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20 **UNITED STATES DISTRICT COURT**
 21 **CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION**

22 FOAGLA, INC., a California
 23 corporation, on behalf of itself and the
 24 Bakersfield FOA, the Central
 25 California FOA, Inc., the Central
 26 Valley FOA, the Greater Bay FOA, the
 27 Joe Saraceno FOA, the Northern
 28 California FOA, the San Diego FOA,
 the Sacramento Valley FOA, the Sierra
 FOA, Cal-Neva FOA, Inc., and the San
 Francisco-Monterrey Bay FOA; and Jas
 Dhillon, an individual; Gurtar Sandhu,
 an individual; Serge Haitayan, an
 individual; Ray Dhaliwal, an
 individual; Tarlochan Rangi, an
 individual; and John Does 1-1000 who
 are similarly situated California
 individual 7-Eleven franchise owners,

Plaintiffs,

v.

7-ELEVEN, INC., a Texas corporation,
 Defendant.

Case No.:

VERIFIED COMPLAINT FOR:

1. Racial Discrimination in Violation of 42 U.S.C. §1981 and California Civil Code § 51, *et seq.*
2. Invasion of Privacy and Illegal Surveillance
3. Retaliation Against Franchisees in Violation of California Franchise Relations Act § 20021
4. Misclassification of Employment Relationship with Franchisees

DEMAND FOR JURY TRIAL

1 **THE PARTIES**

2 1. Plaintiff FOAGLA, Inc. (“FOAGLA”) is a California corporation with a
3 principal place of business in Chino Hills, San Bernardino County, California.
4 FOAGLA is an association of franchisees organized through a Franchise Owners’
5 Association. FOAGLA was established as an organization for the purpose of
6 addressing franchisee members’ collective business concerns in an organized fashion
7 for the benefit of its members and the general good of the franchise brand.

8 2. Plaintiffs Jas Dhillon, Gurtar Sandhu, Serge Haitayan, Ray Dhaliwal and
9 Tarlochan Rangi are all current California 7-Eleven franchisees and/or members of
10 FOAGLA, and residents of California.

11 3. Defendant 7-Eleven is a Texas corporation with a principal place of
12 business in Dallas, Texas. 7-Eleven regularly does business in the State of California
13 and sufficient to establish personal jurisdiction over this entity.

14 **VENUE AND JURISDICTION**

15 4. This is a case of actual controversy, which the Plaintiffs and 7-Eleven have
16 not been able to resolve.

17 5. Plaintiffs seek a declaration of their rights following 7-Eleven’s violations
18 of multiple state and federal laws.

19 6. Plaintiffs seek declaratory judgment, under 28 U.S.C. § 2201(a).

20 7. The amount in controversy in this action exceeds the jurisdictional
21 requirement established under 28 U.S.C. § 1332(a), and the parties are completely
22 diverse.

23 8. 7-Eleven is subject to the jurisdiction of this Court by the terms of the forum
24 selection clauses appearing in its underlying Franchise Agreements.

25 9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a
26 substantial part of the events or omissions giving rise to the claim occurred in this
27 district.

1 **ASSOCIATIONAL STANDING**

2 10. FOAGLA has standing to maintain this action. At least one of its
3 members (indeed, all of its members) will suffer injury in fact by the real and
4 immediate threatened harm from 7-Eleven's conduct.

5 11. Further, the interests sought to be protected by this action are germane
6 to the FOAGLA's organizational purpose, which is the protection of members'
7 franchisee rights, establishing a dialogue between franchisee members and 7-Eleven,
8 an efficient means to identify and address franchisee business issues and concerns
9 and the promotion of the 7-Eleven brand for the good of all parties.

10 12. The interests sought to be protected by FOAGLA are the rights its
11 members (who are all 7-Eleven franchisees) to prevent 7-Eleven from abusing their
12 rights through its abuse of both federal law and the laws of the State of California.

13 13. Finally, neither the claims asserted nor the relief requested requires the
14 participation of individual members of FOAGLA (i.e. the 7-Eleven franchisees) since
15 FOAGLA can prove its allegations of 7-Eleven's breach of the multiple state and
16 federal laws, and other franchisee abuses, through 7-Eleven's own internal
17 documents and data, statistical analysis pertaining to franchisee termination and
18 investigations, and through expert reports and testimony.

19 14. The claims for relief involves issues and 7-Eleven's policies and
20 protocol that are common to all members of FOAGLA and do not require
21 determination on an individual basis. The claim is for declaratory relief only and
22 does not involve any potentially differing claims for monetary compensation.

23 15. Thus, FOAGLA has the requisite standing to seek the requested non-
24 monetary relief on behalf of its members.

25 **BACKGROUND**

26 16. 7-Eleven was once a powerful symbol of the American Dream, a
27 striking example of how American innovation combined with the dreams,
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1 ambitions and work ethic of recent immigrants could, through franchising,
2 simultaneously create a shared prosperity for both a large corporate entity and
3 thousands of small business owners and their families.

4 17. Tragically, 7-Eleven has now become a cautionary tale of the dangers
5 of corporate greed in the franchise context. 7-Eleven has become an unfortunate
6 example of the tragic results that occur when a franchisor ceases to consider its
7 franchisees as valuable, independent contractors and business owners, and to see
8 them merely as disposable assets to be exploited for short-term profits, then
9 discarded once their value has been extracted. Once a validation of the uniquely
10 American franchise model, 7-Eleven is now a modern validation of historian John
11 Dalberg-Acton's warning that *power corrupts and absolute power corrupts*
12 *absolutely*.

