

IN THE CIRCUIT COURT OF
SHELBY COUNTY, ALABAMA

LADY OF AMERICA
FRANCHISE CORPORATION,
Plaintiff,

v.

MATTEIGHTEEN 19, LLC, an
Alabama limited liability
company,
Defendant.

CV 17-539

RECEIVED AND FILED
MARV HARRIS
JUN 11 2007
CIRCUIT CLERK
SHELBY COUNTY

NOTICE OF FILING OF FOREIGN JUDGMENT

TO: MATTEIGHTEEN 19, LLC
1605 Deer Valley Drive
Hoover, Alabama 35226

The Plaintiff, Lady of America Franchise Corporation, hereby files with the Court, pursuant to Ala. Code § 6-9-232 et seq., a judgment obtained by the Plaintiff against Matteighteen 19, LLC in the United States District Court for the Southern District of Florida. A copy of the judgment is attached hereto along with a copy of the judgment creditor's affidavit.



Robert A. Huffaker (HUF003)

RUSHTON, STAKELY,
JOHNSTON

& GARRETT, P.A.

Post Office Box 270

Montgomery, AL 36101-0270

Telephone: (334) 206-3215

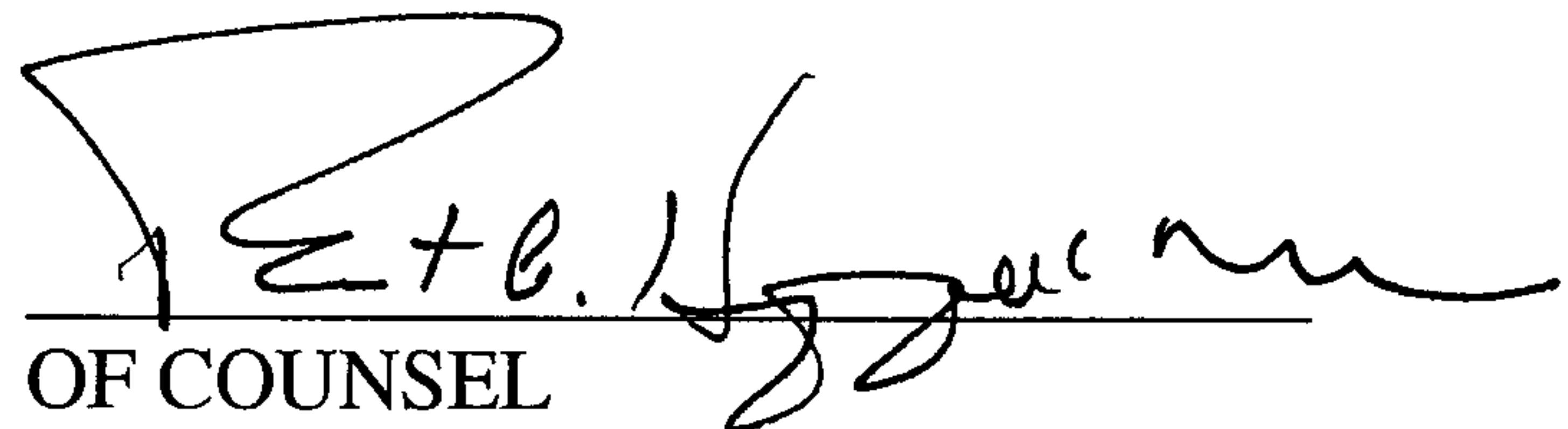
Facsimile: (334) 481-0814


E-Mail: rah@rsjg.com

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing document upon the following by placing a copy of the same in the United States Mail, first class postage prepaid and properly addressed on this the 8 day of June, 2007.

Matteighteen 19, LLC
1605 Deer Valley Drive
Birmingham, AL 35226-5070


OF COUNSEL


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Shelby Cnty Judge of Probate, AL
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IN THE CIRCUIT COURT OF
SHELBY COUNTY, ALABAMA

LADY OF AMERICA
FRANCHISE CORPORATION,
Plaintiff,

v.

