

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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7-ELEVEN, INC.,

No. 2:13-cv-03538-ADS-ARL

Plaintiff,

-against-

**DECLARATION OF TARIQ
KHAN IN SUPPORT OF A
TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY
INJUNCTION**

TARIQ A. KHAN, SENITA KHAN, FAROUQ
KHAN, RAJESH M. AJMERI, IRAM M. KHAN,
MOHAMMED TARIQ WATTOO, ASAID
SOHAIL, ANSARUL H. RANA, MOHAMMED
TANVEER, FAITH E. CAMACHO, SHAHID F.
KHAN, and DOES 1 through 50, inclusive,

Defendants.

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I, Tariq Khan, affirm that I am over eighteen years of age, competent to testify, and state the following from my personal knowledge:

1. This Declaration is submitted in support of the relief of a temporary restraining order to maintain the *status quo* and prohibit the Plaintiff from (a) terminating Defendants' franchise rights in the Stores and/or enforcing the improper termination notice directed to Defendants; (b) altering the status quo of its franchise relationship with Defendants; (c) interfering with Defendants' conducting of business with McLane Company and the Central Distribution Center in any way; (d) ceasing payroll services, sales tax processing and payments for workers compensation, disability insurance and unemployment insurance; (e)

interfering with Defendants' lottery sales, including removal of equipment; (f) removing any additional equipment or inventory from the Stores until the return date on the Order to Show Cause; (g) requiring Plaintiff to immediately return any and all equipment and inventory removed from the Stores, which includes but is not limited to, the Stores' lottery machines, Instant Vending machines electronic surveillance and recording equipment; and (h) granting such other relief as the Court deems just and equitable.

PRELIMINARY STATEMENT

2. As more fully developed herein, 7-Eleven, without justifiable cause or a legal or equitable basis, has purported to terminate five long-standing, highly profitable franchise agreements. Its motivation is not my alleged misconduct; it is vindictive animus predicated on my many years of being an outspoken advocate for myself and fellow franchisee owners who are viewed by corporate management not as partners in a successful business plan, but essentially as low level individuals whose voice is irrelevant. We are viewed as subservients who should just be thankful to be involved in their business and not as a vital and essential component of same.

3. The application herein seeks to protect my 25 year business operation worth more than \$3,000,000, while I have the opportunity to defend myself against outrageous and unsupportable allegations. The Plaintiff seeks to summarily strip

me of my business, by an improper and legally deficient termination action which itself is in violation of the agreements that govern our relationship. The termination of the franchises is the ultimate relief that the Plaintiff seeks in this action and it is sought by means of a mandatory injunction.

4. The more detailed dissection of Plaintiff's filings, which will be provided to the Court in opposition to Plaintiff's motion, will reveal the complete weakness of Plaintiff's allegations. In the meantime, although some evidence of Plaintiff's baseless claims is set forth herein, this Declaration addresses the need to maintain the *status quo* during the pendency of this action so that I have businesses to run once the litigation is resolved. Without such relief, without a preserving of the *status quo*, there will remain nothing, or simply a fraction, of what exists today.

5. Not only will an injunction preserve the *status quo*, injunctive relief sought herein is further justified by the fact that it will not prejudice the Plaintiff. This is confirmed by the Plaintiff's own actions, as despite Plaintiff having suspicions of improper conduct at my five stores since 2010, Plaintiff never took any action to terminate the franchises. If the alleged conduct was as egregious as Plaintiff asserts, then Plaintiff should have acted promptly in seeking the termination of the franchises. Additionally, Plaintiff never once notified me of these suspicions. Thus, I was never given the opportunity to independently investigate the alleged wrongdoing and take action to prevent further alleged

misconduct. Instead, Plaintiff apparently just allowed this alleged misconduct to continue (to their supposed detriment) for years and now seeks to seize upon their recalcitrance to wrongfully terminate my franchise agreements.

6. Clearly, no one was in a better position to analyze sales, theft or performance than 7-Eleven. How would I know that my shortages were higher than other stores in my area (if, in fact, they even were)? The Plaintiff is in the better position, having more information than anyone - information that can and has been distorted in its presentation to the Court for Plaintiff's purposes - information that Plaintiff refuses to share.

