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**7<sup>th</sup> LAWASIA** International Moot  
MOOT PROBLEM 2012

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Organiser of the LAWASIA International Moot Competition

# MOOT PROBLEM

## The Great Wall Noodle Shop Problem<sup>1</sup>

The first Great Wall Noodle Shop opened in Tianjin, China on May 20, 1983. It was founded and co-owned by Jianping Ji and Xuefeng Wang.<sup>2</sup> It was located on the main road to the Huangyaguan Pass of Great Wall, hence the name Great Wall Noodle Shop. In addition to a variety of noodle dishes it also served “local dishes” such as maize cake, wild vegetable cake, millet gruel, corn gruel, baked pancake, stewed chicken and Chinese toon salad. In the past 25+ years, Ji and Wang have franchised numerous other Great Wall Noodle Shops in China as well as in Singapore and Malaysia and have expanded the menu to include a wide variety of Chinese dishes. See Appendix 1.

In early 2011, they decided they would like to expand to Indonesia. In June Wang traveled to Singapore to meet with Mr. Bao Shan, the franchise owner of the Singapore restaurants, to see if he would be interested in opening several restaurants in Indonesia. **He wasn't!**

On June 20, 2011, while waiting for his flight home in the Singapore Airlines Lounge in Changi Airport, Wang met Dr. Adi Budiamman, a prominent Jakarta surgeon. As Wang explained the purpose of his visit to Singapore, Dr. Budiamman became more and more interested. As his flight was being called for boarding, Dr. Budiamman announced excitedly: “I’ll do it! I’d love to operate a couple of Chinese restaurants *in my spare time*. I love Chinese food – worked my way thru college at a Chinese restaurant near Singapore National. **Where do I sign?**”

Wang retrieved the Franchise agreement intended for Mr. Bao from his briefcase; substituted Dr. Budiamman’s name on the contract; and explained the fee arrangements in detail. However, as Dr. Budiamman did not want to miss his flight home, Mr. Wang didn’t have time to go over the entire Franchise Agreement with Dr. Budiamman in detail and suggested that he take the Franchise Agreement home with him to review before he signed it. But Dr. Budiamman read through it quickly, referred derisively to all the “lawyer mumbo jumbo” and signed it. A photocopy of both the original English and a Bahasa Indonesia copy were delivered to Dr. Budiamman the next day.

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<sup>1</sup> This problem is completely fictional, with the sole exception of the geographical references – countries, cities and, of course, The Great Wall of China. Any resemblance to actual people – living or dead - was unintended.

<sup>2</sup> They later formed the Great Wall Noodle Shop LLC.

The two new franchises opened in September 2011. They were successful from the beginning – the Jakarta location far more than the Medan location.<sup>3</sup>

In late October 2011 Mr. Ji made an unannounced visit to both Indonesian restaurants as authorized by Article III G and/or Article VIII of the Franchise Agreement and found several violations of the Franchise Agreement involving the sale of food products not on the “official menu” being served<sup>4</sup> and substitutions for the ingredients of others.<sup>5</sup>

He also observed that some of the female employees in the Jakarta restaurant and almost all of the female employees in the Medan restaurant wore unauthorized clothing, a head scarf or Hijab pictured below. Dr. Budiamman explained that many of the Muslim women employees asked permission to wear a Hijab – a request which he felt obliged to approve.<sup>6</sup>



After returning home, Mr. Ji sent the following email (November 4, 2011) to Dr. Budiamman:

As I explained during my recent visit, you must take immediate steps to conform your operations to those of our other restaurants as required by our

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<sup>3</sup> An email “string” (or “thread”) inadvertently forwarded to Dr. Budiamman contained the following message from Mr. Ji to Mr. Wang: “The Jakarta restaurant is a ‘gold mine.’ I told you we should have given the franchise to a friend or relative not to a perfect stranger.”

<sup>4</sup> In addition to the regular Chinese Menu, any customer who requested one was given a “Special Menu” listing a number of traditional Indonesian dishes such as Gado-Gado, Sate Ayam, Kari Udang, Panggang Bumbu Rujak, Rendang and Oseng Oseng Tahu Tempe.

<sup>5</sup> The menu used in both restaurants included the following notation: “You may request that lamb be substituted for pork on any item on the menu at no extra charge.”

<sup>6</sup> Dr. Budiamman’s wife selected a red hijab to match the “official uniform” that the women are required to wear. Mr. Ji’s wife, who accompanied her husband, commented to him and Dr. Budiamman that she thought they were very attractive and matched the uniforms quite well.

Franchise Agreement. I am, of course, referring to the unauthorized menu items and the head scarves worn by many of your female employees. Serving unauthorized menu items raises very serious problems for a franchise owner. While we obviously recognize that Indonesian food is popular in Indonesia, The Great Wall Noodle Shops are **Chinese restaurants** ... not Indonesian restaurants. The Franchise agreement you signed is quite clear: **no food items not of the Great Wall Noodle Shop Standard Menu can be sold at any franchise without our permission** and we have not – and cannot – give you such permission. You seemed surprised that we would object to the serving of dessert items since they would be purchased in addition to – not as substitutes for – our standard menu items. This presents a somewhat different but equally important “uniformity” issue. Customers from other areas who visit your restaurants and enjoy the drinks and desserts may be disappointed when they visit Great Wall Noodle Shops in other locations and find they do not offer such enjoyable Indonesian deserts. And as we both know: a disappointed customer isn’t likely to return!

Mr. Wang and I want to emphasize that our opposition to allowing your employees to wear the hijab has absolutely nothing to do with religion. [You may recall that my wife commented on how attractive she thought the girls looked.] As I’m sure you appreciate, maintaining UNIFORMITY is the key to any successful franchise operation. Our franchise agreement, which you have agreed to follow, requires that the restaurant – inside and out – be the same **at all locations**. We require uniforms to help distinguish our restaurants from other establishments serving Chinese food. It is essential that all of our employees in every country where we operate dress the same. Even the slightest difference can cause a customer to doubt that a particulate restaurant is affiliated with all of the other Great Wall Noodle Shops. And if we allowed your employees to augment the “official uniform,” It might encourage employees at other locations to believe they need not follow our uniform regulations “to the letter.” If the employees don’t dress the same at all of our restaurants we will lose the “common appearance” element that is so essential to a successful franchise.

