

Plaintiff, Universal Supply Group, Inc. (“Universal”), whose principal place of business is 275 Wagaraw Road, Hawthorne, New Jersey, by way of Complaint against Defendant, Alliance Laundry Systems LLC (“Alliance”), whose principal place of business is 221 Shepard Street, Ripon, Wisconsin, states and alleges as follows:

INTRODUCTION

1. Universal is a franchised distributor of *Speed Queen*®-brand laundry equipment manufactured by Alliance.

2. Despite having served as an award-winning distributor for Alliance since 2006, Universal has received written notice from Alliance that Alliance plans to terminate Universal's distribution rights without good cause, written notice of any performance deficiency, or an opportunity to cure any such performance deficiency. *See **Exhibit A*** hereto (hereinafter identified as the "Notice of Termination").

3. Alliance's planned termination is a violation of Universal's statutory and contractual rights to remain a *Speed Queen*®-brand distributor so long as Universal substantially performs as a distributor of such equipment.

4. Alliance's planned termination is also a violation of Universal's right to receive notice of -- and an opportunity to "cure" -- any observed performance deficiency on the part of Universal.

5. Alliance's written notice to Universal noted that Alliance plans to terminate Universal's distribution rights effective June 1, 2013. *See **Exhibit A***. (Alliance has since agreed to postpone the date of termination for at least an additional three months.)

6. The New Jersey Franchise Practices Act prohibits a supplier, such as Alliance, from terminating a business relationship with its distributor in the absence of: (i) good cause, (ii) advance written notice of any performance deficiency, and (iii) an opportunity to cure any deficiency in the distributor's performance.

7. The parties' underlying written agreement incorporates, by reference, any statutory scheme which provides Universal with greater rights than Universal might have under the laws of the State of Wisconsin.

8. Universal agreed to act as a distributor for Alliance with the understanding that Alliance would not terminate Universal in the absence of: (i) good cause, (ii) written notice of any observed deficiencies in performance, and (iii) a meaningful opportunity to "cure" any such observed deficiencies in performance.

9. However, Alliance's planned termination of Universal is not based on any "good cause" performance deficiency on the part of Universal.

10. Alliance's **Exhibit A** Notice of Termination identified no performance deficiency on the part of Universal (and, accordingly, provided Universal with no opportunity to "cure" any performance deficiencies which Alliance might, otherwise, have identified in its Notice of Termination).

11. Where a supplier "has offered no reason, other than a change in its business strategy" for the supplier's planned termination of a franchised distributor

entitled to the anti-termination protections of the New Jersey Franchise Practices Act, the supplier violates the Act. *See, e.g., Beilowitz v. Gen. Motors Corp.*, 233 F. Supp. 2d 631, 644 (D.N.J. 2002).

12. Upon information and belief, Alliance's true motivations for its planned termination of Universal includes: (a) Alliance's interest in eliminating franchised distributors from the distribution scheme for *Speed Queen*®-brand products (*i.e.*, in order to position Alliance to "go direct" to retailers with such products); (b) Universal's refusal to pay certain "passover" payments demanded by Alliance but not contemplated by the parties' distribution agreement; and (c) Universal's refusal to participate in an agreement, as between Alliance and other *Speed Queen*®-brand distributors, to fix prices.

13. As more fully discussed below, none of the aforementioned circumstances creates a lawful, good cause basis on the part of Alliance for seeking to terminate Universal.

14. As more fully detailed below, as a New Jersey-based distributor, Universal has a statutory right to injunctive relief to prevent termination -- *i.e.*, under the New Jersey Franchise Practices Act.

15. Accordingly, Universal seeks injunctive relief enjoining Alliance's planned termination of Universal.

16. Universal files this action seeking: (a) temporary injunctive relief to prevent termination of its distribution rights; (b) permanent injunctive relief to prevent termination of its distribution rights; and (c) costs and attorneys' fees expended in connection with this matter.

17. Alternatively, Universal seeks money damages sufficient to compensate Universal for having been stripped of its ongoing rights to distribute *Speed Queen*®-brand equipment so long as Universal reasonably performs.

PARTIES

18. Plaintiff Universal is a corporation organized under the laws of the State of New York with a principal place of business in the State of New Jersey.

19. Universal has been a distributor of Alliance's *Speed Queen*®-brand laundry products since late 2006.

20. Universal has purchased its inventory of *Speed Queen*®-brand equipment from Universal's principal business location in the State of New Jersey.

21. Universal distributes (*i.e.*, resells) such products within an exclusive territory comprised of the entire State of New Jersey and substantial portions of both the State of New York and the State of Pennsylvania.

22. Universal was also formerly assigned distribution rights to substantial portions of the State of Delaware and the County of Fairfield within the State of

Connecticut, but Universal was stripped of the distribution rights to that portion of its territory, without good cause, just over a year ago.

23. Alliance is a corporation organized under the laws of the State of Delaware and has a principal place of business in Ripon, Wisconsin.

24. Alliance is a leading global manufacturer of residential and commercial laundry products. The company's products are sold under the well-known brand names *Speed Queen*®, *UniMac*®, *Huebsch*®, *Cissell*®, *D'Hooge*® and *IPSO*®.

JURISDICTION

25. Jurisdiction in this court is proper because both parties conduct business within the State of New Jersey, and the parties are completely diverse.

26. Universal reasonably believes the amount in controversy to be substantially in excess of this Court's jurisdictional requirements.

27. Further, this Court has jurisdiction to issue the temporary injunctive relief sought by Universal.

28. The New Jersey Franchise Practices Act expressly grants franchised distributors a statutory right to seek injunctive relief within the State of New Jersey, and such right is not subject to waiver by the franchised distributor.

