

**MARKS & KLEIN, LLP**

Justin M. Klein, Esq. (Attorney ID No. 36312003)  
63 Riverside Avenue  
Red Bank, New Jersey 07701  
Telephone: (732) 747-7100  
Facsimile: (732) 219-0625  
justin@marksklein.com

**Law Office of Marisa Rauchway Sverdlov, Esq.**

Marisa Rauchway Sverdlov, Esq. (Attorney ID No. 026602008)  
51 JFK Parkway, First Floor West  
Short Hills, New Jersey 07078  
Telephone: 973-826-4098  
Facsimile: 973-954-2527  
mrauchway@rauchwaylaw.com

*Attorneys for Plaintiff*  
*Jonathan Scheurer LLC*

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

JONATHAN SCHEURER, LLC,  
individually and on behalf of all similarly  
situated individuals,

Plaintiff,

v.

S-L DISTRIBUTION COMPANY, INC.,

Defendant.

Civil No.:

**CLASS ACTION COMPLAINT**

Plaintiff, on behalf of itself and other similarly situated individuals, by and through its undersigned counsel, files this Class Action Complaint, and in support thereof, avers as follows:

### **NATURE OF ACTION**

1. This is a Class Action Complaint brought to obtain declaratory and monetary relief on behalf of a class of individuals who are, or were, contractually engaged and/or otherwise operated as franchisees for Defendant S-L Distribution Company, Inc. ("S-L", formerly known as SOH Distribution Company, Inc.) for violations of the New Jersey Franchise Practices Act, N.J.S.A. 56:10-1, et seq. ("NJFPA").

2. The class consists of all individuals or entities that operated out of a warehouse in the State of New Jersey who were a party to a Distributor Agreement with SOH Distribution Company, Inc. on November 1, 2011, and who were terminated as part of S-L's system-wide, no-cause termination of franchisees.

3. Jonathan Scheurer became a franchisee of S-L on or about October 3, 2008, when Mr. Scheurer entered into a Distributor Agreement (the "Agreement" or "Distributor Agreement") with S-L whereby Mr. Scheurer agreed to distribute certain snack food products produced by Snyder's-Lance, Incorporated ("Snyder's-Lance"). A true and correct copy of the Distributor Agreement is attached hereto as Exhibit A.

4. S-L is the distribution division of Snyder's-Lance.

5. Through an Amendment dated December 8, 2008, Mr. Scheurer transferred his interest in the franchise to Jonathan Scheurer, LLC (hereinafter, "Plaintiff" or "Scheurer"). A true and correct copy of the Amendment is attached hereto as Exhibit B. Mr. Scheurer is the sole member of Scheurer.

6. Scheurer dutifully complied with the terms of the Distributor Agreement and Amendment and profitably sold S-L products in accordance with its obligations under the Distributor Agreement.

7. In November 2012, however, S-L notified Scheurer, as part of a system-wide purge of franchisees, that S-L would be terminating Scheurer's franchise. A true and correct copy of this termination notification is attached hereto as Exhibit C. S-L expressly stated that S-L's determination to terminate Scheurer as an S-L distributor was simply a business decision on S-L's part and not because of Scheurer's failure to perform in accordance with the Distributor Agreement in any manner or for any good cause.

8. This system-wide purge resulted in the mass (wrongful) termination of dozens of S-L franchises throughout the state of New Jersey.

9. Not only did S-L's termination eliminate Scheurer's livelihood, S-L forced Scheurer, and those similarly situated, to sell back the exclusive distributorship to S-L for a substantially lower price than the lucrative franchise was worth.

10. Moreover, S-L did not use accurate weekly sales numbers to calculate the transfer price for Scheurer and, upon information and belief, acted similarly with other members of the Class.

11. S-L's actions render S-L liable to Scheurer, as well as similarly situated Class members, for violations of the NJFPA and NJCFA.

### **PARTIES**

12. Plaintiff, Jonathan Scheurer, LLC, is a resident of Hudson County, New Jersey, who owned an S-L statutory franchise located in the State of New Jersey and operated exclusively in the state. Plaintiff operated out of a warehouse in New Jersey.

13. S-L is a Delaware corporation with its principal place of business at 1250 York Street, Hanover, Pennsylvania 17331.

14. Like all members of the proposed Class, Plaintiff was a statutory franchisee for S-L. Plaintiff performed distribution, merchandizing and sales services to local retailers of snack food products manufactured by Snyder's-Lance Incorporated and distributed by S-L.

### **JURISDICTION AND VENUE**

15. This Court has diversity jurisdiction over the claims asserted in this action pursuant to 28 U.S.C. § 1332.

16. Upon information and belief, there are over 60 alleged members in the Class, and the amount in controversy, in the aggregate, exceeds \$5 million exclusive of interest and costs.

17. Venue is proper in this Court under 28 U.S.C §§ 1391(a)(2), 1391(b)(2) and 1391(c) because a substantial part of the events or omissions giving rise to the claim occurred in the State of New Jersey and S-L's principal place of business is located in Hanover, Pennsylvania.

### **FACTS GIVING RISE TO THE ACTION**

18. Defendant is a corporation whose business consists of snack food distribution to retail customers through, at all relevant times, statutory franchisees to whom the company grants exclusive rights to sell and distribute its products to certain retail outlets in a defined territory.

19. Snyder's-Lance is the nation's second largest producer of salty snacks; its brand names include Snyder's of Hanover, Jay's, Lance, Cape Code, Grande, Tom's, Krunchers!, O-Ke-Doke, Naturals, Archway, and others.

20. No entity may wholesale Snyders'-Lance products anywhere in the United States without express permission from Snyders'-Lance or S-L, pursuant to a written agreement.

**A. The Relationship Between S-L and Statutory Franchisees**

21. Defendant entered into the Agreement with Plaintiff and each of the other Class members to sell, merchandise, distribute and deliver snack food products to retailers.

22. Upon information and belief, a vast majority (if not all) of S-L's sales either are or were accomplished through wholesale resellers like Plaintiff.

23. The Agreement between each member of the Class and Defendant is the same in all material respects.

24. The Agreement grants the franchisee "the exclusive right to sell and distribute Authorized Products to Authorized Outlets within [a defined territory]." (See Exh. A at Article 3).

25. The Agreement requires franchisees to accept and buy sufficient quantities of Authorized Products and Other Products to "adequately and properly supply Authorized Outlets and the other retail outlets in the Territory." (See Exh. A at Article 4).

26. The Agreement requires franchisees to comply with S-L's Standard Operating Guidelines, which are published by Defendant as "SOH Distribution Co., Inc.'s Standard Operating Guidelines." The Standard Operating Guidelines set forth the policy and procedures to be utilized by franchisees in operating their franchise and the various charges that the franchisee will incur. S-L reserves the right to change the Standard Operating Guidelines at its discretion. (See Exh. A at Article 1 and Article 5).

27. The Agreement requires statutory franchisees to use their best efforts to: (1) sell and distribute Authorized Products in accordance with the Agreement and the Standard Operating Guidelines; (2) otherwise comply with the Standard Operating Guidelines; (3) develop new accounts and additional shelf space for Authorized Products and Other Products within the

Territory; (4) maintain an adequate and fresh supply of Authorized Products; (5) properly rotate all Authorized Products and Other Products; (6) promptly remove any and all stale merchandise; (7) maintain proper service and delivery to all Authorized Outlets and other retail outlets; and (8) maintain the established, reputation and good will of the Authorized Products and Other Products. (See Exh. A at Article 5).

28. The Agreement prohibits franchisees from selling any products in the Territory that compete with or “in the sole opinion of SOH, would be detrimental, in any way, to the sale of the Authorized Products or Other Products.” (See id.)

29. The overall purpose of the Agreement and the Standard Operating Procedures is to ensure uniformity of S-L’s products and control of their quality and distribution.

30. While a franchisee, Scheurer operated out of a warehouse in Rockaway, New Jersey, from which he received shipments of S-L products for sale to retail outlets. Scheurer and, upon information and belief, other Class members, paid S-L for the use of this warehouse as part of the franchisee fees paid to S-L.

31. Plaintiff and members of the Class do not make a majority of their sales directly to consumers. Like Plaintiff, members of the Class operate out of various warehouses in the State of New Jersey at which they receive shipments of S-L products from S-L for sale to retail outlets.

32. Plaintiff and those similarly situated pull S-L product inventory from their respective S-L warehouse and re-sell that inventory to retailers along the routes in their respective territories as a wholesale distribution business. S-L invoices franchisees, such as Plaintiff and the members of the Class, for these transactions.

