays, rework, and changes in direction by Mrs. Garza include:

A. Vietnamese Po'boy e-shop - Shopify (March 2019-May 2020), including research, business philosophy & strategy, identity, setup, product rollout, configuration, design, copy, development, and offline/online marketing of Vietnamese Po'boy e-shop.

B. Vietnamese Po'boy Box Round 1 (March 2019-March 2020), including research, business philosophy & strategy, identity, box dimensions & structure, design, illustration, naming, offline/online marketing, color proofing, printer communication for Vietnamese Po'boy Box.

C. Banh Mi & Baked Goods e-shop - Square (May 2020-April 2021), including research, business philosophy & strategy, identity, product rollout strategy, setup, configuration, design, copy, development, monitoring, maintenance, offline/online marketing, and updates for Banh Mi & Baked Goods e-shop.

D. Banh Mi Box Round 2 (March 2020-July 2020), including research, business philosophy & strategy, identity, box dimensions & structure, design, illustration, naming, offline/online marketing, color proofing, printer communication and acquisition for Banh Mi Box.

E. Reseller e-shop (October 2020-February 2021), including research, business philosophy & strategy, identity, setup, configuration, copy, development,

monitoring, offline/online marketing, maintenance and updates for King Cake Reseller e-shop.

F. Reseller Updates and Changes over holiday (December 2020-January 2021), including updated Licensed Reseller data on a weekly basis and developed a custom reporting tool used for production.

103. Additional examples include work that was stopped and/or never launched due to DPB's early termination, such as a Baked Goods Box (sweet and savory), banh mi e-shop update with new menu, and the marketing strategy and social media for these launches.

104. Regarding the Reseller Program, Mrs. Garza told Gemini Society "I take full responsibility for not communicating well enough nor helping to foresee the complexities and pitfalls of this project." She continued, "If we end up scrapping the shop, I do intend to pay for the cost of the build." She also agreed in principal that $200,000 was a reasonable amount to pay for Gemini Society's work on the Reseller Program.

105. Regarding the banh mi e-shop and the transition from Shopify to Square platforms, on January 5, 2021, Mrs. Garza acknowledged that the Square ecommerce platform did not exist when Gemini Society began work on the e-shop and that she would pay for work lost because of the transition requested by her: "It was unfortunate that Square did not have that option [i.e., an ecommerce platform like that available from Shopify] available when we started work on the shop a year ago. I had expressed by willingness to absorb some of the cost of the first build. I thought we had agreed on a settlement, but let's discuss if that is not the case."

VII. DPB Searches for Excuses to Terminate Its Relationship With Gemini Society

106. By January 2021, Mrs. Garza was contacting third parties to review its joint venture relationship with Gemini Society and explore options "for terminating or buying out our brand, i.e., king cake box design, logo, logo marks, etc." from Gemini Society.

107. Mrs. Garza criticized the Reseller Program, hiding behind a request from a single Licensed Reseller who asked to pay by check. In reality, Mrs. Garza wanted to cut out Gemini Society and sell to Licensed Resellers without sharing 5% of revenues with Gemini Society.

108. In March 2021 – more than 4 months into the Reseller Program -- Mrs. Garza began to question why Gemini Society charged a $300 fee for Licensed Resellers. DPB asked Gemini Society to waive its fees and allow some of its wholesale customers to access and use the same marketing and other brand identity materials as paying Licensed Resellers. Honoring its commitment to existing Licensed Resellers, Gemini Society declined to make an exception for DPB's unlicensed wholesalers.

VIII. DPB Terminates and Stops Paying Licensing Fees to Gemini Society While Continuing to Enrich Itself and Use Gemini's Materials

109. In January 2021, Mrs. Garza told Gemini Society that she no longer wanted to be treated like a "charity case" and she asked for options for restructuring the parties' relationship.

110. In response and at Mrs. Garza's request, Gemini Society shared its arms-length fee structure for the types of services it had rendered to DPB to date.

111. On January 22, 2021, Mrs. Garza responded, "Thank you Nelly [Paulina Ramirez] for the pricing information below. This is exactly what I needed know [sic] to make decisions going forward about projects."

112. On January 25, 2021, Mrs. Garza pushed to renegotiate the parties' deal: "I would like to renegotiate the brand management fee. I would like to get to bar minimum on that cost for this year. I will not be asking for any new boxes or promotion. We will not redo the mooncake boxes either. I would like us to slow down and go on a maintenance mode this year to reduce cost. What would you be comfortable with? We can jump on a quick call tomorrow to talk if you like."

113. A few days later, Mrs. Garza revealed that her true concern was avoiding the share of e-shop sales and $1 per box fees that DPB had agreed to pay Gemini Society for 2021. She complained, "When we started our annual budget was $60K. This year we are looking at almost $200K." She did not acknowledge that since it began working with Gemini Society, DPB's sales had more than doubled. She continued, "If we can leave the brand management at $60K this year to launch the pastry box and complete the banh mi shop, that'll be great. We can increase the percentage [of e-shop fees] to 8% after kin cakes as we had agreed for the shops."