13 18. Through the 20th century, 7-Eleven pioneered and grew the
14 "convenience store" concept and helped make it a standard part of American life.
15 What fueled 7-Eleven's growth was its franchise arrangement with small business
16 owners, many of them South Asian immigrants from such countries as India and
17 Pakistan, who paid upfront franchise fees and operated the 7-Eleven franchised
18 stores in exchange for a percentage of the store profits.

19 19. 7-Eleven found that the South Indian cultural traits of hard work,
20 family unity, respect for authority, and community-mindedness made South Asians
21 ideal owner/operators for 7-Eleven stores.

22 20. The same franchisee cultural attributes that were highly prized by 7-
23 Eleven management would later be regarded as weaknesses to be exploited for
24 profit by the current management.

25 21. In 2005, the 7-Eleven chain was fully acquired by Tokyo-based Seven
26 and I Holdings Co., one of the largest retail conglomerations in the world, and was
27 taken private. Seven and I Holdings Co. staffed many of the top management
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1 positions of the company with West Point graduates, including its CEO, Joseph
2 DePinto, with a cold, predatory and militaristic approach to business.

3 22. The new regime looked at its relationship with their franchisees and
4 saw an opportunity to exploit the trust and to transform the goodwill the franchisees
5 had built in their local markets into corporate profit. 7-Eleven realized that it could
6 reap almost unlimited revenue by expelling certain franchisees, paying them
7 nothing, and selling their franchises (and associated goodwill) for an enormous
8 profit. In fact, they realized that they could increase their profits exponentially by
9 reselling valuable stores over and over – an industry practice known as “churning.”

10 23. In order to effectively harvest the maximum profit at the expense of
11 their franchisees, 7-Eleven secretly transformed its relationship with its franchisees
12 from one of benign cooperation to one of coldhearted predation.

13 24. 7-Eleven quietly but aggressively diminished the role of the franchisee
14 from independent contractor and respected business owner to one of a low-level
15 employee with little-to-no decision-making power.

16 25. 7-Eleven knowingly violated its franchisees’ rights to privacy with a
17 surveillance program arguably more sophisticated and invasive than ever deployed
18 in the franchise industry.

19 26. 7-Eleven implemented tactics designed to exploit South Indian cultural
20 and societal traits – such as respect for authority and fear of being shamed in their
21 communities – to its full advantage.

22 27. 7-Eleven readily deployed any means necessary to brutally discredit
23 and crush any franchisee advocate who voiced opposition or dared to stand up to its
24 predatory practices.

25 28. In one of the most tragic business stories in recent years, a foreign
26 corporation has been allowed to transform the *American Dream* into an *American*
27 *Nightmare* for countless individuals and families.

1 **SUMMARY OF THE ACTION**

2 29. This is an action brought on behalf of FOAGLA and other California
3 franchise associations comprised of more than one thousand, two hundred (1200) 7-
4 Eleven franchisees in the State of California against Defendant 7-Eleven, Inc. (“7-
5 Eleven”). It is also brought on behalf of the named individual Plaintiffs and those
6 similarly situated.

7 30. FOAGLA complains and seeks declaratory relief for the following
8 wrongful conduct by 7-Eleven in the operation of its franchise:

9 a. Engaging in an ongoing and illegal pattern of racial
10 discrimination and intimidation against South Asian 7-Eleven members of
11 FOAGLA and other franchisees throughout its franchise system, in violation of both
12 Section 1981 of the US Civil Rights Act and the Unruh Civil Rights Act (California
13 Civil Code Section 51 *et seq.*). For the past several years, 7-Eleven has embarked
14 upon a corporate policy to terminate long term successful franchisees who are, in
15 the main, South Asian immigrant American store operators¹ despite the fact that it
16 was this very group of hard-working and loyal franchisees who historically helped
17 build the 7-Eleven system to what it is today namely, 8,300 locations throughout the
18 United States. Rather than rewarding its South Asian franchisees for their efforts, 7-
19 Eleven has, instead, organized an aggressive and discriminatory campaign of
20 harassing, intimidating, profiling and accusing these same loyal franchisees with
21 unfounded false threats of wrongdoing as part of a larger corporate effort to
22 terminate their successful franchise stores and take the stores back at no cost. 7-
23 Eleven then “churns” or re-sells the stores, realizing a windfall profit to new
24 franchisees. Upon information and belief, the above pattern of wrongdoing is
25 designed to establish better corporate earnings for the purpose of taking 7-Eleven
26 “public” but has a discriminatory effect upon South Asian franchisees.

27 _____
28 ¹ “South Asian” is to be defined herein as emanating from India, Pakistan, Nepal, Sri Lanka, Bangladesh, Bhutan and the Maldives.

1 b. Engaging in illegal and “Orwellian” surveillance of FOAGLA
2 franchisee member operations with audio-visual equipment that was originally
3 utilized to protect franchisees from third party crime and theft but is now, instead,
4 being used to spy on franchisees in violation of California’s statutory privacy laws.
5 In addition, 7-Eleven has deployed unlicensed private investigators to follow
6 franchisee activities outside of the store in violation of California statutory anti-
7 stalking laws.

8 c. Changing the independent contractor status of its franchisees to
9 that of employees who have no say in the operations of their stores. As outlined in
10 following portions of this Complaint, 7-Eleven has imposed such a strict system of
11 controls that extend far beyond those controls that are generally accepted in a
12 franchise relationship including weekly, if not daily, email operational directives
13 issued by multiple levels of 7-Eleven corporate management (Field Consultant,
14 Market Manager and Zone Leader).

15 d. Targeting 7-Eleven franchisee advocates in violation of both FTC
16 regulation and California franchise law in order to eliminate “problem” franchisees
17 who seek to advance franchisee rights and are involved in organized franchisee
18 associations including but not limited to FOAGLA.