So the problem we seem to have - whether it involves the hijab, Ayam Kalasan, Cendol or Gethuk – is the same: they cannot be permitted in our restaurants as they will destroy the uniformity of the products and services and the appearance of the restaurants and their employees and in so doing, damage the identity and value of the Great Wall Noodle Shops trademarks.

If you do not immediately discontinue the above mentioned violations of the Franchise Agreement, we will have no choice but to terminate your Franchise.<sup>7</sup>

Two weeks later, an “inspector” hired by Mr. Ji visited both Indonesian franchises and submitted the following report to Mr. Ji electronically:

They are still serving Indonesian food at both locations but they are not listed on the menu. When, I asked for the Indonesian menu, I was informed that they no longer serve Indonesian food except for “The Special of The Day” – a single Indonesian dish written in Bahasa Indonesia on a chalk blackboard. The day I was there it was Ayam Kalasan (I ordered it ... it was very good.).

Many of the girls were wearing white scarves pictured below.



When I asked one of them what happened to the pretty red scarves they previously wore, she replied: “The Boss said we had to wear something that wasn’t as noticeable. Too bad – we liked the red ones better!”

The next day Mr. Ji and Mr. Wang sent a letter to Dr. Budiamman terminating the franchise and directing him to close both restaurants and remove the signage within 15 days. They indicated that they planned to reopen the Jakarta restaurant within 30 days “Under new Management” but that no decision had been made regarding the Medan restaurant.

When Dr. Budiamman refused to close his two restaurants, Wang and Ji submitted a Notice of Arbitration in conformity with Article 3 of the Kuala Lumpur Regional Arbitration Center (KLKCA) Fast Track Rules seeking a restraining order against Dr. Budiamman pursuant to Article XII B of the Franchise Agreement and damages for breach of the Franchise Agreement, trademark infringement and damage to the reputation of the Great Wall Noodle Shops.

Dr. Budiamman filed a response denying the allegations and asserting a counterclaim for breach of the franchise agreement and damage to his reputation.

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<sup>7</sup> Dr. Budiamman does not deny receiving this eMail.

A “Case Management Meeting [See Article 10 of the KLRC Fast Track Rules] was subsequently held by phone during which the parties agreed that the following issues would be covered at the November Hearing to be held on 18 November 2012 in Bali, Indonesia.

### Specific issues to be covered at the November Hearing

- A. What is the proper law to apply in resolving this dispute: Singapore Law, Indonesian Law, or some other law?
- B. In order to minimize additional delay in resolving this dispute, the parties are directed to address each of the following questions *in the alternative*: i.e., under both Indonesian and Singaporean law if they are different.<sup>8</sup>
  1. Is the Arbitration agreement valid and enforceable?
  2. Is the Franchise Agreement invalid under Indonesian Law – specifically Article 31 of Law 24 of 2009?<sup>9</sup>
  3. Is Article XII of the Franchise Agreement (Dispute Resolution) invalid and/or unenforceable as it **authorizes** the granting of specific performance should the Franchisee be found to have violated a provision of the Franchise Agreement **while prohibiting** the granting of specific performance should the Franchisor(s) be found to have violated a provision of the Franchise Agreement.
  4. Was a proper and timely Notice of Termination given to the Franchisee [Dr. Budiamman]?
  5. May the Franchisor terminate the franchise for any violation of the Franchise Agreement or must it be a substantial violation of the Agreement?
  6. Does the “inherent warranty of good faith and fair dealing” in interpreting and applying franchise agreements apply to this Franchise Agreement and, if so:
    - a. Did the serving of a single Indonesian dish referred to as “The Special of the Day” justify the termination of the franchise?
    - b. Did giving customers the option of substituting lamb for pork for menu items justify the termination of the franchise?
    - c. Did the wearing of the “new (white) hijab” by the female Muslim employees justify the termination of the franchise?
    - d. Do the above violations of the Franchise Agreement reflect a continuing disregard of the franchisee’s obligations under the Franchise Agreement to justify its termination?
  7. Does an employment regulation prohibiting the wearing of a hijab by female Muslim employees or restriction (or the color type of the hijab) violate the constitution and/or laws of Indonesia or any international treaties to which it is a member.

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<sup>8</sup> It is not essential that issues be cover in the order listed.

<sup>9</sup> Dr. Budiamman received his graduate medical training in the United States and is fluent in English..

## Issues not to be covered at this Hearing

1. The amount of damages, if any, either party may recover.
2. Any claims by any employees of the Indonesian GWNS restaurants.

# Great Wall Noodle Shop

## FRANCHISE AGREEMENT

BETWEEN

GREAT WALL NOODLE SHOP, LLC

AND

~~Bao Shan~~

*Pai Budiamman, M.D.*

## RECITALS

1. Many of our products are prepared according to special recipes and procedures, some of which include proprietary sauces and mixes.
2. We own the GREAT WALL NOODLE SHOP Trademark and other trademarks used in connection with the operation of a GREAT WALL NOODLE SHOP restaurant;
3. You desire to develop and operate a GREAT WALL NOODLE SHOP restaurant and we, in reliance on your representations, have approved your franchise application.
4. You realize that entering into this Agreement will obligate you to



operate your franchised business in **strict accordance and conformity** with the standards, specifications and procedures as set forth in this AGREEMENT. You furthermore realize that there is a risk in owning any business venture including this one and that running a business can be very hard work. If you operate your GREAT WALL NOODLE SHOP Franchise below the standards we require, customers who patronize that GREAT WALL NOODLE SHOP franchise location will be less likely to patronize other GREAT WALL NOODLE SHOP store locations. This would damage the business of others. It will be difficult for us to obtain new franchisees if a prospective purchaser observes that you do not maintain the required standards.