114. Mrs. Garza candidly admitted that she had not discussed with her mother, Mrs. Tran, the fees DPB had been paying Gemini Society. Mrs. Garza had never told Mrs. Tran about the parties' joint venture and special relationship, and she said she could not tell her mother that DPB had paid Gemini Society for years and did not own anything.

115. Gemini Society responded, "Sounds good, Linh. I'll get the revised contract drawn up and sent over. I'll also set a reminder for early October so that we can touch base and plan for 2022 with plenty of time."

116. On or about January 29, 2021, DPB signed a new Statement of Work for 2021.

117. In reliance on these statements by DPB, Gemini Society continued to work on projects for DPB, including the Baked Goods Box and new banh mi e-shop.

118. In reality, however, DPB had no intention of signing a new contract with Gemini Society in 2022, and no new agreement was reached to supersede or amend the 2021 Statement of Work that DPB had already executed.

119. In March 2021, in anticipation of terminating her relationship with Gemini Society, Mrs. Garza began secretly contacting third party branding firms. For inspiration, she directed them

to the DPBakeshop.com website that Gemini Society created, featuring the branding, logos, and artwork that Gemini Society created and owned.

120. While the Joint Venture was still in effect, in communications to prospective branding firms in March 2021, Mrs. Garza listed DPB's needs in terms of what would be necessary to cut out Gemini Society from the Joint Venture. Mrs. Garza asked prospective branding firms to prepare proposals that mirrored the marketing and product positioning strategies that Gemini Society created:

A. New branding/logo/logomarks
B. New mooncake box
C. New Banh mi box
D. New website
E. 3 Social media campaign to launch
    i. New brand
    ii. Mooncakes
    iii. King cakes
F. 2 E-shops
    i. Banh mi and baked goods shop
    ii. King cake shop
G. Wall mural
H. Delivery van wraps
I. Staff uniforms (t-shirts and hats)
J. Signs, labels, banners, etc.

121. Through April 2021 Gemini Society offered several pricing options for DPB to continue using Gemini's Materials as it transitioned to a new brand. But because DPB would no longer qualify for "friends and family" discount pricing, DPB rejected these offers and declined to pay Gemini Society its arms-length prices.

122. However, Mrs. Garza feigned shock at the fees that Gemini Society normally charged its clients.

123. On April 11, 2021, Mrs. Garza contacted MPRESS for pricing to print 1000 more Bahn Mi Boxes.

124. On April 12, 2021, Mrs. Garza notified Gemini Society that DPB was terminating its relationship with Gemini Society. She terminated because DPB wanted to cut out Gemini Society and DPB did not want to pay the fees that the parties had agreed for 2021 and in future years.

125. This terminated Gemini Society's licenses to DPB. Accordingly, the same day, Gemini Society demanded that DPB cease using the intellectual property of Gemini Society.

126. In response, Mrs. Garza understood she needed to seek permission to continue to use Gemini's Materials, because DPB had previously licensed Gemini's Materials from Gemini Society for years and agreed not to use Gemini's Materials except as permitted by Gemini Society. Consistent with that understanding and seeking such permission, Mrs. Garza wrote:

A. "I would like to negotiate a fee to allow us to use up these branded materials."

B. "Below are the items I would like to negotiate a fee for use . . . ."

C. "We will not reprint any of these. Our goal is to use up existing inventory."

D. "I would also like to continue to use the 3 [branded] vans, mural and staff uniforms for 6 months. We will have these redesigned and replaced as soon as possible"

E. "As for the remaining Banh Mi and King Cake boxes in inventory, I am hoping you will honor our previous agreement, since we have already purchased the license for these. Again, we would not be reprinting any, only using up existing stock."

127. Around the same time Mrs. Garza considered reverting to DPB's old Two Fish Design, which Mrs. Garza said was "not great but will work" for DPB's business. Instead, she decided to hire a branding firm to develop a new logo.

128. Gemini Society de-branded the DP Bakeshop website. DPB is usually closed on Tuesdays, so Gemini Society removed Gemini's Materials from the website on a Monday night. DPB could not accept orders when it was closed on Tuesday, and by the time DPB opened the following Wednesday, DPB had another website ready for visitors and to accept online orders. Even then, at all times the DP Bakeshop website was accessible by the public and fully functional (albeit with default settings), and DPB had full control and access to it. Accordingly, DPB lost no business as a result of the de-branding of the DP Bakeshop website by Gemini Society.

129. DPB breached fiduciary duties owed to Gemini in several ways.

130. DPB violated its obligation to deal with Gemini in good faith. For example, even as Gemini's strategies generated millions of dollars of revenue for DPB, DPB lied to Gemini about how much in licensing fees it could afford to pay.

