

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Fiesta Ventures of Bevercreek, LLC v. Qdoba Restaurant
Corporation

Fiesta Ventures · No. 24-CV-2218 JLS (BLM) · Decided August 21, 2025

SUMMARY

The United States District Court for the Southern District of California denied the counterdefendants’ amended motion to dismiss Qdoba Franchisor, LLC’s second and fourth counterclaims for lost future royalties. The court held that the allegations plausibly supported a total breach of the franchise agreements and that lost future royalties could be available under the circumstances. The court also rejected the counterdefendants’ public-policy arguments under California franchise statutes and denied Qdoba’s request for judicial notice as moot.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Janis L. Sammartino
JURISDICTION	United States District Court for the Southern District of California
DECIDED	August 21, 2025
DOCKET	24-CV-2218 JLS (BLM)
DISPOSITION	other
PROCEDURAL POSTURE	Counterdefendants moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss the second and fourth counts of Qdoba Franchisor, LLC's second amended counterclaim, which sought lost future royalties. The court denied the amended motion to dismiss.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded facts as true, draws reasonable inferences in favor of the claimant, and determines whether the pleading states a legally cognizable theory supported by sufficient factual matter to make relief plausible on its face.
PRECEDENTIAL VALUE	unpublished district court order; persuasive only

TOPICS

contracts

commercial litigation

damages

motions to dismiss

civil procedure

PRACTICE AREAS

contract law

franchise law

commercial litigation

civil procedure

damages

QUESTIONS PRESENTED

1. Whether the counterclaims plausibly alleged a breach of the franchise agreements sufficient to support a claim for lost future royalties under California law.
2. Whether *Postal Instant Press, Inc. v. Sealy* categorically bars a franchisor from seeking lost future royalties after terminating a franchise agreement.
3. Whether California's Franchise Relations Act or Franchise Investment Law makes lost future royalties unavailable or otherwise bars Qdoba's counterclaims in this dispute.

HOLDINGS

1. The counterclaims plausibly alleged that Fiesta Ventures committed a total breach of the franchise agreements and that Qdoba may seek lost future royalties as damages.
2. Sealy does not categorically foreclose a franchisor from seeking lost future royalties as a matter of law; the availability of that remedy depends on the nature of the breach and whether the breach itself prevented the franchisor from earning the royalties.
3. The California Franchise Relations Act and California Franchise Investment Law do not apply to the out-of-state franchise agreements at issue and therefore do not provide a basis for dismissing the lost-future-royalties counterclaims.

KEY QUOTATIONS

“To the extent Fiesta Ventures argues that Sealy categorically forecloses lost future royalties as a matter of law, the Court is unpersuaded.” (at 7)

“At the dismissal stage, the Court must accept the facts alleged by Qdoba in its Counterclaim as true.” (at 10)

“Accordingly, although this Court doubts that Sealy establishes the correct rule of law as the California Supreme Court would see it, under Coughlin, the Court concludes that the allegations against Fiesta Ventures plausibly constitute a total breach.” (at 12)

“For the foregoing reasons, the Court DENIES Counterdefendant Fiesta Ventures’s Motion to Dismiss the Second and Fourth Counts in Counterclaimant Qdoba’s Counterclaim.” (at 14)

FACTUAL BACKGROUND

Fiesta Ventures Dayton operated a Qdoba restaurant, and its owners later formed Fiesta Ventures Bevercreek to develop and operate a Qdoba restaurant in Ohio. After delays and extensions, Qdoba and FVB entered a workout agreement requiring the Bevercreek restaurant to open by a specified deadline and making FVB's affiliates, including FVD and the owners, liable for future defaults. The restaurant allegedly failed to open, Qdoba

terminated FVB's franchise agreement and then terminated FVD's agreement under the affiliate-liability provision. Qdoba counterclaimed for lost future royalties, and the court held that the pleaded facts plausibly alleged a total breach supporting that form of damages.

PROCEDURAL HISTORY

Fiesta Ventures Bevercreek, LLC and Fiesta Ventures DM, LLC filed an action alleging that Qdoba breached franchise-related contracts and committed unfair business practices. Qdoba Franchisor, LLC answered and asserted counterclaims, including claims for declaratory relief and lost future royalties. Counterdefendants moved to dismiss the second and fourth counterclaims for failure to state a claim; the court denied the motion and ordered an answer to the counterclaim within fourteen days after electronic docketing.

