

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

VIKRAM BHALLA,

Plaintiff,

vs.

7-ELEVEN, INC.,

Defendant.

CASE NO.

CIVIL ACTION

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND ORDER TO SHOW
CAUSE**

Plaintiff Vikram Bhalla by way of Verified Complaint for Declaratory and Injunctive Relief against Defendant 7-Eleven, Inc. (“Defendant” or “7-Eleven”), state as follows:

SUMMARY OF THE ACTION

1. This is a case about a threatened franchise termination and retaliation by the franchisor 7-Eleven, Inc. against hardworking long-time franchisee Vikram Bhalla in violation of New Jersey statutory law.

2. This action also regards 7-Eleven’s failure and refusal to act in good faith and acknowledge the blatant errors and discrepancies contained in 7-Eleven’s accounting of Plaintiff franchise location pertaining to Plaintiff’s franchise location, which 7-Eleven now uses to assert that Plaintiff is in breach of his franchise agreement.

3. Plaintiff seeks immediate injunctive and declaratory relief for 7-Eleven’s violations of the New Jersey Franchise Practices Act (“NJFPA”), *N.J.S.A. 56:10-1, et seq.*, and breach of the covenant of good faith and fair dealing, based upon Defendant 7-Eleven, Inc. (“7-Eleven”) threatened improper termination of Plaintiff’s franchise. Plaintiff seeks temporary restraints,

preliminary and final injunctive relief to enjoin the threatened termination and further seek a formal accounting.

4. Defendant 7-Eleven is the largest convenience store chain in the world with more than 8,000 franchise locations in the United States and more than 50,000 locations worldwide. Defendant 7-Eleven's stores are extended-hour retail stores that emphasize convenience to the customer and provide a wide variety of products to its customers including groceries, beverages, dairy products, lottery tickets and other non-food merchandise.

5. Plaintiff, in good faith, currently operates a 7-Eleven franchised store located in Bayonne, New Jersey for the past sixteen (16) years.

6. For the past sixteen years, Plaintiff has been an active and vocal member of the Metro NJ Franchise Owners Association (hereinafter "FOA"), an organization of current and operating New Jersey franchisees that has been instrumental in addressing various issues in the 7-Eleven franchise system.

7. Since 2012, 7-Eleven has become increasingly aggressive and litigious in dealing with franchisees like Vikram Bhalla who are actively involved in franchise associations such as the FOA.

8. Plaintiff's involvement in the FOA, as both a member and an officer, is well known to 7-Eleven, its corporate representatives and its legal counsel. Plaintiff remains, to date, an active FOA member and regularly attends and participates in FOA meetings. One significant issue in which Plaintiff was directly involved was the removal of former Market Manager Jeff Reeder ("Reeder"), due to his discriminatory and abusive conduct toward Indian and other South Asian franchisees.

9. Since 7-Eleven's removal of Reeder due, in large part, to franchisee complaints and pressure exerted by the FOA, Plaintiff, amongst other franchisees, have been harassed and targeted. Other vocal FOA members, such as Karamjeet Sodhi, the current FOA President and multi-unit owner of six (6) successful 7-Eleven locations, have also been targeted and threatened with termination. Mr. Sodhi's matter, captioned *7-Eleven Inc. v. Karamjeet Sodhi, et al.* is currently pending in this District under Case No. 3:13-cv-3715.

10. Upon information and belief, between 2011 and 2013 7-Eleven, its corporate officers and asset protection personnel began compiling and maintaining a Richard Nixon style "Enemies or Hit List" of 160 to 170 franchisees (many of whom are franchisee association members), who are being targeted for investigation and termination by 7-Eleven, purely in retaliation for their roles in various franchisee associations through the United States. The Hit List was specifically compiled by Mark Stinde, 7-Eleven's head of Asset Protection, supervised by 7-Eleven Executive Vice President and Chief Operating Officer (COO) Darren Rebelez, with the knowledge and approval President Chief Executive Officer (CEO) Joe DePinto.