19 **Declaratory Relief Sought**

20 31. Plaintiffs now bring this action on behalf of its members for purely
21 equitable relief by way of Declaratory Judgment to declare illegal and improper
22 Defendant 7-Eleven’s actions with respect to Plaintiffs, all California franchisees and
23 all franchisees in the system for:

24 a. Violating the United States Civil Rights Act, 42 U.S.C. § 1981 by
25 purposefully targeting, harassing and discriminating against franchisee
26 members of FOAGLA of South Asian descent and all other franchisees
27 similarly situated in the 7-Eleven Franchise System;
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- 1 b. Violating § 20021 of the California Franchise Relations Act through the
2 improper termination of franchises and its improper “churning” scheme
3 aimed at successful, outspoken South Asian franchisees.
- 4 c. Invading the privacy and seclusion of FOAGLA members and
5 franchisees throughout its entire system through the use of intrusive and
6 illegal electronic video surveillance systems in violation of and
7 California Civil Code § 1708.8 and the anti-“stalking” provisions of
8 California Penal Code § 646.9;
- 9 d. Improperly classifying members of FOAGLA and franchisees
10 throughout the entire 7-Eleven system are classified as independent
11 contractors when they are, in fact, employees of 7-Eleven.

12 **FOAGLA Franchise Association**

13 32. FOAGLA was specifically formed by its franchisee members for the
14 purpose of representing their collective business needs and addressing their business
15 concerns to 7-Eleven in a productive and professional forum.

16 33. FOAGLA meets regularly and in an organized fashion, for the benefit
17 of its members and the 7-Eleven system, to discuss franchisee issues, which issues
18 have recently become overwhelming, due to 7-Eleven’s increasingly litigious and
19 hyper-aggressive tactics to monitor, and in some cases to target and terminate, their
20 franchisees.

21 34. As franchisee efforts to address these issues in a business context have
22 fallen flat and have only been met with increased aggression, FOAGLA is left with
23 no choice but to bring this Declaratory Judgment action.

24 **BACKGROUND FACTS**

25 **A. 7-Eleven’s Violations of FOAGLA Members and Franchisees’ Civil**
26 **Rights**

27 35. Within the past several years, 7-Eleven has aggressively sought to
28 terminate successful franchisees upon bogus grounds of wrongdoing for the business

1 purpose of “churning” the stores to obtain “windfall” profits by taking back the stores
2 at no cost and reselling them to new franchisees.

3 36. Although there have been suspicions of an improper overall termination
4 scheme by Defendant 7-Eleven, direct evidence of that came to light during the early
5 Spring of 2014, when “whistleblower” Kurt McCord, a former 7-Eleven supervisor
6 of corporate investigations disclosed same and made a Certification in 7-Eleven v.
7 Sodhi, a New Jersey District Court case bearing Civil Action No.: 13-cv-03715.
8 Attached hereto and incorporated herein as Exhibit A is a true and correct copy of
9 the Certification of Kurt McCord (“McCord Cert.”), ¶¶ 4 – 8.

10 37. Upon further information and belief, 7-Eleven’s intimidation and
11 termination efforts are primarily focused on the states of New York, New Jersey and
12 California. See Exhibit A, McCord Cert., ¶ 43.

13 38. To achieve their goal of improperly terminating franchisees, 7-Eleven uses
14 coercive and unlawful interrogation techniques, and has resorted to stalking
15 franchisees. See Exhibit A, McCord Cert., ¶ 100.

16 39. The sole purpose of acquiring franchisees’ stores – albeit through illegal
17 means – is to “take back” the stores, at no cost, with the intent to ultimately re-sell
18 the store, for a fee, to a third party purchaser. See Exhibit A, McCord Cert., ¶ 7.

19 40. 7-Eleven has hired more Asset Protection employees than any other
20 company in 2013. See Exhibit A, McCord Cert., ¶ 32

21 41. 7-Eleven hired approximately thirty-five Asset Protection employees.

22 42. 7-Eleven uses its Asset Protection/Loss Prevention (“AP/LP”) Department
23 as a profit center to realize a significant return on its investment in hiring large
24 numbers of Asset Protection employees. See Exhibit A, McCord Cert., ¶¶ 38 – 42.

25 43. Tremendous pressure is exerted upon the asset protection investigator
26 employees to provide a return on the AP/LP Department investment.

1 44. Upon information and belief, 7-Eleven has instituted quotas to the AP/LP
2 Department which, in turn, causes the AP/LP employees to bring dubious and
3 fabricated charges – based on unlawful and intimidating searches of franchisees, such
4 as Andy.

5 45. Upon further information and belief, 7-Eleven’s efforts are primarily
6 focused on FOA, PAC and/or Community Leaders. See Exhibit A, McCord Cert., ¶
7 46.

8 46. Converse to 7-Eleven, most retailers use asset protection departments in a
9 “non-productive” manner, trying to limit losses from theft and shrinkage.

10 47. However, 7-Eleven uses its AP/LP Department as a “productive work
11 center” by taking back franchises at no cost – only to resell them for a large fee.

12 48. 7-Eleven’s efforts to terminate franchises and take back stores have been
13 extremely profitable for 7-Eleven.

14 49. Upon information and belief, the amount received by 7-Eleven in reselling
15 taken-back stores is in excess of ten million dollars.

16 50. FOAGLA and all 11 named FOA stores are all located in primary target
17 areas for 7-Eleven’s unlawful investigations.

18 51. When Mark Stinde (“Stinde”), Vice President of Asset Protection for 7-
19 Eleven, was given permission by 7-Eleven to hire the aforementioned AP/LP
20 Department employees, the positions were not posted publicly and the vast majority
21 of the investigators were given assignments in two newly created divisions: (i) the
22 Centralized Investigations Team (“CIT”); and (ii) the Profit Assurance Team
23 (“PAT”), a mobile surveillance team.