131. DPB failed to take due care in its relationship with Gemini Society. Among other things, this caused delays, rework and changes in direction that injured Gemini Society and contributed to Gemini Society's losses.

132. DPB has also been disloyal. DPB interfered with Gemini Society's relationship with the Licensed Resellers. DPB diverted sales that, but for DPB's disloyal actions, should have and would have been placed with the e-shop and diverted them to retail and wholesale channels. This was done by DPB in an attempt to avoid licensing fees DPB owed to Gemini and to cut Gemini Society out of the business that DPB agreed to conduct with Gemini.

133. For example, DPB cut out Gemini Society by terminating its relationship with respect to the e-shop, discontinuing the Reseller Program, and using the strategies and other confidential business information that Gemini Society created and other Gemini Materials for its own benefit without paying Gemini Society.

134. DPB also breached its fiduciary duties by allowing unauthorized third parties to use Gemini's Materials without permission from Gemini Society and in a manner that was inconsistent with Gemini Society's high quality standards. Now DPB contends that it owns all rights in Gemini's Materials.

135. After DPB's license was terminated, and in breach of its agreements with Gemini Society, DPB continued to use the DP Bakeshop Mark on its product packaging, including bread bags:



136. As of October 13, 2021, DPB continued to use the DP Bakeshop Mark in its retail store, including on items worn by employees:



137. The King Cake Box Designs created by Gemini Society also include the DP Bakeshop Mark. DPB has sent mixed signals with respect to its intentions to use King Cake Boxes bearing the DP Bakeshop Mark for the 2022 King Cake Season. At various times it has asked Gemini for permission to use the boxes, it has threatened to use the boxes without permission, and it has said it has "no plans" to use the boxes in the future.

138. After DPB's license was terminated, and in breach of its agreements with Gemini Society, it continued to use the Dong Phuong Bahn Mi and Baked Goods Logo on its product packaging, including for its bahn mi:



139. As of October 13, 2021, DPB continued to use Dong Phuong Bahn Mi and Baked Goods Logo on bags given and sold to customers at its retail store:



IX. DPB Launches Smear Campaign Against Gemini

140. In an effort to intimidate Gemini, DPB has launched a sustained smear campaign against Gemini. Mrs. Garza and DPB have defamed Gemini Society, and Mrs. Garza and Mrs. Tran have conspired to destroy Gemini Society's good reputation. Mrs. Garza communicated defamatory statements to the media, existing Licensed Resellers, prospective business relations of Gemini Society, and other third parties.

141. Mrs. Garza said Gemini Society demanded increases to its percentage of e-shop sales, which is a lie because the 8% rate agreed in 2021 was the same 8% rate the parties agreed to in 2020. In fact, Gemini Society agreed to temporarily reduce its fees to 5% at DPB's request.

142. Mrs. Garza said Gemini Society demanded high license fees, which was a lie.

143. Mrs. Garza said Gemini Society treated DPB unfairly, which was a lie.

144. Mrs. Garza said there were no formal contracts between DPB and Gemini Society, which was a lie.

145. Mrs. Garza has said that Gemini Society's conduct was offensive.

146. Mrs. Garza has said that Gemini Society abused its friendship with DPB.

147. Mrs. Garza told the media that DPB sold 100,000 king cakes during the 2021 King Cake season, which is either a lie or evidence that DPB failed to pay all $1/box fees owed under the 2021 Statement of Work.

148. Mrs. Garza's statements to the media and Gemini Society's prospective business relationships have caused Gemini Society to lose hundreds of thousands of dollars in business opportunities in the New Orleans market alone. Her statements have also damaged Gemini Society's ability to find work outside of New Orleans, including in Texas.

149. The harm caused by Mrs. Garza's statements have also harmed Gemini Society's good reputation and ability to earn new work.

150. For example, following the publication of DPB's defamatory statement in 2021, Gemini Society had meetings canceled with Prospective Client 1 and Prospective Client 2, each representing six-figure opportunities for new work and fees for Gemini Society. Historically, Gemini Society had a nearly 100% closing rate for new clients at the stage that they discontinued contact with Gemini Society.

151. Since Mrs. Garza's defamatory statements, third parties have referred to Gemini Society as an "offending" marketing firm, confirming that Mrs. Garza has communicated that Gemini Society's conduct has been offensive and unlawful.

X. Other Unlawful Conduct by DPB

152. Without Gemini Society's knowledge or consent, on August 4, 2017, DPB registered with the Louisiana Secretary of State the DP Bakeshop and logo. The registration identifies "baked goods such as breads, cakes, pies, and sandwiches."