DISPOSITION

other

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662, 677-678 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 557, 570 (2007)
- Papasan v. Allain, 478 U.S. 265, 286 (1986)
- Wi-LAN Inc. v. LG Elecs., Inc., 382 F. Supp. 3d 1012, 1020 (S.D. Cal. 2019)
- Retail Prop. Tr. v. United Bhd. of Carpenters & Joiners of Am., 768 F.3d 938, 945 (9th Cir. 2014)
- DeSoto v. Yellow Freight Sys., Inc., 957 F.2d 655, 658 (9th Cir. 1992)
- Schreiber Distrib. Co. v. Serv-Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986)
- Postal Instant Press, Inc. v. Sealy, 51 Cal. Rptr. 2d 365 (Ct. App. 1996)
- Hollywood Cleaning & Pressing Co. v. Hollywood Laundry Serv., 17 P.2d 712, 713 (Cal. 1932)
- Radisson Hotels Int'l v. Majestic Towers, Inc., 488 F. Supp. 2d 953, 963 n.10 (C.D. Cal. 2007)
- Coburn v. Cal. Portland Cement Co., 77 P. 771, 772-773 (Cal. 1904)
- Brandon & Tibbs v. George Kevorkian Acct. Corp., 227 Cal. Rptr. 40, 48 (Ct. App. 1986)
- US Ecology, Inc. v. State, 28 Cal. Rptr. 3d 894, 916-917 (Ct. App. 2005)
- Oasis W. Realty, LLC v. Goldman, 250 P.3d 1115, 1121 (Cal. 2011)
- Reichert v. General Ins. Co., 442 P.2d 377, 377 (Cal. 1968)
- Coughlin v. Blair, 262 P.2d 305, 308-312 (Cal. 1953)
- Abbott v. 76 Land & Water Co., 118 P. 425, 427-428 (Cal. 1911)
- Gravquik A/S v. Trimble Navigation Int'l Ltd., 323 F.3d 1219, 1223 (9th Cir. 2003)
- Taylor v. 1-800-GOT-JUNK?, LLC, 387 F. App'x 727, 729 (9th Cir. 2010)

OPINION

Fiesta Ventures of Bevercreek, LLC v. Qdoba Restaurant Corporation
PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10

11 FIESTA VENTURES BEVERCREEK, Case No.: 24-CV-2218 JLS (BLM)

LLC, an Ohio limited liability company; 12

and FIESTA VENTURES DM, LLC, an ORDER DENYING

13 Ohio limited liability company, COUNTERCLAIM DEFENDANTS’

AMENDED MOTION TO DISMISS

14 Plaintiffs,

FOR FAILURE TO STATE A CLAIM

15 v. (ECF No. 30)

16 QDOBA RESTAURANT

CORPORATION, a Colorado 17 corporation; and QDOBA FRANCHISOR 18 LLC, a Delaware
limited liability company, 19 Defendants. 20 21

22 QDOBA FRANCHISOR, LLC, a

Delaware limited liability company, 23 Counterclaimant, 24 v. 25

FIESTA VENTURES BEVERCREEK,

26 LLC, an Ohio limited liability company; 27 FIESTA VENTURES DM, LLC, an Ohio limited
liability company; SHALINDER 28 1 KQUALNAWRA, LanD iEnEdPiv iSdluDaHl; Uan, da n

individual, 2 Counterdefendants 3 4 5 Presently before the Court are Plaintiff-Counterdefendants

Fiesta Ventures 6 Bevercreek, LLC; Fiesta Ventures DM, LLC; Shalinder Kular; and Kanwaldeep

Sidhu’s 7 (collectively, “Counterdefendants”) Amended Motion to Dismiss the Second and Fourth

8 Counts in Counterclaim Plaintiff’s Second Amended Counterclaim (“Am. Mot.,” 9 ECF No. 30)

and Memorandum of Points and Authorities in Support thereof (“Am. Mem.,” 10 ECF No. 30-1).

Also before the Court are Defendant-Counterclaimant Qdoba Franchisor, 11 LLC’s Opposition to

the Motion to Dismiss (“Opp’n,” ECF No. 31) and 12 Counterdefendants’ Reply (“Reply,” ECF

No. 33). Having considered the Parties’ 13 arguments, the Counterclaims (“Countercl.,” ECF No.

18), and the law, the Court DENIES 14 Counterdefendants’ Motion. Additionally, the Court

DENIES AS MOOT Qdoba’s 15 Request for Judicial Notice (ECF No. 31-1).