33. Plaintiff and the members of the Class are only authorized to pull inventory from their respective S-L warehouse and Plaintiff and the members of the Class typically pull product inventory from these warehouses on a daily basis.

34. The retailers believe that there is a connection between S-L and statutory franchisees such that S-L is responsible for the overall performance, quality, image, good will, and service provided by franchisees. Merchants who are dissatisfied with a franchisee's performance make complaints to S-L management, who in turn enforce the Standard Operating Procedures and other policies with franchisees including the "Failure to Service" provisions of the Agreement.

35. S-L organizes, produces, and requires that franchisees participate in marketing plans that are designed to create good will with the customers. S-L instructs franchisees how to display and organize products on store shelves, negotiates prices for products, publishes print advertisements, and interacts with management of chain stores to ensure that the stores are satisfied with Snyder's-Lance products and the distribution thereof.

36. Plaintiff and members of the Class were required at all relevant times to purchase and implement marketing displays promoting Snyder's-Lance brands. S-L required Plaintiff and members of the Class to follow its printed instructions for presenting Snyder's-Lance brands.

37. Plaintiff and other franchisees were integral to S-L's marketing scheme; they were the ones who delivered marketing displays to stores, who displayed S-L products in stores, who requested floor or shelf space for advertisements, and were the face of S-L to local customers.

38. S-L also assists statutory franchisees in acquiring and purchasing shelf space in certain retail outlets for display and sale of authorized products.

39. S-L requires that statutory franchisees use its handheld computer system called NORAND or a device that is compatible with the company's software. The NORAND device tracks franchisee orders, customer billing, historical data, and other information helpful to both S-L and franchisees to service customers and increase business. The NORAND device also assists with centralized billing, customer credit, and stale product management.

40. S-L requires franchisees to use its system for centralized billing and credit when servicing chain merchants.

41. S-L's mandatory computer system generates invoices that it requires Plaintiff and other franchisees to provide to customers on a daily and weekly basis. The Invoices prominently display S-L's trade name; Snyder's of Hanover, Inc.; on the top of every invoice followed by S-L's address, phone number, fax number, and website. The bottom of every invoice states "Thank you for doing business with SNYDER'S OF HANOVER, INC." The invoices cause customers to believe that S-L vouches to Plaintiffs' and other franchisees' business.

42. As part of its effort to hold Plaintiff and other franchisees out to third parties as one and the same, S-L provided Plaintiff and other New Jersey franchisees with jackets, shirts, hats, and other apparel bearing S-L trademarks and logos to wear while they worked.

43. Article 20 of the Distributor Agreement permits Plaintiff and other distributors to display S-L trademarks on their vehicles upon S-L's approval and at S-L's cost. (See Exh. A at Article 20).

44. Plaintiff purchased well over \$35,000 worth of Snyder's-Lance products in the twelve months preceding Plaintiff's termination. Upon information and belief, no S-L franchisee in the State of New Jersey purchased less than \$35,000 worth of products from S-L annually



because major retailers such as Target, Wal-Mart, and chain grocery stores require at least that much product to keep their shelves stocked.

45. All of Plaintiff's gross sales were derived from the franchise; Plaintiff's business did not have any other source of income. Upon information and belief, all other S-L franchisees derive all, or nearly all, of their gross sales from their relationship with S-L because their agreement with S-L prohibits them from selling products that compete, or may compete, with S-L's products. Because the S-L product line consists of over 200 items, it is nearly impossible to sell or distribute snack food products that do not compete with S-L.

46. Through his investment of capital, labor, and specialized skills, Plaintiff created good will with the customers in his territory.

47. Good will for Snyder's-Lance products is not transferrable outside of an S-L statutory franchise because the good will created is for intangibles such as shelf space, end cap displays, the right to place free-standing displays in stores, and high-value middle shelf space.

48. Good will is store-specific. Individual retail store managers approve shelf space, promotional displays, and more valuable product placement. The relationship with store management and customers is crucial to building and maintaining good will.

49. Plaintiff and members of the Class cannot use the shelf space, promotional space, or high value placement anywhere but the stores in their S-L Authorized Territory.

50. Plaintiff and members of the Class cannot use the shelf space, end caps, promotional display space, or high value shelf space because such items are approved for specific brands of products. For example, Plaintiff and members of the Class would not be permitted to display Frito-Lay snack products in the space approved for Snyder's-Lace products.

51. Plaintiff and members of the Class cannot credibly market competing products to retail store management after years of promoting Snyder's-Lance products as the best tasting and most profitable snack food line on the market.

52. Plaintiff and members of the Class attended approximately 8-12 hours of mandatory meetings presented by S-L each year. The purpose of the meetings is for S-L to provide mandatory training, education and guidance for promoting Snyder's-Lance products in retail outlets and negotiating with retail store management for shelf and floor space. The meetings were also used for product training, sales training, and continuing education relating to standard operating procedures, performance coaching, and tutorials on how to make sales pitches to retail store managers.

53. In addition to hosting regularly scheduled formal meetings, District Sales Managers made it a point to speak to each statutory franchisee several times per week to discuss marketing and the S-L promotional calendar.

#### **B. S-L's Termination of Its Distribution Franchises in New Jersey**

54. Snyder's of Hanover, Inc. merged with Lance, Inc. in December 2010. The merger created a hybrid system of company-owned distribution territories (45%) and independently-owned (55%) distribution territories. Sometime in March 2011, the newly formed Snyder's-Lance, Incorporated decided to convert all of its territories to independently-owned territories.

55. Beginning in the fall of 2011, S-L notified numerous franchisees in New Jersey that their franchises were being terminated due to a system-wide restructuring of S-L's business.

Upon information and belief, S-L began notifying franchisees of their termination in late 2011 and/or early 2012.

56. In November 2012, Plaintiff received a letter notifying Plaintiff that S-L was terminating Plaintiff's franchise as a result of this same system-wide restructuring and not for any good cause. (See Exhibit C).

57. S-L later offered Plaintiff the opportunity to sell back its franchise to S-L in order to not lose the entire value of the franchise.

58. Facing the prospect of losing the entire value of its franchise, in January 2013, Plaintiff agreed to sell his franchise back to S-L. Plaintiff was forced to sell S-L its franchise at a substantially lower value than the true value of the franchise.

#### **CLASS ACTION ALLEGATIONS**

59. Plaintiff brings this action on behalf of himself and the following Class(es) pursuant to Rule 23 of the Federal Rules of Civil Procedure:

All individuals or entities that operated out of a warehouse in the State of New Jersey who were a party to a Distributor Agreement with Snyder's-Lance Distribution, Inc. on November 1, 2011, and who were terminated as part of S-L's system-wide termination of distributors.

Plaintiff reserves its right to amend or re-define the class definitions prior to moving for class certification.

60. Numerosity: Members of the Class are so numerous that their individual joinder is impracticable. The precise number of Class members is unknown to Plaintiff. However, upon information and belief, Plaintiff believes it is in excess of 60 individuals. The true number of Class members is, however, likely to be known by Defendant, and thus, Class members may be

notified of the pendency of this action by first class mail, electronic mail, and by published notice.

61. Commonality: There are numerous questions of law and fact common to Plaintiff and the Class, and those questions predominate over any questions that may affect individual Class members, and include the following:

- a. Whether Plaintiff and the Class members qualify as franchisees subject to the protections of the NJFPA;
- b. Whether Defendant violated the rights of Plaintiff and the Class under the NJFPA;
- c. Whether Plaintiff and the Class are entitled to an accounting by Defendant for the reasonable market value of their franchises; and
- d. Whether Plaintiff and the Class are entitled to declaratory relief declaring that they are franchisees of Defendant.

62. Typicality: The Plaintiff's claims are typical of the other members of the Class. Plaintiff is informed and believes that, like other franchisees, Plaintiff was a franchisee whose Distributor Agreement was unilaterally terminated by S-L during the Class period.

63. Adequacy: The named Plaintiff will adequately represent the interests of the proposed class. Scheurer has been treated in the same manner as other proposed class members by Defendant and has been damaged by this treatment in the same manner as other proposed class members by Defendant's decision to terminate his franchise without good cause. Plaintiff is committed to vigorously prosecuting this action. Plaintiff has retained attorneys who are well qualified to handle lawsuits of this type. Plaintiff has no interests that are adverse to those of the proposed class.

64. Predominance: This case should be certified as a class action because the common questions of law and fact concerning Defendant's liability for terminating franchise agreements without good cause will predominate over any other issues.

