National Coalition of Associations of 7-Eleven Franchisees

Talking Points

February 2018

Ours is the story of the American Dream. Men and women who have invested their lives and life savings in a dream - to own their own small business. NCASEF represents us, more than 4,600 7-Eleven owners in the United States. We work hard and we play by the rules. We are the face of our brand, serving our communities by operating stores 24 hours a day, 7 days a week, 365 days a year.

But as we work night and day to provide for our families, we now find ourselves battling our corporate parent, SEI (which is based in Irving Texas and is a subsidiary of a Japanese holding company). We know the company is not living up to its promise of treating us as independent contractors – as is promised in our franchise agreements – and allowing us to earn a reasonable profit for our hard work.

The fight to level the playing field has been going on for years, but is reaching a critical juncture now because 80 percent of all franchisees have contracts that will expire between now and 2024. The company is already exerting pressure on many of us to sign new agreements that are structured to further increase control and shrink profits at the store level.

- **Shrinking Profits and Higher Expenses**
    - CEO Joe DePinto touts the idea of "co-prosperity", saying that when franchisees prosper, everybody wins. Yet SEI's proposed new agreements are imposing a regressive royalty structure that penalizes franchisees for increasing sales. His public statements refer to franchisee gross profit, but never address the franchisees' bottom line.
    - SEI is able to use Combined Distribution Centers (CDCs) as a means to attack franchisee profits, because: (i) the list of proprietary products has been dramatically increased; and (ii) control over accounting systems has included implementation of accounting rules allegedly allowed to force franchisees to accept inventory shortages that occur within the CDC and not at the franchise stores.

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- Like manipulations of accounting rules force franchisees either to sell out of season products at no or low profits or SEI will not count such inventory when auditing, resulting in a charge to franchisees.
- SEI's push to force franchisees to sell product at low or no franchisee profit margin flows from the franchise agreement provision allegedly requiring franchisees to participate in SEI's advertising campaigns.
- Another example of like manipulations includes SEI directives that franchisees must accept SEI's equipment maintenance vendor, which has been used to now impose increased costs on franchisees as a result of SEI's decision to eliminate SEI staff that historically oversaw and directed management responsibilities over those maintenance agreements.
- In the name of enforcing the pervasive 7-11 System, SEI field consultants and market managers also apply pressure on franchisees to meet their store "staffing guidelines," including by comparing payroll dollars to sales dollars and presenting critical assessments of job assignments for store workers.
- The responsibility for paying credit card fees has been passed on to franchisees.

- **Cost of Goods**

  - Franchisees do not believe that they are receiving the lowest possible costs on goods.
  - In fact, the CDCs established by SEI have had the effect of increasing the franchisee cost of goods sold.
  - In just one example, the CDC is charging a franchisee $.31 for a fresh banana, a banana that can be bought at retail prices at a local supermarket for nearly half that cost.

- **Recommended Vendors**

  - There also are innumerable abuses of the "Recommended Vendor Rules," all designed to impose control and to shift profits from franchisees to SEI, including: (i) the advent of BT (business transformation systems); (ii) changes in accounting systems; and (iii) SEI's takeover of vendor negotiating practices. The combination of these events have given DePinto the power to virtually dictate who franchisees can buy product from, under what terms, and without any accommodation to franchisee needs. The result of these changes have been to materially eliminate franchisee options and opportunity to reach a better bottom line, including:
  - All products must be ordered and paid through the BT system. There is no or very limited practical ability to order product directly from approved vendors or

to pay cash. These controls also impact when both franchisee and store workers must be scheduled to be in the store.
- SEI mandated rules regarding the delivery of product are narrowed to very tight windows of time, which also virtually dictate when and how franchisees must schedule store workers.
- SEI mandated rules regarding inventory check in with driver present and so called "honor check ins" are now being manipulated so that any discrepancies in the "honor check ins" effectively means that franchisees will be charged overages if the "honor check in" varies from the driver's report.
- Nonproprietary products available through recommended vendors, like McLane, cannot be purchased if like product is available through the CDC at much higher pricing.
- Even when franchisees purport to have the ability to use alternate sources to acquire goods for sale beyond SEI's "preferred product line," BT frequently and indiscriminately bumps those items off the approved product list or vendor list and the correction process takes so much time that it typically is not worth the time and trouble.
- BT imposes like obstacles when trying to change SEI's "suggested retail pricing," In sum, the process for changing pricing for many items is often so cumbersome and time consuming that franchisees cannot affordably make such changes, and when they do, SEI invokes its control over accounting rules to ignore sales price changes properly implemented so that the franchisee gets no benefit from their efforts. Challenges can be levied to such accounting adjustments, but the challenge process is again very time consuming and frequently concludes with SEI's accounting staff ignoring reason and invoking SEI's power to make all such final decisions.

- **It's About Respect**

  - We simply want a fair contract and a constructive, collaborative and mutually respectful relationship with SEI that will revitalize the concept of a franchisee being a true independent contractor.
  - Instead, 7-Eleven's pervasive control over the operation of our stores demonstrates how they treat us like employees—not independent contractors.
  - They own the equipment, the gas, the store….they even control the temperature in the store.
  - Although 7-Eleven's CEO Joe DePinto claims to recognize franchisee owners as the key to the brands' success; their actions reveal a very different attitude towards franchisees. When asked about concerns franchisees have about these new contracts, DePinto responded "If they decide to leave, we have plenty of people in the pipeline."

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- **Turning to the FTC**
  - The National Coalition has called upon the Federal Trade Commission to investigate misleading and inaccurate information SEI provides in franchise disclosure documents.
  - The National Coalition's attorney recently sent a letter to the FTC Chairman, as well as a number of state attorneys general, which details how 7-Eleven has covered up the truth and concealed the many risks of investing in a 7-Elven franchise.
  - This letter invites a clear examination by the FTC into the misrepresentation in the franchise disclosure documents.

- **Last Resort Lawsuit**
  - In October 2017, our National Coalition announced the filing of a lawsuit on behalf of franchisees in California against SEI. The complaint is that SEI has not fulfilled its promises to franchisees.
  - The lawsuit is a last resort attempt to force SEI to accept that reforms are necessary to bring the 7-Eleven System in line with the law.
  - While the lawsuit was filed in California because there are so many franchisees in that state and that state has passed fair franchising legislation designed to restore balance in the franchisor-franchisee relationship, franchisees across the nation also are in a position to benefit because franchisees outside California are subject to the same levels of control and deception on the part of SEI.

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