16 BACKGROUND

17 Fiesta Ventures Dayton (“FVD”) is a franchisee that operates a Mexican food 18 restaurant on
behalf of franchisors, Qdoba Restaurant Corporation and Qdoba Franchisor 19 LLC (collectively,
“Qdoba”). FVD and Qdoba have a business relationship dating back to 20 2012 when FVD’s

owners, Shalinder Kular and Kanwaldeep Sidhu (collectively, 21 “Owners”), entered into an
agreement with Qdoba to operate three pre-existing Qdoba 22 restaurant locations. Countercl. ¶

13. From 2012 through 2019, Qdoba and FVD did not 23 have the smoothest operating
relationship; and, by 2019, FVD was operating just one 24 location. Id. ¶¶ 14–17. 25

Notwithstanding their business history, in July of 2019, Qdoba and FVD signed a 26 development agreement to explore opening a Qdoba restaurant in Bevercreek, Ohio. 27 Id. ¶ 30. After myriad issues, extensions, and modified agreements, Fiesta Ventures 28 Bevercreek (“FVB”)—a new entity owned and operated by FVD and Owners—and Qdoba 1 signed a new franchise agreement to operate and open the Bevercreek location in April of 2 2023. Id ¶ 31. The Bevercreek restaurant, however, was unable to open on time apparently 3 due to leasing issues, and Qdoba issued a notice of default to FVB on February 12, 2024. 4 Id. Instead of terminating their franchise agreement, FVB and Qdoba entered into a 5 Workout Agreement whereby the Bevercreek restaurant was obliged to be open and 6 operating by May 31, 2024. Id. ¶ 34; ECF No. 1-2 (“Work. Agr.”), Ex. 7 at 144.1 Another 7 provision of the Workout Agreement germane to this case is a provision holding affiliates 8 of FVB—namely Owners and FVD—liable for any future default of FVB’s. Work. Agr. 9 at 144. Qdoba further extended the Bevercreek restaurant’s opening deadline three times: 10 once through June 20, 2024; again through July 31, 2024; and finally through 11 September 30, 2024. Countercl. ¶ 35.

12 Finally, after receiving notice from the Bevercreek restaurant’s landlord that 13 Bevercreek’s lease was being terminated, Qdoba notified FVB that Qdoba was terminating 14 FVB’s franchise agreement. Id. ¶ 39. FVB sought to cure the defaults once again, however 15 Qdoba did not re-evaluate their decision to terminate. Id. Subsequently, purportedly due 16 to FVB’s default and subsequent termination, Qdoba exercised its right to terminate FVD’s 17 franchise agreement, pursuant to the provision in the Workout Agreement which held FVD 18 liable as an affiliate for any default of FVB’s. Id. ¶ 40; Work. Agr. at 144. 19 Plaintiffs FVD and FVB filed suit on November 26, 2024, alleging that Qdoba 20 breached the terms of their contracts with both FVD and FVB, and that Qdoba’s 21 terminations were unfair business practices under California Law. ECF No. 1 (“Compl.”). 22 Defendant Qdoba Franchisor, LLC filed an Answer and Counterclaim seeking: (1) a 23 declaratory judgment regarding the termination of the FVB agreement; (2) lost future 24 royalties for the termination of the FVB agreement; (3) a declaratory judgment regarding 25 the termination of the FVD agreement; (4) lost future royalties for the termination of the 26 27 28 1 Pin citations refer to the CM/ECF page numbers electronically stamped at the top of each page of the 1 FVD agreement; (5) attorneys’ fees pursuant to Fiesta Ventures’s breaches; and 2 (6) enforcement of owners Kular and Sidhu’s personal guarantees. Countercl. ¶¶ 48, 54, 3 62, 68, 72, 77. In response, Fiesta Ventures filed the instant Motion, seeking to dismiss 4 the Second and Fourth Counterclaims for failing to state a claim upon which relief can be 5 granted. See generally Am. Mot.

6 LEGAL STANDARD

7 Federal Rule of Civil Procedure 12(b)(6) permits a party to raise by motion the 8 defense that the complaint “fail[s] to state a claim upon which relief can be granted,” 9 generally referred to as a motion to dismiss. The Court evaluates whether a complaint 10 states a cognizable legal theory and sufficient facts in light of Federal Rule of Civil