MATTEIGHTEEN 19, LLC, an
Alabama limited liability
company,
Defendant.

CV 07-539

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MARY HARRIS
JUN 11 2007
CIRCUIT CLERK
SHELBY COUNTY

AFFIDAVIT BY PLAINTIFF

STATE OF ALABAMA

MONTGOMERY COUNTY

Before me, Veronique W. Andrews, a Notary Public in and for said County and State, personally appeared Robert A. Huffaker, who being by me first duly sworn to speak the truth, deposes and says on oath as follows:

1. My name is Robert A. Huffaker. I am the attorney for LADY OF AMERICA FRANCHISE CORPORATION, the Plaintiff in the above-captioned action.
2. On the 24th day of August, 2006, LADY OF AMERICA FRANCHISE CORPORATION, as Plaintiff recovered a judgment against MATTEIGHTEEN 19, LLC, an Alabama limited liability company, as Defendant, in the United States

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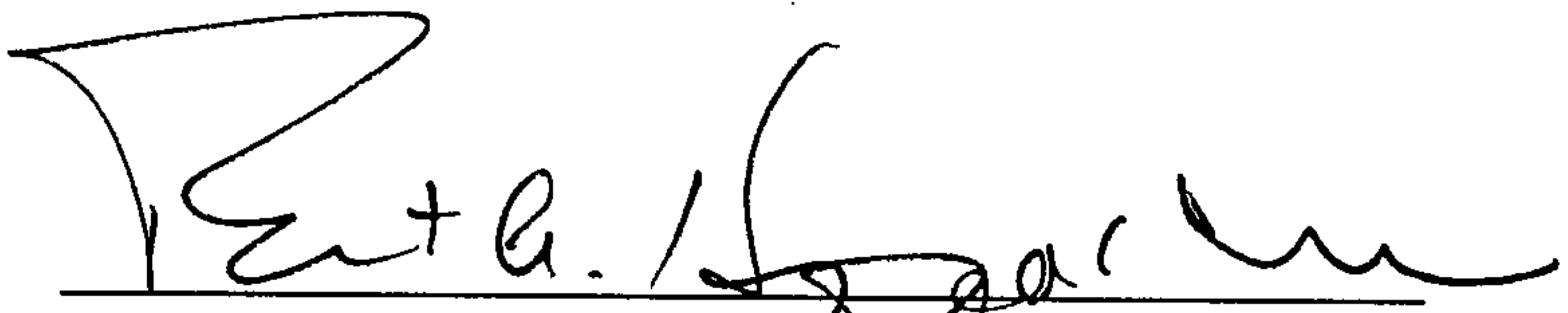
District Court of the Southern District of Florida, a true and correct copy of which is attached hereto as Exhibit "A."

3. The Plaintiff-Judgment Creditor is LADY OF AMERICA FRANCHISE CORPORATION, whose address is 500 E. Broward, Suite 1650, Fort Lauderdale, FL 33394.

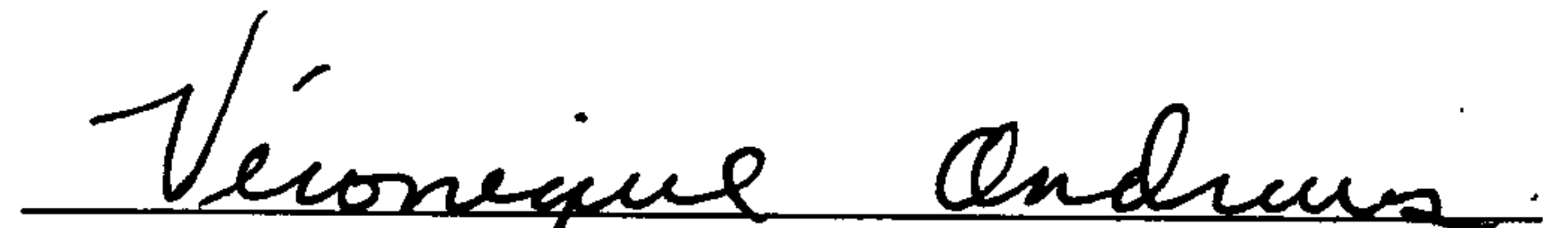
4. The Defendant-Judgment Debtor is MATTEIGHTEEN 19, LLC, whose last known address is 1605 Deer Valley Drive, Hoover, Alabama 35226.