29. Universal demands a trial by jury.

THE PARTIES' AGREEMENT

30. Universal was approached about the opportunity to distribute Alliance's laundry products in 2005.

31. In August 2006, in reliance on Alliance's commitments that Alliance would not terminate Universal in the absence of: (i) good cause, (ii) written notice of any observed deficiencies in performance, and (iii) an opportunity to "cure" any such observed deficiencies in performance, Universal entered into a Distributor Agreement for Home Laundry Equipment (the "Distributor Agreement"). *See* the Distributor Agreement, including the written amendments thereto, attached hereto as **Exhibit B**.

32. As noted in Paragraph B of the Distributor Agreement, Universal is the authorized distributor for the geographic territory identified within the Distributor Agreement.

33. As noted in Paragraph D(12) of the Distributor Agreement, Universal may be obligated to pay certain "passover payments" -- but only for "shipments of Product made out of [Universal's] authorized territory." *See* **Exhibit B** at Paragraph D(12).

34. While Paragraph L of the form Distributor Agreement nominally suggests that Alliance may terminate Universal "for any reason" upon 30 days' advance notice, Paragraph P of the Distributor Agreement also effectively incorporates, by reference, the New Jersey Franchise Practices Act's relationship protections.

35. Paragraph P of the Distributor Agreement provides as follows:

This Agreement shall be construed, enforced and performed in accordance with the laws of the State of Wisconsin. It is understood, however, that nothing herein shall imply, or result in, this Agreement being situated within the State of Wisconsin. If any portion of this Agreement is prohibited or contrary to the laws of any country, state, province or other political subdivision in which it is used or to which it is made applicable or by any code or regulation adopted by any governmental proclamation or orders issued in accordance with any such laws, it shall as to said country, state, province or other political subdivision, be ineffective and void to the extent of such prohibition or illegality without invalidating any of its remaining provisions, and to this end the provisions and clauses of this Agreement are declared to be severable.

See **Exhibit B** at Paragraph P (emphasis added).

36. As more fully discussed, *infra*, state statutes applicable to Alliance's relationship with a New Jersey-based distributor provide Universal with stronger anti-termination protections than Paragraph L of the underlying Distributor Agreement.

37. As a result, Paragraph L is void to the extent of its inconsistency with the New Jersey Franchise Practices Act.

38. In lieu of the Paragraph L termination provisions, Alliance has effectively recognized, for contractual purposes, that it is bound to honor the New Jersey Franchise Practices Act and its anti-termination provisions.

39. Because the Distributor Agreement effectively incorporates the New Jersey Franchise Practices Act, and its anti-termination provisions, Alliance will be in

violation of both the New Jersey Franchise Practices Act and its Distributor Agreement if Alliance should proceed to terminate in the absence of good cause.

40. By the terms of the parties' agreement, whether "good cause" exists to terminate Universal is a function of whether Universal has satisfied reasonable quota requirements established by Alliance.

41. Alliance annually establishes purchase requirements that Universal must fulfill.

THE RESULTS OF UNIVERSAL'S DISTRIBUTION EFFORTS

42. Universal has served as a distributor of Alliance's *Speed Queen*®-brand products since 2006, has satisfied all quota requirements, and has dramatically increased the sales of the *Speed Queen*®-brand products throughout its territory.

43. Alliance employees have repeatedly commented about the outstanding performance rendered by Universal in the development of its market territory.

44. Alliance has awarded Universal with multiple "Quota Buster" awards based on Universal's outstanding distribution performance in 2007 and 2009. *See, e.g., **Exhibit C*** hereto.

45. Universal has also greatly exceeded Alliance's quota requirements in each of the past three years.

46. In 2010, Alliance established a purchase quota of \$3,650,000, and Universal exceeded such quota by making purchases of \$4,155,958.

47. In 2011, Alliance established a purchase quota of \$4,245,216, and Universal exceeded such quota by making purchases of \$6,593,371.

48. In 2012, Alliance established a purchase quota of \$8,082,000, and Universal exceeded such quota by making purchases of \$11,192,802.

49. In short, by 2012, Universal more than tripled the amount of purchases that Alliance had deemed to constitute a reasonable quota amount just three years prior.

50. Because Universal has repeatedly and dramatically exceeded Alliance's annual purchase requirement quotas, Alliance lacks good cause to terminate Universal's distribution rights.

51. Because Alliance had committed not to terminate Universal so long as Universal was meeting annual quota requirements, Alliance will breach its contractual commitments to Universal should Alliance move forward with termination.

**ALLIANCE STRIPS UNIVERSAL OF ITS RETAIL DEALER ACCOUNTS
IN CONNECTICUT AND DELAWARE**

52. The circumstances described above are not the first instance in which Alliance has acted without good cause to seek to terminate Universal's distribution rights.

53. As reflected in the Distributor Agreement (*see* **Exhibit B** thereto), Alliance had assigned to Universal substantial geographic territory within the State of Connecticut and the State of Delaware.

54. However, in 2011 and 2012, Alliance's Ed Ryan purported to be in a position to unilaterally re-allocate the dealers/retailers located within Universal's Connecticut and Delaware territory to other distributors of Alliance's *Speed Queen*®-brand products.

55. Ryan offered no meaningful explanation as to his basis for concluding that Alliance could unilaterally re-allocate dealers/retailers located within Universal's Connecticut and Delaware territory to other distributors of Alliance's *Speed Queen*®-brand products.