153. This registration is invalid for several reasons. First, DPB does not own the DP Bakeshop logo, so DPB could not register it. Second, no product packaging bearing the DP Bakeshop logo had been ordered much less used in commerce as of August 4, 2017, so DPB's application was premature and void *ab initio*. Third, in its application, DPB made false statements to the Louisiana Secretary of State relating to its ownership, exclusive rights in, and use of the DP Bakeshop logo. Because DPB defrauded the Louisiana Secretary of State, the registration should be canceled. And to the extent DPB ever had any rights in the DP Bakeshop logo, which is denied, DPB has since abandoned them.

154. When asked about the Louisiana registration, DPB said the application and registration was an "accident."

155. Mrs. Tran, who lives near the restaurant and bakery, is directly involved in the supervision of DPB employees. She approves large purchases, including product packaging and boxes used for DPB's products.

156. As president of DPB, Mrs. Garza manages all contracts and is directly involved in placing orders for product packaging and boxes used for DPB's products.

157. Mrs. Tran and Mrs. Garza have knowledge and control over the branded products advertised and sold to DPB's customers, and they are the moving force behind DPB's business decisions, including the decision to continue to use Gemini's Materials after its license was terminated.

158. Mrs. Garza and Mrs. Tran have used DPB to engage in unlawful acts. DPB has failed to maintain complete records of the amount its workers work or how much they are paid. DPB has violated labor laws and wage and hour laws.

159. In 2018 the U.S. Department of Labor ("DOL") ordered DPB to pay nearly $130,000 in overtime back pay to its employees. In a news release published by DOL, the DOL stated that its Wage and Hour Division investigators "found Dong Phuong Oriental Bakery Inc. in New Orleans violated the overtime requirements of the FLSA [Fair Labor Standards Act] by paying employees straight time for all the hours they worked, and failing to pay them overtime when they worked more than 40 hours in a work week." U.S. Department of Labor, News Release: U.S. DEPARTMENT OF LABOR INVESTIGATION RESULTS IN NEW ORLEANS BAKERY WHOLESALER PAYING $127,128 IN OVERTIME BACK WAGES, May 24, 2018, https://www.dol.gov/newsroom/releases/whd/whd20180524. "Additionally, the company violated FLSA record keeping provisions when it failed to keep required payroll records for some employees, paying them in cash with no documentation." *Id*. Ultimately, DPB agreed to "pay $127,128 in back wages to 43 employees to settle overtime and recordkeeping violations" of the FLSA. *Id*.

160. The news release also stated that DPB was doing business as "DP Bakeshop," and DPB's actions damaged the goodwill in Gemini Society's brand.

161. That same year – 2018 – DPB earned more than $2.5 million in revenues, which was then its most profitable year in its history.

162. Yet even after the order from the DOL, DPB has continued to hire foreign workers and paid them cash in an effort to avoid labor and immigration laws and to skirt employment taxes.

163. And while DPB failed to pay taxes and wages earned by its employees and DPB pleaded poverty to Gemini, Mrs. Garza and Mrs. Tran have used DPB to enrich themselves with generous salaries, dividends, and other payments. Mr. Garza was even able to afford to leave his job at a successful architectural firm to work for DPB and plan an expansion of DPB's building. This keeps DPB thinly capitalized, with cash earned by DPB paid primarily to the Garzas and Mrs. Tran, who have used the money to buy new houses, vehicles, and other expensive purchases in recent years.

164. Mrs. Garza and Mrs. Tran do not follow corporate formalities in their management of DPB.

165. At great expense and as further alleged herein, Gemini Society developed plans, methods, go-to market strategies, and other proprietary and confidential business information, which were the subject of reasonable measures by Gemini Society to maintain the confidentiality and secrecy of such information. DBP's use of such trade secrets was subject to its license agreement with Gemini Society, under which DBP agreed, expressly and under the circumstances it was given access to them, that DPB would not to use such trade secrets and other Gemini's Materials except as permitted by Gemini Society. Such trade secrets derive independent economic value from not being generally known and not being readily ascertainable by proper means by others who can obtain economic value from its disclosure or use.

166. In negotiations with potential branding firms, DPB has valued each breach of confidentiality obligations at $50,000.

167. In communications with third-party marketing firms produced in discovery in this litigation, DPB continues to demonstrate a lack of understanding and value for their work,

disputing invoices and delaying undisputed payments. Without remedial action from this Court, DPB may never learn that it cannot have its cake and eat it too.

CLAIMS AND CAUSES OF ACTION

COUNT I. Declaratory Judgment that Gemini Society's Licenses to DPB Were Terminated (Under Rule 57 and Texas law and Against DPB)

168. The foregoing paragraphs are incorporated by reference.

169. This claim is brought under the Texas Uniform Declaratory Judgments Act. Tex. Civ. Prac. & Rem. Code §§ 37.001, *et seq*. and the Declaratory Judgement Act, 28 U.S.C. § 2201.