5. The said judgment is valid, enforceable, and unsatisfied. Further, to affiant's knowledge and information, no appeal is pending and no supersedeas bond or security has been given.

Further affiant saith not.


ROBERT A. HUFFAKER

Sworn to and subscribed before me on this 8th day of June, 2007 at Montgomery, Alabama, witness my hand and official seal of office.


Notary Public

My Commission Expires: 6-6-2009

United States District Court
Southern District of Florida

LADY OF AMERICA FRANCHISE
CORPORATION

Case No. 06-60404 CIV-COHN/JOHNSON

Plaintiff(s),

**CERTIFICATION OF JUDGMENT FOR
REGISTRATION IN ANOTHER DISTRICT**

v.

MATTEIGHTEEN 19, LLC, and JILL
RODRIGUEZ

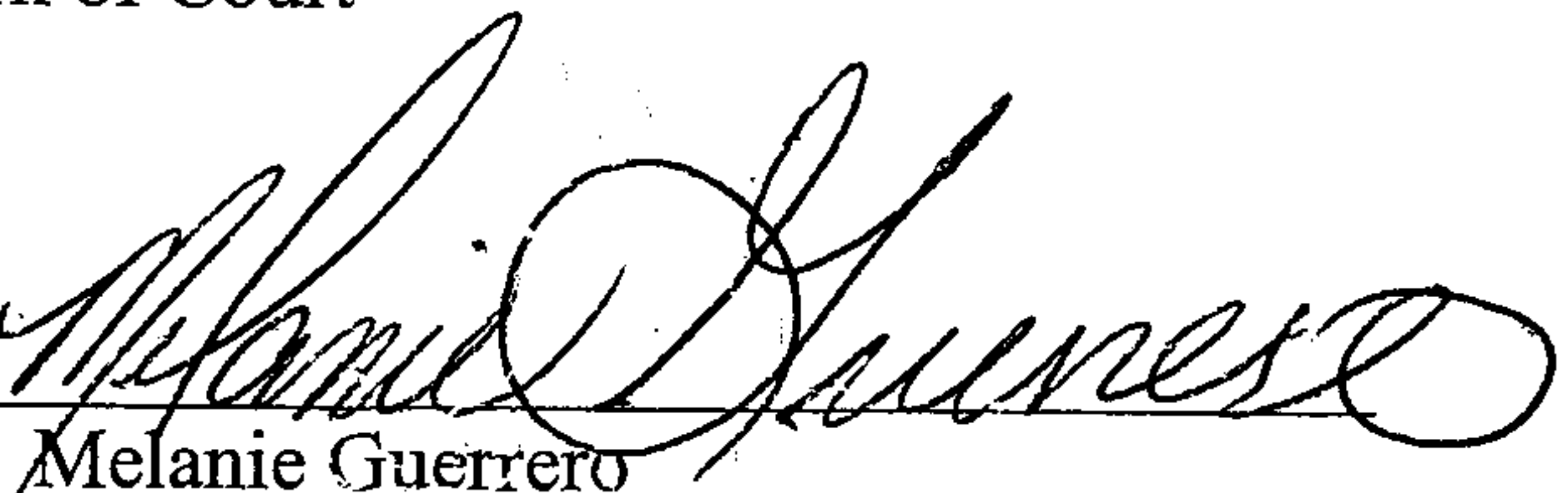
Defendant(s).


