

1 James F. Speyer (SBN 133114)
James.Speyer@apks.com
2 ARNOLD & PORTER KAYE SCHOLER LLP
777 South Figueroa Street, 44th Floor
3 Los Angeles, California 90017-5844
Phone: (213)243-4000
4 Fax: (213)243-4199

5 Norman M. Leon (*pro hac vice* application
forthcoming)
6 Norman.Leon@dlapiper.com
DLA Piper LLP (US)
7 444 West Lake Street, Suite 900
Chicago, IL 60606
8 Phone: 312) 368-4000

9 Ellen M. Bronchetti (SBN 226975)
DLA Piper LLP (US)
10 555 Mission Street, Suite 2400
San Francisco, CA 94105

11 Attorneys for Counterclaimant/Defendant
12 7-Eleven, Inc.

13
14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **WESTERN DIVISION**
17

18 7-ELEVEN, INC., a Texas corporation,

19 Counterclaimant/
20 Defendant,

21 vs.

22 SERGE HAITAYAN, JASPREET
DHILLON, ROBERT ELKINS, and
23 MANINDER "PAUL" LOBANA,
individually, and on behalf of other
24 similarly situated,

25 Counterdefendants/
26 Plaintiffs.
27
28

Case No. 2:17-cv-7454 JFW (JPRx)

**DEFENDANT 7-ELEVEN, INC.'S
COUNTERCLAIM**

1 **COUNTERCLAIM**

2 Counterclaimant/Defendant 7-Eleven, Inc. (“7-Eleven”) brings this
3 Counterclaim against Counterdefendants/Plaintiffs Serge Haitayan, Jaspreet Dhillon,
4 Robert Elkins, and Maninder “Paul” Lobana (collectively, “Plaintiffs”) and alleges as
5 follows:

6 **PARTIES**

7 1. 7-Eleven is a Texas corporation with its principal place of business in
8 Irving, Texas.

9 2. Plaintiffs’ Amended Complaint alleges that each
10 Counterdefendant/Plaintiff is a resident of California.

11 **JURISDICTION AND VENUE**

12 3. This Court has subject matter jurisdiction over this counterclaim
13 pursuant to 28 U.S.C. § 1367 in that it is so related to the claims over which this
14 Court has original subject matter jurisdiction that it forms part of the same case or
15 controversy.

16 4. There is complete diversity of citizenship between the parties.

17 5. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and by
18 virtue of Plaintiffs’ commencement of this action in California.

19 **FACTUAL BACKGROUND**

20 6. 7-Eleven is engaged in the business of selling convenience store
21 franchises. 7-Eleven enters into Individual Store Franchise Agreements (“Franchise
22 Agreement”) with entities who are granted the right to operate 7-Eleven franchises
23 (“franchisees”) using 7-Eleven’s business system and trademarks, all as fully set forth
24 in the Franchise Agreements. An example of an Individual Store Franchise
25 Agreement that 7-Eleven has used in California is attached hereto as **Exhibit A**.

26 7. From time to time, 7-Eleven revises its Franchise Agreement. However,
27 7-Eleven has not made any revisions to the Franchise Agreement that are relevant to
28 this counterclaim.

1 8. The Franchise Agreement contains a Statement of Intent at Paragraph 1
2 in which the parties state their intent to enter into a mutually beneficial business
3 arrangement. Paragraph 1 states, *inter alia*, that the franchisee “recognize[s] the
4 advantages of the 7-Eleven System and wish[es] to obtain a franchise for a 7-Eleven
5 store.”

6 9. Paragraph 2 of the Franchise Agreement provides as follows:

7
8 **2. Independent Contractor.** You and we agree that this Agreement
9 creates an arm’s-length business relationship and does not create any fiduciary,
10 special or other similar relationship. You agree: (a) to hold yourself out to the
11 public as an independent contractor; (b) to control the matter and means of the
12 operation of the Store; and (c) to exercise complete control over and
13 responsibility for all labor relations and the conduct of your agents and
14 employees, including the day-to-day operations of the Store and all Store
15 employees. You and your agents and employees may not: (i) be considered or
16 held out to be our agents or employees or (ii) negotiate or enter any agreement
17 or incur any liability in our name, or our behalf, or purporting to bind us or any
18 of our or your successors-in-interest. Without in any way limiting the
19 preceding statements, we do not exercise any discretion or control over your
20 employment policies or employment decisions. All employees of the Store are
21 solely your employees and you will control the manner and means of the
22 operation of the Store. No actions you, your agents or employees take will be
23 attributable to us or be considered to be actions obligating us.