56. In spite of Universal's exemplary performance from 2011 to 2012, as described above, Ryan simply stripped Universal of all of its retail dealer accounts in both the State of Delaware and the State of Connecticut.

57. Ryan and Alliance had no "good cause" basis upon which to terminate Universal's rights to continue making sales to its retail dealers in either the State of Delaware or the State of Connecticut.

58. Universal has suffered substantial damages based on Alliance's termination, without good cause, of Universal's contractual right to continue distribution in both the State of Delaware and the State of Connecticut.

**ALLIANCE LACKS GOOD CAUSE TO TERMINATE UNIVERSAL AND
HAS FAILED TO PROVIDE UNIVERSAL WITH ADVANCE WRITTEN
NOTICE AS REQUIRED BY BOTH THE DISTRIBUTION AGREEMENT
AND APPLICABLE TRADE STATUTES**

59. On the heels of its having terminated, without good cause, Universal's rights to service retail dealer accounts in both the State of Delaware and the State of Connecticut, Alliance has circulated notice that it intends to terminate all of Universal's remaining distribution rights.

60. If Alliance had any "good cause" basis to terminate Universal's remaining distribution rights, Alliance was obligated to have advised Universal of any such alleged performance deficiencies on the part of Universal as part of the **Exhibit A** Notice of Termination.

61. As illustrated above, Universal fulfilled its quotas for purchases of *Speed Queen*®-brand laundry products such that Alliance has no "good cause" basis for termination.

62. The Notice of Termination does not suggest that Alliance has observed any deficiency on the part of Universal as it relates to Universal's purchases of *Speed Queen*®-brand laundry products.

63. In fact, the Notice of Termination does not take issue with Universal's performance at all and, instead, merely alleges that Alliance believes Alliance could, in some unidentified manner, "improve [its] position in the marketplace" if and when Alliance terminates Universal. See **Exhibit A**.

64. Upon information and belief, the reason that Alliance declined to meaningfully identify the basis for its planned termination in the Notice of Termination is that Alliance lacks a "good cause" basis upon which to terminate Universal.

65. Upon information and belief, Alliance has ulterior motives for seeking to terminate Universal -- none of which constitutes "good cause" for termination.

66. Upon information and belief, Alliance was motivated to terminate, not because of any *bona fide* deficiency in the distribution performance of Universal, but, instead, because: (a) Alliance may wish to eliminate its distributor tier (including Universal) and make sales of *Speed Queen*®-brand laundry products directly to retailers; (b) Universal refused Alliance's demands for "passover payments" to which Alliance was not entitled; and/or (c) Universal refused the concerted demands by

Alliance and Universal's smaller, neighboring distributors that Universal raise -- *i.e.*, fix -- the prices at which Universal resells its inventory to retailing dealers.

67. As more fully discussed below, none of these circumstances constitutes a proper basis for termination of Universal.

68. Furthermore, none of these three circumstances was affirmatively identified in the Notice of Termination -- as required by the parties' agreement and the New Jersey Franchise Practices Act -- as the basis for Alliance's plans to terminate Universal's distribution rights. See **Exhibit A**.

69. Had Alliance affirmatively identified some performance deficiency on the part of Universal, Universal could have worked to "cure" -- *i.e.*, resolve -- such alleged performance deficiency.

70. Alliance's failure to affirmatively identify any performance deficiency on the part of Universal has deprived Universal of the opportunity to work to "cure" any observed performance deficiency on its part.

**ALLIANCE'S DESIRE TO POTENTIALLY ELIMINATE
ITS DISTRIBUTORS AND "GO DIRECT"
BY SELLING DIRECTLY TO RETAIL DEALERS**

71. Speed Queen Regional Manager Ed Ryan has frequently observed to Universal representatives that Universal, as a distributor of *Speed Queen*®-brand products, is nothing more than a "drop-shipper."

72. Ryan has also observed to Universal representatives that Universal, and other distributors of *Speed Queen*®-brand products, add no value to Alliance's distribution model.

73. Ryan has not explained his basis and reasoning for his two conclusions in this regard.

74. In reality, Universal adds incredible value to Alliance's distribution model because Universal handles the administrative and operational duties of establishing, training, and responding to retail dealers' concerns relating to *Speed Queen*®-brand products.

75. Upon information and belief, Ryan has suggested to both Speed Queen National Sales Manager Reid Meisner and Alliance Laundry Systems Vice President of North American Sales Bill Bittner that distributors like Universal are nothing more than "drop-shippers," and that Alliance should, accordingly, seek to eliminate such distributors from Alliance's chain of distribution.

76. Upon information and belief, Meisner and Bittner crafted the Notice of Termination, at least in part, based on the notion that Alliance could capture profits being made by Universal if Alliance were to: (a) terminate Universal, and (b) commence making direct shipments to the retail dealers.

77. Alliance's desire to capture profits being made by Universal is not, however, a "good cause" basis for seeking to terminate Universal because the mere desire on the part of Alliance to alter its distribution model is not a "performance deficiency" on the part of Universal.

78. Stated differently, the mere fact that Alliance seeks to alter its present distribution model does not serve as a basis for contending that Universal has failed to perform as a distributor within Alliance's present distribution model.

79. Accordingly, if Alliance is seeking to terminate Universal, at least in part, because of a desire on the part of Alliance to alter its model of distribution, Alliance is violating its statutory and contractual obligations to Universal.

80. Furthermore, Alliance lacks good cause to terminate because Alliance representatives have, since the date of the issuance of the Notice of Termination admitted to Universal representatives that: (a) Universal and Alliance's other distributors do add value to Alliance's present model of distribution; and (b) Alliance's distributors handle a host of operational and administrative tasks that Alliance is not presently prepared to handle.