65. Superiority: A class action is the only realistic method available for the fair and efficient adjudication of the claims of the proposed class. The expense and burden of individual litigation makes it impracticable for members of the proposed class to seek redress individually for the wrongful conduct alleged in this Complaint. Were each individual member required to bring a separate lawsuit, the resulting multiplicity of proceedings would cause undue hardship and expense for the litigants and the Court, and create the risk of inconsistent rulings, which would be contrary to the interest of justice and equity. Litigating these claims in a single action will streamline discovery and avoid needless repetition of evidence at trial.

66. Defendant has acted on grounds that apply generally to the proposed class. Specifically, Defendant has terminated the franchise agreements of all members of the class at approximately the same time and for the same business reason. Final declaratory relief and monetary judgment is appropriate for the class as a whole under these circumstances.

### **COUNT I**

#### **(Declaratory Judgment)**

67. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

68. A substantial controversy exists between Plaintiff and the members of the proposed class and Defendant as to whether Plaintiff and members of the proposed class are franchisees of Defendant protected under the NJFPA.

69. Plaintiff and the members of the proposed class have adverse legal interests to Defendant. Upon information and belief, Defendant denies that Plaintiff and the members of the proposed class are franchisees of Defendant protected under the NJFPA.

70. The controversy between Plaintiff and the members of the proposed class and Defendant is ripe for adjudication.

## **COUNT II**

**(New Jersey Franchise Practices Act, N.J.S.A. 56:10-1, et seq.)**

71. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

72. The relationship between Plaintiff, as well as the Class, and Defendant is a franchise as that term is defined under the New Jersey Franchise Practices Act, N.J.S.A. 56:10-3, including that (a) a written arrangement exists between Plaintiff, as well as the Class, and Defendant, (b) Defendant granted Scheurer, as well as the Class, a license to use its intellectual property, and (c) there is a community of interest between Defendant and Plaintiff, as well as the Class.

73. Furthermore, the franchise relationship at issue here is subject to the protections of the New Jersey Franchise Practices Act, as set forth under N.J.S.A. 56:10-4 because (a) Plaintiff, as well as members of the Class, maintained a place of business in New Jersey, (b) there were well over \$35,000 in sales between Plaintiff, as well as the Class, and Defendant in the twelve months prior to termination, and (c) Plaintiff, as well as the Class, derived well over 20% of their gross sales from the franchise in question.

74. As such, pursuant to the NJFPA, Defendant could not terminate Plaintiff or members of the Class unless, among other requirements, it identified good cause, defined as a “failure to substantially comply with those requirements imposed upon [Plaintiff] by” Defendant.

75. Defendant's actions herein, including its improper termination of the relationship among the parties without good cause, is a violation of the New Jersey Franchise Practices Act.

76. As a consequence of the breaches and violations set forth herein, Plaintiff and the Class have been damaged.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests of this Court the following relief on behalf of himself, all members of the Class and all others similarly situated individuals:

- a. An Order certifying the Class and all sub-classes, appointing Plaintiff as Class Representative, and appointing the undersigned counsel of record as Class Counsel;
- b. An Order for declaratory relief that Plaintiff and Class members relationship with Defendant is subject to the NJFPA;
- c. An Order requiring Defendant compensate Plaintiff and the other members of the Class for the reasonable value of their franchises;
- d. Payment of any penalties or other amounts under any applicable laws, statutes or regulations;
- e. Judgment in favor of each Class member for all general, special and liquidated damages suffered as a result of the conduct alleged herein, to include pre-judgment interest;
- f. Award Plaintiff reasonable attorneys' fees and costs as provided by N.J. Stat. Ann. § 56:10-10;
- h. Award Plaintiff and the other members of the Class punitive damages in an amount to be determined at trial; and
- i. Grant such other and further legal and equitable relief as this Court deems just and necessary.

**JURY DEMAND**

Plaintiff, on behalf of himself and members of the Class, hereby demands a trial by jury on all issues so triable.

**LOCAL RULE 11.2 CERTIFICATION**

The matter in controversy is not the subject of any other action pending in any other court or any pending arbitration or administrative proceeding.

Dated: November 28, 2016

MARKS & KLEIN, LLP

s/ Justin M. Klein  
63 Riverside Avenue  
Red Bank, New Jersey 07701  
Telephone: (732) 747-7100  
Facsimile: (732) 219-0625  
justin@marksklein.com

and

Law Office of Marisa Rauchway Sverdlov  
Marisa Rauchway Sverdlov  
51 JFK Parkway, First Floor West  
Short Hills, New Jersey 07078  
Telephone: 973-826-4098  
Facsimile: 973-954-2527  
mrauchway@rauchwaylaw.com



# **EXHIBIT A**

1169737

**DISTRIBUTOR AGREEMENT**

**AGREEMENT** made this 3<sup>rd</sup> day of October, 2008, in Hanover, Pennsylvania, between SOH Distribution Company, Inc., a Delaware corporation with its offices and principal place of business located at 1250 York Street, P.O. Box 917, Hanover, York County, Pennsylvania, 17331 (hereinafter called "SOH"), and Jonathan Scheurer of 249 Mark Avenue, Cliffside, NJ 07010 (hereinafter called "Distributor").

**WITNESSETH:**

**WHEREAS**, SOH is a snack food distributor authorized to distribute the Snyder's of Hanover brand and various other brands of snack products throughout an area which includes the territory hereinafter set forth; and

**WHEREAS**, Distributor is an independent businessman operating a distribution business, with the facilities, knowledge and ability necessary for successful distribution; and

**WHEREAS**, Distributor desires to acquire the right to sell Authorized Products to Authorized Outlets, as hereinafter defined, within a specified geographic area, which right can be sold or assigned and which right survives the death or disability of Distributor, subject to the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, for good and valuable consideration and intending to be legally bound, the parties mutually agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

- (a) Authorized Outlets - shall mean those retail grocery stores selling to the general public, identified on Schedule B attached hereto and made a part hereof which are located in the Territory. Thrift stores, club stores, drug stores, mass merchandisers, convenience stores and specialty outlets shall not be deemed to be Authorized Outlets. Distributor hereby agrees that Schedule B may be amended from time to time by SOH.
- (b) Authorized Products - shall mean those snack food items now or hereafter sold under the name and trademark Snyder's of Hanover or other trade names for which SOH has exclusive distribution rights within the Territory, all of which shall specifically be identified as Authorized Products, from time to time, on the Price List. Authorized Products shall not include vend or bulk size products, private label products, products intended for distribution or sale as frozen products, products intended for distribution or sale to specialty outlets, specialty or seasonal products, or stale or out-of-code products. From time to time, an Authorized Product may be removed from the Price List by SOH, may be changed as far as ingredients, packaging or other features, may cease to be supplied or distributed by SOH, may have its designation changed from Authorized Product to Other Product or may have its price changed on the Price List.

- (c) Other Products - shall mean those snack food items which are listed, from time to time, on the Price List but are not identified as Authorized Products, which shall include, but are not limited to, items sold under names and/or trademarks other than Snyder's of Hanover.
- (d) Price List - shall mean that document published by SOH from time to time entitled "Contract Sales Retail Price List". This document identifies all products that SOH has available, from time to time, for purchase by Distributor, the Distributor's cost for each product and the DSD Unit Price for each product. The DSD Unit Price is the suggested sales price to Distributor's customers. Distributor hereby agrees and understands that the Price List may be changed, from time to time, by SOH, upon fifteen (15) days notice to Distributor.
- (e) Standard Operating Guidelines - shall mean that document published by SOH, from time to time, entitled "SOH Distribution Company Inc.'s Standard Operating Guidelines". This document sets forth the recommended and/or agreed to guidelines to be utilized in operating the Territory and the various charges to be incurred by Distributor. SOH has the right to change the Standard Operating Guidelines, from time to time, upon fifteen (15) days notice to Distributor.
- (f) Territory - shall mean that geographic area for which Distributor is granted the right to sell and distribute Authorized Products to Authorized Outlets. The Territory is more specifically described on Schedule A attached hereto and made a part hereof.