11. Since June 2013, despite Plaintiff's continued efforts to resolve ongoing record-keeping discrepancies, 7-Eleven has advised Plaintiff verbally, and in writing, of its intent to terminate Plaintiff's franchise rights, divesting Plaintiff of both his status as a franchisee and the ability to obtain the goodwill value of their businesses.

12. 7-Eleven bases the threatened termination upon Plaintiff's alleged failure to adhere to 7-Eleven's minimum "Net Worth" requirements, which are false and misleading and belied upon simple accounting discrepancies 7-Eleven chooses to ignore.

13. As set forth herein, this is the second time 7-Eleven has threatened such a termination, without good cause. 7-Eleven also attempted to terminate Plaintiff's locations, in part

with respect to the “Net Worth” requirement, based upon errant financial information which was brought to 7-Eleven’s attention by Defendant 7-Eleven, in clear violation of the NJFPA, is attempting to once again terminate Plaintiff’s franchise on the basis erroneous financial information.

14. These claims are baseless and Plaintiff seek injunctive and declaratory relief and a formal accounting.

THE PARTIES

15. Plaintiff Vikram Bhalla is a resident of the State of New Jersey.

16. Defendant 7-Eleven, Inc. (“7-Eleven”) is a Texas Corporation with a principal place of business located at 2711 North Haskell Avenue, Dallas, Texas 75204. 7-Eleven regularly does business in the State of New Jersey and sufficient to establish personal jurisdiction over this entity.

VENUE AND JURISDICTION

17. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1391 as the parties are completely diverse in citizenship and the amount in controversy exceeds \$75,000.

18. Venue is also proper in this jurisdiction as Plaintiff reside in this district and the subject matter of this lawsuit is located in this district.

FACTS COMMON TO ALL COUNTS

A. Background of Franchise Location

19. In or around June 1998, Plaintiff entered into his first 7-Eleven Franchise Agreement. On or about August 18, 2004 Plaintiff renewed his agreement and entered into a 15 year franchise agreement for the 7-Eleven franchise located at 765 Broadway, Bayonne, New Jersey (“Bayonne Franchise Agreement”), which operates as store number 2412-32162A (“Bayonne Location”).

B. Original Net Worth Dispute

20. Plaintiff has previously had issues with Defendant 7-Eleven regarding 7-Eleven's suggestion that the Bayonne Location's net worth was not at the contractually-required level of ten thousand dollars (\$10,000) (the "Minimum Net Worth").

21. On or around June 25, 2013, 7-Eleven sent Plaintiff a Notice of Material Breach alleging that Plaintiff had failed to comply with the terms of his Agreement because his financial summaries reflected a Net Worth less than the Agreement's required Minimum Net worth of \$10,000 (the "June Notice").

22. It is upon information and belief, the shortages were due to shortages found in Plaintiff's Lottery and Merchandise. Despite Plaintiff curing the defect alleged in the June Notice, Plaintiff continued to receive additional Notices of Material Breach for alleged Lottery shortages. Attached hereto as **Exhibit A** are true copies of the Notices of Material Breach.

23. With each Notice of Material Breach, Plaintiff cured each and raised the Store's Minimum Net worth by way of inputting his own personal funds.

24. On or around September 16, 2014, 7-Eleven conducted an audit at the Bayonne Location (the "September 16th Audit"). The shocking results of the September 16th Audit showed a Lottery shortage of \$27, 818.84. Attached hereto as **Exhibit B** is a true copy of the September 16th Audit Reconciliation.

25. After receiving the September 16th Audit results, Plaintiff demanded that 7-Eleven conduct an additional audit. The results of the re-audit showed a \$10,000 Lottery shortage greater than the September 16th Audit.

26. Notably, 7-Eleven did not, nor has not, offered an explanation as to what could have been causing such enormous variances and shortages at the Bayonne Location.