24 52. Upon information and belief, 7-Eleven used its CIT and PAT teams to stalk
25 FOAGLA members, specifically including Adnan Khan.

1 53. The effect of 7-Eleven’s “churning”, termination and Asset Protection
2 Department policies has been discrimination against franchisees of South Asian
3 descent.

4 54. 7-Eleven and its agents have resorted to tactics against South Asian
5 franchisees ranging from stalking, spying, bullying, and interrogation to coerce these
6 franchisees into giving up their stores without compensation.

7 55. 7-Eleven has also targeted these franchisees because they have taken an
8 active role in franchisee associations and been vocal advocates of franchisee rights
9 and system change.

10 56. 7-Eleven’s business actions have resulted in discrimination against South
11 Asians and are based on deep-rooted sociological factors pertaining to South Asian
12 culture. See attached Exhibit B, Certification of Saint Louis University Professor of
13 Marketing, Brett Boyle, Ph.D.

14 57. As Professor Boyle has opined in paragraph 7 of his Certification: 7-Eleven
15 has targeted primarily Indian and Southeast Asian ethnic groups for the purposes of
16 exploiting cultural vulnerabilities associated with these groups on the basis of “power
17 distance” and “collectivism”. Power Distance means an acceptance of a subordinate
18 role in a relationship with 7-Eleven. Collectivism means franchise ownership tends
19 to be centered within families.

20 58. As a result, individuals from such cultures will tend to acquiesce to coercion
21 by the franchisor, given the disproportionate power advantage the franchisor holds.
22 See Boyle Cert., paragraphs 17-24.

23 59. Further, the threat of making public any claims of franchisee impropriety
24 (however false) carries with it “a great deal of shame to the family within the tightly
25 knit South Asian community, thereby making it even easier to coerce these
26 franchisees. See Boyle Cert., paragraphs 25-27.

1 60. Further the attached Certification of Professor Jaideep Singh (Exhibit C)
2 sets forth the numerous sociological reasons that South Asian franchisees are
3 particularly vulnerable to 7-Eleven’s “churning” tactics.

4 61. Professor Singh finds that 7-Eleven’s is “aware of and exploits the social
5 vulnerability of South Asian American immigrants” in which “everyone knows
6 everyone else, and often the intimate details of their personal business” and where
7 threats by 7-Eleven investigators of incarceration and public censure leads to
8 “community level shaming” which, in turn, will lead to “social exclusion” and “inflict
9 a ‘social death’ upon shunned community members.” See Singh Cert., paragraphs 6,
10 9-10.

11 **B. Retaliation against FOA Members with Threats of Default and**
12 **Termination.**

13 62. 7-Eleven has also violated Section 20021 of the California Franchise
14 Relations Act through its scheme of improperly churning successful franchisees and
15 acquiring their stores without compensation, in violation of Section 20021.

16 63. Upon information and belief, in addition to its discriminatory intent, 7-
17 Eleven’s motive behind the rash of termination and enforcement actions is to silence
18 vocal, opinionated franchisees that may complicate its attempts to go public and/or
19 to court private equity investors.

20 64. More specifically, 7-Eleven has recently targeted FOAGLA and other
21 Franchise Owners Association (“FOA”) presidents and vocal association members
22 throughout the United States.

23 65. As set forth herein, 7-Eleven has brought numerous actions against FOA
24 representatives in various States throughout the United States and has also targeted
25 FOAGLA members for unsubstantiated alleged offenses.

26 **C. Covert and Illegal Surveillance and Stalking of FOAGLA Members.**
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1 66. 7-Eleven has also increasingly asserted extensive and oppressive
2 mechanisms of control to direct, directly oversee, micromanage and even
3 surreptitiously spy on franchisee operations, all of which render the parties'
4 relationship clearly that of employer and employee.

5 67. 7-Eleven's control mechanisms, include, but are not limited to, unfettered
6 and abused access to franchisees' by electronic surveillance DVR systems (the
7 "System").

8 68. 7-Eleven is now seeking to impose an even more intrusive surveillance
9 system upon FOAGLA members by attempting to coerce FOAGLA members to
10 enter into an amendment to the underlying franchise agreement.

11 69. The amendment to the Franchise Agreement is commonly referred to as
12 the "Security System and Monitoring Amendment." See Security System and
13 Monitoring Amendment attached hereto as Exhibit D.

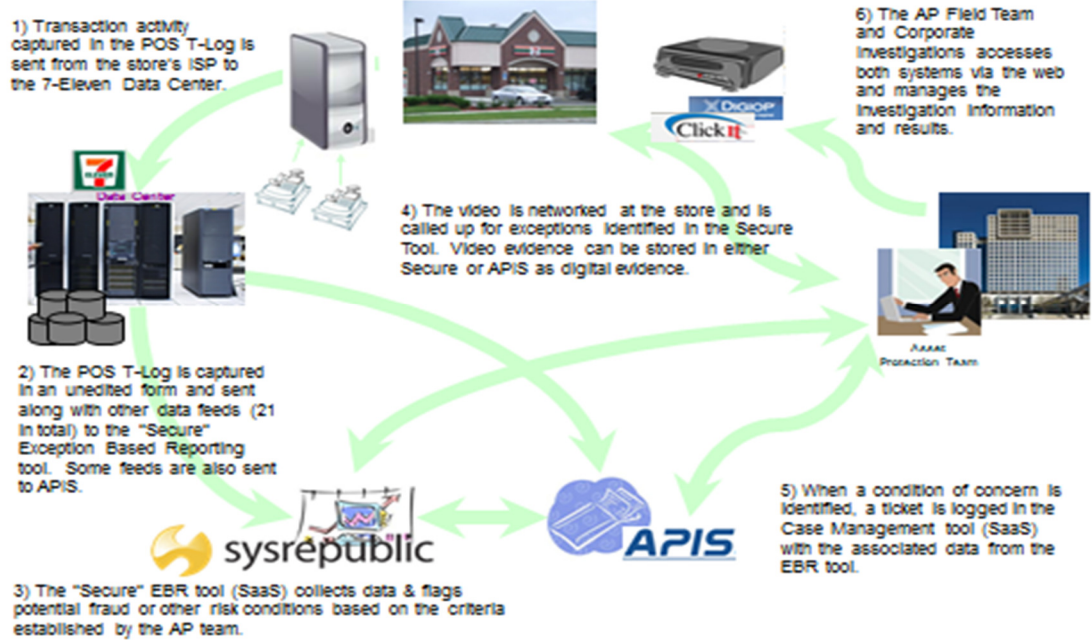
14 70. The Security System was initially installed by 7-Eleven for the stated
15 purpose of protecting franchisees from theft and other unwanted intrusions. See
16 Exhibit E, Certifications of former 7-Eleven Asset Protection Investigators, John
17 Ragsdale and Kevin Eliason and Art Salcido, former LP and Market Manager of SEI.