5. We expressly disclaim the making of and you acknowledge that you have not received or relied upon, any warranty or guaranty, express or implied, as to the revenues, profits or success of the business venture contemplated by this Franchise Agreement. We do not furnish nor do we authorize our other franchisees to furnish any oral or written information concerning the actual or potential sales, costs, income or profits of any GREAT WALL NOODLE SHOP operation. Actual results vary from unit to unit and we cannot estimate the results of any particular franchise.

**In consideration of the foregoing and the mutual covenants and consideration below, you and we agree as follows:**

#### **I. DEFINITIONS**

For purposes of this Agreement, the terms below have the following definitions:

- A. "Gross Sales" includes the total revenues and receipts from the sale of all products, services and merchandise sold in your Restaurant whether under any of the Trademarks or otherwise, including any cover charges or fees, vending or similar activities in

your Restaurant or on its premises as well as all license and use fees. Gross Sales excludes sales taxes.

- B. "Menu Items" means all products and beverages on our Great Wall Noodle Shop Menu during the life of this agreement.
- C. "Restaurant" means the GREAT WALL NOODLE SHOP [GWNS] Restaurant you develop and operate pursuant to this Agreement.
- D. "System" means the GREAT WALL NOODLE SHOP System, which consists of distinctive food and beverage products prepared according to special and confidential recipes and formulas with unique storage, preparation, service and delivery procedures and techniques, offered in a setting of distinctive exterior and interior layout, design and color scheme, signage, furnishings and materials, distinctive attire for all employees, and using certain distinctive types of facilities, equipment, supplies, ingredients, business techniques, methods and procedures together with sales promotion programs, all of which we may modify and change from time to time.
- E. Proprietary Marks. When used in this Agreement, "Proprietary Marks" mean the "Great Wall Noodle Shop" trademark and service marks which are used now or in the future to identify Facilities or the Products and Services and to distinguish it from that of any other business, and the trademarks, service marks, trade names, logos and commercial symbols as may be designated by the Franchisor from time to time for use in connection with the System.

## **II. GRANT OF LICENSE**

1. The following provisions control the license granted hereunder:

- A. Authorized Location. We grant to you the right to establish and

operate a retail Restaurant identified by the GREAT WALL NOODLE SHOP Trademarks or such other marks as we may direct, to be located at a location to be determined, in accordance with this subparagraph (the "Authorized Location").

You accept the license and undertake the obligation to operate the Restaurant at the Authorized Location in compliance with the terms and conditions of this Agreement.

- B. Designated Area. You must locate and operate the Restaurant at an Authorized Location in the following places in Indonesia: Jakarta and Medan. We and our affiliates will not locate and operate or grant to anyone else a franchise to locate and operate a GREAT WALL NOODLE SHOP restaurant within this area so long as this Agreement is in effect. You do not have any right to sublicense or sub franchise within or outside of the Designated Area and do not have the right to operate more than one Restaurant within the Designated Area.
- C. Opening. You agree that the Restaurant will be open and operating ... within 120 days from the date of this Agreement. [There is no dispute that this requirement was satisfied.]
- D. Nonexclusivity; Our Reservation of Rights.
  - 1. The license is limited to the right to develop and operate one Restaurant at the Authorized Location located in the Designated Area, and does not include (i) any right to sell products and Menu Items identified by the Trademarks at any location other than the Authorized Location or through any other channels or methods of distribution, including the internet (or any other existing or future form of electronic commerce), (ii) any right to sell products and Menu Items identified by the Trademarks to any person or entity for resale

or further distribution, or (iii) any right to exclude, control or impose conditions on our development of future franchised, company or affiliate owned restaurants at any time or at any location. You acknowledge that the consumer service area or trade area of another GREAT WALL NOODLE SHOP restaurant may overlap with your Designated Area.

2. You also acknowledge and agree that we have the absolute right to operate and franchise others the right to operate restaurants or any other business within and outside the Designated Area [between under trademarks other than the GREAT WALL NOODLE SHOP Trademarks, without compensation to you for any lost business.
- E. Catering and Delivery. You may not engage in catering and delivery services and activities within or outside of the Designated Area, unless we authorize you in writing.
- F. Restaurant Identification. You must use the name GREAT WALL NOODLE SHOP with or without the approved logo as the trade name of the Restaurant and you may not use any other mark or words to identify the Restaurant without our prior written consent. You may not use any of the words GREAT WALL NOODLE SHOP or any of the other Trademarks as part of the name of your corporation, partnership, or other similar entity. You must post a prominent sign in the Restaurant Identifying you as a GREAT WALL NOODLE SHOP franchisee in a format we deem reasonably acceptable, including an acknowledgment that you independently own and operate the Restaurant and that the GREAT WALL NOODLE SHOP Trademark is owned by us and your use is under a license we have issued to you. All your internal and external signs must comply at all times with our outdoor/indoor guidelines and practices, as they are modified from time to time.

G. Uniforms and Employee Appearance. All employees who have any contact with the customers while working in our restaurants to

(i) wear uniforms of such color, design, and other specifications as Company may designate from time to time [a picture of the uniform currently required for female employees is shown below.]

(ii) present a neat and clean appearance. Jewelry or other adornment which detracts from the uniform appearance of our employees must not be permitted.



The uniform for male employees consists of a shirt of a similar design and white pants or shorts.

#### TERM AND RENEWAL

1. The following provisions control with respect to the term and renewal of this Agreement:

A. Term. The initial term of this Agreement is 10 years, unless this Agreement is sooner terminated in accordance with Article XIII.

B. Renewal Term and Conditions of Renewal. You may renew your

license for two 10 year renewal terms provided (i) you have given us written notice of your decision to renew at least 6 months but not more than 12 months prior to the end of the expiring term; (ii) you sign our then-current form of franchise agreement, the terms of which may differ from this Agreement, including higher fees; (iii) you have performed any further items of modernization and/or replacement of the building, premises, trade dress, equipment and grounds as may be necessary for your Restaurant to conform to the standards then applicable to new GREAT WALL NOODLE SHOP restaurants, regardless of the cost of such modernizations and/or replacements; (iv) you pay us, at least 30 days prior to the end of the expiring term, a renewal fee in the amount of \$50,000; and (v) you and all other Owners and guarantors execute a general release of claims in a form we prescribe.