24 10. When each franchisee enters into a Franchise Agreement with 7-Eleven,
25 both parties agree, understand, and explicitly acknowledge that the franchisee is an
26 independent contractor. This mutual understanding is a basic assumption upon which
27 the Franchise Agreement is based, and an important precondition to the parties’
28 agreement to the terms and conditions of the Franchise Agreement.

1 11. As stated in Paragraph 2 of the Franchise Agreement, at the time
2 7-Eleven entered into Franchise Agreements with certain of the Plaintiffs, it believed,
3 and still believes, that those Plaintiffs were independent contractors rather than
4 employees. It also did not believe or anticipate that Plaintiffs would claim otherwise.

5 12. As stated in Paragraph 2 of the Franchise Agreement, at the time
6 7-Eleven entered into Franchise Agreements with certain of the Plaintiffs, each such
7 Plaintiff believed that he was an independent contractor rather than an employee.
8

1 13. In this lawsuit, Plaintiffs allege that 7-Eleven has misclassified them as
2 independent contractors instead of employees, in violation of the FLSA and
3 California law.

4 14. If Plaintiffs are deemed employees rather than independent contractors,
5 and Plaintiffs are entitled to the damages claimed in the Amended Complaint,
6 7-Eleven's continued performance of its obligations under the Franchise Agreements
7 will be extremely and/or unreasonably difficult because the essential value of the
8 Franchise Agreements to 7-Eleven will be defeated.

9 15. If Plaintiffs are deemed employees instead of independent contractors,
10 the parties' essential purpose of creating mutually beneficial franchise business
11 arrangements will have been frustrated because their essential value will have been
12 defeated.

13 16. If Plaintiffs are deemed employees instead of independent contractors, a
14 basic assumption upon which the Franchise Agreements are based will become a
15 misconception that certain of the Plaintiffs and 7-Eleven shared at the time they
16 signed the Franchise Agreements. That shared misconception will have a material
17 effect on the agreed-upon exchange.

18 17. If Plaintiffs are deemed employees instead of independent contractors,
19 requiring that 7-Eleven continue to be bound by the terms of the Franchise
20 Agreements would be unfair because the parties' agreed-upon exchange will have
21 been severely changed by the parties' mistaken assumption.

22 18. The changes in circumstances that will result from a Court finding that
23 Plaintiffs are employees instead of independent contractors would cause 7-Eleven's
24 continued performance of its obligations under the Franchise Agreements to be
25 extremely difficult if not impossible. For example, if Plaintiffs prevail, 7-Eleven
26 would be prohibited from receiving any remuneration in the form of franchise fees or
27 other franchise charges, and would be prohibited from seeking compensation for
28

1 services, leases, and inventory that it is contractually obligated to provide to the
2 Plaintiffs.

3 **FIRST COUNTERCLAIM**

4 **(Declaratory Judgment that the Franchise Agreements are Void)**

5 19. 7-Eleven hereby repeats and re-alleges the allegations set forth in the
6 preceding paragraphs as if set forth fully herein.

7 20. Based on the allegations of the Amended Complaint, an actual
8 controversy appears to exist between the parties concerning their status under the
9 Franchise Agreements, including whether each Plaintiff that entered into a Franchise
10 Agreement with 7-Eleven is an independent contractor or an employee.

11 21. If the Plaintiffs are deemed employees rather than independent
12 contractors, 7-Eleven is entitled to a declaration that the Franchise Agreements
13 between each such Plaintiff and 7-Eleven is void under the doctrines of
14 impracticability of performance, frustration of purpose, and/or mutual mistake.

15 **JURY DEMAND**

16 7-Eleven hereby requests a trial by jury on all claims triable by jury.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, 7-Eleven respectfully requests that this Court:

- 19 (1) Enter judgment in favor of 7-Eleven on all of Plaintiffs' claims; or, in
20 the alternative
21 (2) Enter judgment in favor of 7-Eleven on its Declaratory Judgment
22 Counterclaim and declare Plaintiffs' Franchise Agreements void; and
23 (3) Award such other relief as the Court deems just and proper.

24 Dated: November 30, 2017.

ARNOLD & PORTER KAYE SCHOLER LLP

25
26 By: /s/ James F. Speyer
27 James F. Speyer
28 Attorneys for Counterclaimant/Defendant
7-Eleven, Inc.