11 Procedure 8(a), which requires a “short and plain statement of the claim showing that the
12 pleader is entitled to relief.” Although Rule 8 “does not require ‘detailed factual 13 allegations,’
. . . it [does] demand more than an unadorned, the-defendant-unlawfully- 14 harmed-me
accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. 15 Corp. v. Twombly*,
550 U.S. 544, 555 (2007)). In other words, “a plaintiff’s obligation to 16 provide the ‘grounds’ of
his ‘entitle[ment] to relief’ requires more than labels and 17 conclusions, and a formulaic
recitation of the elements of a cause of action will not do.” 18 *Twombly*, 550 U.S. at 555 (citing
Papasan v. Allain, 478 U.S. 265, 286 (1986)). A 19 complaint will not suffice “if it tenders ‘naked
assertion[s]’ devoid of ‘further factual 20 enhancement.’” *Iqbal*, 556 U.S. at 677 (citing *Twombly*,
550 U.S. at 557). 21 To survive a motion to dismiss, “a complaint must contain sufficient factual
matter, 22 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting 23
Twombly, 550 U.S. at 570); see also Fed. R. Civ. P. 12(b)(6). A claim is facially plausible 24 when
the facts pled “allow the court to draw the reasonable inference that the defendant is 25 liable for
the misconduct alleged.” *Iqbal*, 556 U.S. at 677 (citing *Twombly*, 550 U.S. 26 at 556). That is not
to say that the claim must be probable, but there must be “more than a 27 sheer possibility that a
defendant has acted unlawfully.” *Id.* Facts “‘merely consistent 28 with’ a defendant’s liability” fall
short of a plausible entitlement to relief. *Id.* (quoting 1 *Twombly*, 550 U.S. at 557). This review
requires context-specific analysis involving the 2 Court’s “judicial experience and common
sense.” *Id.* at 675 (citation omitted). “[W]here 3 the well-pleaded facts do not permit the court to
infer more than the mere possibility of 4 misconduct, the complaint has alleged—but it has not
‘show[n]’—‘that the pleader is 5 entitled to relief.’” *Id.* 6 “In reviewing a Rule 12(b)(6) motion to
dismiss, a district court must accept as true 7 all facts alleged in the complaint, and draw all
reasonable inferences in favor of the 8 plaintiff.” *Wi-LAN Inc. v. LG Elecs., Inc.*, 382 F. Supp. 3d
1012, 1020 (S.D. Cal. 2019) 9 (citing *Retail Prop. Tr. v. United Bhd. of Carpenters & Joiners of*
Am., 768 F.3d 938, 945 10 (9th Cir. 2014)). Where a complaint does not survive 12(b)(6) analysis,
the Court will 11 grant leave to amend unless it determines that no modified contention “consistent
with the 12 challenged pleading . . . [will] cure the deficiency.” *DeSoto v. Yellow Freight Sys.,*
Inc., 13 957 F.2d 655, 658 (9th Cir. 1992) (quoting *Schreiber Distrib. Co. v. Serv-Well 14*
Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986)).

15 ANALYSIS

16 *Fiesta Ventures* moves to dismiss Counterclaims Two and Four of *Qdoba’s* Second 17 Amended
Counterclaim on multiple grounds. *Am. Mot.* at 3. First, *Fiesta Ventures* argues 18 that *Qdoba* is
not entitled to lost future royalties as a matter of law under the California 19 precedent established
in *Postal Instant Press, Inc. v. Sealy*, 51 Cal. Rptr. 2d 365 (Ct. App. 20 1996). And second, *Fiesta*
Ventures argues that lost future royalties are not available as a 21 remedy to *Qdoba* because they
violate public policy as set forth in the California Franchise 22 Relations Act and California
Franchise Investment Law. *Id.* at 14. 23 Because the Court finds that the claims contain plausible
allegations upon which 24 *Qdoba* may seek damages for lost future royalties and that the public

policy argument is 25 inapposite, the Court DENIES Fiesta Ventures's Amended Motion to Dismiss 26 Counterclaims Two and Four. Furthermore, the Court DISMISSES AS MOOT Qdoba's 27 Request for Judicial Notice as the documents included in the request are not relevant to the 28 Court's analysis. 1 I. Lost Future Royalties as Damages Under Sealy 2 Fiesta Ventures argues that Qdoba is seeking a form of relief to which they are not 3 entitled because Sealy precludes awarding lost future royalties. Am. Mem. at 12. Sealy 4 generally stands for the proposition that lost future royalties are unavailable in the absence 5 of a total breach when a franchisor exercises its right to terminate a franchise agreement. 6 51 Cal. Rptr. 2d at 370. Fiesta Ventures's argument aligns with the reasoning expressed 7 in Sealy; namely that, when a franchisor exercises its contractual right to terminate a 8 franchise agreement, the franchisor may not obtain lost future royalties. Am. Mem. at 12. 9 Qdoba does not agree that Sealy is applicable in this case, arguing that it is both factually 10 and legally distinguishable. Opp'n at 9. 11 To the extent Fiesta Ventures argues that Sealy categorically forecloses lost future 12 royalties as a matter of law, the Court is unpersuaded. The Court will accept Sealy as 13 controlling for the purposes of resolving the instant Motion. Nonetheless, even if the Court 14 accepts Sealy as controlling, Sealy still contemplates the possibility of a total breach, and 15 with it, the availability of awarding damages in the form of lost future royalties. 16 A. Case Description of Sealy 17 In Sealy, a franchisor sought lost future royalties as damages after terminating a 18 franchise agreement due to the franchisee's multiple alleged breaches. 51 Cal. Rptr. 2d 19 at 367. The court in Sealy held that, although the franchisee breached the terms of the 20 franchise agreement, because the franchisor elected to terminate the agreement in full, the 21 franchisor was not entitled to receive lost future royalties. Id. at 369. Elaborating upon 22 this ruling, the court stated that "[n]othing in the franchisee's failure to pay past royalties 23 in any sense prevented the franchisor from earning and receiving its future royalty 24 payments. No, it was the franchisor's own decision to terminate the franchise agreement 25 that deprived it of its entitlement to those future royalty payments." Id. 26 The Sealy court also found that an exception to this rule would apply in the event of 27 a franchisee's total breach; indeed, there might be a case where "the breach may be of a 28 type which directly causes the franchisor to lose future profits independent of the 1 franchisor's own termination of the franchise agreement." Id. at 375. Citing landmark 2 California Supreme Court caselaw, the court said, "it is not surprising the California 3 Supreme Court allowed the plaintiff to recover future profits it was prevented from earning 4 as a direct result of defendant's breach," in a case "where the franchisor wrongfully 5 terminates the franchise or closes down a product line." Id. at 370 (citing *Hollywood 6 Cleaning & Pressing Co. v. Hollywood Laundry Serv.*, 17 P.2d 712, 713 (Cal. 1932) 7 (stating that, in a case of a franchisor's wrongful termination, it would be proper to award 8 "not only the damages that have accrued at the time of trial, but also the loss that will be 9 incurred for the balance of the contract period")). Sealy itself is a very fact-specific 10 opinion. 51 Cal. Rptr. 2d at 371. In point of fact, Sealy explicitly states, "we wish to make 11 it clear we are not holding franchisors can never collect lost future royalties for franchisee's 12