27. Plaintiff has, and continues to, dispute the accuracy and truth of any alleged violations, especially in light of the fact that 7-Eleven failed to apply tens of thousands of dollars in owed credits to Plaintiff's franchise accounts.

28. Nevertheless, due to the continued threat of the issuance of a Notice of Default and their desire to continue operating their locations without 7-Eleven's continued harassment and interruption, Plaintiff made a "required" equity payment to 7-Eleven in order to avoid default and termination proceedings; however, Plaintiff also reserved all rights for the associated credits.

C. Current "Net Worth" Dispute

29. Most recent, in January 2015, 7-Eleven once again approached Plaintiff regarding an alleged net worth deficit.

30. The Notice of Breach was premised upon similarly inaccurate financial information pertaining to the Bayonne Location's alleged Lottery shortage.

31. The January Notice stated that 7-Eleven would agree to forego its right to terminate the Agreement, but only if Plaintiff entered into an Equity Building Budget Agreement, attached to the January Notice.

32. As such, in or around January 2015, Plaintiff and 7-Eleven entered into an Equity Building Budget Agreement which setup a structured payment plan for Plaintiff to pay back the Bayonne Location's Net Worth shortages to 7-Eleven (the "Agreement"). According to the Agreement, Plaintiff was required to make monthly installment payments of \$7,000 to 7-Eleven. Attached hereto as **Exhibit C** is a true copy of the Agreement.

33. Plaintiff should not once again be made to "cure" a material breach that does not exist in order to remain in the franchise system. Moreover, 7-Eleven's continued neglect of relevant accounting issues ensures that this same issue will continue to arise in the future, unless

it is immediately rectified. Moreover, if Plaintiff's Location is terminated Plaintiff's employees will be out of work.

34. All the more troublesome, under the terms of the Agreement, should Plaintiff default, 7-Eleven, without any notice, may take back Plaintiff's Bayonne Location.

35. If Defendant 7-Eleven is successful in terminating Plaintiff's Bayonne Location without compensating Plaintiff, based upon faulty accounting, and without affording Plaintiff a fair opportunity to sell his franchise, Plaintiff will be forced to forfeit the potential value and goodwill of their two 7-Eleven franchises, based solely upon 7-Eleven's own accounting errors.

FIRST COUNT

**(Declaratory and Injunctive Relief-Violation of the New Jersey Franchise Practices Act,
N.J.S.A. 56:10-1 et. seq.)**

36. The allegations of the preceding paragraphs are hereby incorporated by reference herein.

37. Plaintiff is a franchisee as defined pursuant to *N.J.S.A. 56:10-3*.

38. Defendant 7-Eleven is a franchisor as defined pursuant to *N.J.S.A. 56:10-3*.

39. Plaintiff reasonably relied upon the written and oral promises and representations of Defendant 7-Eleven, and was induced to expend substantial time, effort, and money in an on-going attempt to develop and operate the Bayonne Location in order to comply with Defendant's rules and regulations.

40. Now, Defendant is threatening, without demonstrating the requisite "good cause" to wrongfully terminate Plaintiff's Bayonne Franchise Agreement for the Bayonne Location without the requisite good cause, without providing proper notice under the NJFPA, and by creating unreasonable standards to cure any alleged default.

41. Defendant 7-Eleven failed to comply with the notice provisions of *N.J.S.A. 56:10-5* in that it failed to afford Plaintiff the time allotted under the statute to cure any alleged deficiencies, and is threatening to prematurely terminate Plaintiff's Bayonne Franchise Agreement.

42. 7-Eleven has also based its threat of termination upon incorrect calculations pertaining to the Bayonne Location's Net Worth.

43. 7-Eleven also purports to have the right to usurp the operation of Plaintiff's location, deprive Plaintiff of his entire investment and to take-over franchise operations at the Bayonne Location without a Court Order.

