

COMP

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

NEVADA WEST PETROLEUM, LLC, a
Nevada limited liability company;
QARAMAN SUNSET / DECATUR,
LLC, a Nevada Limited Liability
Company; WASEF QARAMAN, LLC, a
Nevada limited liability company;
QARAMAN MESQUITE, LLC and

Plaintiffs,

vs.

BP WEST COAST PRODUCTS, LLC, a
Delaware limited liability company;
TESORO REFINING & MARKETING
COMPANY; LLC, a Delaware limited
liability company, TREASURE
FRANCHISE COMPANY, LLC, a
Delaware limited liability company; JEFF
CARY; an individual; DEREK TOMITA,
an individual; and MICHAEL
GLASSMAN, an individual.

Defendants.

COMPLAINT FOR:

- 1. VIOLATIONS OF THE PETROLEUM MARKETING PRACTICES ACT (15 U.S.C. § 2801, ET SEQ);**
- 2. BREACH OF CONTRACT;**
- 3. BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING; and**
- 4. CIVIL CONSPIRACY**

DEMAND FOR JURY TRIAL

INTRODUCTION

1. This is a suit for damages arising out of bad faith practices by and on behalf of petroleum franchisors / refiners BP West Coast Products, Tesoro Refining & Marketing, and Treasure Franchise Company. Through a series of systematic, concerted actions, these entities, and their key employees, defendants Derek Tomita, Michael

1 Glassman, and Jeff Cary, engaged in a campaign of bad faith, discriminatory conduct
2 with the express goal of running plaintiffs out of business. This conduct violates the
3 terms of the agreements covering the plaintiffs' franchises, and Nevada common law.
4 The defendants' wrongful conduct also resulted in the constructive termination of
5 plaintiffs' franchises in violation of the Petroleum Marketing Practices Act. Each of the
6 defendants had personal knowledge of the ongoing pattern and practice of bad faith and
7 each condoned and encouraged the conduct.

8 **JURISDICTION**

9 2. Jurisdiction over this action is based on the provisions of the Petroleum
10 Marketing Practices Act, 15 U.S.C.A. § 2805, which expressly confers jurisdiction on the
11 United States District Courts over civil actions brought against franchisors by
12 franchisees, regardless of the amount in controversy.

13 3. Jurisdiction over the other causes of action in this complaint is proper under
14 28 U.S.C. § 1367 because the state and common law claims alleged herein are so related
15 to the federal claims that they form part of the same case or controversy.

16 **VENUE**

17 4. Venue is appropriate in this district pursuant to 28 U.S.C.A. § 1391(b),
18 because the properties that are the subject of this litigation are situated in this judicial
19 district and a substantial part of the events or omissions giving rise to this claim occurred
20 in this judicial district.

21 **PARTIES**

22 5. Plaintiff Nevada West Petroleum, LLC ("NWP") is a Nevada limited
23 liability company organized and existing under the laws of the state of Nevada and doing
24 business in Clark County, Nevada.

25 6. NWP was the owner and operator, under franchise from Defendants BP
26 West Coast Products, LLC, Tesoro Refining & Marketing Company, LLC, and Treasure
27 Franchise Company, LLC, of ARCO *ampm* branded motor fuel service station and mini
28

1 market located at 1570 W. Cheyenne Ave, North Las Vegas, NV (the “Cheyenne
2 station”) until the franchise was wrongfully terminated by the defendants.

3 7. NWP also owns land located at the intersection of Boulder Highway and
4 Galleria Drive in Henderson, Nevada on which NWP plans to operate an ARCO *ampm*
5 branded motor fuel service station and mini market under a franchise granted by the
6 defendants. (the “Boulder / Galleria project”).

7 8. Plaintiff Qaraman Sunset / Decatur is a Nevada limited liability company
8 organized and existing under the laws of the state of Nevada and doing business in Clark
9 County, Nevada.

10 9. Qaraman Sunset / Decatur was the owner and operator, under franchise
11 from Defendants BP West Coast Products, LLC, Tesoro Refining & Marketing
12 Company, LLC and Treasure Franchise Company, LLC, of an ARCO AM / PM branded
13 motor fuel service station and mini market located at 6460 S. Decatur Blvd., Las Vegas,
14 Nevada (the “Sunset / Decatur station”) until the franchise was wrongfully terminated by
15 the defendants.