18 71. The stated purpose of the Security System and Monitoring Amendment
19 drafted by 7-Eleven notably omits any implicit or explicit reference to surveillance
20 of the franchisees' day-to-day operations. Anything not covered within the stated
21 purpose is protected by a reasonable expectation of privacy from recording.

22 72. Further, the following portions of a 7-Eleven Asset Protection slide show
23 explain the numerous camera angles, exception based reporting and synchronization
24 with POS and other franchisee entries are used to collect information on franchisee
25 activities, all of which belie 7-Eleven's designation of its franchisees as "independent
26 contractors":

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The Asset Protection System

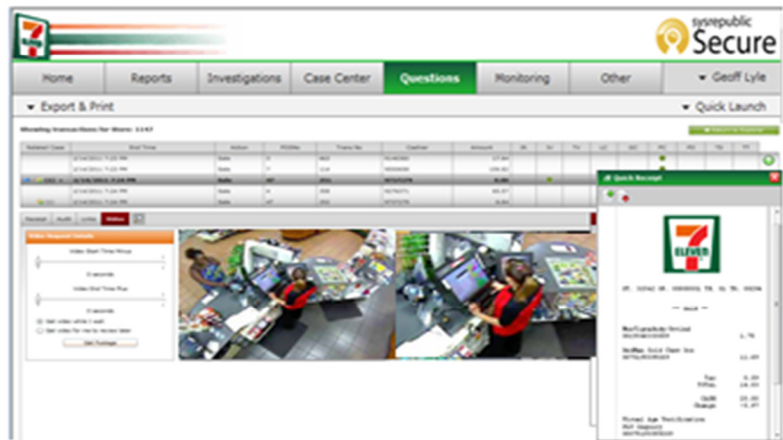


Secure Transaction Viewer

Users can drill into the investigation results to see the details of specific transactions which have been flagged by the system.

Transaction viewer will have access to details such as:

- Receipt View
- Tlog Audit View
- Store Sequence
- CCTV footage



73. Such surveillance measures, even if proper, are only permissible in employer-employee situations.

1 74. Upon information and belief, these surveillance systems were installed to,
2 and have been used extensively to, monitor franchisee operations in order to support
3 untrue and manufactured claims of theft and other store mismanagement.

4 75. While the systems are purportedly installed to "protect" franchisees, their
5 employees and store patrons from outside threats as a "shield," the systems are
6 actually being used as a "sword" to monitor and harass franchisees where they would
7 otherwise have a reasonable expectation of privacy.

8 76. In addition to improper in-store surveillance, 7-Eleven goes a step further
9 to invade and subvert franchisees' privacy.

10 77. Certain FOAGLA members such as Adnan Khan (and upon information
11 and belief other FOAGLA members) have been trailed and followed by 7-Eleven's
12 agents and/or employees while making bank deposits, at their homes and on their
13 personal time. These tactics are criminal in nature and brazenly violate California's
14 Anti-Stalking Statute, Cal. Penal Code § 646.9.

15 **D. Misclassified Employer-Employee Relationship**

16 78. 7-Eleven's Franchise Agreements purposefully mischaracterize the
17 relationship between itself and its franchisees as one of an independent
18 contractor/franchisor.

19 79. Language in 7-Eleven's form Franchise Agreements notwithstanding,
20 the overwhelming and undisputed facts and circumstances surrounding the parties'
21 relationship establish that extensive supervision, direction and control is exercised by
22 7-Eleven, and that an employer-employee relationship is what actually exists
23 according to the appropriate test used by California courts. *See Ruiz v. Affinity*
24 *Logistics Corp.*, Docket 12-56589 (9th Cir. June 16, 2014)(citing *S.G. Borello & Sons,*
25 *Inc. v. Dep't of Industrial Relations*, 769 P.2d 399, 403 (Cal. 1989)).
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1 80. More specifically, 7-Eleven significantly controls the day-to-day
2 operations of its franchisees, far beyond the “typical” franchisor-franchisee
3 relationship, rendering the parties’ relationship as one of *de facto* employment.