170. Gemini Society's licenses to DPB were terminated, which DPB disputes.

171. Gemini Society is entitled to a declaratory judgment that Gemini Society's licenses to DPB were terminated.

COUNT II. Declaratory Judgment that Gemini Society Owns Copyrights In The Works It Authored (Under Rule 57 and Texas law and Against DPB)

172. The foregoing paragraphs are incorporated by reference.

173. This claim is brought under the Texas Uniform Declaratory Judgments Act. Tex. Civ. Prac. & Rem. Code §§ 37.001, *et seq*. and the Declaratory Judgement Act, 28 U.S.C. § 2201.

174. Gemini Society owns the copyrights in the works it authored, including Gemini's Materials, which DPB disputes.

175. Gemini Society is entitled to a declaratory judgment that Gemini Society owns the copyrights in the works it authored, including Gemini's Materials.

COUNT III. Declaratory Judgment that Gemini Society Owns DP Bakeshop Mark (Under Rule 57 and Texas law and Against DPB)

176. The foregoing paragraphs are incorporated by reference.

177. This claim is brought under the Texas Uniform Declaratory Judgments Act. Tex. Civ. Prac. & Rem. Code §§ 37.001, *et seq*. and the Declaratory Judgement Act, 28 U.S.C. § 2201.

178. Gemini Society owns the DP Bakeshop Mark, which DPB disputes.

179. Gemini Society is entitled to a declaratory judgment that Gemini Society owns the DP Bakeshop Mark.

COUNT IV. Trademark Infringement and Unfair Competition
(Under Lanham Act Section 43(a) and the laws of Texas and Louisiana and Against DPB, Mrs. Garza, and Mrs. Tran)

180. The foregoing paragraphs are incorporated by reference.

181. The foregoing allegations are sufficient to plead a claim for trademark infringement and unfair competition. DPB's unauthorized uses of the DP Bakeshop Mark infringed Gemini Society's exclusive right to use the mark. DPB used in commerce DP Bakeshop Mark, which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of DPB with Gemini Society, or as to the origin, sponsorship, or approval of its goods, services, or commercial activities. Such uses damaged Gemini Society in an amount to be proven at trial.

COUNT V. Defamation
(Under Texas law and Against DPB, Mrs. Garza and Mrs. Tran)

182. The foregoing paragraphs are incorporated by reference.

183. The foregoing allegations are sufficient to plead a claim for defamation, which is a compulsory counterclaim. As alleged herein, on behalf of DPB and for herself, Mrs. Garza made false and defamatory statements concerning Gemini Society to third parties, including parties with whom Gemini Society had current contracts and prospective business relationships, causing damages to Gemini Society to be proven at trial. The defendants' actions damaged DPB's

reputation in Texas, where it has lost business and harmed Gemini Society's ability to find new clients in Texas.

184. Gemini and its principals and employees are not public figures and Gemini's dispute with DPB is not a public issue or matter of public concern, because it is not a matter of political, social, or other concern to the community.

185. Mrs. Garza's statements were made with the knowledge, consent, and agreement of Mrs. Tran, who conspired with Mrs. Garza to defame Gemini Society and is therefore jointly and severally liable for the damages caused by such defamation.

COUNT VI. Defamation
(Under Louisiana law and Against DPB, Mrs. Garza, and Mrs. Tran)

186. The foregoing paragraphs are incorporated by reference.

187. The foregoing allegations are sufficient to plead a claim for defamation, which is a compulsory counterclaim. As alleged herein, on behalf of DPB and for herself, Mrs. Garza made false and defamatory statements concerning Gemini Society to third parties, including parties with whom Gemini Society had current contracts and prospective business relationships, causing damages to Gemini Society to be proven at trial. The defendants' actions damaged DPB's reputation in Louisiana, where it has lost business and harmed Gemini Society's ability to find new clients in Louisiana.

188. Mrs. Garza's statements were made with the knowledge, consent, and agreement of Mrs. Tran, who conspired with Mrs. Garza to defame Gemini Society and is therefore answerable, in solido, for the damages caused by such defamation.

COUNT VII. Breach of Fiduciary Duty
(Under Texas law and Against DPB)

189. The foregoing paragraphs are incorporated by reference.

190. The foregoing allegations are sufficient to plead a claim for breach of fiduciary duty. As a joint venture partner, DPB owed Gemini Society fiduciary duties that it breached by engaging in the activities alleged herein, which damaged Gemini Society in an amount to be proven at trial. Their community of interest included the e-shop, Reseller Program, and future opportunities to market boxed products and franchises. In essence, Gemini Society agreed to create a franchise-capable platform, which Gemini Society would license to DPB, and DPB agreed to license Gemini's Materials and pay Gemini Society fees, including a percentage of its sales. On the basis of the decades' long relationship between the Garzas and Ramirezes, which was established and maintained in Texas, this established a special relationship of confidence and trust between the parties to act primarily for the other's benefit.