16 10. Plaintiff Wasef Qaraman, LLC is a Nevada limited liability company
17 organized and existing under the laws of the state of Nevada and doing business in Clark
18 County, Nevada.

19 11. Wasef Qaraman, LLC was the owner and operator, under franchise from
20 Defendants BP West Coast Products, LLC, Tesoro Refining & Marketing Company, LLC
21 and Treasure Franchise Company, LLC, of an ARCO *ampm* branded motor fuel service
22 station and mini market located at 2300 Glendale Avenue in Moapa, Nevada (the
23 “Glendale station”) until the franchise was wrongfully terminated by the defendants.

24 12. Plaintiff Qaraman Mesquite, LLC is a Nevada limited liability company
25 organized and existing under the laws of the state of Nevada and doing business in Clark
26 County, Nevada.

27 13. Qaraman Mesquite, LLC was the owner and operator, under franchise from
28 Defendants BP West Coast Products, LLC, Tesoro Refining & Marketing Company,

1 LLC, and Treasure Finance Company, LLC, of an ARCO *ampm* branded motor fuel
2 service station and mini market located at 325 N. Sandhill Blvd., Mesquite, Nevada
3 89027 until the franchise was wrongfully terminated by the defendants.

4 14. Defendant BP West Coast Products, LLC is a Delaware limited liability
5 company, which is qualified to do business in Nevada and which maintains its principal
6 place of business in California. At all times mentioned, defendant BP West Coast
7 Products, LLC was a “franchisor” or “refiner” as defined in the federal Petroleum
8 Marketing Practices Act, 15 U.S.C.A. §§ 2801 et seq.

9 15. Defendant Tesoro Refining & Marketing Company is a Delaware limited
10 liability company which is qualified to do business in Nevada and which maintains its
11 principal place of business in Texas. At all times mentioned, defendant Tesoro Refining
12 & Marketing Company was a “franchisor” or “refiner” as defined in the federal
13 Petroleum Marketing Practices Act, 15 U.S.C.A. §§ 2801 et seq.

14 16. Defendant Treasure Franchise Company, LLC is a Delaware limited
15 liability company which is qualified to do business in Nevada and which maintains its
16 principal place of business in Texas. At all times mentioned, defendant Treasure
17 Franchise Company, LLC was a “franchisor” or “refiner” as defined in the federal
18 Petroleum Marketing Practices Act, 15 U.S.C.A. §§ 2801 et seq.

19 17. Defendant Derek Tomita is a Nevada resident. At all times mentioned, Mr.
20 Tomita was the regional sales / marketing manager for BP West Coast or its successor-in-
21 interest, Tesoro.

22 18. Defendant Jeff Cary is a California resident. At all times mentioned, Mr.
23 Cary was director of Franchise Development for BP West Coast or its successor-in-
24 interest, Tesoro.

25 19. Defendant Michael Glassman is a California resident. At all times
26 mentioned, Mr. Glassman was the Franchise Marketing Manager for BP West Coast or
27 its successor-in-interest, Tesoro.

20. Plaintiffs are informed and believe and thereon allege that each of the defendants are responsible in some manner for the pattern and practice of events herein alleged, or are a necessary party for obtaining appropriate relief. In performing each of the acts alleged in this complaint and in omitting to do those acts that are alleged in this complaint to have been legally required, each defendant acted as an agent for each and all other defendants. The injuries inflicted upon the plaintiffs occurred because of the acts and omissions of each and all of the defendants. Moreover, upon information and belief, the acts of each of the defendants were directed, authorized, or ratified by the other defendants, and each of them.

FACTS

21. In or around 2008, defendant BP West Coast faced lagging performance of its ARCO AM/PM branded motor fuel stations and convenience stores in Clark County, Nevada.

22. Upon information and belief, to stop losing its share of the Las Vegas / Clark county gasoline sales market, BP West Coast embarked upon an aggressive marketing and development plan targeted on Clark County.