4 81. The employer-employee relationship is evidenced by, among other
5 things, a heightened and almost pathological level of control by 7-Eleven over its
6 franchisees (including FOAGLA Members), including:

- 7 - Requirement that FOAGLA Members and all franchisees closely follow an
8 unusually detailed 300-page operations manual that is supplemented weekly
9 by various management directives as well as a 72 page monthly “Monthly
10 Store Infrastructure, Quality and Service Evaluation” report card. See Exhibit
11 F, Operations Manual and 72 Page Monthly Store Infrastructure, Quality and
12 Service Evaluation form being filed Under Seal;
- 13 - Regulation of vendors and product supply;
- 14 -Processing FOAGLA Members’ payroll through 7-Eleven’s own internal
15 payroll;
- 16 -Regulation of product pricing, advertising and promotional items;
- 17 -Intense daily oversight of FOAGLA Members’ Managers
- 18 -Requirement that FOAGLA members wear 7-Eleven uniforms at off-site
19 events;
- 20 -FOAGLA members do not and cannot control the volume on their
21 television; rather, 7- Eleven controls same from their corporate headquarters
22 in Dallas, Texas.;
- 23 -FOAGLA members do not and cannot control the air conditioning or heat in
24 their stores; rather, 7-Eleven controls same from their corporate headquarters
25 in Dallas, Texas.;
- 26 -Bookkeeping and accounting is performed exclusively by 7-Eleven; and

1 - FOAGLA Members cannot withdraw money without 7-Eleven’s approval.

2 82. 7-Eleven further asserts control by imposing fines on its franchisees,
3 including but not limited to FOAGLA members (by way of Letter of Notice
4 (“LONs”), Notice of Breach and/or Notices of Termination), or by alleging that
5 franchisees are “under equity,” (having less than the required \$15,000 cash reserve)
6 despite 7-Eleven’s notoriously inaccurate accounting practices.

7 83. These announcements of power to impose fines, and 7-Eleven’s
8 imposition of same, are strong indicators of employment type control.

9 84. 7-Eleven wholly controls the standards by which franchisees, including
10 FOAGLA members, are reviewed. For instance, in or about May 2014, 7-Eleven
11 issued a new Guest Experience Assessment (“GEA”) Audit form. See GEA Exhibit
12 G.

13 85. Prior to its issuance, Plaintiff, nor franchisees, were consulted about the
14 contents of the GEA Audit form.

15 86. The GEA Audit is a multi-page document that 7-Eleven to control each
16 and every aspect of franchisees’ stores. This is just further indicative of the
17 employee-like relationship between 7-Eleven and its purported “franchisees.”

18 87. Franchisees are also wholly dependent on 7-Eleven for the opportunity
19 to render services. By way of example, franchisees are unable to control the
20 maintenance of the equipment in their stores, the volume on the television, etc., and
21 thus, are not in business for themselves.

22 88. 7-Eleven’s role is further indicative of an employer-employee
23 relationship because 7-Eleven, *inter alia*: (i) controls employees’ payroll and
24 paychecks; (ii) owns and maintains all equipment; (iii) is responsible for sound,
25 lighting and temperature, as well as all other aesthetics; and (iv) is responsible for
26 marketing efforts, including, but not limited to, special promotions, the 7-Eleven
27 website, and advertisements in publications and on the Internet.

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1 89. 7-Eleven and its franchisees are engaged in the same type of business,
2 and franchisees are not permitted to engage in certain other business activity outside
3 of the operation of a 7-Eleven franchise.

4 90. The relationship between the parties was set for a duration of years, (and
5 despite 7-Eleven's efforts to thwart or inhibit business operations) the relationship
6 has/had a degree to permanency to it.

7 91. Further indicative of their status as employees is the fact that FOAGLA
8 Members and all franchisees are integral to the 7-Eleven system and, but for
9 Plaintiffs, 7-Eleven would be unable to operate in a manner similar to the one in
10 which it currently operates.

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FIRST CLAIM FOR RELIEF

(Violation of 42 U.S.C. §1981 and California Civil Code Section 51 *et seq.*)

92. Plaintiffs re-allege and incorporate by reference all of the allegations set forth in the preceding paragraphs as though fully set forth herein.

93. 42 U.S.C. §1981 provides for “equal rights under the law” and prohibits racial discrimination.

94. Under 42 U.S.C. §1981, numerous members of FOAGLA are also members of a protected class as they are minorities of South Asian descent.

95. 7-Eleven has engaged in a systematic course of business (“Churning” which has had a discriminatory effect against South Asian franchisees, many of whom are FOAGLA members, to target, harass, falsely accuse and ultimately disenfranchise them in violation of 42 U.S.C. §1981 and California Civil Code Section 51 *et seq.*

96. 7-Eleven’s business churning practices, upon information and belief, are known to 7-Eleven management to have discriminatory effect upon FOAGLA South Asian franchisees.

97. 7-Eleven has brought extensive litigation against South Asian franchisees in courts throughout the United States, even resorted to police-like interrogation tactics to create a fear of criminal exposure and deportation to innocent, but frightened and impressionable minority franchisees.

98. As a result of 7-Eleven’s illegal and discriminatory actions, numerous South East Asian franchisees have already been targeted and lost their business and this protected group, of which FOAGLA is substantially comprised, continues to be targeted and harassed to date.

1 **SECOND CLAIM FOR RELIEF**

2 **(Invasion of Privacy (Intrusion into Seclusion) Through Improper and**
3 **Excessive Surveillance; Violation of California Civil Code § 1708.8)**

4 99. Plaintiffs re-allege and incorporate by reference all of the allegations set
5 forth in the preceding paragraphs as though fully set forth herein.

6 100. Franchisees have a reasonable expectation of privacy in their stores, free of
7 surveillance for the purposes not explicitly listed in the Franchise Agreements.

8 101. Upon information and belief, 7-Eleven has violated this reasonable
9 expectation of privacy by recording franchisees and their employees for purposes not
10 agreed upon in the Franchise Agreements.

11 102. Furthermore, upon information and belief, 7-Eleven has trailed franchisees
12 with the use of unlicensed private investigators outside of the store while making
13 bank deposits in violation of their right to privacy and California's Anti-Stalking
14 Statute, Cal. Penal Code § 646.9.

