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Baja Fresh closes area stores; franchisee in KC files lawsuit

By JOYCE SMITH
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The local franchisee for **Baja Fresh Mexican Grill** has closed area operations and is in litigation with the franchise and its former president.

Fresh Start Enterprises Inc. opened four of the fast-casual restaurants in 2002 but closed the Shawnee and Overland Park restaurants two years later. The remaining locations in **Ward Parkway Center** and Leawood's **Town Center Plaza** closed last week.

Jim Essington, founding partner of Fresh Start Enterprises, has been in arbitration with the franchisor, **Triune Corp.**, the franchising entity for Baja, a subsidiary of **Wendy's International**, since April. He also recently filed a lawsuit in California against the former franchise president, Greg Dollarhyde.

Essington said the franchisor misrepresented the average unit volume sales for Baja as \$1.5 million annually. Sales for his restaurants have been in the \$800,000 to \$900,000 range, not enough to cover overhead, so the restaurants have been losing money. Essington and his partners — Tony Gonzalez of the **Kansas City Chiefs**, Simeon Rice of the **Tampa Bay Buccaneers** and Michael Bankston, who had been with the **Arizona Cardinals** — are asking for compensatory damages and attorney's fees.

"He is an abused franchisee with high-profile investors who were lured, seduced and induced to enter into a franchise relationship based on a series of misrepresentations regarding the financial performance of this particular franchise," said Robert Zarco, founding partner with **Zarco Einhorn & Salkowski**, franchise experts and attorneys based in Miami. "What you have is a problem where the operational people of Baja Fresh have no clue what they are doing."

Wendy's has owned the Baja chain since mid-2002. Bob Bertini, spokesman for Wendy's International in Dublin, Ohio, said it would be inappropriate for him to comment because of the arbitration proceedings and because the lawsuit was just filed.

Wendy's has 305 company-owned and franchise locations in the Baja chain. It recently announced it would close 18 underperforming, company-owned restaurants.

"The business model was not ready to be put out into a national system; the business model did not work based on the sales and the costs incurred and so on," said Essington, who had previously owned and operated six successful area **McDonald's** restaurants. He sold those restaurants to invest in the Baja chain.

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