breaches of the franchise agreement. That entitlement depends on the nature of the breach 13 and whether the breach itself prevents the franchisor from earning those future royalties.” 14 Id. 15 Ultimately, Sealy seems to condition a finding for causation upon whether a breach 16 was partial or total, not necessarily upon whether the lost profits are natural and direct 17 consequences of the breach. In the event of a partial breach, if a franchisor elects to 18 exercise its right to terminate the agreement, the franchisor is the direct and proximate 19 cause for the termination and therefore cannot recover lost future damages. Id. at 369. 20 However, should the breach be total, a franchisor’s decision to terminate is predicated upon 21 the total breach and repudiation of the agreement, making the breaching party (the 22 franchisee in this hypothetical) the direct and proximate cause for the termination.

23 Id. at 375.

24 B. Concerns With Sealy 25 The Court is concerned that an adoption of Sealy could potentially create untenable, 26 even unjust, circumstances for plaintiffs, especially in such a case as this one, where a 27 defendant has possibly repeatedly failed to perform. The Sealy court acknowledged the 28 somewhat onerous burden its causation analysis placed on a franchisor when faced with a 1 breaching franchisee, stating that, “if the franchisor had not terminated the franchise 2 agreement it might have been required to sue again and again” 51 Cal. Rptr. 2d 3 at 370. Or, in other words, under Sealy, a plaintiff would be forced to periodically sue the 4 defendant to recover profits, or risk forfeiting recovery altogether because, by terminating 5 the agreement, the plaintiff would be the direct and proximate cause of the termination, 6 despite the defendant’s defaults. Id. 7 This result forms the basis for a great deal of the criticism leveled at Sealy. See, e.g., 8 Radisson Hotels Int’l v. Majestic Towers, Inc., 488 F. Supp. 2d 953, 963 n.10 (C.D. Cal. 9 2007) (“In this Court’s view, the Sealy Court’s holding that a franchisor has no remedy but 10 to sue the franchisee over and over again as lost royalties is simply untenable.”). And the 11 Court is wary of any potential acceptance of Sealy for the same reasons. Yet even more 12 suspect to the Court is Sealy’s apparent departure from California contract law. 13 In an action for a breach of contract, the damages awarded to an injured party are 14 meant to give them the benefit of that bargain, to place them in the same position they 15 would have been in had the contract been performed. Coburn v. Cal. Portland Cement Co., 16 77 P. 771, 772–73 (Cal. 1904); see also Cal. Civ. Code § 3300 (“[T]he measure of 17 damages . . . is the amount which will compensate the party aggrieved for all the detriment 18 proximately caused thereby, or which, in the ordinary course of things, would be likely to 19 result therefrom.”). In a case “where the object of the contract is profits,” it is “presumed 20 that lost profits were contemplated by the parties” at the time of agreement. Brandon & 21 Tibbs v. George Kevorkian Acct. Corp., 227 Cal. Rptr. 40, 48 (Ct. App. 1990). 22 Furthermore, California Code provides that, in the event of a breach, a person may recover 23 what they “could have gained by the full performance thereof on both sides.” Cal. Civ. 24 Code § 3358. Damages for lost profits are traditionally limited partially by causation, that 25 is to say, “[t]he only prerequisite to recovery of lost profits is proximate causation: the lost 26 profits must

be the natural and direct consequences of the breach.” Brandon & Tibbs, 27 227 Cal. Rptr. at 48.