#### FACILITY STANDARDS AND MAINTENANCE

You acknowledge and agree that we have the right to establish, from time to time, quality standards regarding the business operations of GREAT WALL NOODLE SHOP restaurants and stores to protect the distinction, goodwill and uniformity symbolized by the Proprietary mark and the System. Accordingly, you agree to maintain and comply with our quality standards and agree to the following terms and conditions:

- A. **Restaurant Facility:** You are responsible for purchasing or leasing a building site that meets our site selection criteria. You must obtain our written consent to the site. You may not open your Restaurant for business until we have notified you in writing that you have satisfied all pre-opening obligations and we have approved your opening date. We are not responsible or liable for any of your pre-opening obligations, losses or expenses you might incur for your failure to comply with these obligations or your failure to open by a

- particular date.
- B. Construction of the building. The architectural plans and specifications must be consistent with our general atmosphere, image, color scheme and ambience requirements as set forth from time to time in the manuals for a GREAT WALL NOODLE SHOP restaurant (including requirements for dimensions, exterior design, materials, interior design and layout, equipment, fixtures, furniture, signs and decorating. [Other requirements not relevant to The Problem have been omitted.]
  - C. Relocation. [Omitted – not relevant to the Problem]
  - D. Modernization or Replacement: From time to time as we require, you must effect items of modernization and/or replacement of the building, premises, trade dress, equipment and grounds as may be necessary for your Restaurant to conform to the standards for similarly situated new GREAT WALL NOODLE SHOP restaurants. The maximum cumulative amount (the "Maximum Modernization Amount") that you will be required to spend during the initial term of this Agreement is \$185,000. You must complete to our satisfaction any changes we require within 18 months from the date you are notified of any required changes. You acknowledge and agree that the above requirement are both reasonable and necessary to insure continued public acceptance and patronage of GREAT WALL NOODLE SHOP restaurants and to avoid deterioration or obsolescence in connection with the operation of the Restaurant. If you fail to make any improvement as required above we may, in addition to our other rights in this Agreement, effect such improvement or maintenance and you must reimburse us for the costs we incur.
  - E. Signage. The outdoor signage at your Restaurant must comply with our then current specifications, which we may modify and change from time to time. You must make such changes at your expense to

the outdoor signage as we require.

### **III. PRODUCTS AND OPERATIONS STANDARDS AND REQUIREMENTS**

You must implement and abide by our requirements and recommendations directed to enhancing substantial System uniformity. The following provisions control with respect to products and operations:

- A. Authorized Menu. Your business must be confined to the preparation and sale of only such Menu Items and other food and beverage products as we designate and approve in writing from time to time for sale by your Restaurant.

You must offer for sale from the Restaurant all items and only those items listed as Menu Items and other approved food and beverage products. We have the right to make modifications to these items from time to time, and you agree to comply with any modifications. You may not offer or sell any other product or service at the Authorized Location without our prior written consent.

- B. Authorized Products and Ingredients. You must use in the operation of the Restaurant and in the preparation of Menu Items and other food and beverage products only the proprietary sauces and mixes and other proprietary and non-proprietary ingredients, recipes, formulas, cooking techniques and processes and supplies, and must prepare and serve Menu Items and products in such portions, sizes, appearance, taste and packaging, all as we specify in our most current product preparation materials or otherwise in writing. We will supply to you a copy of the current product preparation materials prior to opening the Restaurant. You acknowledge and agree that we may change these periodically and that you are obligated to conform to the requirements. All supplies, including containers, cups, plates, wrapping, eating utensils, and napkins, and



all other customer service materials of all descriptions and types must meet our standards of uniformity and quality. You acknowledge that the Restaurant must at all times maintain an inventory of ingredients, food and beverage products and other products, material and supplies that will permit operation of the Restaurant at maximum capacity.

- C. **Approved Supplies and Suppliers.** We will furnish to you from time to time lists of approved supplies or approved suppliers. You must only use approved products, services, inventory, equipment, fixtures, furnishings, signs, advertising materials, trademarked items and novelties, and other items or services (collectively, "approved supplies") in connection with the design, construction and operation of the Restaurant as set forth in the approved supplies and approved suppliers lists, as we may amend from time to time. Although we do not do so for every item, we have the right to approve the manufacturer, distributor and/or supplier of approved supplies and in some instances, require that you use designated sources or suppliers. You acknowledge and agree that certain approved supplies may only be available from one source, and we or our affiliates may be that source. All inventory, products, materials and other items and supplies used in the operation of the Restaurant must conform to the specifications and standards we establish from time to time. WE EXPRESSLY DISCLAIM ALL WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, WITH RESPECT TO SERVICES, PRODUCTS, EQUIPMENT (INCLUDING, WITHOUT LIMITATION, ANY REQUIRED COMPUTER SYSTEMS), SUPPLIES, FIXTURES, FURNISHINGS OR OTHER APPROVED ITEMS. IN ADDITION, WE DISCLAIM ANY LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE SERVICES RENDERED OR PRODUCTS FURNISHED BY ANY SUPPLIER APPROVED OR DESIGNATED BY US. OUR APPROVAL OR CONSENT TO ANY SERVICES,

GOODS, SUPPLIERS, OR ANY OTHER INDIVIDUAL, ENTITY OR ANY ITEM SHALL NOT CREATE ANY LIABILITY TO US.

- E. **Serving and Promotional Items.** All sales promotion material, customer goodwill items, cartons, containers, wrappers and paper goods, eating and serving utensils and other items, and customer convenience items used in the sales promotion, sale and distribution of products covered by this Agreement are subject to our approval and must, where practicable, contain one or more of the Trademarks. We may require you to carry and offer for sale in the Restaurant a representative supply of approved trademarked clothing and other novelty items, including special promotional items that we develop and market from time to time.
- F. **Health and Sanitation.** Your Restaurant must be operated and maintained at all times in compliance with any and all applicable health and sanitary standards prescribed by governmental authority. [Details omitted – not relevant to The Problem.]
- G. **Evaluations.** We or our authorized representative have the right to enter your Restaurant at all reasonable times during the business day for the purpose of making periodic evaluations and to ascertain if the provisions of this Agreement are being observed by you, to inspect and evaluate your building, land and equipment, and to test, sample, inspect and evaluate your supplies, ingredients and products, as well as the storage, preparation and formulation and the conditions of sanitation and cleanliness in the storage, production, handling and serving. If we determine that any condition in the Restaurant presents a threat to customers or public health or safety, we may take whatever measures we deem necessary, including requiring you to immediately close the Restaurant until the situation is remedied to our satisfaction.