23. At the same time, BP West Coast forged a mutually beneficial relationship with developer Robert Elyousef and Wasef Qaraman, the manager of each of the plaintiff entities.

24. At a time when BP West Coast was having difficulty maintaining market share with its ARCO *ampm* brand in the local area, the plaintiffs – with Elyousef’s assistance –developed and brought to market several successful ARCO *ampm* franchises in Clark County between 2008 and 2013.

25. Specifically, plaintiff NWP owned and operated an ARCO *ampm* branded motor fuel station and mini market located at 1570 W. Cheyenne Ave, North Las Vegas, NV under a franchise with the defendants. (the “Cheyenne station”).

26. NWP also owns land located at the intersection of Boulder Highway and Galleria Drive in Henderson, Nevada on which NWP plans to operate an ARCO *ampm*

1 branded motor fuel service station and mini market under a franchise granted by the
2 defendants. (the “Boulder / Galleria project”).

3 27. Plaintiff Qaraman Sunset / Decatur owned and operated an ARCO *ampm*
4 branded motor fuel station and mini market located at 6460 S. Decatur Blvd., Las Vegas,
5 Nevada under a franchise granted by the defendants. (the “Sunset / Decatur station”).

6 28. Wasef Qaraman, LLC owned and operated an ARCO *ampm* branded motor
7 fuel service station and mini market located at 2300 Glendale Avenue in Moapa, Nevada
8 (the “Glendale station”) under a franchise granted by the defendants. (the “Glendale
9 station”).

10 29. Qaraman Mesquite, LLC owned and operated an ARCP *ampm* branded
11 motor fuel service station and mini market located at 325 N. Sandhill Blvd., Mesquite,
12 Nevada 89027 under a franchise granted by the defendants. (the “Mesquite station”).

13 30. The relationships between plaintiffs and the defendants relating to the
14 Cheyenne station, Boulder / Galleria project, Sunset / Decatur station, the Mesquite
15 station and Glendale station, were governed by, among other things, the terms and
16 conditions of a *ampm* Mini Market Agreement and a Contract Dealer Gasoline
17 Agreement executed by and between each of the plaintiff entities and BP West Coast
18 Products, LLC, and by such federal and state laws and regulations then in effect
19 concerning the relationships between retail gasoline franchises and corporate petroleum
20 franchisors, and such other provisions implied in law and equity with regard to such
21 contractual franchise relationships.

22 31. The form of the *ampm* Mini Market Agreement and Contract Dealer
23 Gasoline Agreement signed by each plaintiff relating to each specific property is, for
24 present purposes, identical in all material respects.

25 32. The *ampm* Mini Market Agreement and Contract Dealer Gasoline
26 Agreement by and between each plaintiff and defendant BP West Coast established
27 between each plaintiff and BP West Coast a franchise relationship as defined by the
28 Petroleum Marketing Practices Act, 15 U.S.C.A. §§ 2801 et seq. At the time the

1 agreements were signed, the plaintiffs and defendant BP West Coast were not in equal
2 bargaining positions; plaintiffs were not at liberty to add or modify the terms of the
3 contracts as presented to plaintiff by BP West Coast, but were required to accept the
4 contracts on a take-it-or-leave it basis; the agreements accordingly constitute contracts of
5 adhesion.

6 33. Each plaintiff was also required to execute a purchase agreement with BP
7 West Coast for the hardware and software for a centralized point of sale (“POS”) system
8 called Retailix in a form which, for present purposes, is identical in all material respects.

9 34. Upon information and belief, in or around 2013, BP West Coast sold its
10 ARCO brand and other assets to Tesoro Refining & Marketing Company and sold the
11 rights to franchise its AM/PM brand to Treasure Franchise Company, LLC, which is a
12 subsidiary of Tesoro Refining & Marketing Company.

13 35. As a result of the transactions described in paragraph 26, Tesoro Refining
14 & Marketing Company acquired all the rights, title and interest in the ARCO trademark
15 and Treasure Franchise Company became a subfranchisor for *ampm* mini market
16 franchises in Nevada.