BACKGROUND HISTORY

7. As indicated above, my wife and I are franchisees in the 7-Eleven franchise system. We currently operate five (5) franchise locations, all of which despite their profitable and successful operations, are being sought to be terminated by Plaintiff 7-Eleven. These franchise convenience stores are located at (a) 80 Brooklyn Avenue, Freeport, New York 11520 (the "Brooklyn Avenue" store); (b) 169 Atlantic Avenue, Lynbrook, New York 11563 (the "Atlantic Avenue" store); (c) 324 Merrick Road, Rockville Centre, New York 11570 (the "Merrick Road" store); (d) 1571 Hempstead Turnpike, Elmont, New York 11003 (the "Hempstead Turnpike" store); and (e) 145 W. Sunrise Highway, Freeport, New York 11520 (the "Sunrise Highway" store)(collectively the "Stores")

8. I have been a 7-Eleven franchisee for 25 years, since 1988.

9. I have been actively involved with 7-Eleven franchisee organizations.

I was the longest running chairman of the National Coalition of 7-Eleven Franchisees, serving in that position from 1998 through 2007. Prior to that appointment, I was both the vice chairman of this organization as well as a regional chairman from 1992 through 1997.

10. I have been a member of the United Franchise Owners of Long Island & New York since 1989 and was President of the organization for 15 years from 1998 through 2012. I served as a vice president of this organization before that time.

11. Additionally, I served on the National Advisory Council from approximately 1992 through 2004, which was a group consisting of between 30 and 40 members that was created by 7-Eleven for purposes of understanding franchisees' concerns.

12. My Stores employ approximately 25 full time and 5-6 part-time staff/personnel.

13. The first 7-Eleven that I owned was the Lynbrook store. Before I took over the operations of the Lynbrook store (I did not buy it initially), it was previously run by 7-Eleven management directly. Within just a short time after assuming control of the store, the profits increased by 20%. It was clear to me

from my first experience with 7-Eleven that 7-Eleven did not manage its franchise stores effectively.

14. Later, during my tenure as chairman of the National Coalition of 7-Eleven Franchisees, I saw documentation that indicated that 7-Eleven's managed stores had three times more shortages than franchised stores, further contributing to their poor performance. This is one reason that any interim order placing 7-Eleven in control of my business would be so detrimental. In addition, if I lost control of my stores, this would lead to the loss of my management team. If this happens, it will take me years to replace as many of my employees who 7-Eleven would remove would move on to find other employment.

7-ELEVEN RAIDS MY STORES

15. On June 21, 2013, I was contacted by a 7-Eleven market manager, Rochelle Ganns, and was asked to meet with her and Daniel Keiperneck, another 7-Eleven representative, to generally discuss the recent Immigration Service raids on other 7-Eleven franchised stores (which did not involve my stores). When I appeared for this meeting at my Merrick Road store, I was surprised to see two other men join us. These men introduced themselves to me as Jim Passarella, director of Asset Protection Eastern Operation, and Michael Suppe, Regional Asset Protection Manager.

16. These 7-Eleven representatives proceeded to tell me that 7-Eleven, without any prior notice, warning or discussion, and despite my long-standing productive and mutually beneficial relationship with the 7-Eleven franchise since 1988, was terminating the franchise agreements for all of the Stores for alleged misconduct including skimming profits, under-reporting sales and labor violations. They did not offer and have not shown me where in any of the franchise agreements their right to take this action – as it does not exist.

17. Then, within minutes of learning for the first time of these baseless and shocking allegations made against me, my wife, my son and my business, 7-Eleven representatives converged on all of the Stores and proceeded to remove, without any legal rights, all prepaid phone and gift cards, as well as the money order machines. Within a few more hours, my lottery machines were also removed (which they now deny), despite the fact that they do not belong to 7-Eleven. In a 24 hour period, they attempted to take my 5 stores and illegally removed my most profitable items, including the lottery machines which draw customers who then buy many additional products from me.

18. That same day, June 21, 2013, 7-Eleven sent me a letter purporting to be a Non-Curable Notice of Material Breach and Termination (annexed hereto as Exhibit “A”). Under this letter, 7-Eleven asserts that they have terminated the franchise agreements for all of the Stores. This letter fails to cite to *any* provision

of the franchise agreements that allow them to take this action. Moreover, any claim for termination for the violations they accuse me of, comes with a right to cure period. None was set forth in their June 21st letter. In addition, the violations set forth are not continuing in nature – in other words, since I deny that I have done anything wrong I have nothing to cure. And since I believe I am operating in compliance with the franchise agreements I again need not take any further corrective action.