- H. **Period of Operation.** Subject to any contrary requirements of local law, your Restaurant must be opened to the public and operated at least 12 hours each day of the year. Any variance from this provision must be authorized by us in writing. You acknowledge and agree that if your Restaurant is closed for a period of 2 consecutive days or 5 or more days in any 12-month period without our prior written consent, such closure constitutes your voluntary abandonment of the franchise and business and we have the right, in addition to other remedies provided for herein, to terminate this Agreement. Acts of God, war, strikes, riots or other force majeure cause preventing you temporarily from complying with the foregoing will suspend compliance for the duration of such interference.
- I. **Operating Procedures.** You must adopt and use as your continuing operational routine the required standards, service style, procedures, techniques and management systems described in our manuals or other written materials relating to product preparation, menu, storage, uniforms, financial management, equipment, facility and sanitation. We will revise the manuals and these standards, procedures, techniques and management systems periodically to meet changing conditions of retail operation in the best interest of restaurants operating under the Proprietary mark. Any required standards exist to protect our interests in the System and the Proprietary mark and not for the purpose of establishing any control or duty to take control over those matters that are reserved to you. You must use your best efforts to promote and increase the sales and service of Menu Items and to effect the widest and best possible distribution throughout the Designated Area. You acknowledge having received one copy of the manuals on loan from us for the term of this Agreement. You acknowledge and agree that the manuals and other system communications may only be available on

the internet or other online or computer communications. The manuals at all times are our sole property. You must at all times treat the manuals, and the information they contain, as secret and confidential, and must use all reasonable efforts to maintain such information as secret and confidential. We may from time to time revise the contents of the manuals and you expressly agree to comply with each new or changed requirement. You must at all times insure that your copy of the manuals are kept current and up to date, and in the event of any dispute as to the contents of said manuals, the terms of the master copy of the manuals that we maintain are controlling.

- J. Confidential Information. [Omitted – not related to issues in The Problem.]
- K. Vending Services. You may not install or maintain on the premises of the Restaurant any newspaper racks, video games, jukeboxes, gum machines, games, rides, vending machines, or other similar devices without our prior written approval. ... Any income from vending services in the Restaurant or on its premises, regardless of which person or entity collects the money, and regardless of whether we authorized you to install them, must be included in Gross Sales.
- L. Catering and Delivery Services. [Omitted – not relevant to The Problem.]
- M. Compliance with Law; Licenses and Permits. You must at all times maintain your premises and conduct your Restaurant operations in compliance with all applicable laws, regulations, codes and ordinances. [Remainder omitted – not relevant to The Problem.]
- N. Participation in Internet Web Sites or Other Online Communications. You must, at your expense, participate in our GREAT WALL NOODLE SHOP web site on the internet, our intranet

system or other online communications as we may require. For instance, you must submit to us daily reports via our intranet system, as further described in subparagraph 9.H. We have the right to determine the content and use of our web site and intranet system and will establish the rules under which franchisees may or must participate. You may not separately register any domain name containing any of the Proprietary mark nor participate in any web site that markets goods and services similar to a GREAT WALL NOODLE SHOP restaurant. We retain all rights relating to our web site and intranet system and may alter or terminate our web site or intranet system. Your general conduct on our web site and intranet system or other online communications and specifically your use of the Proprietary mark or any advertising is subject to the provisions of this Agreement. You acknowledge that certain information related to your participation in our web site or intranet system may be considered Confidential Information, including access codes and identification codes. Your right to participate in our web site and intranet system, or otherwise use the Proprietary mark or System on the internet or other online communications, will terminate when this Agreement expires or terminates.

- O. Modifications. You acknowledge and agree that we have the right to modify, add to or rescind any requirement, standard or specification that we prescribe under this Agreement to adapt the System to changing conditions competitive circumstances, business strategies, business practices and technological innovations and other changes as we deem appropriate. You must comply with these modifications, additions or rescissions at your expense, subject to the requirements of subparagraph 5.E and any other express limitations set forth in this Agreement.

#### **IV. PERSONNEL AND SUPERVISION STANDARDS**

You will employ a sufficient number of competent and trained employees to insure efficient service to your customers. You must require all your employees to work in clean uniforms approved by us, but furnished at your cost or the employees' cost as you may determine.

#### **V. FEES, REPORTING AND AUDIT RIGHTS**

You must pay the fees described below and comply with the following provisions:

- A. Initial Franchise Fee. You must pay to us a nonrefundable Initial Franchise Fee of \$75,000. The Initial Franchise Fee, payable in full on the date you sign this Agreement, is earned upon receipt and is in consideration for our expenses incurred and services rendered in granting you the franchise rights.
- B. Royalty Fee. In addition to the Initial Franchise Fee, during the full term of this Agreement and in consideration of the rights granted to you, you must pay to us as a weekly Royalty Fee. The Royalty Fee for the first half of the initial term of this Agreement shall be an amount equal to 5% of Gross Sales. The Royalty Fee for the second half of the initial term of this Agreement shall be an amount equal to the greater of (i) 5% of Gross Sales or (ii) the Royalty Fee being charged by us under our form of franchise agreement being used by us at any time during the second half of the initial term of the Agreement (or, if no form of franchise agreement is being used by us on such date, the Royalty Fee being charged by us under our latest form of franchise agreement), provided that the Royalty Fee may not be increased by more than 1/2% at any time during the

initial term of the Agreement. The amount of the Royalty Fee for any renewal term shall be that provided in the franchise agreement executed for such renewal term.