17 36. As a further result of the transactions described in paragraph 26, BP West
18 Coast assigned its interests in the Contract Dealer Gasoline Agreements, *ampm* mini
19 market agreements, and other franchise documents between plaintiffs and BP West Coast
20 to Tesoro and Treasure Franchise Company.

21 37. For several years beginning in 2008, plaintiffs and BP West Coast enjoyed
22 a mutually beneficial and successful relationship.

23 38. The relationship began to sour in 2011, when defendants Derek Tomita,
24 Michael Glassman, and Jeff Cary, acting in the course and scope of their employment
25 with BP West Coast, induced Qaraman and Elyousef to engage in a joint venture with
26 Wagih Kamar (“Kamar”) for the re-branding of a gasoline station and mini market
27 located at 2901 North Rancho Drive in Las Vegas. (the “Petro / Rancho project”).
28

1 39. The Petro / Rancho project was a shell-branded gas station with six gas
2 station islands, a convenience store, and a full serve car wash. Qaraman and Elyousef had
3 previously approached BP West Coast about re-branding the project as an ARCO *ampm*
4 motor fuel station and convenience store.

5 40. At the time, Qaraman was already operating an ARCO *ampm* station and
6 convenience store nearby at 4371 N. Rancho Drive, Las Vegas, Nevada 89130. (the
7 “Craig / Rancho station”).

8 41. The Craig / Rancho station was approximately 1.8 miles away from the
9 Petro / Rancho site. Under BP West Coast’s course of dealing and standard of practice,
10 BP West Coast would not grant two franchises to two different franchisors if the
11 locations were less than 2 miles apart.

12 42. Dating back to at least November 2009, BP West Coast promised that
13 Qaraman was the only franchisee that BP West Coast would consider granting a franchise
14 to for the re-brand of the Petro / Rancho project. Specifically, on November 9, 2009, BP
15 West Coast employee Michael Hager wrote an email to Elyousef stating that “if anyone
16 else approaches us [about the Petro / Rancho site], we will tell them no.”

17 43. Upon information and belief, despite promising Qaraman that it would
18 refuse any bids placed by others, the defendants solicited a “back-up bid” for the Petro /
19 Rancho project from Wagih Kamar. (“Kamar”).

20 44. Beginning in late 2010, defendants Tomita, Glassman, and Cary, acting in
21 the course and scope of their employment with BP West Coast, began meeting with
22 Qaraman and Elyousef in attempt to convince them to engage in a joint venture with
23 Kamar for the re-branding of the Petro / Rancho project. Tomita, Glassman and Cary
24 repeatedly vouched for Kamar’s character and business acumen, citing their many years
25 of business dealings with him. The defendants required Qaraman’s participation because
26 Qaraman was already operating the nearby Craig Rancho station, which was less than
27 two miles from the Petro / Rancho station, as an ARCO *am pm* station.

1 45. In July 2011, in reliance on the representations made by Glassman, Tomita,
2 and Cary, Qaraman entered into a partnership with Kamar to re-brand the Petro/Rancho
3 project. Under the terms of the original partnership agreement, Qaraman was required to
4 (a) bring in ARCO as a gas provider for the company; (b) obtain a franchise agreement
5 for the site and property; (c) deposit money into the company account and (d) act as “the
6 operational designee” for the ARCO franchise on the site.

7 46. However, after ARCO franchised the station but before the operating
8 documents were finalized, Tomita told Qaraman that he had too many ARCO franchises
9 and that BP West Coast required that Kamar, not Qaraman, serve as the operational
10 designee for the Petro / Rancho project. Relying on Tomita’s representation, Qaraman
11 reluctantly agreed to this condition and Kamar was installed as the operational designee
12 for the Petro / Rancho project.

13 47. Upon information and belief, Kamar, negligently / fraudulently operated
14 the Petro / Rancho project and embezzled funds from the company’s accounts, causing
15 nearly catastrophic damage to the company’s credit and financial situation. Moreover,
16 due to Kamar’s conduct, plaintiffs’ primary corporate bank, Chase, froze many of
17 plaintiffs’ business accounts.

18 48. Qaraman and Elyousef complained about Kamar’s conduct to Tomita,
19 Glassman, Cary, and other BP West Coast employees. These complaints were not well-
20 received, and the once fruitful relationship between BP West Coast and plaintiffs began
21 to deteriorate.