15 103. Such right to privacy was not waived or extinguished by the agreement to
16 install security cameras in stores. The agreement does not permit 7-Eleven to
17 videotape, follow, or trail franchisees outside of their stores.

18 **THIRD CLAIM FOR RELIEF**

19 **(Retaliation/Violation of the California Franchise**
20 **Relations Act, Section 20021)**

21 104. Plaintiffs re-allege and incorporate by reference all of the allegations set
22 forth in the preceding paragraphs as though fully set forth herein.

23 105. Upon information and belief, 7-Eleven has targeted successful franchisees
24 and acquired their stores without compensation.

25 106. Upon information and belief, 7-Eleven has specifically targeted FOA
26 presidents and vocal association members. See McCord Certification.

27 107. The sole purpose of acquiring franchisees' stores – albeit through illegal
28 means – is to implement a corporate policy of “take back” and “churning” of

1 franchisee stores, at no cost, and ultimately resell the store, for a fee, to a third-party
2 purchaser. Exhibit A, Certification of Former Corporate Investigations Supervisor
3 Kurt McCord paragraphs 1 to 16. (Unsealed Docket No. 98-2, Naik v. 7-Eleven, 3:13-
4 cv-4578, U.S.D.C of New Jersey).

5 108. To achieve this goal, 7-Eleven hired more Asset Protection employees than
6 any other company in 2013.

7 109. Specifically, 7-Eleven hired approximately thirty-five Asset Protection
8 employees.

9 110. 7-Eleven uses its Asset Protection/Loss Prevention (“AP/LP”) Department
10 as a profit center to realize a significant return on its investment in hiring large
11 numbers of Asset Protection employees.

12 111. Upon information and belief, 7-Eleven has instituted quotas to AP/LP
13 Department which, in turn, incentivizes the AP/LP employees to bring dubious and
14 fabricated charges based on unlawful and intimidating tactics.

15 112. Unlike 7-Eleven, most retailers use their asset protection departments in a
16 “non-productive” manner to limit losses from theft and shrinkage.

17 113. However, 7-Eleven uses their AP/LP Department as a “productive work
18 center” by taking back franchises at no cost to 7-Eleven – only to resell them for a
19 larger fee by entering into store franchise agreements with more favorable terms for
20 7-Eleven.

21 114. 7-Eleven’s effort to improperly “take over” franchises has been
22 overwhelmingly profitable for 7-Eleven, albeit at the expense of the terminated
23 franchisees.

24 115. Such action is in violation of Cal. Corp. Code § 31220, which states: “It
25 shall be a violation of this division for any franchisor, directly or indirectly, through
26 any officer, agent or employee, to restrict or inhibit the right of franchisees to join a
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1 trade association or to prohibit the right of free association among franchisees for any
2 lawful purposes.”

3 116. By targeting FOA presidents and association members, 7-Eleven is
4 restricting and inhibiting the right of franchisees to join a trade association

5 **FOURTH CLAIM FOR RELIEF**

6 **(Declaration that Franchisees are Employees under California State Law)**

7 117. Plaintiffs re-allege and incorporate by reference all of the allegations set
8 forth in the preceding paragraphs as though fully set forth herein.

9 118. Under California law, the right to control work details is the most important
10 or most significant consideration when determining whether an individual is an
11 employee or independent contractor.

12 119. Notwithstanding representations to the contrary contained in 7-Eleven’s
13 franchise agreement, 7-Eleven exerts such a tremendous amount of control over its
14 franchisees, the same renders their franchisees “employees” of 7-Eleven as opposed
15 to “independent contractors.”

16 120. Plaintiff’s members are merely employees and in-store operators for 7-
17 Eleven. They have limited, if any, control over the day-to-day operations of any of
18 the stores, and are constantly and consistently berated and harassed by 7-Eleven.

19 121. Despite the titles, which are inconsequential, the true relationship between
20 7-Eleven and Plaintiffs is one of employer-employee. 7-Eleven takes advantage of
21 the uneven and mischaracterized relationship by harassing Plaintiffs by and through
22 Zone Leaders, Market Managers and Field Consultants (collectively, “7-Eleven
23 Management” or “7-Eleven’s Managers”). This harassment has caused serious and
24 injurious damage to each Plaintiff.

25 122. 7-Eleven’s Franchise Agreements purposefully mischaracterize the parties’
26 relationship as one of an independent contractor/franchisor. Language in the
27 Franchise Agreements notwithstanding, the evidence establishes that sufficient
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1 supervision, direction and control is exercised, and that an employer-employee
2 relationship exists.

3 123. 7-Eleven, in actuality, significantly controls the day-to-day operations of
4 its franchisees, beyond the normal franchisor-franchisee relationship, rendering the
5 parties' relationship as one of *de facto* employment.

6 124. Further details of 7-Eleven's intensive control evidencing a lack of
7 Independent judgment found in employer/employee relationships is set forth in the
8 Certification of Richard Schwarz a former 7-Eleven franchisee and Liaison Manager
9 for 7-Eleven in Southern California. The R. Schwartz Certification is attached hereto
10 as Exhibit H.

11 125. The employer-employee relationship is evidenced by, *inter alia*, a high
12 level of control that is exerted by 7-Eleven over the following:

- 13 a. Regulation of vendors and product supply;
- 14 b. Processing franchisee payroll through 7-Eleven's own internal payroll
15 system;
- 16 c. Regulation of product pricing, advertising and promotional items;
- 17 d. Intense daily oversight by 7-Eleven's Managers of Plaintiffs'
18 operations;
- 19 e. Requirement that franchisees wear 7-Eleven emblazoned uniforms, both
20 in the store and at off-site events;
- 21 f. Franchisees cannot control the volume on their television; rather, 7-
22 Eleven controls same from their corporate headquarters in Dallas, Texas.;
- 23 g. Franchisees cannot control the air conditioning or heat in their stores;
24 rather, 7-Eleven controls same from their corporate headquarters in Dallas,
25 Texas.;
- 26 h. Franchisees cannot own active business interests in other business
27 entities;
- 28

1 i. Bookkeeping and accounting is all done by 7-Eleven; and

2 j. Franchisees cannot withdraw money without 7-Eleven's approval.