- C. Advertising Fee. You must pay to us a weekly Advertising Fee in an amount equal to 3% of Gross Sales. We reserve the right to increase this percentage upon 60 days written notice to you, provided, however, that we may not increase the Advertising Fee by more than 1/2% per year and that the Advertising Fee will not exceed 4% for the initial term of this Agreement. These fees are not held by us in trust and become our property to be spent in accordance with Paragraph 8 of this Agreement.
- D. Computations and Remittances. Except for the Initial Franchise Fee, you must compute all amounts due and owing at the end of each week's operation and remittance for the amounts must be made to us on or before Friday of the following week, accompanied by the reports required by this Agreement. We reserve the right to change the reporting day of the week for any or all amounts. You must certify the computation of the amounts in the manner and form we specify, and you must supply to us any supporting or supplementary materials as we reasonably require to verify the accuracy of remittances. You waive any and all existing and future claims and offsets against any amounts due under this Agreement, which amounts you must pay when due. We have the right to apply or cause to be applied against amounts due to us or any of our affiliates any amounts that we or our affiliates may hold from time to time on your behalf or that we or our affiliates owe to you. Further, if you are delinquent in the payment of any amounts owed to us, we have the right to require you to prepay estimated Royalty Fees and Advertising Fees.
- E. Electronic Transfer of Funds. You must sign an electronic transfer of

funds authorization to authorize and direct your bank or financial institution to transfer electronically, on a weekly basis, directly to our account or our affiliates' and to charge to your account all amounts due to us or our affiliates. You must maintain a balance in your account sufficient to allow us and our affiliates to collect the amounts owed when due. You are responsible for any penalties, fines or other similar expenses associated with the transfer of funds described in this subparagraph.

- F. Interest Charges; Late Fees. Any and all amounts that you owe to us or to our affiliates will bear interest at the rate of 18% per annum or the maximum contract rate of interest permitted by governing law, whichever is less, from and after the date of accrual. In addition to interest charges on late Royalty Fee and Advertising Fee payments, you must pay to us a service charge of \$150 for each delinquent report or payment that you owe to us under this Agreement. A payment is delinquent for any of the following reasons: (i) we do not receive the payment on or before the date due; or (ii) there are insufficient funds in your bank account to collect the total payment by a transfer of funds on or after the date due. The service charge is not interest or a penalty, it is only to compensate us for increased administrative and management costs due to late payment.
- G. Financial Planning and Management. [Omitted – not relevant to The Problem].
- H. Reports and Audit. [Omitted – not relevant to The Problem].

## **VI. YOUR OTHER OBLIGATIONS; NONCOMPETE COVENANTS**

You agree to comply with the following terms and conditions:

- A. Payment of Debts. You agree to pay promptly when due: (i) all



payments, obligations, assessments and taxes due and payable to us and our affiliates, vendors, suppliers, lessors, federal, state or local governments, or creditors in connection with your business; (ii) all liens and encumbrances of every kind and character created or placed upon or against any of the property used in connection with the Restaurant or business; and (iii) all accounts and other indebtedness of every kind incurred by you in the conduct of the Restaurant or business. In the event you default in making any such payment, we are authorized, but not required, to pay the same on your behalf and you agree promptly to reimburse us on demand for any such payment.

- B. Indemnification. You hereby waive all claims against us for damages to property or injuries to persons arising out of the operation of your Restaurant. You must fully protect, indemnify and hold us and our owners, directors, officers, insurers, successors and assigns and our affiliates harmless from and against any and all claims, demands, damages and liabilities of any nature whatsoever arising in any manner, directly or indirectly, out of or in connection with or incidental to the operation of your Restaurant (regardless of cause or any concurrent or contributing fault or negligence of us or our affiliates) or any breach by you or your failure to comply with the terms and conditions of this Agreement. We also reserve the right to select our own legal counsel to represent our interests, and you must reimburse us for all our costs and all attorneys' fees immediately upon our request as they are incurred.
- C. Insurance. You must purchase and maintain in full force and effect, at your expense and from a company we accept, insurance that insures both you and us and any other persons we designate by name. [Details omitted – not relevant to The Problem.] .
- D. Noncompete Covenants. You agree that you will receive valuable

training and Confidential Information that you otherwise would not receive or have access to but for the rights licensed to you under this Agreement. You therefore agree to the following noncompetition covenants:

1. You covenant that during the term of this Agreement you will not, either directly or indirectly, for yourself, or through, on behalf of, or in conjunction with any person or entity, own, manage, operate, maintain, engage in, consult with or have any interest in any restaurant or food business other than one authorized by this Agreement or any other agreement between us and you, except if, at the Effective Date of this Agreement, you operate or hold an interest in a restaurant or food business. Under no circumstances may you be a member of a franchisee advisory council, committee, board or other similar group for a restaurant or food business, unless you receive our prior written approval.
2. You covenant that you will not, for a period of 5 years after the expiration or termination of this Agreement, regardless of the cause of termination, or within 5 years of the sale of the Restaurant or any interest in you, either directly or indirectly, for yourself, or through, on behalf of, or in conjunction with any person or entity, own, manage, operate, maintain, engage in, consult with or have any interest in (i) a casual or fast casual restaurant that sells or offers to dispense prepared food products the same as or similar to the type sold in GREAT WALL NOODLE SHOP restaurants;
  - a. At the premises of the former Restaurant;
  - b. Within a 5-mile radius of the former Restaurant; or
  - c. Within a 5-mile radius of the location of any other business or restaurant using the GREAT WALL NOODLE SHOP System,

whether franchised or owned by us or our affiliates.

## **VII. TRANSFER OF FRANCHISE**

1. We have entered into this Agreement with specific reliance upon your financial qualifications, experience, skills and managerial qualifications as being essential to the satisfactory operation of the Restaurant. Consequently, neither your interest in this Agreement nor in the Restaurant may be transferred or assigned to or assumed by any other person or entity without our express permission in writing which we will not unreasonably withhold.
2. We have the right to sell or assign, in whole or in part, our interest in this Agreement.