## ARTICLE 2 INDEPENDENT CONTRACTOR

- (a) Through this Agreement, the parties intend to create an independent contractor relationship between them and agree that Distributor is a self-employed, independent contractor for all purposes. Nothing herein shall be construed: (i) to be inconsistent with that relationship; (ii) as constituting Distributor as the franchisee, partner, agent or employee of SOH; or (iii) as authorizing Distributor or any agent or employee of Distributor, to create or assume any obligation or liability in the name of SOH. Any contrary final determination by any board or court of competent jurisdiction shall entitle either party to declare this Agreement null and void.
- (b) SOH is interested only in the results obtained under this Agreement. The manner and means by which Distributor achieves these results shall be determined by Distributor.
- (c) Distributor shall hold himself out as a self-employed, independent contractor and shall not be treated as an agent or employee of SOH for any federal, state or local tax, social security, workers' compensation or unemployment compensation purposes or for any other purposes whatsoever. Distributor shall comply with all laws applicable to Distributor's business, shall obtain all appropriate licenses for that business, and shall pay all business, self-employment or other taxes applicable to Distributor and his business.
- (d) Nothing in this Agreement shall prevent Distributor from engaging in any other business or profession except as herein limited.

### ARTICLE 3 GRANT OF RIGHTS

Subject to the terms of this Agreement, SOH hereby grants to Distributor the exclusive right to sell and distribute Authorized Products to Authorized Outlets within the Territory. Except as set forth herein, Distributor's right will continue for as long as SOH continues to do business in the Territory unless said rights are sooner sold, assigned or terminated as hereinafter provided.

Subject to the terms of this Agreement, SOH also grants Distributor the non-exclusive right to sell and distribute Authorized Products to other retail outlets within the Territory and Other Products to Authorized Outlets and other retail outlets within the Territory so long as such sale or distribution, in the sole discretion of SOH, does not interfere with any other commitment made by, or obligations of, SOH and does not, in the sole discretion of SOH, adversely affect the sale and distribution of Authorized Products to Authorized Outlets. SOH shall have the right, for any reason whatsoever, to terminate, upon five (5) days notice to Distributor, the non-exclusive right to sell and/or distribute Authorized Products to other retail outlets within the Territory or Other Products and/or limit or change the Other Products which may be sold or distributed by Distributor.

### ARTICLE 4 PURCHASE/DELIVERY OF PRODUCTS

Distributor agrees to accept and buy sufficient quantities of Authorized Products and Other Products to adequately and properly supply Authorized Outlets and the other retail outlets in the Territory. Distributor shall submit orders for Authorized Products and Other Products, as determined by Distributor, in accordance with SOH's applicable procedures, and upon SOH's acceptance of an order, SOH will use its best efforts to fill that order in accordance with SOH's applicable procedures. Distributor shall pick up his order from SOH's warehouse, or such other reasonable location as SOH may, from time to time, designate. The Authorized Products and Other Products will be sold to Distributor by SOH on the terms and at the prices established by SOH from time to time. Notwithstanding the foregoing, SOH, in case of strikes, shortages of materials, breakdowns or other causes affecting the availability of products, reserves the right to fill orders proportionately in accordance with the amount of merchandise available, and SOH shall have no liability or responsibility to Distributor or his customers for failure of delivery by reason of same.

### ARTICLE 5 RESPONSIBILITIES OF DISTRIBUTOR

Distributor agrees to use his best efforts: (i) to sell and distribute Authorized Products to Authorized Outlets and to other retail outlets within the Territory in accordance with this Agreement and SOH's Standard Operating Guidelines; (ii) to sell and distribute to Authorized Outlets and to other retail outlets within the Territory, in accordance with this Agreement and SOH's Standard Operating Guidelines, the Other Products identified on the Price List for which SOH has obtained authorizations in the Authorized Outlets or other retail outlets; (iii) to otherwise comply with the Standard Operating Guidelines; (iv) to develop new accounts and additional shelf space for Authorized Products and Other Products within the Territory; (v) to maintain an adequate and fresh supply of Authorized Products and Other Products in the

Equity / Rev. 9

4/01

Issued 1/2002

Authorized Outlets and in the other retail outlets within the Territory; (vi) to properly rotate all Authorized Products and Other Products; (vii) to promptly remove any and all out-of-code or stale merchandise; (viii) to maintain proper service and delivery to all Authorized Outlets and other retail outlets within the Territory except those determined to be unprofitable as defined in Article 6; and to establish, and to maintain the established, reputation and good will of the Authorized Products and Other Products. Without limiting the foregoing, Distributor also agrees to comply with the normal and customary distribution hours and days generally prevailing in the snack food industry.

Distributor agrees not to sell any products in the Territory which compete, in any way, with the Authorized Products or Other Products, or which, in the sole opinion of SOH, would be detrimental, in any way, to the sale of the Authorized Products or Other Products.

Distributor shall exercise his own judgment in making sales to and extending credit to his customers. Except for those outlets for which SOH has agreed to accept charge sales tickets as set forth in Article 11, Distributor shall be responsible for all credit risks involved in such sales.

#### **ARTICLE 6 UNPROFITABLE OUTLETS**

The parties agree that an Authorized Outlet or other retail outlet within the Territory will be considered to be unprofitable if Distributor and SOH jointly agree, in writing, that the sales generated from the outlet, for a certain period of time, have consistently not been sufficient to justify the cost of Distributor servicing the outlet. The parties further agree that all outlets deemed to be unprofitable will be re-evaluated by the parties on a yearly basis. The parties further agree and understand, however, that an unprofitable outlet shall not include any chain outlets within the Territory unless otherwise jointly agreed, in writing, by the parties.

#### **ARTICLE 7 RESPONSIBILITIES OF SOH**

SOH shall use its best efforts to make available to Distributor sufficient quantities of the Authorized Products to supply Authorized Outlets in the Territory and to preserve and develop the marketability of the Authorized Products.

#### **ARTICLE 8 LOSS/LIMITATION OF AUTHORIZED OUTLET**

SOH and Distributor recognize that the buying patterns and distribution requirements of customers may change from time to time and that such changes may be outside the control of either SOH or Distributor. A retail grocery store currently designated as Authorized Outlet (or the purchasing departments thereof or buyer therefor), may require delivery to a central warehouse or utilization of another channel of distribution which would make the continued service of that Authorized Outlet by Distributor impossible or impractical, or which may result in Distributor servicing a retail grocery store previously designated as an Authorized Outlet which is also receiving Authorized Products from other distribution channels.

Distributor acknowledges that the risk of loss of an Authorized Outlet, in whole or in part, is one of the hazards of an owner-operated business. Distributor hereby agrees not to assert any claim against SOH, any Authorized Outlet or any other person, whether in tort, contract, equity or otherwise, whether statutory or common law, relating to or arising from the loss of an Authorized Outlet or to the manner of, or any change to, the distribution of products to an Authorized Outlet.

In the event that an Authorized Outlet requires or requests delivery of an Authorized Product via some other form or channel of distribution, and SOH agrees thereto, then SOH shall have the right to terminate Distributor's exclusive right to sell and distribute said products to such Authorized Outlet. If such a termination occurs, SOH agrees to pay Distributor for any lost sales in the following manner and Distributor hereby agrees to accept such payment as full and complete payment for the lost sales and the right to sell and distribute products to such Authorized Outlets: an amount equal to the lower of: (a) the average weekly sales of the Authorized Products in question over the prior twenty-six (26) weeks to said Authorized Outlet, times the multiple appearing in SOH's books and records used to establish the value of the Territory at the time of Distributor's purchase thereof, or if the Territory has been purchased in portions by Distributor, at the time of his most recent purchase of a portion of the Territory; (b) the average weekly sales of the Authorized Products in question over the prior twenty-six (26) weeks to said Authorized Outlet, times the average multiple appearing in SOH's books and records used to establish the value of the territories sold or transferred within the market in which the Territory is located during the prior two (2) years; (c) a reasonable projection, in the sole opinion of SOH, of the average weekly sales of the Authorized Products in question expected to be distributed to said Authorized Outlet via a form or channel of distribution other than Distributor, times the multiple appearing in SOH's books and records used to establish the value of the Territory at the time of Distributor's purchase thereof or if the Territory has been purchased in portions by the Distributor, at the time of his most recent purchase of a portion of the Territory; or (d) a reasonable projection, in the sole opinion of SOH, of the average weekly sales of the Authorized Products in question expected to be distributed to said Authorized Outlet via a form or channel of distribution other than Distributor, times the average multiple appearing in SOH's books and records used to establish the value of the territories sold or transferred within the market in which the Territory is located during the prior two (2) years. This amount shall be paid in fifty-two (52) equal weekly installments in conjunction with Distributor's weekly settlement. In the event that SOH subsequently permits Distributor to again exclusively distribute said Authorized Products to such Authorized Outlet within the fifty-two (52) weeks during which these payments are being made, the payments will be discontinued and SOH shall have no obligation to pay the balance of the payments to Distributor.

