

MARKS & KLEIN, LLP

Gerald A. Marks, Esq.

Louis D. Tambaro, Esq.

Evan M. Goldman, Esq.

63 Riverside Avenue

Red Bank, New Jersey 07701

Tel. 732-747-7100

Fax. 732-219-0625

Attorneys for *Plaintiffs Bijen Patel and Kalpana Patel*

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

BIJEN PATEL and KALPANA PATEL,

Plaintiffs,

vs.

7-ELEVEN, INC., and JOHN DOES 1-10,

Defendants.

CASE NO.

CIVIL ACTION

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

Plaintiffs Bijen Patel and Kalpana Patel (collectively hereinafter referred to as “Plaintiffs” or the “Patels”) 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 unfair franchise termination and retaliation by the franchisor 7-Eleven, Inc. against hardworking long-time franchisees, Bijen Patel and Kalpana Patel, husband and wife, 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 the Patels’ franchise locations – that were made known to them by the Patels **more than two years**

ago – pertaining to the Patels’ two (2) franchise locations, which 7-Eleven now uses to assert that Plaintiffs are in breach of their franchise agreement and should be terminated.

3. The Patels seek 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 Defendants 7-Eleven, Inc. (“7-Eleven”) (collectively “Defendants”) threatened improper termination of Plaintiffs’ two franchises. Plaintiffs seek 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. Plaintiffs are husband and wife. Plaintiffs, in good faith, have operated 7-Eleven franchised stores located in East Brunswick New Jersey for the past seventeen (17) years and a separate location in Milltown, New Jersey for the past nineteen (19) years.

6. For the past decade, Plaintiff Bijen Patel 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 increasing aggressive and litigious in dealing with franchisees like Bijen Patel who are actively involved in franchise associations such as the FOA.

8. Bijen Patel'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. Between 2003 and 2007 he served as the FOA President, between 2007 and 2009 he was its Vice President and between 2009 and November 2013 he was its Treasurer. Bijen Patel remains, to date, an active FOA member and regularly attends and participates in FOA meetings. One significant issue in which Plaintiff Bijen Patel 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, Bijen Patel and Kalpana Patel, 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 "Enemy List" 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. Upon further information and belief, based upon Bijen Patel's active role in the FOA and his former status as the President of the FOA, the Patels are amongst those franchisee activists across the United States whose names are included on the Hit List.

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

13. 7-Eleven bases the threatened termination upon the Patels' 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.

14. As set forth herein, this is the second time 7-Eleven has threatened such a termination, without good cause. Indeed, two years ago in May 2012, 7-Eleven also attempted to terminate Plaintiffs' 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 Plaintiffs' franchise on the basis erroneous financial information.

15. These claims are baseless and the Patels seek injunctive and declaratory relief and a formal accounting.

THE PARTIES

16. Plaintiffs Bijen Patel and Kalpana Patel are residents of the State of New Jersey.

17. 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

18. 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.

19. Venue is also proper in this jurisdiction as Plaintiffs 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 Locations

20. On or about May 1995, Plaintiff Kalpana Patel entered into a 15 year franchise agreement for the 7-Eleven franchise located at 114 Ryders lane, Milltown, New Jersey (“Milltown Franchise Agreement”), which operates as store number 2413-10955-D (“Milltown Location”).

21. On or about January 1998, Plaintiff Bijen Patel entered into a 15 year franchise agreement (“East Brunswick Franchise Agreement”) (the East Brunswick Franchise Agreement and Milltown Franchise Agreement will be collectively referred to herein as the “Franchise Agreements”) with Defendant to operate a 7-Eleven franchised convenience store located at 120 Old Stage Road, East Brunswick, New Jersey (“East Brunswick Location”) and known as store number 2413-10950-B.

B. Original Net Worth Dispute

22. Plaintiffs have previously had issues with Defendant 7-Eleven regarding 7-Eleven’s suggestion that the Milltown Location’s net worth was not at the contractually-required level of ten thousand dollars (\$10,000).

23. These issues intensified in Summer 2012, when Plaintiffs received multiple written correspondences from Defendants regarding the Milltown Location's net worth, including a notice of Material Breach dated May 9, 2012. Attached hereto as **Exhibit A** is a true and correct copy of the May 9, 2012 Notice of Breach.

24. Upon receipt of a breach notice and the threat of continued actions to enforce the breach, the Patels promptly retained legal counsel and addressed these issues with 7-Eleven through their counsel. Specifically, the Patels compiled and presented empirical data to demonstrate that 7-Eleven's analysis purposefully disregarded certain enumerated credits and deductions that should have properly been applied to Plaintiffs' net worth statements.

25. Specifically, the Patels contended, with back-upon documentation, that 7-Eleven manufactured two issues to create "defaults" under the Franchise Agreements.

26. With respect to the first manufactured default, Defendant 7-Eleven issued bogus Cash Reports in order to create a "Net Worth Unauthorized Draw", which 7-Eleven asserted constituted a "Material Breach" of the Milltown Franchise Agreement. Attached hereto as **Exhibit B** is a true and correct copy of the May 16, 2012 Cash Report Corrections Recap for the Milltown Location.