28 The aforementioned analysis in Sealy hardly seems to adhere to the goals of contract 1 damages as enumerated under California law and as expounded upon above. As a court 2 doubtful of Sealy stated, “where a franchisee breaches a contract and demonstrates that it 3 is unable or unwilling to meet its obligations, lost future profits are a proximate result of 4 the breach because the franchisee’s actions are a ‘substantial factor in bringing about that 5 loss or damage.’” Radisson Hotels Int’l, Inc., 488 F.Supp. 2d at 963 n.10 (quoting US 6 Ecology, Inc. v. State, 28 Cal. Rptr. 3d 894, 916–17 (Ct. App. 2005)). 7 Although the Court expresses skepticism that Sealy even stands for the correct 8 standard in this district, let alone that it should be a controlling case in this matter, it need 9 not decide whether Sealy controls at this point because the total breach exception outlined 10 in Sealy could apply based on the factual allegations in this case. 11 C. Total Breach Exception in Sealy 12 Under California law, “the elements of a cause of action for breach of contract are 13 (1) the existence of the contract, (2) plaintiff’s performance or excuse for nonperformance, 14 (3) defendant’s breach, and (4) the resulting damages to the plaintiff.” Oasis W. Realty, 15 LLC v. Goldman, 250 P.3d 1115, 1121 (Cal. 2011) (citing Reichert v. General Ins. Co., 16 442 P.2d 377, 377 (Cal. 1968)). If applying Sealy, once a court finds there may have been 17 a breach, the court must next determine if the breach is total or partial under California law. 18 This is material precisely because Sealy leaves open the possibility of awarding lost future 19 royalties only in the event of a total breach. So, the question therefore is not one of whether 20 there was a breach, but whether the breach was partial or total. The court in Sealy merely 21 states that it is dependent on the nature of the case, which leaves this Court without 22 guidance in the instant case. 51 Cal. Rptr. 2d at 371. 23 Because Sealy does not explore what a total breach is, which implicates the potential 24 application of the total breach exception, the Court turns to the standard set by the 25 California Supreme Court in Coughlin v. Blair, 262 P.2d 305 (Cal. 1953), to shed some 26 light on how to determine a partial versus a total breach under California law. 27 In Coughlin, the plaintiff brought suit against the defendant because, although the 28 defendant “did not repudiate the contract,” he also did not “perform [his] obligations 1 thereunder.” Id. at 308. The court found that, “[i]n an action for damages for such a breach, 2 the plaintiff in that one action recovers all his damages, past, and prospective.” Id. (citing 3 Abbott v. 76 Land & Water Co., 118 P. 425, 427–28 (Cal. 1911)). This is vital to a case 4 involving a total breach of contract because, should a plaintiff wish to bring a subsequent 5 action for additional damages, it would be barred by res judicata. Id. Comparable to how 6 the court in Sealy found that “the franchisor-franchisee relationship introduces some 7 special considerations,” the court in Coughlin found that the circumstances of each case 8 would be determinative in deciding whether the breach was total. Sealy, 51 Cal. Rptr. 2d 9 at 375; Coughlin, 262 P.2d at 309. 10 The plaintiff in Coughlin repeatedly requested for the defendant to perform under 11 the terms of their contract; however, the plaintiff did not file for a breach of contract until 12 nearly a year after the alleged default. Id. at 312. Had the plaintiff brought the action 13 within the first year, the court may have treated that breach as