**ARTICLE 9  
ADDITION OF AUTHORIZED OUTLETS**

Except as provided in Article 17, Distributor shall not be required to make any additional payment to SOH for the rights to the Territory as a result of any Authorized Outlet which may hereafter be developed and added as an Authorized Outlet in the Territory.

**ARTICLE 10  
STALE, UNUSABLE MERCHANDISE**

Distributor is responsible for the disposition of all damaged, distressed, stale or out-of-code Authorized Products. Distributor is aware of the need to protect and enhance the SOH name, and the various names of the Authorized Products and the Other Products and their consumer reputation and agrees that any such products which are to be disposed of for resale to or consumption by human beings shall be clearly labeled as damaged, distressed, stale or out-of-code products and shall only be sold under circumstances reasonably satisfactory to SOH which preserve the image and integrity of the SOH name and the Authorized Products and the Other Products.

**ARTICLE 11  
SETTLEMENT OF ACCOUNT**

On a weekly settlement basis, Distributor will remit to SOH the purchase price of all merchandise delivered to Distributor during the settlement week. Any amounts due and owing by Distributor to SOH at any time shall constitute a lien upon Distributor's interest in this Agreement and the Territory. Nothing herein shall be deemed to require SOH to fill any order of Distributor during any time when Distributor is in default of any payment due SOH or this Agreement.

When Authorized Products are sold and distributed to Authorized Outlets or other retail outlets within the Territory whose managers are not permitted to pay cash for merchandise, SOH may, at the request and for the convenience of Distributor, accept charge sales tickets signed by the store manager, or his designee, in lieu of cash, and credit Distributor's account.

**ARTICLE 12  
WHOLESALESHIP**

SOH may authorize other persons, from time to time, to act as SOH's wholesaler (the "Wholesaler") in an area which includes the Territory. In such event, SOH may, in its sole discretion, assign this Agreement to the Wholesaler upon written notice to Distributor. Distributor hereby consents to such an assignment, agrees that such an assignment shall fully and completely release SOH from any and all liability, claims or expenses hereunder and agrees, if requested to do so, to surrender this Agreement in exchange for a new agreement between Distributor and the Wholesaler which will reflect the assignment by SOH, but which will otherwise be the then current form of this Agreement.

### ARTICLE 13 ASSIGNABILITY/TRANSFER/SURVIVAL

Except as otherwise provided in this Agreement, Distributor (which, for purposes of this Article only, shall include Distributor's estate, executor and/or personal representative following his death) shall not sell, assign, transfer, pledge, encumber, sub-contract or otherwise dispose of his interest in this Agreement without the prior written consent of SOH, which consent may be withheld for any reason whatsoever. If Distributor desires to sell, assign or transfer all or part of his interest in this Agreement, Distributor shall first obtain a written bona fide offer from a proposed third party purchaser not related to or affiliated with Distributor which offer shall contain all pertinent terms and conditions of the proposed sale to such third party. Distributor shall furnish a copy of that offer to SOH and offer in writing to sell same to SOH at a purchase price and on terms and conditions no less favorable to SOH than those contained in such bona fide offer. Distributor shall provide SOH with such other information with respect to the proposed sale as SOH may reasonably request.

If such bona fide offer contains consideration of a non-cash nature, Distributor shall at his own cost and expense have such non-cash consideration valued by a nationally recognized investment banker reasonably acceptable to SOH, and such valuation shall be included in Distributor's offer to SOH. The cash equivalency may be paid by SOH in lieu of such non-cash consideration for purposes of accepting Distributor's offer.

SOH shall have a period of fifteen (15) days after receipt by it of Distributor's offer and all required and requested information within which to notify Distributor of its election to purchase the Agreement or interest therein to be transferred pursuant to the terms of Distributor's offer. If SOH declines to purchase, Distributor may, within a period of sixty (60) days after the end of such election period, sell or otherwise dispose of his interest to the proposed bona fide third party purchaser but only under the terms and conditions specified in that third party's offer to Distributor that was delivered to SOH in accordance with the terms of this Article. Also, as an express condition of the closing of any such sale, Distributor hereby agrees to, and does, effective as of the date of such closing, on behalf of himself and his representatives, heirs, successors and assigns, release and discharge SOH from any and all rights, interests, claims, demands, liabilities, causes of action, costs and expenses, including, but not limited to, attorneys' fees, whether known or unknown, of any kind or nature whatsoever, arising under this Agreement or otherwise. Also, at the closing of such sale and as a condition thereof, Distributor shall require the purchaser to enter into the then current form of this Agreement.

In the event Distributor suffers a medical, physical or mental condition so that he is unable to service the Territory or any Authorized Outlet for a period of sixty (60) consecutive calendar days (a "Disability") or dies, and if Distributor fails to sell the rights under this Agreement within sixty (60) days following the date of Disability or death in accordance with the first refusal procedures set forth above, then SOH shall have the right (but not the obligation) to sell the same at the best price reasonably obtainable after reasonable notice and advertisement, which sale shall be for the account of Distributor or his estate, and the proceeds of such sale, after deducting therefrom any monies owed by Distributor to SOH, including the satisfaction of any outstanding liens, and the reasonable costs incurred in effecting the sale, including the transfer fees provided for under Article 17 of this Agreement, will be provided to Distributor or his estate in exchange for his or its release, in a form acceptable to and provided by SOH, of all rights, interests, claims, demands, liabilities, causes of action, costs and expenses, including, but not limited to attorneys' fees, arising under this Agreement and/or against SOH.



In the event Distributor, his estate or SOH, after reasonable notice and advertisement, fails to sell Distributor's rights under this Agreement within ninety (90) days following the date of Disability or death of Distributor, SOH shall have the right (but not the obligation) to re-purchase the Territory at a value equal to the lower of: (a) the last offer received from a potential purchaser; (b) the Territory's average weekly sales to all outlets over the twenty-six (26) week period immediately preceding the date of disability or death of the Distributor, times the multiple appearing in SOH's books and records used to establish the value of the Territory at the time of Distributor's purchase thereof, or if the Territory has been purchased in portions by Distributor, at the time of his most recent purchase of a portion thereof; or (c) the Territory's average weekly sales to all outlets over the twenty-six (26) week period immediately preceding the date of Disability or death of Distributor, times the multiple appearing in SOH's books and records used to establish the value of the territories sold or transferred within the market in which the Territory is located during the prior two (2) years; less any monies owed by Distributor to SOH, including the satisfaction of any outstanding liens, the reasonable costs incurred by SOH in effecting or attempting to effect the sale of the Territory, and the transfer fee provided for under Article 17 of this Agreement. The "average weekly sales" shall be determined by dividing the average dollar amount per week of the Distributor's purchases of Authorized Products and Other Products from SOH over the twenty-six (26) week period immediately preceding the date of Disability or death of the Distributor by one minus the average gross margin earned by the Distributor during said period, which shall be determined by SOH.

#### ARTICLE 14 FAILURE TO SERVICE

If Distributor fails to maintain satisfactory services within the Territory, to any segment or part of the Territory, to any Authorized Outlet or to any other retail outlet within the Territory, and such failure is not remedied within five (5) days after receipt of written notice thereof from SOH, in addition to any other lawful remedies SOH may have under this Agreement or otherwise, SOH may deem the Territory, the segment or part, the Authorized Outlet or the other retail outlet within the Territory to be abandoned, which decision shall be final and binding on Distributor and make other arrangements for the service thereof. Notwithstanding anything to the contrary contained in this Agreement, Distributor agrees that if SOH deems that Distributor has abandoned the Territory, a segment or part, an Authorized Outlet or other retail outlet within the Territory, all rights under this Agreement to the Territory, the segment or part, the Authorized Outlet, or other retail outlet within the Territory, shall immediately revert to SOH, and that Distributor shall not be entitled to, nor receive, any compensation from SOH or any other person for the loss of the Territory, the segment or part, the Authorized Outlet or the other retail outlet within the Territory. Also, if SOH determines that the Distributor has abandoned the Territory, a segment or part, an Authorized Outlet or the other retail outlet within the Territory, Distributor hereby agrees to and does, effective as of the date of SOH's determination, on behalf of himself and his representatives, heirs, successors and assigns, release and discharge SOH from any and all rights, interests, claims, demands, liabilities, causes of action, costs and expenses, including, but not limited to, attorneys' fees, whether known or unknown, of any kind or nature whatsoever, arising under this Agreement or otherwise.