22 49. Upon information and belief, in retaliation for Elyousef and Qaraman’s
23 complaints about Kamar and BP West Coast’s handling of the Petro / Rancho project, the
24 defendants, and each of them, planned and implemented a concerted plan of action
25 designed to force plaintiffs to abandon their interests in the Cheyenne Station, the
26 Glendale Station, and the Sunset / Decatur Station and to indefinitely delay the Boulder /
27 Galleria project.

1 50. Examples of the defendants' bad faith with respect to each station include,
2 but are not limited to, the following conduct:

3 A. **Retalix point of sale ("POS") system / all stations:** the Contract Dealer
4 Gasoline Agreement and *ampm* mini market agreements require that all franchisees
5 utilize a centralized point of sale ("POS") system. Shortly after the Retalix system was
6 rolled out, BP West Coast's franchisees began to complain that the system was defective,
7 resulting in lost operation time, lost revenue, lost or inaccurate inventory, class action
8 litigation against BP West Coast followed. BP West Coast originally charged plaintiffs
9 \$28,000 per franchise term (28 months) to use the Retalix system. In 2011, BP West
10 Coast area representative Ken Lehman met with Qaraman to discuss the lawsuit and its
11 ramifications. If Qaraman agreed not to join the lawsuit, Lehman promised that BP West
12 Coast would lower the per-term fee to use the Retalix system from \$28,000 per term to
13 \$18,000 per term. BP West Coast did not honor this agreement; instead, BP West Coast
14 charged more than \$43,000 per site, which was sums were drawn at one time rather than
15 spread over monthly payments, as originally agreed. These unexpected expenses caused
16 numerous overdrafts and other financial harm to each of the stations.

17 B. **Sunset / Decatur station:** In 2012, BP West Coast revoked plaintiff
18 Qaraman Sunset / Decatur LLC's credit and required pre-payment for fuel in the form of
19 a cashier's check. Under the course of dealing and custom of practice between plaintiff
20 and BP West Coast while relations were good between the parties, BP West Coast
21 accepted a letter of credit and a cash deposit in exchange for extending credit and/or
22 lifting the requirement to pre-pay for fuel using a cashier's check. Plaintiff attempted to
23 tender the required letter of credit along with an \$180,000 deposit in order to remove the
24 cashier's check requirement. BP West Coast refused to accept the tender, claiming that it
25 required the written authorization of minority owner Juan Rivas before extending credit
26 or allowing payment via electronic funds transfer. Upon information and belief, Tomita
27 met privately with Mr. Rivas and told him not to provide the requested authorization.
28

1 **C. Glendale station:** In or around 2013, BP West Coast revoked plaintiff
2 Qaraman LLC's credit and required pre-payment for fuel in the form of a cashier's check.
3 Under the course of dealing and custom of practice between plaintiff and BP West Coast
4 while relations were good between the parties, BP West Coast agreed to restore stations
5 from cashier's check EFT credit status after 90 days of fuel purchase and appropriate
6 financial assurances. The Glendale station account was in good standing for more than a
7 year and plaintiff provided appropriate financial assurances; however, BP West Coast
8 refused to restore the Glendale store's EFT credit status.

9 **D. The Cheyenne station:** The Cheyenne station experienced similar
10 difficulties with fuel payment requirements. After the transition from BP West Coast to
11 Tesoro, Tesoro repeatedly debited EFT fuel transfers from an outdated bank account,
12 causing overdrafts and leading to accusations that the station was not properly
13 capitalized. As a result of the increasingly onerous payment conditions imposed by
14 Tesoro and the deteriorating relationship that constricted plaintiff NWP's ability to
15 purchase fuel, NWP started to look for a buyer for the Cheyenne station. NWP found
16 such a buyer; however, Tesoro unreasonably withheld approval of the requested franchise
17 assignment and imposed a series of unreasonable, last-minute requirements before it
18 would agree to consent to any transfer. These unreasonable conditions included, but were
19 not limited to: arbitrarily determining that the sale agreement failed to satisfy loan-to-
20 value calculations and requiring that plaintiff agree to carry back a loan to the buyer
21 without securing the loan with a deed of trust recorded against the property. Upon
22 information and belief, these actions were designed and intended to restrict the plaintiffs'
23 cash flow and prevent capital investment in other projects, such as the Boulder / Galleria
24 project.