COUNT VIII. Breach of Fiduciary Duty
(Under Louisiana law and Against DPB)

191. The foregoing paragraphs are incorporated by reference.

192. This claim for breach of fiduciary duty under Louisiana law is made in the alternative to the foregoing count for breach of fiduciary duty under Texas law.

193. The foregoing allegations are sufficient to plead a claim for breach of fiduciary duty. As a joint venture partner, DPB owed Gemini Society fiduciary duties that it breached by engaging in the activities alleged herein, which damaged Gemini Society in an amount to be proven at trial. Their community of interest included the e-shop, Reseller Program, and future opportunities to market boxed products and franchises. In essence, Gemini Society agreed to create a franchise-capable platform, which Gemini Society would license to DPB, and DPB agreed to license Gemini's Materials and pay Gemini Society fees, including a percentage of its sales. On the basis of the decades' long relationship between the Garzas and Ramirezes, this established a

special relationship of confidence and trust between the parties to act primarily for the other's benefit.

COUNT IX. Piercing Corporate Veil
(Under Louisiana law and Against DPB, Mrs. Garza and Mrs. Tran)

194. The foregoing paragraphs are incorporated by reference.

195. The foregoing allegations are sufficient to plead a claim for piercing the corporate veil of DPB.

196. Mrs. Garza is the President of DPB and is responsible for its day-to-day operations. In communications with Gemini Society, Mrs. Garza has taken personal responsibility for her delays and miscommunications with Gemini Society. Regarding the Reseller Program, Mrs. Garza told Gemini Society "I take full responsibility for not communicating well enough nor helping to foresee the complexities and pitfalls of this project." She continued, "If we end up scrapping the shop, I do intend to pay for the cost of the build."

197. Mrs. Tran owns DPB and uses the corporation as her private bank. At her deposition, she was unable to say how much money she is paid annually or answer many other questions to which an officer, director, and sole shareholder of a corporation should know the answer. On information and belief, she uses corporate accounts and funds for personal expenses. DPB does not follow formalities for transacting corporate affairs, and it fails to hold regular shareholder meetings, board meetings, or maintain written minutes for such meetings.

198. DPB is kept thinly capitalized, with cash earned by DPB paid primarily to Mrs. Garza and Mrs. Tran, who have used the money to buy new houses, cars, and other expensive purchases in recent years.

199. DPB has violated labor laws and engaged in other unlawful acts alleged herein justifying piercing its corporate veil and holding its officers and shareholders liable for its debts.

COUNT X. Tortious Interference With Contracts
(Under Texas law and Against DPB, Mrs. Garza, and Mrs. Tran)

200. The foregoing paragraphs are incorporated by reference.

201. The foregoing allegations are sufficient to plead a claim for tortious interference with contracts. As further alleged herein, Gemini Society had existing contracts with third parties, including vendors and Licensed Resellers, and Mrs. Garza acted willfully and intentionally to interfere with such contracts, causing damages to Gemini Society in an amount to be proven at trial.

202. Mrs. Garza's actions were made with the knowledge, consent, and agreement of Mrs. Tran, who conspired with Mrs. Garza to injure Gemini Society and is therefore answerable, in solido, for the damages caused by such actions.

COUNT XI. Interference With Prospective Business Relationships
(Under Texas law and Against DPB, Mrs. Garza, and Mrs. Tran)

203. The foregoing paragraphs are incorporated by reference.

204. The foregoing allegations are sufficient to plead a claim for interference with prospective business relationships. Through its statements in public and private, including to Gemini Society's prospective business relationships, and Mrs. Garza has interfered with Gemini Society's prospective business relationships by inducing third parties not to enter into or continue the prospective relation with Gemini Society and preventing Gemini Society from acquiring prospective business relationships. Such acts by DPB have harmed Gemini Society and its reputation in Texas and prevented it from consummating new business contracts in Texas.

205. These defamatory and unlawful actions were undertaken by Mrs. Garza without justification with intent to harm Gemini Society, which has suffered damages in an amount to be proven at trial.

206. Mrs. Garza's actions were made with the knowledge, consent, and agreement of Mrs. Tran, who conspired with Mrs. Garza to injure Gemini Society and is therefore answerable, as a joint and several tortfeasor, for the damages caused by such actions.

COUNT XII. Interference With Prospective Business Relationships
(Under Louisiana law and Against DPB, Mrs. Garza, and Mrs. Tran)

207. The foregoing paragraphs are incorporated by reference.

208. This claim for interference with prospective business relationships under Louisiana law is made in the alternative to the foregoing count for interference with prospective business relationships under Texas law.