## ARTICLE 15 TEMPORARY SERVICE BY SOH

If Distributor, or his estate as the case may be, is not able to or does not service the Authorized Outlets by reason of short-term illness, emergency or reasonable holiday or vacation, he or it shall make other adequate provision for service at his or its own expense. If no such provision is made, SOH may, within the limits of its ability to do so, and for as long as it, in its sole discretion, so chooses, operate the business for the account of Distributor or his estate. Distributor shall reimburse SOH for all costs incurred by SOH to provide this service. Such temporary operation by SOH shall not relieve Distributor or his estate of any of the obligations imposed by this Agreement nor act to cure any default or breach which may exist on the part of Distributor.

## ARTICLE 16 TERMINATION

This Agreement may be terminated by Distributor, with or without cause, upon thirty (30) days prior written notice to SOH.

SOH may terminate this Agreement and Distributor's rights with respect to the Territory as follows:

- (a) SOH may terminate this Agreement and Distributor's rights with respect to the Territory, upon twenty-four (24) hours written notice and Distributor shall have no right to cure, after the occurrence of any of the following:
- (1) The insolvency of Distributor or the institution of insolvency, bankruptcy or similar proceedings by or against Distributor;
  - (2) The failure to pay SOH any monies due or owing to it under this Agreement or otherwise or the failure to pay any monies due or owing to others which relate to or impact the performance of this Agreement;
  - (3) Any dishonesty, fraudulent conduct or misrepresentation in any of Distributor's dealings with SOH, the Authorized Outlets, retailers or consumers;
  - (4) The performance by the Distributor of this Agreement or any of Distributor's duties and responsibilities hereunder while under the influence of alcohol or illegal drugs;
  - (5) The involvement in any activity which is unsafe or is a health hazard to the public;
  - (6) The conviction of Distributor of any offense which is punishable by imprisonment or which is a felony;
  - (7) Any actions by Distributor which cause, or in the reasonable belief of SOH are likely to cause: substantial harm to SOH's business, goodwill or reputation in the Territory or elsewhere; substantial harm to Distributor's business, goodwill or reputation; or substantial harm to another SOH distributor's business, goodwill or reputation;
  - (8) The death of the Distributor; or
  - (9) The abandonment of the Territory, a segment or part of the Territory, an Authorized Outlet or other retail outlet within the Territory.
- (b) In the event of any other breach of this Agreement or the terms hereof by Distributor, SOH shall provide Distributor with five (5) business days written notice of the breach within which time

Distributor must cure the breach to SOH's satisfaction. If Distributor fails to cure such breach within said five (5) day period, this Agreement and Distributor's rights with respect to the Territory may be immediately terminated by SOH without further notice, provided, further, that repeated violations or breaches shall be deemed to constitute substantial harm to SOH's business. Accordingly, the parties agree that SOH shall not be obligated to afford Distributor the right to cure his breach on more than three (3) occasions during any consecutive twelve (12) month period and that upon any subsequent breach SOH may terminate this Agreement and Distributor's rights with respect to the Territory upon twenty-four (24) hours written notice without right to cure.

- (c) In addition, SOH may terminate this Agreement and Distributor's rights with respect to the Territory for any just cause which may arise from time to time including, but not limited to, business or economic reasons of SOH, or in the event SOH elects to terminate all the distributor agreements within the Distributor's area, upon giving Distributor sixty (60) days notice of such termination.

Upon termination of this Agreement, the Territory and rights of Distributor therein immediately shall revert to SOH and SOH shall have the right to operate the Territory for its own account. SOH shall also have the right to sell the rights to the Territory at the best price obtainable after reasonable notice and advertisement.

Except for abandonment of the Territory, a segment or part of the Territory, an Authorized Outlet or other retail outlet within the Territory, the sale shall be for the account of Distributor. In the event that SOH is unable to sell the rights to the Territory within ninety (90) days of the effective date of a termination under Articles 16 (a) or 16 (b), after reasonable notice and advertisement, or immediately in the event this Agreement is terminated under Article 16(c), SOH shall have the right (but not the obligation) to repurchase the Territory at a value equal to the lower of: (a) the last offer received from a potential purchaser; (b) the Territory's average weekly sales to all outlets over the twenty-six (26) week period immediately preceding the effective date of the termination, times the multiple appearing in SOH's books and records used to establish the value of the Territory at the time of Distributor's purchase thereof, or if the Territory has been purchased in portions by the Distributor, at the time of his most recent purchase of a portion thereof; or (c) the Territory's average weekly sales to all outlets over the twenty-six (26) week period immediately preceding the effective date of the termination, times the multiple appearing in SOH's books and records used to establish the value of the territories sold or transferred within the market in which the Territory is located during the prior two (2) years. The "average weekly sales" shall be determined by dividing the average dollar amount per week of the Distributor's purchases of Authorized Products and Other Products from SOH over the twenty-six (26) week period immediately preceding the date of Disability or death of the Distributor by one (1) minus the average gross margin earned by the Distributor during that period which shall be determined by SOH.

The proceeds of the sale or the value of the Territory as established above, after deducting therefrom any amounts owed by Distributor to SOH, the reasonable costs incurred by SOH in effecting or attempting to effect the sale of the Territory, costs associated with the satisfaction of any outstanding liens and the transfer fees provided for under Article 17 of this Agreement, will be paid to Distributor in exchange for his release, in a form acceptable to and provided by SOH, of all rights, interests, claims, demands, liabilities, causes of action, costs and expenses including, but not limited to attorneys' fees, arising under this Agreement and/or against SOH. In the event the proceeds from the sale or the value of the Territory are not enough to pay all amounts owed to SOH plus any outstanding liens, then the proceeds or value shall be applied first to the obligations to SOH. Distributor shall remain obligated to pay any balance due to SOH as well as any unpaid liens and transfer fees.

Distributor agrees that termination of this Agreement shall not relieve Distributor of any obligations to SOH accrued as of the effective date of termination or of any outstanding liens. Also, Distributor agrees that if this Agreement is terminated by either Distributor or SOH, Distributor shall return to SOH, within five (5) days after the termination of this Agreement, any property which belongs to SOH.

#### **ARTICLE 17 TRANSFER FEE**

In the event of a sale, assignment or transfer by Distributor, or by SOH for the account of Distributor, of any or all of Distributor's rights under this Agreement, Distributor shall pay a transfer fee in an amount determined as follows:

In the event of the sale, assignment or transfer of all of Distributor's rights under this Agreement, the transfer fee shall be equal to five (5%) percent of the total consideration received for such sale, assignment or transfer, or

In the event of the sale, assignment or transfer of part of Distributor's rights under this Agreement, the transfer fee shall be equal to ten (10%) percent of the total consideration received for such sale, assignment or transfer.

This transfer fee shall be in consideration for the administrative activities undertaken by SOH in connection therewith.

#### **ARTICLE 18 SERVICE CHARGES**

Distributor shall pay a weekly service charge to SOH in return for SOH handling Distributor's stock, for the use of and maintenance of computer equipment, for the processing of automated settlement and financial reports each week and for various supplies and services provided by SOH which are required to support Distributor's sales efforts. This service charge will be established by SOH as set forth in the Standard Operating Guidelines and will be subject to change from time to time at the sole discretion of SOH. Distributor also shall pay to SOH the other charges established by SOH as set forth in the Standard Operating Guidelines, which also will be subject to change from time to time at the sole discretion of SOH.

#### **ARTICLE 19 COST OF SPACE AND/OR AUTHORIZATIONS**

Distributor acknowledges that fees are charged to obtain shelf space and/or authorizations for products in certain outlets. Both SOH and Distributor recognize that acquiring additional space and product authorizations are essential for continued growth and profitability of their respective businesses. Therefore, where SOH is required to purchase space in Authorized Outlets, or is required to purchase authorizations for Authorized Products, Distributor agrees to reimburse SOH for up to fifty percent (50%) of such costs or such lesser amount as SOH may determine, from time to time, payable at such time or times as SOH may require.

## ARTICLE 20 TRADEMARKS AND TRADENAMES

Distributor shall not conduct his business under SOH's name, or the trademarks or tradenames of any of the Authorized Products or Other Products. Distributor shall make no use of SOH's name, or the trademarks or tradenames of any of the Authorized Products or Other Products for any reason whatsoever, except upon receiving SOH's prior written consent.

If Distributor agrees to provide advertising space satisfactory to SOH on the vehicle used in Distributor's business pursuant to this Agreement, SOH agrees to pay the cost of painting and lettering Distributor's vehicle from time to time as SOH shall, in its sole discretion, determine is necessary. If SOH elects to cease using the advertising space on the vehicle, if Distributor ceases to use the vehicle in his business pursuant to this Agreement, or if the Agreement is terminated, Distributor, at his own expense, shall promptly remove or paint over such lettering. If Distributor fails to promptly remove or paint over such lettering upon the occurrence of any such event, SOH shall have the right to remove all such lettering, decals and trademarks, with all of SOH's costs therefor to be reimbursed by Distributor, and Distributor further agrees that SOH will not be responsible for any damage to the vehicle resulting from such removal.