25 **E. The Mesquite station:** Like the other stations, the Mesquite station
26 experienced similar problems with fuel payment requirements and unexpected Retalix
27 charges. Like the other stations, BP West Coast revoked plaintiff Qaraman Mesquite's
28 credit and required pre-payment for fuel in the form of a cashier's check. Despite a track

1 record of on-time payment and adequate financial assurances, the defendants refused to
2 restore the station to EFT credit status.

3 **F. The Boulder / Galleria project:** NWP purchased the land on which this
4 station will be built in 2011. NWP executed an *ampm* mini market agreement on October
5 24, 2011 for this site and a Contract Dealer Gasoline Agreement for this site on October
6 24, 2011. Under these agreements, NWP was required to commence construction within
7 18 months and open the facilities within 24 months of signing the agreements. On May
8 16, 2013, due to unforeseen delays associated with obtaining permits from the Nevada
9 Department of Transportation, NWP obtained an extension to complete construction
10 through October 24, 2014. Despite its best efforts, NWP continued to experience delays
11 with the planning and permitting process. On May 21, 2014, Mr. Qaraman requested an
12 additional extension through November 15, 2014 to complete the project. Tesoro did not
13 respond to the request. Qaraman followed up with email correspondence on May 28,
14 2014, June 2, 2014, and November 11, 2014, but received no substantive written
15 response. On or about November 19, Mr. Tomita called Mr. Qaraman and told him that
16 “the project was dead” and the \$35,000 franchise fee that NWP paid was lost. In
17 response, NWP advised Tesoro that its unilateral cancellation of the Boulder / Galleria
18 franchise violated the PMPA. Shortly thereafter, on December 3, 2014, Tesoro offered, in
19 writing, to extend the deadline through May 30, 2015. Tesoro later offered to extend this
20 deadline through December 31, 2015, with an additional six months to complete
21 construction if permits were obtained by December 31. However, despite demand, Tesoro
22 has withheld final approval of NWP’s request for credit approval.

23 51. The above conduct severely and irreparably damaged the plaintiffs’
24 business operations. The defendants’ increasingly onerous demands surrounding the
25 conditions of fuel payments made it virtually impossible for the plaintiffs to timely and
26 reliably obtain fuel for their stations. Moreover, the overall pattern and practice of bad
27 faith conduct directed towards the plaintiffs’ operations made clear that the defendants
28

1 intended to run the plaintiffs out of business and would stop at nothing to accomplish this
2 unlawful goal.

3 52. Plaintiffs are informed and believe and thereon allege that a meeting was
4 held in Las Vegas in 2013 with Randy Aleman, Wagih Kamar, and employees of the
5 defendants wherein the defendants made clear that the defendants planned to force
6 plaintiffs to sell all of their stations and to cancel all pending projects. Mr. Aleman
7 relayed this message to one of NWP's investors, Karen Ajlouni, and told her to take her
8 money out of the Boulder / Galleria project and run; otherwise, she would "lose
9 everything."

10 53. The defendants systematic, wrongful conduct left plaintiffs with no choice
11 but to sell their stations at whatever price they could obtain. However, in keeping with
12 their on-going pattern of bad faith conduct, the defendants unreasonably withheld their
13 consent to the proposed sales, extracting draconian concessions from the plaintiffs and
14 further depressing the sales prices for each of the stations.

15 54. Moreover, due to Tesoro's delays in responding to the request for extension
16 to complete construction on the Boulder / Galleria project, developments adjacent to the
17 project site have significantly increased the potential costs of construction and
18 detrimentally affected NWP future business plans. Had Tesoro timely responded to the
19 request, the NWP site would likely have been constructed already and would not have
20 been affected by the developments on the adjacent property.