**UNIVERSAL’S REFUSAL TO MAKE “PASSEVER PAYMENTS” WHICH
ALLIANCE HAD NO CONTRACTUAL RIGHT TO DEMAND**

81. As noted, *supra*, Alliance identified no performance deficiency on the part of Universal within the **Exhibit A** Notice of Termination that Alliance circulated to Universal.

82. Nonetheless, Universal has reasonably come to believe that Alliance’s present intention to terminate Universal arises, at least in part, from Universal’s refusal to pay to Alliance certain “passover payments” which Alliance demanded from Universal in 2012.

83. Universal has not acceded to Alliance’s demands for such passover payments because the written portion of the Distributor Agreement specifically defines the limited circumstances under which Universal is obligated to make such passover payments.

84. Paragraph D(12) of Universal’s Distributor Agreement provides, in relevant part, that:

DISTRIBUTOR AGREES: ... (12) To focus upon the primary area of responsibility and authorized territory. In the event another Alliance Distributor sells product into the authorized territory of Distributor, to accept a passover payment of ten percent (10%) of the published single lot Distributor price in effect at the time of shipment. Distributor agrees that this passover payment will be full compensation for its after sales technical support and its warranty responsibilities. Likewise, Distributor agrees to pay Alliance this passover payment for shipments of Product made out of its authorized territory.

See **Exhibit B** at Paragraph D(12) (emphasis added).

85. The plain language of this passage provides that, so long as Universal is selling and shipping to a buyer located within Universal's assigned geographic territory, Universal is not obligated to make a passover payment.

86. This is true even if that buyer subsequently resells the equipment -- initially purchased from Universal within Universal's assigned territory -- outside of the geographic area assigned to Universal.

87. If there were any ambiguity in the meaning of Paragraph D(12) of the Distributor Agreement (which there is not), Alliance Bulletin 26-1206S resolves the ambiguity.

88. Alliance Bulletin 26-1206S, a document crafted by Alliance at or about the time when Universal signed on as a distributor of Alliance's *Speed Queen*®-brand products, provides in relevant part, that:

Alliance Distributors (Speed Queen Home Laundry) will no longer be required to make Passover payments under the following conditions: 1. Sales made to a dealer that ships laundry product from a dealer controlled warehouse to branches that are outside the distributor's territory ... [and] 2. Sales made to a dealer that purchases from a group warehouse located in another distributor's territory.

See **Exhibit D** hereto.

89. Alliance Bulletin 26-1206S confirms Alliance's own, subjective belief that the Distributor Agreement does not contemplate that passover payments are to be made where the distributor makes the initial sale of equipment within the distributor's assigned territory.

90. Furthermore, the parties' longtime course of dealing has been that Universal has not been obligated to make passover payments when the initial sale by Universal is made within the geographic territory assigned to Universal.

91. A party to a contract cannot unilaterally modify its terms without the other party's assent.

92. Nonetheless, on May 1, 2012, Alliance issued written notice that Alliance was purporting to unilaterally change the contractual passover payment policy -- *i.e.*, to "support the Distributor who has not collected payment for products being sold in his or her authorized territory and will be used to pay for sales and product training,

warranty service, POP materials to include, but not limited to: literature, signage etc. and general dealer awareness.” See **Exhibit E** hereto.

93. Over the balance of 2012, Alliance sought to collect passover payments from Universal. See, e.g., the December 20, 2012 email attached hereto as **Exhibit F** from Alliance’s Reid Meisner.

94. Universal is not contractually obligated to make passover payments -- e.g., based on sales made to the buying group known as NECO, because NECO and Universal’s other buyers make and receive their purchases within the geographic territory assigned to Universal.

95. As a result, Universal’s sales of product to NECO are not Universal sales “out of its authorized territory,” as that phrase is used in the Distributor Agreement (attached as **Exhibit B** at Paragraph D(12)).

96. Universal refused to accede to Alliance’s passover payment demands in 2012 specifically because the plain language of the Distributor Agreement does not contemplate that Universal is obligated to make passover payments except “for shipments of Product made out of its authorized territory.”

97. The passover payment demands made by Alliance in 2012 related exclusively to shipments of product that Universal made to buyers within Universal’s assigned geographic territory.

98. Because Universal has been unwilling to make the demanded passover payments -- alleging them to be beyond the scope of the contract -- Alliance commenced deducting passover payments from the volume sales rebates which would, otherwise, have been paid to Universal by Alliance.

99. To date, Alliance has captured approximately \$200,000 worth of alleged passover payment obligations, *e.g.*, from rebates owed to Universal that have been withheld by Alliance.

100. In so doing, Alliance has breached its agreement with Universal.

101. Alliance does not have good cause to terminate Universal's distribution rights based on Universal's refusal to pay passover payments not contemplated under the Distributor Agreement.

102. That said, if Alliance believed that Universal's refusal to pay passover payments for shipments made within Universal's territory was a breach of Universal's obligations, Alliance's Notice of Termination should have specified this as a basis for seeking to terminate Universal.

**UNIVERSAL'S REFUSAL TO PARTICIPATE IN THE PRICE-FIXING
AGREEMENT AS BETWEEN ALLIANCE AND UNIVERSAL'S
ADJOINING DISTRIBUTORS**

103. As more fully described herein, Alliance does not have a good cause basis for terminating Universal based on Universal's refusal to participate in a price-fixing

scheme as between Alliance and distributors with territories adjoining the geographic territory presently serviced by Universal.