## ARTICLE 21 INSURANCE/INDEMNIFICATION

Distributor shall obtain and keep in full force and effect during the term of this Agreement, at Distributor's expense, a commercial comprehensive general liability insurance policy including automobile, personal injury, bodily injury, and property damage with minimum limits of \$1 million per occurrence and an aggregate of \$2 million herein covering Distributor's business and naming SOH as additional insured, and shall provide SOH with a certificate of such insurance and all renewals thereof. SOH shall have the right, upon notice to Distributor, to change or add to the type of insurance to be carried and increase the minimum amount of insurance required to be carried by Distributor hereunder. The policy shall provide that it will not be cancelled or materially altered without the insurance company giving SOH at least ten (10) days prior written notice before such cancellation or alteration shall become effective.

Distributor shall protect, defend, indemnify, and hold harmless SOH and its directors, officers, employees, agents, representatives, successors and assigns from and against any and all fines, claims, costs, expenses (including attorney's fees and court costs), demands, damages, actions, causes of action and other liabilities of every kind and nature, whether in contract, tort, equity or otherwise, whether statutory or common law, arising or resulting directly or indirectly from: Distributor's actions, omissions or negligence; the performance of this Agreement by Distributor or any of Distributor's duties or obligations thereunder; any breach of this Agreement by Distributor; the operation of Distributor's business; or the use or operation of Distributor's vehicles. Distributor shall notify SOH of any such matters as soon as Distributor becomes aware of them. Unless otherwise required by any applicable insurance contract, SOH shall have the exclusive right to control and direct the legal activities associated with any such action through counsel retained by it, but at Distributor's cost and expense.

SOH shall protect, defend, indemnify, and hold harmless Distributor from and against any and all fines, claims, costs, expenses (including attorney's fees and court costs), demands, damages, actions, causes of action and other liabilities of every kind or nature for injury arising directly from the consumption of any Authorized Product sold by SOH, but only if such claim arises solely from the actions of SOH, the product has not been altered by Distributor or others, Distributor has fully complied with his obligations under this Agreement and provided SOH is promptly notified of such claim and is permitted to assume the defense thereof and to settle same in its discretion and through its own representative or attorney.

## ARTICLE 22 NOTICES

Any notice required or permitted under this Agreement shall be in writing and shall be deemed properly given: When personally delivered; twenty-four (24) hours after deposit with a national express delivery service for next day delivery; or seventy-two (72) hours after deposit in the mail, return receipt requested, first class postage pre-paid, addressed to the party to be notified at the address above stated in this Agreement or at such other address as either party may designate by written notice.

## ARTICLE 23 INCORPORATION

If Distributor desires to conduct business as a corporation or limited liability company, SOH will consent to the assignment of this Agreement to a corporation or limited liability company approved by SOH provided

- (a) that Distributor at all times holds not less than fifty-one (51%) percent of the outstanding stock of such corporation or fifty-one (51%) percent ownership of the limited liability company;
- (b) that Distributor acts as such corporation's or limited liability company's principal officer;
- (c) that Distributor personally guarantees all liabilities and obligations of the corporation or limited liability company imposed hereunder, and
- (d) that Distributor executes any other instruments reasonably required by SOH in connection therewith.

## ARTICLE 24 LIMITED WARRANTIES

SOH warrants that the Authorized Products sold by it to Distributor pursuant to this Agreement are as described on the packages containing such Authorized Products. SOH MAKES NO REPRESENTATION OR WARRANTY OF ANY OTHER KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE TERRITORY OR THE AUTHORIZED PRODUCTS OR OTHER PRODUCTS, WHETHER AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER MATTER, ANY SUCH REPRESENTATIONS OR WARRANTIES BEING HEREBY EXPRESSLY EXCLUDED AND WAIVED. SOH DOES NOT AUTHORIZE ANYONE TO MAKE OR MAKE ANY OTHER

REPRESENTATION OR WARRANTY EXCEPT AS STATED HEREIN.

**ARTICLE 25  
MISCELLANEOUS**

- (a) Survival. This Agreement shall be binding upon the parties hereto and their respective officers, directors, heirs, personal representatives, successors and permitted assigns.
- (b) Severability. Any provision of this Agreement which is prohibited by, or unlawful or unenforceable under, any applicable law of any jurisdiction will be ineffective as to such jurisdiction without affecting any other provision of this Agreement. To the full extent, however, that the provisions of such applicable law may be waived, they are hereby waived, to the end that this Agreement be deemed to be a valid and binding Agreement enforceable in accordance with its terms.

Also, if any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable: (i) the validity and enforceability of the remainder of this Agreement shall not be affected; (ii) such provision shall be deemed modified to the minimum extent necessary to make such provision consistent with applicable law; and (iii) such provision shall be valid, enforceable and enforced in its modified form.

- (c) Choice of Forum. THE PARTIES AGREE THAT TO THE EXTENT ANY DISPUTES ARISE THAT CANNOT BE RESOLVED DIRECTLY BETWEEN THEM, Distributor SHALL FILE ANY SUIT AGAINST SOH ONLY IN THE FEDERAL OR STATE COURT HAVING JURISDICTION OVER WHERE SOH'S PRINCIPAL OFFICE IS THEN LOCATED. THE PARTIES FURTHER AGREE THAT SOH MAY FILE SUIT IN EITHER THE FEDERAL OR STATE COURT HAVING JURISDICTION OVER WHERE SOH'S PRINCIPAL OFFICE IS LOCATED OR IN THE FEDERAL OR STATE COURT HAVING JURISDICTION OVER WHERE Distributor RESIDES OR DOES BUSINESS OR WHERE THE CLAIM AROSE. Distributor IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT AND WAIVES ANY OBJECTION HE MAY HAVE TO EITHER THE JURISDICTION OR VENUE OF ANY SUCH COURT.
- (d) Waiver of Jury Trial. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY DISPUTE OR LITIGATION BASED ON THIS AGREEMENT OR ARISING OUT OF THIS AGREEMENT OR ANY ACTS, OMISSIONS, TRANSACTIONS OR COURSE OF DEALING HEREUNDER.
- (e) Limitation of Claims. EXCEPT FOR CLAIMS BROUGHT BY SOH WITH REGARD TO Distributor's OBLIGATION TO MAKE PAYMENT TO SOH PURSUANT TO THIS AGREEMENT, OR Distributor's OBLIGATIONS TO INDEMNIFY SOH PURSUANT TO THIS AGREEMENT, ANY AND ALL OTHER CLAIMS OR DISPUTES ARISING UNDER OR RELATING TO THIS AGREEMENT OR THE RELATIONSHIP BETWEEN SOH AND Distributor PURSUANT TO THIS AGREEMENT, SHALL BE BARRED UNLESS AN ACTION IS COMMENCED WITHIN: (i) TWO YEARS FROM THE DATE ON WHICH THE ACT OR

EVENT GIVING RISE TO THE CLAIM OR DISPUTE OCCURRED OR (ii) ONE YEAR FROM THE DATE ON WHICH Distributor KNEW OR SHOULD HAVE KNOWN IN THE EXERCISE OF REASONABLE DILIGENCE, OF THE FACTS GIVING RISE TO SUCH CLAIM OR DISPUTE, WHICHEVER FIRST OCCURS.