I, CLARENCE MADDOX, Clerk of the United States District Court certify that the attached judgment is a true and correct copy of the original judgment entered in this action on August 24, 2006, as it appears in the records of this court, and that no notice of appeal from this judgment has been filed, and no motion of any kind listed in Rule 4(a) of the Federal rules of Appellate Procedure has been filed.

IN TESTIMONY WHEREOF, I sign my name and affix the seal of this Court on September 7, 2006.

CLARENCE MADDOX
Clerk of Court

by:


Melanie Guerrero
Deputy Clerk


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* Insert the appropriate language: . . . "no notice of appeal from this judgment has been filed, and no motion of any kind listed in Rule 4(a) of the Federal Rules of Appellate Procedure has been filed." . . . "no notice of appeal from this judgment has been filed, and any motions of the kinds listed in Rule 4(a) of the Federal Rule of Appellate Procedure [*] have been disposed of, the latest order disposing of such a motion having been entered on [date]." . . . "an appeal was taken from this judgment and the judgment was affirmed by mandate of the Court of Appeals issued on [date]." . . . "an appeal was taken from this judgment and the appeal was dismissed by order entered [date]."

Rodriguez

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

**CLOSED
CIVIL
CASE**

CASE NO.: 06-60404-CIV-COHN/JOHNSON

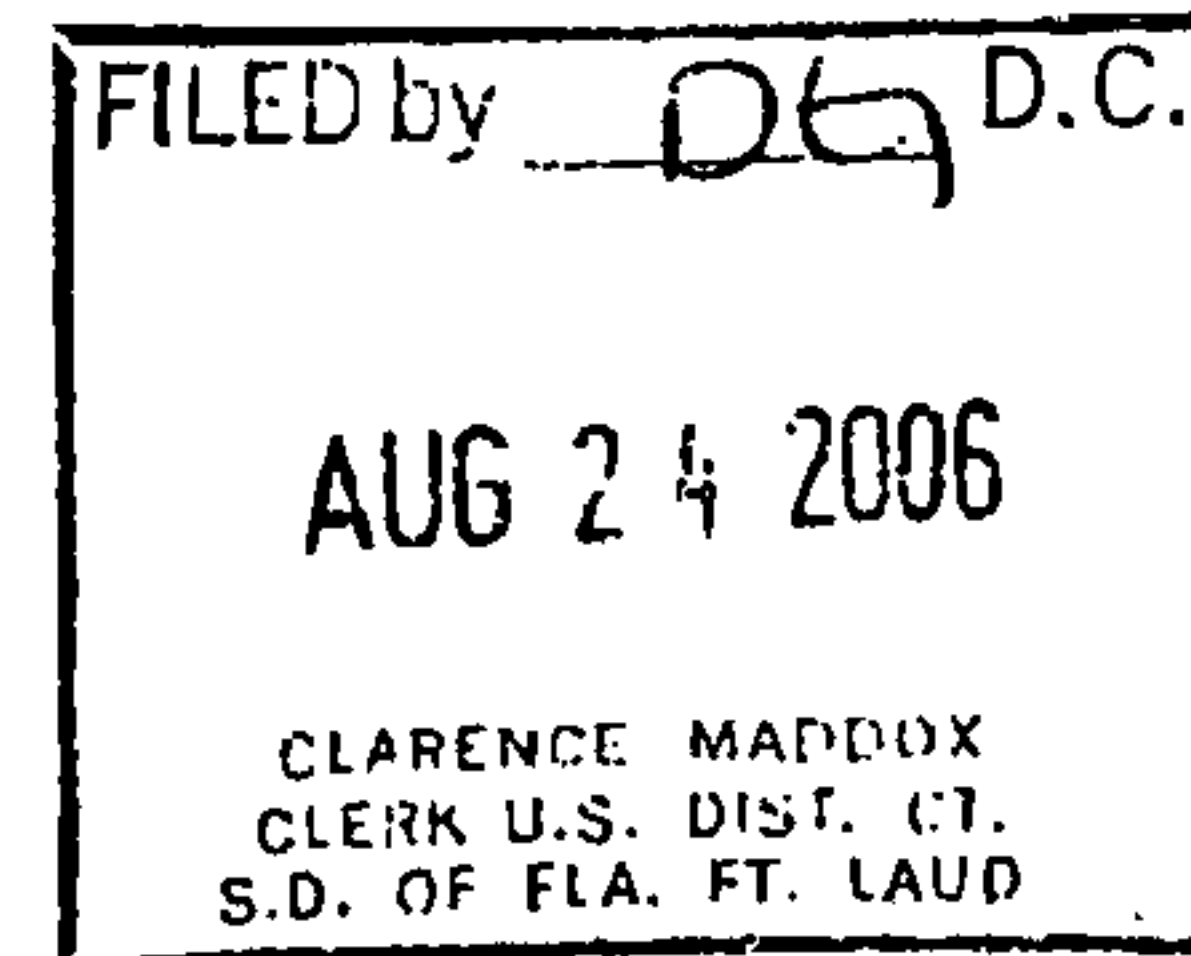
LADY OF AMERICA
FRANCHISE CORPORATION,

Plaintiff,

vs.

MATTEIGHTEEN 19, LLC, an
Alabama limited liability company and
JILL RODRIGUEZ,

Defendants.



DEFAULT FINAL JUDGMENT

THIS CAUSE is before the Court upon Plaintiff's Amended Motion for Entry of Permanent Injunction and Final Judgment After Default Against Defendant Matteighteen 19, LLC [DE 20].¹ The Court has carefully considered the Motion and accompanying Declaration of Jill A. Cook, Esq. calculating the amount due [DE 20, Exh. C], the entire file of this case including Plaintiff's Complaint and exhibits [DE 1], return of service upon Defendant [DE 10] the Clerk's entry of default against Defendant [DE 14], and the failure of Defendant to respond to Plaintiff's Motion, and is otherwise fully advised in the premises.

