

Court Denies Franchisee's Motion to Dismiss Claim Alleging Breach of Contract Based on Underreporting of Sales

In *AAMCO Transmissions, Inc. v. Trovato*, 2011 U.S. Dist. LEXIS 111943 (S.D. Cal. Sept. 28, 2011), a California federal court denied a motion to dismiss AAMCO's claim for breach of contract based on a franchisee's failure to accurately report sales and failure to allow AAMCO to inspect its books and records. The dispute arose when AAMCO learned that the franchisee had completed a \$2,400 transaction for a customer, which it did not report to AAMCO. During a resulting audit, AAMCO's inspectors found two books with receipts for transactions that were not reported. When the franchisee refused to allow the inspectors to copy the books, AAMCO sued based on underreporting of sales, fraud, and a declaratory judgment that it could terminate.

The franchisees moved to dismiss the underreporting count of the complaint, arguing that it did not allege that the receipt books found by AAMCO's inspectors were the type of books and records contemplated by the inspection and audit provisions of the franchise agreement. It also argued that since the complaint stated that the customer repair cost \$2,400, but alleged over \$75,000 in damages, AAMCO must have omitted some components of the claim. The court denied the motion to dismiss, finding that AAMCO properly alleged contractual breaches and resulting damages.