3 126. Further details of 7-Eleven's intensive control evidencing a lack of
4 Independent judgment found in employer/employee relationships is set forth in the
5 Certification of Richard Schwarz a former 7-Eleven franchisee and Liaison Manager
6 for 7-Eleven in Southern California is attached hereto as Exhibit H.

7 127. 7-Eleven further asserts control by fining Plaintiffs (by way of Letter of
8 Notice ("LONs"), Notice of Breach and/or Notices of Termination), or by alleging
9 that Plaintiffs are "under equity," despite 7-Eleven's notoriously inaccurate
10 accounting practices.

11 128. These announcements of power to impose fines, and 7-Eleven's imposition
12 of same, are strong indicators of employment, vis-à-vis control.

13 129. Moreover, 7-Eleven wholly controls the standards by which Plaintiffs are
14 reviewed. By way of example, in or about May 2014, 7-Eleven issued a new Guest
15 Experience Assessment ("GEA") Audit form. See Exhibit H.

16 130. Prior to its issuance, Plaintiff, nor franchisees, were consulted about the
17 contents of the GEA Audit form.

18 131. The GEA Audit is a multi-page document that 7-Eleven to control each and
19 every aspect of franchisees' stores.

20 132. This is just further indicative of the employee-like relationship between 7-
21 Eleven and its purported "franchisees."

22 133. Plaintiff's members are wholly dependent on 7-Eleven for the opportunity
23 to render services. By way of example, franchisees are unable to control the
24 maintenance of the equipment in their stores, the volume on the television, etc., and
25 thus, are not in business for themselves.

26 134. 7-Eleven's dominant role and rigid oversight is further indicative of an
27 employer-employee relationship because 7-Eleven, *inter alia*: (i) controls
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1 employees' payroll and paychecks; (ii) owns and maintains all equipment; (iii) is
2 responsible for sound, lighting and temperature, as well as all other aesthetics; and
3 (iv) is responsible for marketing efforts, including, but not limited to, special
4 promotions, the 7-Eleven website, and advertisements in publications and on the
5 Internet.

6 135. 7-Eleven and its franchisees are engaged in the same type of business, and
7 Plaintiffs are not permitted to engage in certain other business activity outside of the
8 operation of a 7-Eleven franchise.

9 136. The relationship between Plaintiff's members and 7-Eleven was set for
10 duration of years, and despite 7-Eleven's now-constructive termination, the
11 relationship has/had a degree to permanency to it.

12 137. Plaintiff's franchisee members are integral to the 7-Eleven system and, but
13 for Plaintiffs, 7-Eleven would be unable to operate in a manner similar to the one in
14 which it currently operates.

15 138. For all of these reasons, FOAGLA members and all 7-Eleven franchisees
16 should be deemed "employees" under the control analysis imposed under California
17 law.

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19 **PRAYER FOR DECLARATORY RELIEF**

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21 **WHEREFORE**, Plaintiffs respectfully request that this Court enter an Order
22 declaring and adjudging as follows:

- 23 1. 7-Eleven has violated 42 U.S.C. §1981 by purposely targeting,
24 harassing and threatening FOAGLA Members and all franchisees of
25 South Asian descent;
26 2. Eleven is in violation of California Civil Code § 1708.8 by invading the
27 privacy through intrusion into seclusion of the franchisees;
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- 1 3. 7-Eleven has violated Section 20021 of the California Franchise
- 2 Relations Act through its churning scheme aimed at retaliating against
- 3 outspoken and minority franchisees.
- 4 4. 7-Eleven’s franchisees, including but not limited to FOAGLA members,
- 5 are employees, and not independent contractors, and have been
- 6 misclassified under the terms of the 7-Eleven franchise agreement;
- 7 5. Any and all Attorneys’ fees and Costs to which Plaintiffs may be entitled; and
- 8 6. Such other and further relief in favor of Plaintiffs as this Court deems just and
- 9 equitable.

10 Dated: July 11, 2014

11 /s/ Eric J. Schindler
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: July 11, 2014

/s/ Eric J. Schindler
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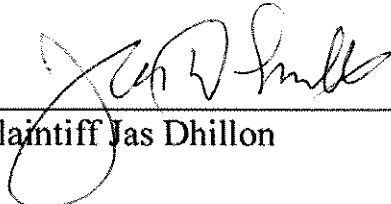
VERIFICATION

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I am one of the named plaintiffs in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge except those matters which are therein stated on information and belief, and as to those matters, I believe it to be true.

I declare under the penalty of perjury under the laws of the United States of America that all of the foregoing is true and correct.

July 10, 2014



Plaintiff Jas Dhillon

I am one of the named plaintiffs in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge except those matters which are therein stated on information and belief, and as to those matters, I believe it to be true.

I declare under the penalty of perjury under the laws of the United States of America that all of the foregoing is true and correct.

July 10, 2014



Plaintiff Gurtar Sandhu

I am one of the named plaintiffs in the above-entitled action. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge except those matters which are therein stated on information and belief, and as to those matters, I believe it to be true.

I declare under the penalty of perjury under the laws of the United States of America that all of the foregoing is true and correct.

July 10, 2014



Plaintiff Serge Haitayan