Pursuant to a franchise agreement between the parties, Defendant Matteighteen 19, LLC owned and operated one of Plaintiff Lady of America Franchise Corporation's franchises. Section 9.1 of the parties' Franchise Agreement indicates that the agreement

¹ On June 13, 2006, Defendant Jill Rodriguez filed a Chapter 7 Bankruptcy [DE 22]. In an Order dated today, this Court stayed the above-styled cause as to Defendant Rodriguez. Therefore, Plaintiff seeks default judgment as to the only remaining Defendant to this action, Defendant Matteighteen 19, LLC.

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was for a period of ten years, or until April 12, 2012. [DE 1, Exh. A]. Defendant unilaterally terminated the agreement on December 25, 2005 leaving 76 months or 330 weeks remaining on their Franchise Agreement. (Letter from Shane Rodriguez [DE 1, Exh. B].) Pursuant to § 9.8(e) of the Franchise Agreement, all future royalties are due immediately upon termination. [DE 1, Exh. A]. Therefore, Plaintiff seeks recovery for 330 weeks of fees. [DE 13, Exh. C].

Section 6.3 of the Franchise Agreement states that the Royalty Fees due Plaintiff are "the greater of 10% of his or her prior week's gross receipts or \$100 per week." Plaintiff states that based on Defendant's prior earnings, the average weekly royalty due Plaintiff is \$358.71. Plaintiff therefore alleges that it is entitled to judgment in the amount of \$118,374.30 (\$358.71 per week for 330 weeks) rather than \$33,000 (\$100 per week for 330 weeks). The Court disagrees.

Section 6.3 of the Franchise Agreement clearly states that Plaintiff is entitled to 10% of the prior week's gross receipts or \$100 per week. In this case, because Defendant ceased operating its Lady of America franchise, its prior week's gross receipts are \$0.00. The Franchise Agreement does not entitle Plaintiff to average all past receipts to determine the amount owed. Plaintiff is entitled to judgment in the amount of \$33,000.00 (\$100 per week for 330 weeks) because \$100/week is greater than 10% of \$0.00.