209. The foregoing allegations are sufficient to plead a claim for interference with prospective business relationships. Through its statements in public and private, including to Gemini Society's prospective business relationships, Mrs. Garza has interfered with Gemini Society's prospective business relationships by inducing third parties not to enter into or continue the prospective relation with Gemini Society and preventing Gemini Society from acquiring prospective business relationships. Such acts by Mrs. Garza have harmed Gemini Society and its reputation in Louisiana and prevented it from consummating new business contracts in Louisiana.

210. Without any justification, Mrs. Garza acted with actual malice, ill will, and bad feelings against Gemini Society, which has suffered damages in an amount to be proven at trial.

211. Mrs. Garza's actions were made with the knowledge, consent, and agreement of Mrs. Tran, who conspired with Mrs. Garza to injure Gemini Society and is therefore answerable, in solido, for the damages caused by such actions.

COUNT XIII. Violations of LUTPA
(Under Louisiana law and Against DPB, Mrs. Garza, and Mrs. Tran)

212. The foregoing paragraphs are incorporated by reference.

213. The foregoing allegations are sufficient to plead a claim of violations of the Louisiana Unfair Trade Practices and Consumer Protection Law (commonly known as "LUTPA").

214. Mrs. Garza's actions were made with the knowledge, consent, and agreement of Mrs. Tran, who conspired with Mrs. Garza to injure Gemini Society and is therefore answerable, in solido, for the damages caused by such actions.

COUNT XIV. Cancelation of DPB's Louisiana Registration for DP Bakeshop (Under Louisiana law and Against DPB and Mrs. Garza)

215. The foregoing paragraphs are incorporated by reference.

216. Under La. R.S. § 51:219, the Louisiana Secretary of State "shall cancel from the register: . . . (4) Any registration concerning which a court of competent jurisdiction shall find: . . . (b) That the registrant is not the owner of the mark"; "(c) That the registration was granted improperly"; or "(d) That the registration was obtained fraudulently." As alleged herein, when DPB applied to register the DP Bakeshop logo with the Louisiana Secretary of State on August 4, 2017, it was not the owner of the DP Bakeshop logo and it had not used it in commerce. Hence, the application was premature and the registration was granted improperly. Mrs. Garza made false statements to the Louisiana Secretary of State relating to DPB's ownership, exclusive rights in, and use of the DP Bakeshop logo, and, therefore, the registration was obtained fraudulently. It should be canceled.

217. Gemini Society has sustained damages, including attorney's fees, in consequence of DPB's fraudulent registration, which it is entitled to recover from DPB and Mrs. Garza under La. R.S. § 51:221.

218. In the alternative, under La. R.S. § 51:1408, for violations of LUTPA, the court has authority to order the "revocation, forfeiture, or suspension of any license, charter, franchise, certificate, or other evidence of authority of any person to do business in the state." If the court

rules in favor of Gemini Society on its LUTPA claims, the court may revoke the registration or cause DPB to forfeit it.

219. In the alternative, to the extent DPB ever had rights in the DP Bakeshop logo, which is denied, DPB's registration should be canceled on grounds that it has abandoned the mark.

COUNT XV. Misappropriation of Trade Secrets
(Under DTSA and the laws of Texas and Louisiana and Against DPB and Mrs. Garza)

220. The foregoing paragraphs are incorporated by reference.

221. The foregoing allegations are sufficient to plead a claim of misappropriation of trade secrets.

222. As further alleged herein, Gemini Society's trade secrets included comprehensive strategies for new and emerging markets, social media, product design and development, merchandizing, go-to market plans, e-commerce platforms, vendor relationships, market research, naming and product life-cycle strategies, roadmaps to focus sales and marketing efforts and to establish cross-selling opportunities, and other confidential business information.

223. DPB agreed to limit its use of Gemini Society's trade secrets, and DPB understood it could not use or disclose them without Gemini Society's permission. Yet after DPB terminated its relationship with Gemini Society, DPB continued to use Gemini Society's trade secrets and disclosed them with its new vendors meant to replace DPB, all without paying license fees that DPB had previously agreed to pay Gemini Society.

224. DPB's misappropriation of Gemini Society's trade secrets was willful and malicious.

COUNT XVI. Breach of Contract
(Under Texas law and Against DPB)

225. The foregoing paragraphs are incorporated by reference.

226. The foregoing allegations are sufficient to plead breach of contract claims. Gemini Society and DPB agreed to valid contracts alleged herein, under which Gemini Society performed or tendered performance, and DPB breached the contract, causing damages to Gemini Society in an amount to be proven at trial.

227. Gemini Society's and DPB's contractual obligations were governed by Texas law. Most communications between Gemini Society and DPB were via principals and employees of Gemini Society, located in Austin, Texas, and Mrs. Garza, located in Dallas, Texas. Negotiations between Gemini Society and DPB relating to the terms of the parties' agreements took place in Texas, the joint venture was formed in Texas, and the parties contemplated that they were perform under their agreements in Texas. For example, Gemini Society created and delivered all Gemini Materials (defined below) from its offices in Austin, Texas, and, from her residence in Dallas, Texas, Mrs. Garza accepted Gemini Materials and directed DPB to pay fees to Gemini Society.