104. By way of background, over the course of 2011 and 2012, Alliance representatives, including Speed Queen National Sales Manager Reid Meisner and Speed Queen Regional Manager Ed Ryan, coaxed Universal's Pete Gasiewicz, Melissa Williams and Eddie Guss, both by telephone and in person, to "work with" distributors in adjoining territories who have been selling products to their dealers at higher prices. *See, e.g.*, the materials attached hereto as **Exhibit G**, regarding Reid Meisner's demands for a common pricing program with other distributors, and **Exhibit H**, an email string with a smaller distributor in an adjoining territory ending the conversation about common pricing.

105. Meisner and Ryan have specifically encouraged Universal to raise Universal's prices in order to "align" with the prices being charged by smaller distributors like Blodgett Supply, a distributor to the north of Universal, and Appliance Associates, Inc., a distributor to the west of Universal.

106. As reflected in **Exhibit H**, Universal's Pete Gasiewicz directed Williams to discontinue such conversations in the summer of 2012 when it became apparent that "working with" such smaller, adjoining distributors amounted to an attempt at price fixing.

107. In short, over the latter half of 2012, Universal refused to accede to: (a) Alliance's demands for unwarranted "passover payments"; and (b) the concerted demands by Alliance and Universal's smaller, neighboring distributors that Universal fix the prices at which Universal sells product to its dealer customers to align with neighboring suppliers.

108. In reaction to Universal's refusal of such demands, Alliance's Reid Meisner and Bill Bittner went on to issue a Notice of Termination dated January 25, 2013 to Universal. See **Exhibit A** hereto.

109. Upon information and belief, Alliance has sought to terminate Universal, at least in part, because Universal was unwilling to "work with" smaller, adjoining distributors -- *i.e.*, to fix prices -- as directed by Alliance's Reid Meisner and Ed Ryan.

110. Universal's refusal to participate in a price-fixing scheme -- orchestrated by Alliance per Alliance's agreement with smaller, adjoining distributors -- is not a "good cause" basis for termination of Universal's distribution rights.

111. Alliance's issuance of a Notice of Termination under these circumstances is a violation of both the parties' agreement and Universal's statutory rights under the New Jersey Franchise Practices Act.

**UNIVERSAL IS ENTITLED TO THE PROTECTIONS OF
THE NEW JERSEY FRANCHISE PRACTICES ACT**

112. Universal qualifies as a “franchise” within the meaning of the New Jersey Franchise Practices Act which defines a franchise as “a written arrangement for a definite or indefinite period, in which a person grants to another person a license to use a trade name, trademark, service mark, or related characteristics, and in which there is a community of interest in the marketing of goods or services at wholesale, retail, by lease, agreement, or otherwise.” *See* N.J. Stat. § 56:10-3(a).

113. Universal meets both elements of the aforementioned “franchise” definition.

114. As an initial matter, Paragraph H of the Distributor Agreement contemplates Universal’s use of Alliance’s registered trademarks, and Universal has created a groundswell of interest in Alliance’s *Speed Queen*®-brand products since taking over distribution of this line of products.

115. There is also a community of interest in Universal’s distribution of such products.

116. Universal’s efforts to dramatically increase the purchase of home laundry equipment by its customers has operated to the financial benefit of both Universal, as a wholesaler, and Alliance, as manufacturer.

117. Moreover, Universal has also made substantial monetary and franchise-specific investments in the promotion of the *Speed Queen*® product line (*e.g.*, via the substantial expansion of the Westville, New Jersey facility to accommodate Universal's ever-growing sales of the *Speed Queen*® product line) and the hiring of staff dedicated exclusively to the promotion, sale, and delivery of *Speed Queen*®-brand products.

118. Such investments by Universal will be lost if Alliance is permitted to proceed with its planned termination.

119. Universal will also lose the substantial goodwill it has built up if Alliance proceeds with its current plan to strip Universal of such goodwill by terminating its distribution rights.

120. Accordingly, Universal is properly characterized as a "franchise" within the meaning of New Jersey law.

121. Universal enjoys the protections of the New Jersey Franchise Practices Act which is applicable to that subset of "franchises":

(1) the performance of which contemplates or requires the franchisee to establish or maintain a place of business within the State of New Jersey;

(2) where gross sales of products or services between the franchisor and franchisee covered by such franchise shall have exceeded \$35,000.00 for the 12 months next preceding the institution of suit pursuant to this act; and

(3) where more than 20% of the franchisee's gross sales are intended to be or are derived from such franchise.

See N.J. Stat. § 56:10-4.

122. Universal meets all such requirements for its franchise to be covered under the New Jersey Franchise Practices Act because Universal: (1) operates from a principal location within the State of New Jersey and, likewise, the bulk of its *Speed Queen*®-brand inventory out of its aforementioned Westville, New Jersey location; (2) enjoyed \$13.5 million in gross sales last year on the *Speed Queen*® product line -- far above the statutory minimum of \$35,000 for the preceding 12 months; and (3) more than a third (33%) of Universal's revenues last year came from Alliance's *Speed Queen*®-brand products.

123. Accordingly, Universal is in a position to claim the anti-termination protections of the New Jersey Franchise Practices Act which makes it a "violation of this act for the franchisor to terminate, cancel or fail to renew a franchise without good cause." *See* N.J. Stat. § 56:10-5.

124. Alliance's Notice of Termination did not specify any performance deficiency on the part of Universal as the basis for Alliance's decision to terminate Universal.

125. Alliance lacks good cause to terminate because Universal has abided by the underlying contract and grossly exceeded the 2012 quota requirement.

126. The suggestion made by Alliance in its Notice of Termination -- *i.e.*, that Alliance can “improve [its] position in the market by making a change in distribution” (*see* **Exhibit A**) -- is false.