27. The bogus Cash Reports that were manufactured by Defendant 7-Eleven were actually contradicted by three (3) other existing 7-Eleven reports ("Three Additional Reports").

28. Specifically, a Cash Report dated May 1, 2012, indicated a shortage of \$34,637.11 ("Cash Report"). Attached hereto as **Exhibit C** is a true and correct copy of the May 1, 2012 Cash Report.

29. The Cash Report, however, failed to apply the Three Additional Reports, which erase any net worth shortage and, in fact, proved a **positive net worth** at the Milltown Location.

30. The Three Additional Reports show a deduction of \$15,112.98 from Plaintiffs “Open Account” in response to the \$15,112.98 inventory shortage; \$18,397.16 for store #10950 (East Brunswick) in the **xx ssi** sales total column and \$13,211.78 corresponds to store #10955 (Milltown) in the **xx ssi** sales total column. Attached hereto as **Exhibits D, E, and F** are true and correct copies of the Additional Reports.

31. The sum of the three accounts/reports amount to \$46,721.92, a *positive net worth* of \$12,084.81.

32. Plaintiffs opened an official claim with 7-Eleven’s accounting department and repeatedly brought the three adjustments expressly contained in the Three Additional Reports to Defendants’ attention, but Defendants ignored the adjustments and dismissed them as irrelevant.

33. With respect to the second manufactured basis for “default,” Defendant 7-Eleven has issued two forged “Retail Inventory Adjustments” for both of the East Brunswick and Milltown Locations.

34. Between Summer and Fall 2012, the Patels remained in constant contact with Defendants concerning the Milltown Location’s net worth and vehemently disputed the amount Defendant 7-Eleven alleged to be owed. Nevertheless, to date, Defendant 7-Eleven has failed to account for tens of thousands of dollars in credits that are owed to Plaintiffs and persisted in asserting their right to terminate the Milltown Location.

35. Moreover, Defendant 7-Eleven failed to provide a Letter of Notification (“LON”) to Plaintiffs advising that the equity account for the Milltown Location has fallen below an acceptable balance.

36. The Patels disputed 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 Plaintiffs' franchise accounts. *See Exhibits D through F.*

37. 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, the Patels made a "required" equity payment to 7-Eleven in order to avoid default and termination proceedings; however, the Patels also reserved all rights for the associated credits.

38. None of the accounting issues raised by the Patels to 7-Eleven have been resolved, despite the fact that 7-Eleven's Counsel represented that all such issues had been referred to accounting. **Exhibit G**, October 2012 string of e-mail correspondence between Counsel for the Patels and Counsel for 7-Eleven.

C. Current "Net Worth" Dispute

39. In November 2013, 7-Eleven once again approached the Patels regarding an alleged net worth deficit; this time as to both the Milltown and East Brunswick Locations.

40. The Patels, understanding that 7-Eleven refused to consider their analysis that was prepared and presented in Summer 2012, hired an outside accounting firm, L. Shanti Kumar & Co. CPA's P.C. of Plainview, New York, which accounting firm has extensive experience providing guidance to 7-Eleven franchisees, and whose accountants are well acquainted with 7-Eleven franchisee business operations.

41. The Kumar Firm prepared and provided "worksheets" showing the existence of accounting discrepancies pertaining specifically to lottery variations (comparing 7-Eleven audit/accounting report and the New Jersey State Lottery's Inventory Activity Report) at both

locations. The Patels again provided 7-Eleven representatives their independent analysis, which was ignored. The Kumar report indicated lottery variations in the amount of \$29,061.82 at Store and \$14,412.08 (East Brunswick) at Store 10955 (Milltown). See Kumar Decl., Exhibits A and B.

42. Since the Kumar reports were prepared, 7-Eleven has wrongly assessed lottery shortages to Store 10950 in the following amounts:

Month/Year	Amount
December 2013	\$36,000
April 2014	\$12,500
June 2014	\$7,700

43. Once again, in February 2014, 7-Eleven's Market Manager William Smith persisted in 7-Eleven's assertion that both of the Patels' locations were below required Net Worth (in deficit) and further responded to the Patels' ongoing and well-documented accounting challenges with the following conclusory statement:

"I confirmed with our accounting team that no money is outstanding. With that said, I need to meet with you at your store to discuss your business and how we need to move forward."

Exhibit H, E-mails between Bijen Patel and William Smith between February 13, 2014 and March 2, 2014.

44. Despite having ready and direct access to all relevant information, Market Manager Smith failed to provide the Patels any back-up documentation or response to the Kumar Firm's worksheets showing lottery variations, or any of the other materials provided to 7-Eleven

(Exhibits A-F) through their counsel. Given the fact that these issues have been pending for two years and were formally discussed between the parties' counsel and directly by the Patels with 7-Eleven's accounting, such conduct constitutes bad faith.