Plaintiff also seeks injunctive relief. Section 8.3 of the Franchise Agreement contains a non-compete provision which provides:

(b) [F]or 2 years after the expiration or termination of this Agreement, . . . the Franchisee and its Associated Persons will not

(i) have a direct or indirect interest (as an officer, director, partner, investor, shareholder, employee, agent or otherwise) in any business

that engages in the same line of commerce as does the Franchisee's Center . . . where the business is located or operating in whole or in part within the Franchisee's Area and the state where the Franchisee's Center is or was located or within any other System Center's Franchisee area, county or [Area of Dominant Influence ("ADI")], or within any county or ADI where the Franchisee has reason to believe a System Center will begin operating within 1 year from the termination of this Agreement; . . .

(c) If the Franchisee commits any act in violation of these restrictions . . . the time period of these restrictions will be tolled during the pendency of the violation.


In this case, Plaintiff alleges that Defendant owns and/or operates a women's fitness center named "Lifestyle Fitness for Women" from the same location as the former Lady of America franchise. In the Complaint, Plaintiff asks the Court to issue a permanent injunction pursuant to the provision in § 8.3 enjoining Defendant from "operating a competing fitness center from the exact same location as their former Lady of America Fitness Center, or within any other Lady of America and/or Ladies Workout Express fitness center's area, county or ADI or within any county or ADI where Defendants have reason to believe that a System Center will begin operating within 1 year." (Compl. [DE 1], pp. 7-8.) Although the Court will award injunctive relief, it will not go outside the scope of the Franchise Agreement. The non-compete provision only limits operations for two years. It does not provide for a permanent injunction. However, pursuant to § 8.3(c) of the Franchise Agreement, the two years does not begin to toll until the date of this Order because the time restriction has been tolled while Defendant has been in violation of § 8.3 of the Franchise Agreement. (See Franchise Agreement, [DE 1, Exh. A], § 4.2(h).)

Based on the foregoing, it is **ORDERED AND ADJUDGED** as follows:

1. Plaintiff's Amended Motion for Entry of Permanent Injunction and Final

Judgment After Default Against Defendant Matteighteen 19, LLC [DE 13] is hereby **GRANTED**;

2. Judgment is hereby entered in favor of Plaintiff, Lady of America Franchise Corporation, a Florida corporation, and against Defendant Matteighteen 19, LLC, upon the Complaint and exhibits herein;
3. Plaintiff shall recover of Defendant the sum of \$33,000.00, consisting of the outstanding balance of future royalty fees owed to Lady of America Franchise Corporation pursuant to the parties' Franchise Agreement, §§ 6.3, 9.1, 9.6, and 9.9 [DE 1, Exh. A];
4. Defendant is hereby enjoined for two years from the date of this Order from having a direct or indirect interest (as an officer, director, partner, investor, shareholder, employee, agent or otherwise) in any business that engages in the same line of commerce as does the Lady of America Franchise Corporation where the business is located or operating in whole or in part within the Franchisee's Area, which is defined in § 3.1 of the Franchise Agreement as the area with a diameter of three miles in any direction from the location at issue in this case, and the state where the Franchisee's Center is or was located or within any other Lady of America Franchisee's Area or county or Area of Dominant Influence. Defendant is further enjoined from having a direct or indirect interest in any such business within any county or Area of Dominant Influence where the Franchisee has reason to believe a Lady of America franchise will begin operating within 1 year from


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the date of this Order.