21 **FIRST CLAIM FOR RELIEF**

22 (For Damages, Exemplary Damages, Attorney's Fees and Costs against defendants BP
23 West Coast, Tesoro, and Treasure Franchise Company for Violations of the Petroleum
Marketing Practices Act, 15 U.S.C.A. §§ 2801, et. Set; "PMPA")

24 55. Plaintiffs reincorporate and re-allege the allegations of paragraphs 1
25 through 54, inclusive, as if fully set forth herein.

26 56. The conduct of the defendants, taken together, constitutes a constructive
27 termination of each of the plaintiffs' franchises. The defendants' wrongful conduct, taken
28

1 over the course of several years, left plaintiffs with no choice but to abandon their
2 franchises via sales at below market prices.

3 57. Defendants BP West Coast, Tesoro, and Treasure Franchise Company have
4 not provided a PMPA-compliant notice of termination.

5 58. Moreover, the defendants' decision to constructively terminate plaintiffs'
6 franchise agreements was not made in good faith or in the normal course of business.

7 59. Plaintiffs are informed and believe and thereon allege that defendants acted
8 with the intent of eliminating plaintiffs as franchisees to the benefit of other franchisees,
9 such as Mr. Kamar.

10 60. Plaintiffs have suffered damages in an amount to be proven at trial as
11 proximate result of the violations of the PMPA by the defendants as set forth herein.

12 61. Plaintiffs are entitled to and request exemplary damages, in an amount
13 sufficient to deter further violations of the PMPA as a result of the defendants' willful
14 disregard of their obligations under the PMPA and of the rights of the plaintiffs.

15 62. Plaintiffs are entitled to and request attorneys' fees, expert fees and costs
16 under the PMPA in connection with bringing this action pursuant to 15 U.S.C.A. §
17 2805(d).

18 **SECOND CLAIM FOR RELIEF**

19 (Breach of Contract against all defendants)

20 63. Plaintiffs reincorporate and re-allege the allegations of paragraphs one
21 through 60 as though fully set forth herein.

22 64. To the extend the defendants permitted plaintiffs to do so, plaintiffs
23 performed all relevant terms, covenants and conditions on plaintiffs' part to be performed
24 under the terms of the *ampm* mini market agreements, Contract Dealer Gasoline
25 Agreements, and other franchise agreements, both contractual and implied in law or
26 equity.

27 65. The defendants, and each of them, breached the *ampm* mini market
28 agreements and Contract Dealer Gasoline Agreements in at least the following respects:

(1) by failing and refusing to deliver fuel on reasonable payment terms; (2) by failing and refusing to consent to transfer or sale of the franchises without reasonable or permissible grounds for such refusal; (3) withholding consent to the sale of the plaintiffs' franchises; and (4) refusing to timely respond to NWP's requests for extension of the time to complete construction of the Boulder / Galleria project.

66. Such unreasonable failure to consent to sale included, but is not limited to, one or more of the following acts or omissions with respect to each of the franchise purchasers, all of which show bad faith:

A. Failure and refusal to process applications for sale, assignment, and transfer;

B. Failure and refusal to interview proposed franchise applicants;

C. Failure and refusal to investigate the qualifications of proposed franchisee applicants;

D. Failure and refusal to review applications that have been prepared and submitted by proposed franchisee applicants;

E. Unreasonable delay in processing such applications;

F. Failure and refusal to approve any prospective franchise purchase applicant on any condition, including the foregoing, except a second application by a specific applicant, selected by defendants, and each of them, in which application such applicant, at the urging of defendants, reduced applicant's offer to an unreasonably low price for the franchise owned by plaintiff.

67. As a proximate result of defendants' various breaches of the Franchise Agreements, plaintiffs have been damaged in an amount to be proven at the time of trial.

THIRD CLAIM FOR RELIEF

(Damages for breach of the implied covenant of good faith and fair dealing against all defendants)

68. Plaintiffs incorporate and re-allege the allegations of paragraphs one through 67 as though fully set forth herein.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, plaintiff hereby demands a trial by jury of all claims herein which are properly the subject of a trial by jury.

DATED this 1 day of September, 2015.

MORRIS, SULLIVAN, LEMKUL &
PITEGOFF

/s/ Jeffrey I. Pitegoff

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