45. On or about March 25, 2014, the ongoing accounting issues still having not been resolved, 7-Eleven issued a Notice of Breach as to both locations.

46. The Notices of Breach were premised upon similarly inaccurate financial information pertaining to both the Milltown Location and East Brunswick Location.

47. On July 23, 2014, 7-Eleven issued a "Supplemental Notice of Material Breach and Notice of Termination" ("NOT") in which it purports to have the right to force the turnover of the Patels' Milltown and East Brunswick locations, in seven (7) days, without compensation. Such conduct, without court order, clearly violates the proscriptions of the NJFPA. **Exh. I**, "Supplemental Notices of Breach and Termination.

48. The NOTs premised upon inaccurate financial information pertaining to both the Milltown Location and East Brunswick Location and purport to have the right to take-back and assume operation of both locations on July 31, 2014. Thus, immediate injunctive relief is necessary and required.

49. The Patels 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 Plaintiffs' Locations are terminated Plaintiffs' twelve employees (total at both locations) will be out of work.

50. If Defendant 7-Eleven is successful in terminating the Patels' Locations without compensating Patels, based upon faulty accounting, and without affording the Patels a fair

opportunity to sell the franchises, the Patels 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.)**

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

52. Plaintiffs are franchisees as defined pursuant to *N.J.S.A. 56:10-3*.

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

54. Plaintiffs reasonably relied upon the written and oral promises and representations of Defendant 7- Eleven, and were induced to expend substantial time, effort, and money in an on-going attempt to develop and operate the Milltown Location and the East Brunswick Location in order to comply with Defendant's rules and regulations.

55. Defendant now is threatening, without demonstrating the requisite "good cause" to wrongfully terminate Plaintiffs' Milltown Franchise Agreement for the Milltown Location and the East Brunswick Franchise Agreement for the East Brunswick Location without the requisite good cause, without providing proper notice under the NJFPA, and by creating unreasonable standards to cure any alleged default.

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

57. 7-Eleven has also based its termination upon incorrect calculations pertaining to both Locations' Net Worth and a refusal to acknowledge the existence of tens of thousands of dollars in credits due and owing by 7-Eleven to the Plaintiffs' stores.

58. 7-Eleven also purports to have the right to usurp the operation of Plaintiffs' locations, deprive Plaintiffs of their entire investment and to take-over franchise operations at the Milltown Location and East Brunswick Locations without a Court Order.

59. Defendant 7-Eleven's failure to provide proper notice of any default and failure to afford Plaintiffs the ability to sell their locations, and 7-Eleven's abject refusal, despite materials prepared by a third-party CPA, to make reasonable efforts to consider Plaintiffs' 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).

60. Plaintiffs therefore seeks equitable relief, full reimbursement of costs, and/or damages for wrongful termination, which have all and/or will irreparably damage Plaintiffs, including, but not limited to the irreparable damage to Plaintiffs' 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)

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

62. 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”).

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

64. Defendant 7-11 has breached its implied covenant of good faith and fair dealing by and through numerous acts that have harmed Plaintiffs’ ability to operate the Milltown Location and the East Brunswick, by and through the following conduct:

(a) Failing to provide Plaintiffs 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 Plaintiffs due to Bijen Patel’s role in the FOA; and,

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

65. As a direct and proximate result of Defendant’s repeated breaches of the covenant of good faith and fair dealing, Plaintiffs 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

Plaintiffs Bijen Patel and Kalpana Patel seek emergent relief against Defendant 7-Eleven by way of entry of an Order:

- (a) Declaring and Adjudging that the threatened July 31, 2014 termination of both the Milltown Location and the East Brunswick Locations were 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 July 31, 2014 termination of the Milltown Location and the East Brunswick Location;
- (c) Requiring that Defendant 7-Eleven provide a formal and complete accounting to Plaintiffs of all sales, revenues, fees received for both Locations, along with all credits due and owing to Plaintiffs since 2011 for both locations;
- (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

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

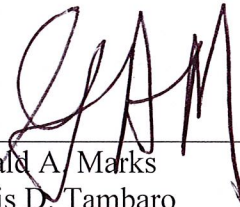
DESIGNATION OF TRIAL COUNSEL

Gerald A. Marks, Esq., Louis D. Tambaro and Evan Goldman, Esq. are hereby designated as trial counsel for Plaintiffs

Dated: July 30, 2014

MARKS & KLEIN, LLP

Attorneys for Plaintiffs

A handwritten signature in dark ink, appearing to be 'GAM', is written over a horizontal line.

Gerald A. Marks

Louis D. Tambaro

Evan M. Goldman

63 Riverside Avenue

Red Bank, N.J. 07701

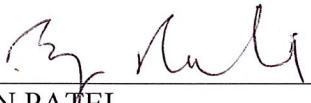
Tel: (732) 747-7100

Fax: (732) 219-0625

VERIFICATION OF BIJEN PATEL

I, **Bijen Patel**, 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 30th day of July 2014.



BIJEN PATEL