19. Since this time, 7-Eleven had directed all of my vendors to cease servicing me, denying my stores' access to the invoicing system and proprietary merchandise, such as cups and trademarked goods, advising the vendors that they were terminating my franchise agreements. I learned of this when vendors such as McLane Company began contacting me advising me that they could no longer provide me with the proprietary products such as cups, wrappings and containers with the franchise logo and mark. This has a huge impact on my sales and profits and may put me out of business. Furthermore, it causes me to breach, at the hands of the Plaintiff, the franchise agreements. (See Paragraphs 15(c) and (e) of the franchise agreements for the Brooklyn Avenue Store, Atlantic Avenue Store, and Hempstead Turnpike Store and Paragraph 14 of the franchise agreements for the Merrick Road Store and the Sunrise Highway Store, attached collectively as Exhibit "B").

20. This action by 7-Eleven not only damages me, causing me irreparable injury through the loss of good will and the loss of the franchises themselves, but further serves to harm the Plaintiff, the 7-Eleven franchise name and business reputation. Conversely, there is no harm to the Plaintiff if I am simply allowed to run my business in accordance within the closely documented and scrutinized parameters of my agreements with Plaintiff.

THE TRUE MOTIVATION FOR PLAINTIFF'S ACTIONS

21. The underlying motivation for 7-Eleven to file this action clearly stems from my activity as a proponent of franchisees' rights and my Pakistani descent. These allegations against me and my family are again simply baseless and shocking and I categorically deny any such wrongdoing. I am convinced that these allegations are being made in retaliation for my long time, active involvement in the various franchisees' organizations, **and** my vocal criticism of various actions taken by 7-Eleven upper management to the detriment of 7-Eleven franchisee owners.

22. This concept of vindictive and retaliatory conduct by 7-Eleven is supported further by their simultaneous suit against another vocal proponent of franchisee rights in New Jersey – making the instant suit far from unique. In an almost identical suit being prosecuted by Plaintiff in the District Court of New Jersey (filed **only** two weeks ago), 7-Eleven is trying to rid itself of another

franchisee “troublemaker.” *7-Eleven, Inc. Karamjeet Sodhi*, Docket No.: 3:13-cv-03715. (See: *7-Eleven v. Sodhi* Complaint; Sodhi’s Answer; and Sodhi Declaration, annexed collectively as Exhibit “C”).

23. In the above suit, Karamjeet Sodhi, the president of the Metro New Jersey Franchise Operators Association, an entity whose primary purpose is to advocate for 7-Eleven owners in their disputes with 7-Eleven corporate management, is being sued by 7-Eleven in their effort to take away his **six** 7-Eleven franchises that he has owned and operated for many years. The counterclaim filed by Mr. Sodhi speaks to 7-Eleven’s vindictive, retaliatory conduct of upper management directed at him because of his vocal advocacy for franchise owners rights and as evidence of discrimination against him because of the fact that he is of Pakistan decent, from which I come as well. (See: Exhibit “C”).

Baseless Claims

24. Included among the baseless allegations against me is that there were significant inventory shortages. However, contrary to the assertions made about my silence to such shortages, I had multiple conversations with the assigned 7-Eleven field consultant, Eric Merkle, Jr., as well as Ms. Ganns regarding these shortages. During these discussions, I specifically asked for their help as to what was causing the shortages and how to remedy them. These 7-Eleven

representatives refused to ever provide me with any guidance, even though they apparently had a wealth of knowledge of what was allegedly causing these shortages for the past three years. It is clearly relevant that I sought help for this issue that went ignored.

25. After receiving notice of the improper termination of the franchise agreements, 7-Eleven, despite advising me that it was no longer going to process any payments with vendors, continues to bill me for items that have never been delivered. This adds to inventory shortages. I did not realize that 7-Eleven may have been always doing this, causing falsely increased shortages.

26. Moreover, the circumstances of my termination as they relate to the cause is suspect. All of the records and documentation required to be filed with 7-Eleven in compliance with the franchise agreements, which 7-Eleven asserts contained falsified information, were prepared by Christine Schieferste. Ms. Schieferste has performed this function for my stores for the past 3 years having previously been employed by 7-Eleven for many years. Since this lawsuit was commenced, she has refused to call me back or answer my calls.