partial for, in a case where 14 “the injured party has fully performed his obligations under a bilateral contract, courts 15 usually treat a breach as partial unless it appears that performance of the agreement is 16 unlikely and that the injured party may be protected only by recovery of damages for the 17 value of the promise.” Id. at 311–12 (citing *Gold Mining & Water Co. v. Swinerton*, 18 142 P.2d 22, 30 (Cal. 1943)). When the plaintiff brought suit against the defendant, the 19 plaintiff was indicating that the defendant’s default was no longer considered to be a partial 20 breach. The court found, therefore, that, 21 Defendants could not reasonably expect plaintiffs to continue indefinitely to treat the breach as partial. Even if a breach might 22 be considered partial at the time performance is due, there is a 23 limit to the time a promise must thereafter await performance. . . . Despite repeated requests by plaintiffs, 24 defendants had not installed the improvements called for by the 25 contract. It was uncertain when if ever they would do so. Although defendants had not expressly repudiated the contract, 26 their conduct clearly justified plaintiff’s belief that performance 27 was either unlikely or would be forthcoming only when it suited defendant’s convenience. Plaintiffs were not required to endure 28 1 tthusatti fuinecde ritna intrtyea otirn tgo adwefaeint dthaantt ’cso nnvoenn-ipeenrcfeo ramndan wcee rea st hear etfootrael 2 breach of the contract. 3 4 Coughlin, 262 P.2d at 312. 5 The same concerns which appear to have motivated the court in *Sealy* to provide a 6 total breach exception in the first place also find footing in *Coughlin*. To wit, that it feels 7 contrary to California law to force a party to repeatedly sue in order to recover the amount 8 of damages to which they would have been entitled had they been able to pursue lost future 9 royalties as damages. 10 D. Application of *Coughlin* 11 The definition set out in *Coughlin* provides a workable standard through which a 12 partial or a total breach may be ascertained. The Court recognizes that Qdoba does not 13 believe *Sealy* is applicable in this case, however the Court has already decided to accept 14 *Sealy* for the purposes of the instant Motion. Here, Qdoba argues that the reason for the 15 termination was “FVB’s total failure to perform under that agreement,” thereby further 16 distinguishing the proximate cause analysis from that in *Sealy*. Opp’n at 10. “Where 17 Qdoba was frustrated by FVB’s total breach of its Franchise Agreement, Qdoba had the 18 contractual right to end its relationship with FVB’s affiliate, [FVD].” Id. at 12. 19 Additionally, although Qdoba entirely rejects *Sealy*, Qdoba also asserts both that *Fiesta Ventures*’s breach was total and that *Fiesta Ventures* was the direct and proximate cause of 21 Qdoba’s damages. Id. at 9. *Fiesta Ventures* argues, on the other hand, that “there is not a 22 single factual [sic] allegation of any breach of the *Dayton Franchise Agreement*, let alone 23 allegations sufficient to support any claim or inference that there was a total breach of the 24 *Dayton Franchise agreement* that prevented Qdoba Franchisor from receiving the benefit 25 from that franchise agreement.” 2 Reply at 10. 26 27 2 To the extent *Fiesta Ventures* contends that they did not breach the *FVD franchise agreement*, the 28 presence of Section 28.3.14 in the franchise agreements, holding *FVD* and *FVB* responsible for each 1 At the dismissal stage, the Court must accept the facts alleged by Qdoba in its 2 Counterclaim as true. Subsequently, under those facts, the Court draws all reasonable 3 inferences in favor of Qdoba’s claims. See *Wi-Lan*

Inc., 382 F. Supp. 3d at 1020. Pertinent 4 to the Court’s analysis is Qdoba’s breakdown of the elements required for a successful 5 breach of contract claim in California. Opp’n at 14. Thus, the Court finds Qdoba has 6 plausibly alleged that: (1) Fiesta Ventures and Qdoba entered into contractual agreements, 7 one with FVD and one with FVB; (2) Qdoba performed in full pursuant to the terms of the 8 agreements; (3) FVB failed to open and FVD was in breach by virtue of its affiliate FVB 9 being in breach; and (4) Qdoba has suffered damages commensurate with the value of the 10 franchise agreements with FVB and FVD. 11 Much like the plaintiff in Coughlin, Qdoba gave Fiesta Ventures numerous 12 opportunities to correct the alleged defaults in their franchise agreements, but to no avail. 13 Countercl. ¶ 39. Eventually, Qdoba allegedly felt compelled to terminate the franchise 14 agreements for reasons akin to those found in Coughlin, namely that Fiesta Ventures’s 15 “conduct clearly justified [Qdoba’s] belief that performance was either unlikely or would 16 be forthcoming only when it suited defendant’s convenience. Plaintiffs . . . were therefore 17 justified in treating defendant’s non-performance as a total breach of the contract.” 18 262 P.2d at 312. Sealy, too, even acknowledged a total breach would exist in a scenario 19 such as the one plausibly present in the instant case, stating that distinguishing a total 20 breach from a partial breach “depends on the nature of the breach and whether the breach 21 itself prevents the franchisor from earning those future royalties.” 51 Cal Rptr. 2d at 371. 22 Where, as here, a defendant has allegedly failed to timely open a location after numerous 23 opportunities to do so, the Court may plausibly infer that the nature of that breach totally 24 prevents a franchisor from earning future royalties, or any royalties for that matter. See 25 Coughlin, 262 P.2d at 311 (citing Gold Mining & Water Co., 142 P.2d at 31–33) (finding 26 27 agreement with Qdoba in order for the Court to find it plausible for FVD to have breached. Fiesta 28 Ventures’s argument that FVD “was not terminated due to any alleged breach by” FVD is unconvincing 1 that, “courts usually treat a breach as partial unless it appears that performance of the 2 agreement is unlikely and that the injured party may be protected only by recovery of 3 damages for the value of the promise”)). 4 Accordingly, although this Court doubts that Sealy establishes the correct rule of law 5 as the California Supreme Court would see it, under Coughlin, the Court concludes that the 6 allegations against Fiesta Ventures plausibly constitute a total breach. Moreover, because 7 the total breach exception in Sealy allows for recovery of lost future royalties, this entitles 8 Qdoba to seek damages in the form of lost future royalties. Alternatively, if Sealy is not 9 adopted, Qdoba’s allegations against Fiesta Ventures still plausibly constitute a breach, 10 partial or otherwise, which entitles Qdoba to recover lost future royalties. In either 11 circumstance, Qdoba has requested relief in a form that would be available to them; 12 namely, lost future royalties. 13 II. Fiesta Ventures’s Policy Argument 14 Fiesta Ventures also argues that “[a]warding lost future royalties [to Qdoba] as 15 damages would be contrary to California’s public policy, namely the California Franchise 16 Relations Act (CFRA) and the California Franchise Investment Law Act (CFIL).” 17 Opp’n at 15. 18 Facially, the CFRA makes it clear that Fiesta Ventures’s argument is misguided. 19 Cal. Bus. & Prof. Code § 20015. The CFRA