## **VIII. INSPECTION**

We reserve the right at any time during normal business hours – with or without notice - to enter and inspect and photograph the Restaurant and all aspects of its operation together with all records, books of account, tax returns and other documents and materials in the possession or under your control relating to this Agreement, including, without limitation, all records required to be maintained pursuant to applicable law. We or our representative or agent shall be allowed to make extracts from or copies of any such material and to take samples of any products sold at the restaurant and immediately remove any unauthorized products without any liability to you, including, but not limited to, payment for such unauthorized products.

In the event we give you notice of any deficiency detected during such inspection, you must correct them within five (5) days after receipt of such notice. If you fail to correct such deficiency within such five (5) day period,

we shall have the right (but not the obligation) to correct such deficiency and you must reimburse us for all costs incurred in connection therewith.

**IX. DEATH, DISABILITY OR INCAPACITY.**

[This provision has been omitted as it is not relevant to The Problem.]

**X. RESERVED RIGHTS**

1. We have the right to operate, administrate, develop, and change the System in any manner that is not specifically precluded by the provisions of this Agreement, although this right does not modify the requirements of subparagraph 5.E and other express limitations set forth in this Agreement.
2. Our Reasonable Business Judgment. Whenever we reserve discretion in a particular area or where we agree to exercise our rights reasonably or in good faith, we will satisfy our obligations whenever we exercise Reasonable Business Judgment in making our decision or exercising our rights. Our decisions or actions will be deemed to be the result of Reasonable Business Judgment, even if other reasonable or even arguably preferable alternatives are available, if our decision or action is intended, in whole or significant part, to promote or benefit the System generally even if the decision or action also promotes our financial or other individual interest. Examples of items that will promote or benefit the System include, without limitation, improving customer service and satisfaction, improving product quality, maintaining uniformity, enhancing or encouraging modernization and improving the competitive position of the System.
3. Notice of Potential Profit. We may from time to time make

available to you or require you to purchase goods, products and/or services for use in your Restaurant on the sale of which we and/or our affiliates may make a profit. Further, we and/or our affiliates may from time to time receive consideration from suppliers and/or manufacturers in respect to sales of goods, products or services to you or in consideration of services rendered or rights licensed to such persons. You agree that we and/or our affiliates are entitled to said profits and/or consideration.

#### **XI. ADAPTATIONS AND VARIANCES.**

Complete and absolute uniformity under some unexpected conditions may not always be possible, practical, or in the best interest of the System. Accordingly, we have the right to vary the Menu Items and other standards, specifications, and requirements for any franchised restaurant or franchisee based upon the customs or circumstances of a particular franchise or operating agreement, site or location, population density, business potential, trade area population, existing business practice, competitive circumstance or any other condition that we deem to be of importance to the operation of such restaurant or store, franchisee's business or the System.

We are not required to grant to you a like or other variation as a result of any variation from standard menus, specifications or requirements granted to any other franchisee. You acknowledge that you are aware that our other franchisees operate under a number of different forms of agreement that were entered into at different times and that, consequently, the obligations and rights of the parties to other agreements may differ materially in certain instances from your rights and obligations under this Agreement.

## **XII. DISPUTE RESOLUTION**

- A. Arbitration Any dispute, controversy or claim arising out of or relating to this franchise agreement, the operation of the franchise or its termination contract – except as otherwise provided for in this Agreement - shall be settled by arbitration in accordance with the Kuala Lumpur Regional Centre for Arbitration Fast Track Rules at a location acceptable to all parties.

The arbitrators must follow the law and may not disregard the terms of this Agreement. Nor may they decide this dispute *ex aequo et bono*. The decision of the arbitrators will be final and binding on all parties to the dispute; however, the arbitrators may not under any circumstances: (i) stay the effectiveness of any pending termination of this Agreement; (ii) assess punitive or exemplary damages; (iii) make any award which extends, modifies or suspends any lawful term of this Agreement or any reasonable standard of business performance that we set; (iv) enter an order restraining an alleged breach of contract by us; or (v) enter a decree of specific performance requiring us to perform any part of this contract.

The provisions of this subparagraph will survive the termination of this Agreement. You are aware of the business purposes and needs underlying the language of this subparagraph and with a complete understanding thereof, agree to be bound in the manner set forth.

- B. Restraining Order/Specific Performance: Notwithstanding the above, you recognize that our restaurant is one of a large number of restaurants and stores selling to the public similar products, and the failure on the part of a single franchisee to comply with the terms of its agreement could cause *irreparable damage* to us. Therefore, it is mutually agreed that in the event of a breach or threatened breach of any of the terms of this Agreement by you, we will forthwith be entitled to an order restraining such breach or to a decree of specific

performance, without showing or proving any actual damage, together with recovery of reasonable attorneys' fees and other costs incurred in obtaining said equitable relief, until such time as a final and binding determination is made by the arbitrators. The foregoing equitable remedies are in addition to, and not in lieu of, all other remedies or rights that the parties might otherwise have by virtue of any breach of this Agreement by the other party. Finally, we have the right to commence a civil action against you or take other appropriate action for the following reasons: to collect sums of money due to us; to compel your compliance with trademark standards and requirements to protect the goodwill of the Trademarks; to compel you to compile and submit required reports to us; or to permit evaluations or audits authorized by this Agreement.

Attorneys' Fees. The prevailing party in any action or proceeding arising under, out of, in connection with, or in relation to this Agreement will be entitled to recover its reasonable attorneys' fees and costs.

Applicable Law: This agreement and the parties' rights under it and the relationship between the parties shall be governed by, and will be interpreted in accordance with the laws of Singapore. You specifically waive any rights and protections that might be provided through the laws of any other country including the place where the franchise is operated.

### **XIII. DEFAULT AND TERMINATION**

- A. Defaults. You are in default if we determine that you have breached any of the terms of this Agreement, which without limiting the generality of the foregoing includes making any false report to us, intentionally understating or underreporting or failure to pay when due any amounts required to be paid to us or any of our affiliates; a

conviction of you, or any co-owner of an offense which impairs or tends to impair your reputation or the goodwill and reputation of the Restaurant; voluntary or involuntary bankruptcy by or against you or any Owner or guarantor, insolvency, making an assignment for the benefit of creditors or any similar voluntary or involuntary arrangement for the disposition of assets for the benefit of creditors.