127. Universal is entitled to injunctive relief to prevent Alliance’s planned termination in violation of the New Jersey Franchise Practices Act and the parties’ agreement which effectively incorporates the provisions of the New Jersey Franchise Practices Act.

128. Universal is, furthermore, entitled to injunctive relief preventing Alliance from supplying competing distributors in and around Universal’s territory with Alliance’s laundry products.

129. Accordingly, Universal is entitled to “recover damages sustained by reason of any violation of this Act and, where appropriate, shall be entitled to injunctive relief. Such franchisee, if successful, shall also be entitled to the costs of the action including but not limited to reasonable attorney's fees.” *See* N.J. Stat. § 56:10-10.

130. In the absence of injunctive relief, Universal will lose the value of the substantial capital investments, which Universal has made in order to facilitate its distribution of the *Speed Queen*®-brand products manufactured by Alliance.

131. In the absence of injunctive relief, Universal will likely be forced to terminate many of its existing staff retained exclusively for the purpose of the promotion and marketing of Alliance's *Speed Queen*®-brand products.

132. In the absence of injunctive relief, Universal will be stripped of the substantial goodwill which Universal has built up in connection with Universal's promotion and distribution of Alliance's *Speed Queen*®-brand products.

133. The dollar amount of Universal's would-be loss of goodwill is not readily subject to mathematical calculation.

134. Universal will be irreparably harmed by the termination of its current rights to distribute *Speed Queen*®-brand products.

135. In the event that Universal is terminated by Alliance, Universal is entitled to statutory damages associated with Alliance's wrongful termination.

ALLIANCE'S VIOLATION OF THE SHERMAN ACT

136. Alliance's documented attempts to create a common pricing program at the behest of smaller, neighboring distributors raises serious concerns about Alliance's

motivation to terminate and, likewise, creates a claim for treble damages on the part of Universal.

137. This is so because, though Meisner's and Ryan's concerted actions to control the resale price at which *Speed Queen*®-brand products are sold is not "good cause" for termination of Universal, Alliance's conduct in this regard is an antitrust violation.

138. The Sherman Act, 15 U.S.C. § 1, forbids a "contract, combination ..., or conspiracy" to control prices.

139. Section 1 of the Sherman Act applies to concerted action that restrains trade.

140. Concerted activity inherently is fraught with anticompetitive risk insofar as it deprives the marketplace of independent centers of decision-making that competition assumes and demands.

141. The Sherman Act prohibits any concerted action in restraint of trade or commerce even if the action does not threaten monopolization.

142. Where there is concerted action to control prices as between a manufacturer and a vertically-integrated distributor, *e.g.*, via the termination of a discounting distributor, such concerted action is a violation of the Sherman Act.

143. Alliance's violation of the Sherman Act entitles Universal to treble damages.

COUNT I
REQUEST FOR TEMPORARY
AND PERMANENT INJUNCTIVE RELIEF

144. Plaintiff realleges and incorporates the above paragraphs as if fully set forth herein.

145. Due the misconduct set forth above, Universal has an express statutory right to injunctive relief under the New Jersey Franchise Practices Act.

146. Universal also has a strong likelihood of success on the merits and will suffer irreparable harm if an injunction preventing Alliance from terminating Universal as Alliance's exclusive distributor is not issued.

147. Due to Alliance's above-described conduct, Universal seeks temporary and permanent injunctive relief preventing Alliance from terminating Universal as a distributor of Alliance's laundry products, as such termination will cause irreparable harm to Universal and because such termination would, otherwise, violate the statutory prohibition of the New Jersey Franchise Practices Act.

148. Universal is, furthermore, entitled to temporary and permanent injunctive relief preventing Alliance from re-allocating Universal's distribution rights either to competing distributors or to Alliance.

149. Universal specifically requests that this Court grant Universal temporary and permanent injunctive relief prohibiting Alliance from: (a) taking further steps to terminate Universal; or (b) taking further steps to sign up any replacement distributor within the geographic territory currently assigned to Universal by Alliance; or (c) committing to enter into an agreement with any third party to act as a replacement distributor within the geographic territory currently assigned to Universal by Alliance; or (d) taking further steps to plan or facilitate Alliance's making direct shipments to retail dealers within the geographic territory currently assigned to Universal by Alliance.

COUNT II
VIOLATION OF THE NEW JERSEY FRANCHISE PRACTICES ACT
N.J. STAT. § 56:10-1, ET SEQ.

150. Plaintiff realleges and incorporates the above paragraphs as if fully set forth herein.

151. As discussed, *supra*, Universal is a franchised distributor of Alliance's products within the meaning of the New Jersey Franchise Practices Act.

152. For the reasons discussed above, Alliance's planned termination of Universal's distribution rights is a violation of the New Jersey Franchise Practices Act.

153. Alliance has no good cause basis upon which to terminate Universal.

154. Furthermore, by declining to identify any specific basis for seeking to terminate Universal, Alliance has deprived Universal of the opportunity to “cure” any deficiency in its performance.

155. Alliance’s Ed Ryan has already undertaken to begin establishing new retail dealers within the territory served by Universal notwithstanding the fact that Alliance has not yet terminated Universal.

156. The New Jersey Franchise Practices Act provides Plaintiff Universal with an express statutory right to injunctive relief.

157. Universal is entitled to temporary and permanent injunctive relief preventing Alliance’s planned termination of Universal, as well as costs, disbursements and attorneys’ fees.