44. Defendant 7-Eleven's failure to provide proper notice of any default and failure to afford Plaintiff the ability to sell his location, and 7-Eleven's abject refusal to make reasonable efforts to consider Plaintiff's ongoing contentions that its accounting department's calculations are incorrect, which it is entitled to do, has created an unreasonable standard of performance in violation of *N.J.S.A. 56:10-7(e)*.

45. Plaintiff therefore seeks equitable relief, full reimbursement of costs, and/or damages for wrongful termination, which have all and/or will irreparably damage Plaintiff, including, but not limited to the irreparable damage to Plaintiff's business reputation that Defendant 7-Eleven has caused by way of its false accusations of wrongdoing.

SECOND COUNT
(Breach of the Implied Covenant of Good Faith and Fair Dealing)

46. The allegations of the proceeding paragraphs are hereby incorporated by reference herein.

47. The covenant of good faith and fair dealing is implied in every contract entered into in the State of New Jersey, including franchise agreements. Additionally, a franchisor's

affirmative obligations under the NJFPA incorporate the inherent contractual obligation that the franchisor acts in good faith. *See Maple Shade Motor Corp. v. KIA Motors of Am., Inc.*, 384 F. Supp. 2d 770, 774 n.4 (D.N.J. 2005)(district court construed NJFPA, *N.J.S.A.* 56:10-1 et seq. and held that statutory requirement of “good cause” termination includes component of “good faith”).

48. Defendant 7-11 at all relevant times had the obligation to act in good faith in order to maximize the best interests of Plaintiff under the Franchise Agreements.

49. Defendant 7-11 has breached its implied covenant of good faith and fair dealing by and through numerous acts that have harmed Plaintiff’s ability to operate the Bayonne Location by and through the following conduct:

(a) Failing to provide Plaintiff the requisite 60 day notice and opportunity to cure any alleged default pursuant to *N.J.S.A.* 56:10-5;

(b) Retaliating and harassing Plaintiff due to Plaintiff’s role in the FOA; and,

(c) Refusing to address legitimate accounting challenges and alleged errors that are supported by empirical data.

50. As a direct and proximate result of Defendant’s repeated breaches of the covenant of good faith and fair dealing, Plaintiff have sustained and continue to sustain substantial hardship and considerable monetary damages. Plaintiff herein seeks a declaration that Defendant has acted in bad faith in connection with its obligations under the franchise agreement(s).

PRAYER FOR RELIEF

Plaintiff Vikram Bhalla seek emergent relief against Defendant 7-Eleven by way of entry of an Order:

- (a) Declaring and adjudging that the threatened termination of the Bayonne Location was made without the requisite “good cause” required by the New Jersey Franchise Practices Act, *NJFPA* 56:8-10
- (b) Temporarily restraining, preliminarily and permanently enjoining the January 21, 2015 threatened termination of the Bayonne Location;
- (c) Requiring that Defendant 7-Eleven provide a formal and complete accounting to Plaintiff of all sales, revenues, fees received for the Bayonne Location, along with all credits due and owing to Plaintiff.
- (d) Compensatory Damages for overcharges and unpaid credits;
- (e) Consequential damages;
- (f) Attorneys’ fees and costs of suit; and,
- (g) Any other relief this Court deems equitable and just.

JURY DEMAND

Plaintiff hereby demand trial by jury of all issues so triable.

DESIGNATION OF TRIAL COUNSEL

Gerald A. Marks, Esq., is hereby designated as trial counsel for Plaintiff

Dated: March 3, 2015

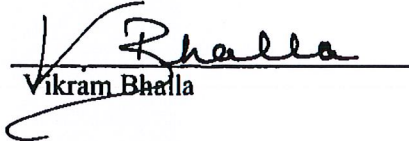
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VERIFICATION OF VIKRAM BHALLA

I, **Vikram Bhalla**, a named Plaintiff in this matter, have read the contents of the above Verified Complaint and hereby verify, under penalty of perjury, that the allegations set forth therein are true and accurate, to the best of my knowledge.

Executed this 26th day of February, 2015.


Vikram Bhalla