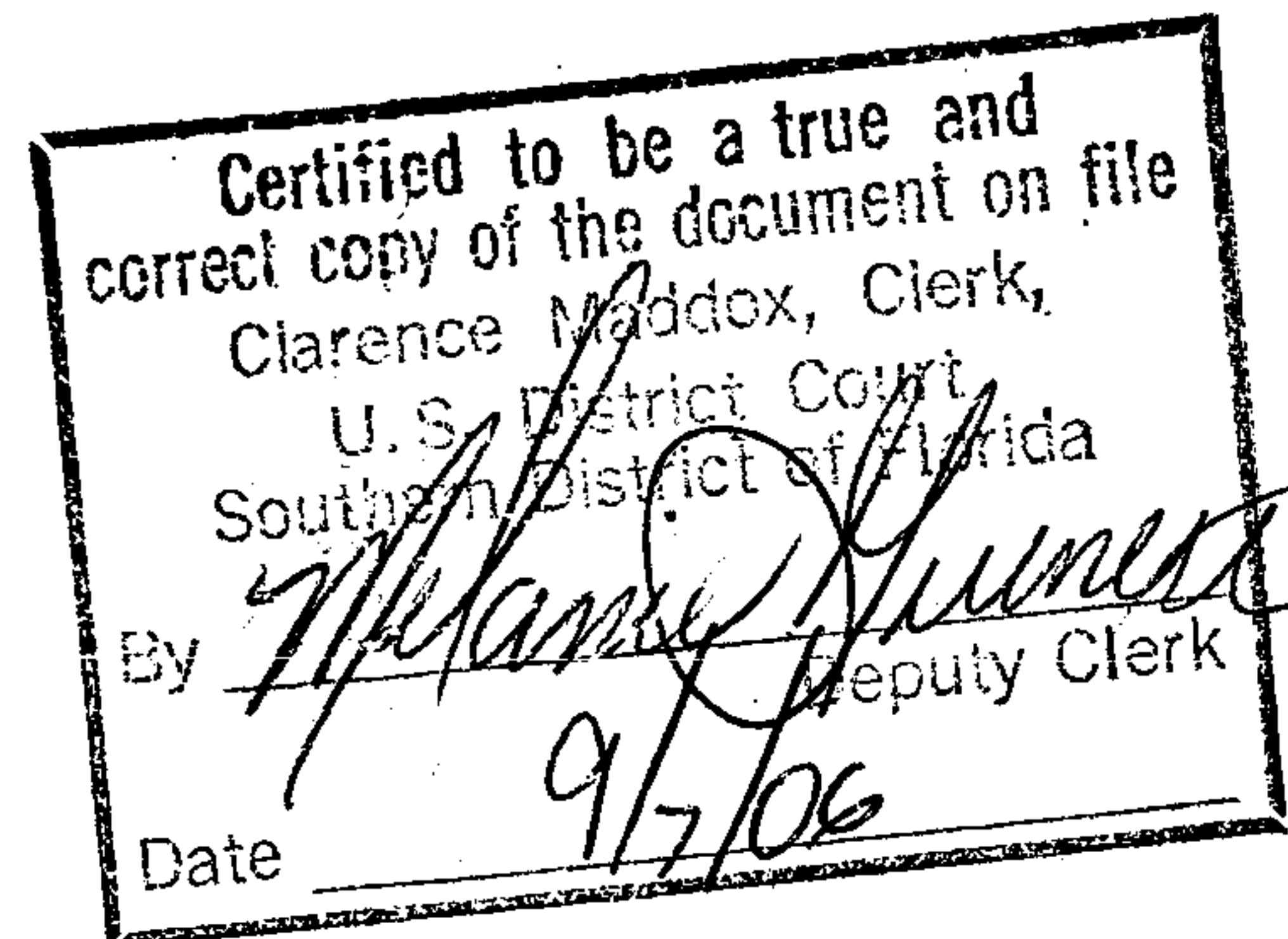
5. All pending motions are **DENIED** as moot.
6. The Clerk of the Court shall administratively **CLOSE THIS CASE** in light of the default final judgment entered as to Defendant Matteighteen 19, LLC and the stay as to Defendant Jill Rodriguez.


DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida,
this 24th day of August, 2006.


JAMES J. COHN
United States District Judge

copies to:

Roberto Zarco, Esq.
Robert M. Einhorn, Esq.
Himanshu M. Patel, Esq.




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