158. Universal requests that this Court grant Universal temporary and permanent injunctive relief prohibiting Alliance from: (a) taking further steps to terminate Universal; or (b) taking further steps to sign up any replacement distributor within the geographic territory currently assigned to Universal by Alliance; or (c) committing to enter into an agreement with any third party to act as a replacement distributor within the geographic territory currently assigned to Universal by Alliance; or (d) taking further steps to plan or facilitate Alliance’s making direct shipments to

retail dealers within the geographic territory currently assigned to Universal by Alliance.

159. Alternatively, Universal is entitled to statutory damages, as well as costs, disbursements, interest and attorneys' fees.

160. Universal is also entitled to damages, costs, disbursements, interest and attorneys' fees arising out of Alliance's conduct in terminating, without good cause, Universal's territorial rights to dealer accounts within the State of Delaware and the State of Connecticut.

161. The amount of damages which Universal is, or will be, entitled to recover cannot now be exactly determined, but is reasonably believed to be significantly in excess of the jurisdictional requirements of this Court.

COUNT III
BREACH OF CONTRACT AND THE IMPLIED
COVENANT OF GOOD FAITH AND FAIR DEALING

162. Plaintiff realleges and incorporates the above paragraphs as if fully set forth herein.

163. As discussed above, Universal agreed to act as a distributor for Alliance with the understanding that Alliance would not terminate Universal in the absence of: (i) good cause, (ii) written notice of any observed deficiencies in performance, and (iii) a meaningful opportunity to "cure" any such observed deficiencies in performance.

164. As detailed *supra*, the written Distributor Agreement between the parties to the instant dispute also contemplates that applicable trade statutes may be deemed to override the terms of such form distribution agreement, stating:

This Agreement shall be construed, enforced and performed in accordance with the laws of the State of Wisconsin. It is understood, however, that nothing herein shall imply, or result in, this Agreement being situated within the State of Wisconsin. If any portion of this Agreement is prohibited or contrary to the laws of any country, state, province or other political subdivision in which it is used or to which it is made applicable or by any code or regulation adopted by any governmental proclamation or orders issued in accordance with any such laws, it shall as to said country, state, province or other political subdivision, be ineffective and void to the extent of such prohibition or illegality without invalidating any of its remaining provisions, and to this end the provisions and clauses of this Agreement are declared to be severable.

See **Exhibit B** at Paragraph P (emphasis added).

165. As such, both the New Jersey Franchise Practices Act and the Distributor Agreement itself require that Alliance comply with the protections afforded under the New Jersey Franchise Practices Act.

166. Alliance's planned termination, in the absence of good cause, is a breach of contract and the implied covenant of good faith and fair dealing.

167. Universal may not be terminated in the absence of good cause.

168. Moreover, Universal is entitled to a written notice of default/termination that actually affords universal some *meaningful opportunity to cure* any performance deficiencies identified by Alliance as a part of such written notice.

169. Alliance's failure to provide Universal with proper notice of any alleged deficiency in Universal's performance -- and a meaningful opportunity to cure any such identified performance deficiency -- is a breach of contract and the implied covenant of good faith and fair dealing.

170. Alliance's Ed Ryan has already undertaken to begin establishing new retail dealers within the territory served by Universal notwithstanding the fact that Alliance has not yet terminated Universal.

171. Ryan's conduct, as described in the preceding paragraph, represents yet another breach of contract and the implied covenant of good faith and fair dealing by Alliance.

172. Universal will suffer irreparable harm in the absence of temporary and permanent injunctive relief.

173. Universal is entitled to temporary and permanent injunctive relief preventing Alliance's planned termination of Universal, as well as costs, disbursements and attorneys' fees.

174. Universal requests that this Court grant Universal temporary and permanent injunctive relief prohibiting Alliance from: (a) taking further steps to terminate Universal; or (b) taking further steps to sign up any replacement distributor within the geographic territory currently assigned to Universal by Alliance; or (c) committing to enter into an agreement with any third party to act as a replacement distributor within the geographic territory currently assigned to Universal by Alliance; or (d) taking further steps to plan or facilitate Alliance's making direct shipments to retail dealers within the geographic territory currently assigned to Universal by Alliance.

175. Alternatively, Universal is entitled to its damages, costs, disbursements, interest and attorneys' fees.

176. Universal is also entitled to damages, costs, disbursements, interest and attorneys' fees arising out of Alliance's conduct in terminating, without good cause, Universal's territorial rights to dealer accounts within the State of Delaware and the State of Connecticut.

177. Universal is also entitled to damages, costs, disbursements, interest and attorneys' fees arising out of Alliance's failure to remit to Universal rebates owed to Universal but wrongly withheld by Alliance.

178. The amount of damages which Universal is, or will be, entitled to recover cannot now be exactly determined, but is reasonably believed to be significantly in excess of the jurisdictional requirements of this Court.

COUNT IV
PRICE-FIXING IN VIOLATION OF THE SHERMAN ACT

179. Plaintiff realleges and incorporates the above paragraphs as if fully set forth herein.

180. Section 1 of the Sherman Act provides that “[e]very contract, combination ... or conspiracy” in restraint of trade is illegal. 15 U.S.C. § 1.

181. There was a contract, combination, and/or conspiracy among Alliance and one or more distributors of *Speed Queen*®-brand laundry equipment (excluding Universal) to fix the prices at which the distributors would sell their products.

182. Alternatively, there was a contract, combination and/or conspiracy among two or more distributors of *Speed Queen*®-brand laundry equipment (not including Universal) to fix the prices at which the distributors would sell their products.

183. The above referenced contracts, combinations, and/or conspiracies (the “Price Fixing Schemes”) constitute an unreasonable restraint of trade in violation of Section 1 of the Sherman Act.