27. I believe this can be explained. If 7-Eleven is successful in taking away my stores, they stand to make a *tremendous* windfall. For example, If 7-Eleven takes back the stores it can re-franchise them to a new franchisee charging a franchise fee. If I sell the franchises, I get a percentage of the franchise fee. The

franchise fee for stores the size of mine would be between \$200,000 and \$350,000 – essentially whatever the market will bear. I would not receive this money if they take my stores under termination, nor would I be able to sell the good will associated with the stores which I estimate to be worth between \$400,000 and \$800,000.

28. Thus, upon information and belief, I think that Ms. Schieferste has been involved in an attempt, in conjunction with 7-Eleven's management, to wrongfully seize my Stores as a windfall benefit of Plaintiff and to get rid of a vocal troublemaker.

29. In my several decade-long tenure with 7-Eleven, I have never been cited, cautioned or otherwise warned with respect to operations difficulties. My only notice was with regard to having less than \$10,000 in equity, which was immediately remedied. I have never defaulted or been even threatened with termination prior to the actions taken in June 2013.

30. My track record is flawless and impeccable and my stores are consistently profitable. Indeed, in 2012, I had \$9.5 million in sales for the Stores.

31. Moreover, over the 778 hour period of surveillance (32 days), 7-Eleven is only able to point to 10 instances of **allegedly** improperly recording the sale of an item. These sales items purportedly included: 1) six pack of Corona (retail of about \$8.00); 2) a single cigar (retail of \$2.00); 3) a bag of chips (retail of

\$2.00); 4) a package of gum (retail of \$1.50); 5) six pack of Coors Light (retail of \$6.00); 6) two packs of cigarettes (retail of \$12.00); 7) a Heineken beer (retail of \$10.61); 8) a Natty Daddy (retail of \$1.89); and 9) a phone card (retail of \$5.00). However, for a total of approximately \$50.00 unreported or improperly recorded, 7-Eleven is claiming I am in material breach.

32. In addition, there are between 800 and 1200 transactions a day between the Stores, which equates to approximately 24,000 and 36,000 a month. Over this period, 7-Eleven points to only **10** allegedly improper transactions.

33. If 7-Eleven is permitted to proceed in its bad faith efforts to terminate my locations, without my being able to defend myself and my business against these serious and false allegations, I stand to lose my entire investment in the franchise business. I will be forced to terminate the employment of approximately 30 individuals, many of whom have been with me for more than 20 years.

34. Equally troubling is the fact that I stand to lose the large customer base that I have developed over the past several decades if 7-Eleven is permitted to take the Stores away from me and permitted to take away Lotto machines (that they do not even own) and deny me the right to purchase proprietary merchandise from vendors like McLane Company and the Central Distribution Center for the sale of the 7-Eleven products like cups and other trademarked items.

35. As this Court is aware, employment violations by other 7-Eleven franchise locations have made national news. I am not involved in any of these matters. Moreover, 7-Eleven's powerful media relations has been showcasing this action, only furthering this belief and inflicting irreparable damage to my business reputation.

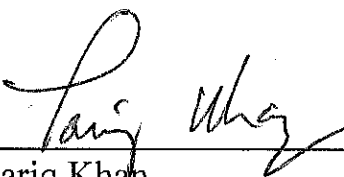
36. I am left with no recourse but to seek injunctive relief from this Court in an effort to keep my business viable and in operation as I defend against baseless and insulting allegations.

37. For the above reasons, I seek the following relief from the Court: (i) a temporary restraining order to maintain the *status quo* and prohibiting the Plaintiff from (a) terminating Defendants' franchise rights in the Stores and/or enforcing the improper termination notice directed to Defendants; (b) altering the *status quo* of its franchise relationship with Defendants; (c) interfering with Defendants conducting of business with McLane Company and the Central Distribution Center in any way; (d) ceasing payroll services, sales tax processing and payments for workers compensation, disability insurance and unemployment insurance; (e) interfering with Defendants' lottery sales, including removal of equipment; and (f) removing any additional equipment or inventory from the Stores until the return date on the Order to Show Cause; (ii) requiring Plaintiff to return any and all equipment and inventory removed from the Stores immediately, which includes

but is not limited to, the Stores' lottery machines, Instant Vending machines, electronic surveillance and recording equipment; and (iii) granting such other relief as the Court deems just and equitable.

38. I hereby certify that the foregoing statements are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

Dated: Uniondale, New York
July 1, 2013



Tariq Khan