- B. Termination by us. We have the right to terminate this Agreement for any substantial violation of the terms and conditions of this Agreement we deem substantial.

#### **XIV. POST-TERMINATION OBLIGATIONS**

- A. Reversion of Rights; Discontinuation of Trademark Use. All of your rights to the use of the Trademarks and all other rights and licenses granted herein and the right and license to conduct business under the Trademarks at the Authorized Location will revert to us without further act or deed of any party. All of your right, title and interest in, to and under this Agreement will become our property. Upon our demand, you must assign to us or our assignee your remaining interest in any lease then in effect for the Restaurant (although we will not assume any past due obligations). You must immediately comply with the post-term noncompete obligations under Art VIII D, cease all use and display of the Trademarks and of any proprietary material (including the manual and the product preparation materials) and of all or any portion of point-of-sale materials furnished or approved by us, assign all right, title and interest in the telephone numbers for the Restaurant and cancel or assign, at our option, any assumed name rights or equivalent registrations filed with authorities.

You must pay all sums due to us, our affiliates or designees and all sums you owe to third parties that have been guaranteed by us or any of our affiliates. You must immediately return to us, at your



expense, all copies of the manuals and product preparation materials then in your possession or control or previously disseminated to your employees and continue to comply with the confidentiality provisions of subparagraph 6.J.

You must promptly at your expense remove or obliterate all Restaurant signage, displays or other materials (electronic or tangible) in your possession at the Authorized Location or elsewhere that bear any of the Trademarks or names or material confusingly similar to the Trademarks and so alter the appearance of the Restaurant as to differentiate the Restaurant unmistakably from duly licensed restaurants identified by the Trademarks. If, however, you refuse to comply with the above provisions within 30 days, we have the right to enter the Restaurant and remove all signage, displays or other materials that bear any of the Trademarks or names or material confusingly similar to our Trademarks, and you must reimburse us for our costs incurred. Notwithstanding the foregoing, in the event of expiration or termination of this Agreement, you will remain liable for your obligations pursuant to this Agreement or any other agreement between you and us or our affiliates that expressly or by their nature survive the expiration or termination of this Agreement.

Purchase Option. We have the right to purchase or designate a third party that will purchase all or any portion of the assets of your Restaurant including, without limitation, the land, building, equipment, fixtures, signage, furnishings, supplies, leasehold improvements, liquor license and inventory of the Restaurant at a price determined by a qualified appraiser selected with the consent of both parties, provided we give you written notice of our preliminary intent to exercise our purchase rights under this Paragraph within 30 days after the date of the expiration or termination of this Agreement. If the parties cannot agree upon the

selection of an appraiser(s), one or both will be appointed by a court of general jurisdiction in which the Authorized Location is located upon petition of either party.

IN WITNESS WHEREOF, the parties have executed this Franchise Agreement on the dates written below.

For the Franchisor

For the Franchisee

Wang Xuefeng-----

Pai Budiamman\_\_\_\_\_

20 June 2011

**Great Wall**



**Noodle Shop**

## **Franchise Agreement**

### **Appendix 1 – Authorized Menu<sup>10</sup>**

Spring Roll  
Vegetable Spring Roll  
Fried Wonton  
Crab Wonton  
Pot Stickers  
Vegetable Pot Stickers  
Yau Choi in Oyster Sauce  
Fried Chicken Wing  
Crispy Fried Squid  
Fried Tofu  
Scallion Pancake  
Sticky Rice in Lotus Leaf  
BBQ Pork Bun  
Chinese Fried Bread Stick  
Crepe with Dried Shrimp  
Plain Chinese Crepe  
Tomato Pepper Steak

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<sup>10</sup> Franchisees must serve all items listed above unless permission to discontinue the item has been approved by the Great Wall Chinese Noodle Shops International LLC. Temporary discontinuation of specific items due to shortage of ingredients not exceeding fourteen days is permitted without authorization.

**No other food items may be served without written permission from the management of Great Wall Chinese Noodle Shops International LLC.**

Mongolian Beef  
Snow Peapod and Beef  
Beef with Broccoli  
Chestnut and Chicken  
Baby Pokchoy in Supreme Stock  
Beef with Ginger Scallion  
Honeycomb Tripe and Garbanzo Bean  
Mixed Vegetables and Tofu Deluxe  
Steamed Egg with Lean Pork  
Cured Meat with Chinese Broccoli  
Roast Duck with Taro  
Cured Meat with Taro  
Five Spices Beef Special Trim  
Lamb with Bean Curd Skin  
Squid with Shrimp Paste  
Squid and Pork Patty  
Salted Fish and Pork Patty  
Spare Ribs Braised with Black Bean Sauce  
Salted Egg and Pork Patty  
Pan-Sheared Pom-frit  
Taro with Pork Belly  
Sweet and Sour Chicken  
General Tso's Chicken  
Sesame Chicken  
Hong Su Chicken  
Kung Pao Chicken  
Cashew Chicken  
Salted Fish and Chicken  
Yang Chow Fried Rice

Beef Stir Fried Rice Stick

Ho-fen noodles stir-fried in a specialty soy sauce with beef and scallions.

Ho-fen noodles smothered in a black bean sauce with green pepper and beef.

Chaing Mai Curry Noodle

Rad Na

Guong Chow Fried Noodle

Ja Jang Mein

Szechuan Dam Dam Noodle

Jambong

Hunan Vegetable

Kung Pao Chicken

Beef with Pea Pod

Sauteed Chinese Vegetable

Kung pao chicken and shrimp fried rice with crab puffs.

Shrimp in Garlic Sauce

Szechuan Spicy Pork

Fragrant Chicken

Kung Pao Shrimp

Szechuan Spicy Pork

Shrimp Fried Rice with Crab Puffs

Fragrant chicken and shrimp fried rice with crab puffs.

Peking Beef

Hong Siu Fish

Pork Fried Noodle with Chinese Vegetable

Spicy Vegetables Fried Noodle

Ma Po Tofu Noodle

Curry Stir-Fried Noodle

Stewed Pig Hock Noodle

Tuesday, 1 May 2012