specifically states that its application is limited only to those franchises, “when either the franchise is domiciled in this state or the franchised business is or has been operated in this state.” *Id.* The franchise agreements between Fiesta Ventures and Qdoba contain a forum selection clause, choosing California law as the governing law for any dispute arising from the agreements. *Am. Mem.* at 10. But that does not mean that the legal protections offered by CFRA are extended to the agreements at issue in this matter as Fiesta Ventures argues; in fact, just the opposite is true. *Id.*; see also *Gravquick A/S v. Trimble Navigation Int’l Ltd.*, 323 F.3d 1219, 1223 (9th Cir. 2003) (“When a law contains geographical limitations on its application, however, courts will not apply it to the parties falling outside of those limitations, even if the parties stipulate that the law should apply.”). The text of the CFRA and precedent are clear that the CFRA simply does not apply in a case with out-of-state franchise locations. *Cal. Bus. & Prof. Code* § 20015; see e.g., *Taylor v. 1-800-GOT-JUNK?, LLC*, 387 F. App’x 727, 729 (9th Cir. 2010) (stating that, “even though the parties stipulated to the application of Washington law,” a Washington statute “was not applicable because of its territorial limitation”). CFIL, conversely, states that “no franchisor may terminate a franchise prior to the expiration of its term, except for good cause.” *Cal. Bus. & Prof. Code* § 20020. Although not said expressly in their Motion, Fiesta Ventures’s public policy argument seems to further invoke *Sealy* by stating that an award of lost future profits would be “unreasonable, unconscionable, and oppressive . . . [and] would place a bludgeon in the hands of franchisors in contract disputes with their franchisees.” *Sealy*, 51 Cal. Rptr. 2d at 373. This, then, would conflict with the CFIL’s requirement that “no franchisor may terminate a franchise prior to the expiration of its term, except for good cause.” *Cal. Bus. & Prof. Code* § 20020. But the CFIL primarily governs the sale of franchises, which is not at issue in this matter. *Cal. Corp. Code* § 31001 (“[I]t is the intent of this law to prohibit the sale of franchises where the sale would lead to fraud or a likelihood that the franchisor’s promises would not be fulfilled . . .”). As Qdoba argued in their Opposition to the instant Motion, it is not entirely clear which part of the alleged events Fiesta Ventures believes are in contravention of the CFRA or CFIL. However, because the CFRA and CFIL are not applicable in this matter, the Court need not reach Fiesta Ventures’s claim that Qdoba’s actions are thus violative.

CONCLUSION

For the foregoing reasons, the Court DENIES Counterdefendant Fiesta Ventures’s Motion to Dismiss the Second and Fourth Counts in Counterclaimant Qdoba’s, Counterclaim (ECF No. 30). Additionally, the Court DENIES AS MOOT Counterclaimant Qdoba’s Request for Judicial Notice (ECF No. 31-1). The Court hereby ORDERS Counterdefendant Fiesta Ventures to file an ANSWER to Counterclaimant 1 || Qdoba Franchisor, LLC’s Counterclaim no later than fourteen (14) days after the date on which this Order is electronically docketed. IT IS SO ORDERED. ||Dated: August 21, 2025 tt 5 ja Janis L. Sammartino ‘ United States District Judge