COUNT XVII. Promissory Estoppel
(Under Texas law and Against DPB)

228. The foregoing paragraphs are incorporated by reference.

229. The foregoing allegations are sufficient to plead a claim of promissory estoppel. DPB knew or should have known that the promises alleged herein would lead Gemini Society to reasonably and substantially reply on such promises, such reliance was foreseeable by DPB, and Gemini Society relied on such promises to its detriment.

COUNT XIII. Detrimental Reliance
(Under Louisiana law and Against DPB)

230. The foregoing paragraphs are incorporated by reference.

231. The foregoing allegations are sufficient to plead a claim for detrimental reliance. DPB knew or should have known that the promises alleged herein would induce Gemini Society

to rely on it to the detriment of Gemini Society and Gemini Society was reasonable in so relying on such promises.

COUNT XIX. Unjust Enrichment
(Under the laws of Texas and Louisiana and Against DPB)

232. The foregoing paragraphs are incorporated by reference.

233. This claim for unjust enrichment is made in the alternative to the foregoing counts.

234. The foregoing allegations are sufficient to plead a claim of unjust enrichment. DPB has been enriched without cause at Gemini Society's expense and, therefore, DPB is bound to compensate Gemini Society in an amount to be proved at trial.

JURY TRIAL

235. Gemini Society reserves the right to a trial by jury on all matters triable by a jury.

REQUESTS FOR RELIEF

Gemini Society respectfully requests an order in favor of Gemini Society and against DPB and the other Counterclaim Defendants, including a judgment that:

A. denies DPB's claims against Gemini Society, dismisses them with prejudice, and awards Gemini Society its attorney's fees, costs, and expenses for defending those claims;

B. sustains Gemini Society's claims against the Counterclaim Defendants;

C. finds DPB breached its contractual obligations, fiduciary duties, and other quasi-contractual obligations owed to Gemini Society and awards Gemini Society all its damages, including damages to compensate Gemini Society for the expenditures it made in preparation for the performance of its obligations, the benefits that Gemini Society would have received had DPB performed, rather than breached, its obligations, and Gemini Society's other losses, lost profits, and actual damages;

D. finds DPB and Linh Garza defamed Gemini Society, tortuously interfered with Gemini Society's contracts and prospective business relationships, misappropriated Gemini Society's trade secrets, engaged in unfair and deceptive trade practices, and other delictual acts;

E. finds DPB, Linh Garza, and Huong Tran conspired to engage in tortious acts as alleged herein and they are, therefore, liable in solido for the resulting damages suffered by Gemini Society;

F. holds the officers and shareholders of DPB liable for the debts of DPB;

G. declares that the licenses granted by Gemini Society to DPB were terminated;

H. declares that Gemini Society owns the copyrights in the Gemini Materials and other works authored by Gemini Society;

I. declares that Gemini Society, not DPB, owns the DP Bakeshop Mark;

J. finds that DPB fraudulently obtained Louisiana Registration for DP Bakeshop logo, Reg. No. 68-6857;

K. revokes and cancels the Louisiana Registration for DP Bakeshop, Reg. No. 68-6857 and enters an order requiring the Louisiana Secretary of State to cancel from its register such registration;

L. finds DPB, Linh Garza, and Huong Tran infringed the DP Bakeshop Mark;

M. issues a preliminary and permanent injunction enjoining DPB, Linh Garza, and/or Huong Tran, and their officers, agents, servants, employees, and attorneys, and other persons who are in active concert or participation with any of the foregoing from:

i. infringing the DP Bakeshop Mark or using in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, which is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of DPB with Gemini Society, or as to the origin, sponsorship, or approval of its goods, services, or commercial activities;

ii. misappropriating Gemini Society's trade secrets and/or engaging in unfair and deceptive trade practices by using without authorization the proprietary and confidential business information created by Gemini Society; and

iii. defaming Gemini Society, including in private communications, and interfere with existing contracts and prospective business relationships of Gemini Society.

N. finds this case exceptional;

O. finds that the actions of DPB and the other Counterclaim Defendants as alleged herein were unlawful, willful and malicious, and they acted with actual malice;

P. awards Gemini Society all damages, exemplary damages, enhanced damages, treble damages, punitive damages, and other legal relief against the Counterclaim Defendants' for their unlawful acts;

Q. in the alternative under Gemini Society's unjust enrichment claim, awards Gemini Society just compensation due;

R. awards Gemini Society prejudgment and post-judgment interest;

S. awards Gemini Society all its attorney's fees, costs, and expenses in prosecuting its claims and defenses; and

T. awards Gemini Society such other and further relief as the Court may deem appropriate, just and proper.

Respectfully submitted,

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