184. Universal refused to participate in the Price Fixing Schemes.

185. As a direct and proximate result of Universal refusing to participate in the Price Fixing Schemes, Alliance, in furtherance of the Price Fixing Schemes (and not part of any independent, non-concerted action), has announced its intention to terminate Universal.

186. In addition to the harm that the relevant markets have suffered as a result of the Price Fixing Schemes, if Alliance's unlawful termination of Universal in furtherance of the Price Fixing Schemes is allowed to proceed, Universal will suffer substantial damages.

187. Universal is entitled to temporary and permanent injunctive relief preventing Alliance's planned termination of Universal.

188. Universal specifically requests that this Court grant Universal temporary and permanent injunctive relief prohibiting Alliance from: (a) taking further steps to terminate Universal; or (b) taking further steps to sign up any replacement distributor within the geographic territory currently assigned to Universal by Alliance; or (c) committing to enter into an agreement with any third party to act as a replacement distributor within the geographic territory currently assigned to Universal by Alliance; or (d) taking further steps to plan or facilitate Alliance's making direct shipments to retail dealers within the geographic territory currently assigned to Universal by Alliance.

189. Alternatively, Universal is entitled to recover threefold the damages it has sustained, as well as its costs, disbursements, attorneys' fees and interest.

190. The amount of damages which Universal is, or will be, entitled to recover cannot now be exactly determined, but is reasonably believed to be significantly in excess of the jurisdictional requirements of this Court.

COUNT V
TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS
AND PROSPECTIVE ECONOMIC ADVANTAGE

191. Plaintiff realleges and incorporates the above paragraphs as if fully set forth herein.

192. At all times material hereto, Universal has had existing contracts and prospective economic opportunities of which Alliance was aware, including, but not limited to, existing and prospective customer relationships for the sale of laundry equipment supplied to Universal by Alliance.

193. Alliance has engaged in wrongful conduct toward Universal by proposing to strip Universal of its distribution rights, the effect of which will be to interfere with Universal's existing and prospective contractual relations.

194. As described above, Alliance's intentional actions are without legal justification, and Alliance has improperly interfered with Universal's current and prospective business relationships of which Alliance had knowledge.

195. Furthermore, Alliance's Ed Ryan has already undertaken to begin establishing new retail dealers within the territory served by Universal. In so doing, Alliance has interfered with the contractual relations that Universal has established with other, longtime retail dealers.

196. As a direct and proximate result of Alliance's tortious interference with Universal's existing and prospective contractual relations and prospective business advantages, Universal will be damaged in an amount yet to be determined.

197. The amount of damages which Universal is, or will be, entitled to recover cannot now be exactly determined, but is reasonably believed to be significantly in excess of the jurisdictional requirements of this Court.

198. Universal is also entitled to damages, costs, disbursements, interest and attorneys' fees arising out of Alliance's conduct in terminating, without good cause, Universal's territorial rights to service retail dealer accounts within the State of Delaware and the State of Connecticut.

199. To the extent authorized by law, Universal also seeks to recover its attorneys' fees from Alliance. *See, e.g., Kallok v. Medtronic*, 573 N.W.2d 356 (Minn. 1998).

COUNT VI
UNJUST ENRICHMENT

200. Plaintiff realleges and incorporates the preceding paragraphs as if fully set forth herein.

201. Alliance's conduct in encouraging and allowing Universal to serve as a distributor and to build up the market for Alliance's *Speed Queen*®-brand products, and to make substantial investments of time and money in reliance on a continuing opportunity to market Alliance's laundry products, and then breaching its agreements with and statutory obligations to Universal by seeking to cannibalize the market that Universal has built over Universal's years of effort and investment, constitutes unjust enrichment.

202. The amount by which Alliance has been, or will be, unjustly enriched, and the amount which Universal is, or will be, entitled to recover cannot now be exactly determined, but is reasonably believed to be significantly in excess of the jurisdictional requirements of this Court.

203. Universal demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that it be granted the following relief:

1. Order temporary and permanent injunctive relief in favor of Plaintiff Universal and prohibiting Alliance from: (a) taking further steps to terminate Universal; or (b) taking further steps to sign up any replacement distributor within the geographic territory currently assigned to Universal by Alliance; or (c) committing to enter into an agreement with any third party to act as a replacement distributor within the geographic territory currently assigned to Universal by Alliance; or (d) taking further steps to plan or facilitate Alliance's making direct shipments to retail dealers within the geographic territory currently assigned to Universal by Alliance;
2. Award Plaintiff Universal its complete costs, disbursements, interest, and reasonable attorneys' fees incurred herein;
3. Award Plaintiff Universal the full amount of its damages;
4. Award Plaintiff Universal the full amount of its treble damages arising out of Defendant Alliance's violations of statutes governing price-fixing; and
5. Award Plaintiff such other and further relief as may be deemed just and appropriate.

CERTIFICATION PURSUANT TO L. Civ. R. 11.2

Pursuant to L. Civ. R. 11.2, it is hereby certified that the matter in controversy is not the subject of any other pending or related court action, arbitration or administrative proceeding.

DATED: April 24, 2013

**SCHENCK, PRICE, SMITH
& KING, LLP**

By: s/ Valerie A. Vladyka

Valerie A. Vladyka

Country Club Plaza

115 West Century Road, Suite 100

Paramus, New Jersey 07652

PH: 201-225-2729

FX: 973-540-7300

VAV@spsk.com

**ATTORNEYS FOR PLAINTIFF
UNIVERSAL GROUP, INC.**