- (f) Further Limitation of Product Claims: NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, ALL CLAIMS BY Distributor RELATING TO AUTHORIZED PRODUCTS OR OTHER PRODUCTS MUST BE MADE, IN WRITING, WITHIN TEN (10) DAYS AFTER Distributor LEARNS THE FACTS UPON WHICH SUCH CLAIMS ARE BASED BUT IN NO EVENT LATER THAN NINETY (90) DAYS AFTER RECEIPT OF SUCH PRODUCT BY Distributor. ALL SUCH CLAIMS NOT MADE IN WRITING WITHIN THE TIME PERIOD SPECIFIED SHALL BE DEEMED WAIVED. FURTHERMORE, Distributor's EXCLUSIVE REMEDY FOR ALL PRODUCT CLAIMS ARISING OUT OF THIS AGREEMENT SHALL BE THE REPLACEMENT OF THE PRODUCTS BY SOH, OR, AT THE OPTION OF SOH, RETURN OF THE PURCHASE PRICE.
- (g) Limitation on Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT SHALL SOH BE LIABLE TO Distributor FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS AND PUNITIVE DAMAGES.
- (h) Waiver: The failure in any one or more instances of a party to insist upon strict performance of any provision of this Agreement or to exercise any right conferred in this Agreement, shall not be construed as a waiver of such provision or right, and the waiver by either party of a breach of any provision of this Agreement shall not be construed as a waiver of a subsequent breach of that provision. No waiver, except a waiver expressly set forth in this Agreement, shall be effective unless it is in writing and signed by an authorized representative of the waiving party.
- (i) Captions. Articles and other captions contained in this Agreement are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of any part of this Agreement.
- (j) Number and Gender. Where the context so indicates, the masculine shall include the feminine and neuter, the singular shall include the plural and "person" shall include a corporation and other entities.
- (k) Governing Law. The validity, interpretation and performance of this Agreement shall be controlled by and construed in accordance with the laws of the Commonwealth of Pennsylvania without giving effect to its conflicts of law provisions.



- (l) Entire Agreement. This Agreement constitutes the entire agreement between the parties and shall not be modified except by a written document executed by Distributor and by an authorized officer of SOH.

## ARTICLE 26 DISTRIBUTOR'S ACKNOWLEDGEMENTS/REPRESENTATIONS

Distributor understands and acknowledges that there are significant risks in any business venture and that the primary factor in Distributor's success or failure will be Distributor's own efforts. In addition, Distributor acknowledges that SOH and its representatives have made no representation, warranty or guaranty regarding the sales volume or profit which Distributor may derive from this Agreement or in his business operations conducted thereunder and have made no representation, warranty or guaranty to Distributor other than the matters set forth in this Agreement and that Distributor has undertaken this venture solely in reliance upon Distributor's own independent investigation of the merits of this venture.

Distributor understands and acknowledges that he, as a Distributor under this Agreement, is an independent contractor and not an employee of SOH. As such, he will not receive any benefits of the type typically provided to an employee such as worker's compensation benefits, health and welfare insurance benefits, Social Security benefits or unemployment benefits. Instead, Distributor understands and acknowledges that, to the extent desired, he will have to obtain and pay for his own health and welfare benefits and also be required to pay self-employment taxes.

Distributor understands and acknowledges that this Agreement is not a franchise agreement. This Agreement does not provide the Distributor with a franchise to distribute Authorized Products or Other Products under a marketing plan or system prescribed by SOH. The Agreement does not allow the Distributor to conduct his business under, or in any way use SOH's name or the tradenames or trademarks of any of the Authorized Products or Other Products.

Distributor also understands and acknowledges that other distributors of SOH may be granted distributor agreements at different times and in different situations and that the provisions of such agreements may vary substantially from those contained in this Agreement. Distributor's obligations hereunder may differ substantially from those of other distributors.

Distributor understands and acknowledges that SOH may, in its sole discretion, vary the guidelines and operating practices and requirements among distributors including, without limitation, those relating to the Territory, Authorized Products and Authorized Outlets. Distributor understands and acknowledges that such variations may lead to different costs and obligations among distributors.

Distributor further acknowledges and represents that each of the following statements are true and correct:

- (a) He is executing this Agreement voluntarily, and has read and understands each of its provisions; and

- (b) He has been advised to consult an attorney or certified public accountant of his choice before executing the Agreement to, among other things, review the legal and accounting requirements of being an independent businessman and to determine his tax reporting obligations.

IN WITNESS WHEREOF, SOH and Distributor have hereunto set their hands and seals as of the day and year first above written.

WITNESS:

Kathy M. Rock

WITNESS:

Sal Antino

SOH Distribution Company, Inc.

C. E. Good

By: Charles E. Good, Vice President

Distributor:

Jonathan Scheurer

# **EXHIBIT B**

**AMENDMENT**

THIS AMENDMENT dated this 8<sup>TH</sup> day of December 2008, between SOH Distribution Company, Inc., a Delaware LLC with its principal offices located at 1250 York Street, PO Box 6917, Hanover, PA 17331, hereinafter referred to as "SOH", and Jonathan Scheurer, of 249 Park Avenue, Cliffside Park, NJ 07010 hereinafter referred to as "DISTRIBUTOR".

**WITNESSETH:**

SOH and DISTRIBUTOR have entered into a Distributor Agreement, dated October 3, 2008, attached hereto. DISTRIBUTOR has formed a Limited Liability Company known as Jonathan Schuerer LLC, with its principal office located at 249 Park Avenue, Cliffside Park, NJ 07010, hereinafter referred to as "LLC". DISTRIBUTOR wishes to transfer certain assets to the LLC, one asset being the DISTRIBUTOR's rights under his Distributor Agreement with SOH. The DISTRIBUTOR has requested SOH to permit such a transfer to the LLC. SOH is agreeable to such a transfer, based upon the following terms and conditions, to which DISTRIBUTOR and LLC agree:

1. DISTRIBUTOR shall transfer DISTRIBUTOR's rights under his Distributor's Agreement with SOH to the LLC.
2. The LLC shall be bound by the terms of the Distributor Agreement, and the LLC shall have its officers execute a copy of this amendment to acknowledge that the LLC is now a full third party to the original Distributor's Agreement, as modified by the terms of this amendment.
3. DISTRIBUTOR shall continue to remain personally liable and shall guarantee the obligations imposed upon the DISTRIBUTOR under the Distributor Agreement; AND hereby provides a personal guarantee of the LLC's financial obligation to SOH.
4. Except as set forth herein, the terms and conditions of the Distributor Agreement shall remain in full force and effect.

IN WITNESS WHEREOF and intending to be legally bound hereby, the Parties have duly executed this Agreement the day and year first written above.

Witness: Ry

DISTRIBUTOR

Jonathan Scheurer

Jonathan Scheurer LLC

By: Jonathan Scheurer

Witness: Ry

SOH Distribution Company, Inc.

C. E. Good  
By: Charles E. Good, Vice President

Witness: Charles E. Good

# **EXHIBIT C**

Balance

11/13/16

11/13/16

1250 York Street, PO Box 6917  
Harrisburg, PA 17105

1250 York Street, PO Box 6917

1250 York Street, PO Box 6917

1250 York Street, PO Box 6917  
Harrisburg, PA 17105

1250 York Street, PO Box 6917  
Harrisburg, PA 17105

1250 York Street, PO Box 6917  
Harrisburg, PA 17105

1250 York Street, PO Box 6917  
Harrisburg, PA 17105

1250 York Street, PO Box 6917  
Harrisburg, PA 17105

1250 York Street, PO Box 6917

1250 York Street, PO Box 6917

JS 44 (Rev. 07/16)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

JONATHAN SCHEURER, LLC, individually and on behalf of all similarly situated individuals,

(b) County of Residence of First Listed Plaintiff Hudson County

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, Email and Telephone Number)  
Marks & Klein, LLP, 63 Riverside Ave., Red Bank, NJ 07701,  
justin@marks Klein.com, (732) 747-7100; Law Office of Marisa Rauchway  
Sverdlov, LLC, 51 JFK Pkwy, 1st Fl. W, Short Hills, NJ 07078,  
973-526-4098

**DEFENDANTS**

S-L DISTRIBUTION COMPANY, INC.,

County of Residence of First Listed Defendant York County (PA)

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |                                         | PTF                        | DEF                        |                                                               | PTF                                   | DEF                                   |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|---------------------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5            | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation                                                | <input type="checkbox"/> 6            | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332

Brief description of cause:

Violation of New Jersey Franchise Practices Act, N.J.S.A. 56:10-1, et seq

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

GreaterThan \$5 million

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE  
11/28/2016

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**MARKS & KLEIN, LLP**

Justin M. Klein, Esq. (Attorney ID No.036312003)  
63 Riverside Avenue  
Red Bank, New Jersey 07701  
Telephone: 732-747-7100  
Facsimile: 732-219-0625  
justin@marksklein.com

**Law Office of Marisa Rauchway Sverdlov, Esq.**

Marisa Rauchway Sverdlov, Esq. (Attorney ID No. 026602008)  
51 JFK Parkway, First Floor West  
Short Hills, New Jersey 07078  
Telephone: 973-826-4098  
Facsimile: 973-954-2527  
mrauchway@rauchwaylaw.com

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

JONATHAN SCHEURER, LLC,  
individually and on behalf of all similarly  
situated individuals,

Plaintiff,

v.

S-L DISTRIBUTION COMPANY, INC.,

Defendant.

Civil No.:

**CLASS ACTION COMPLAINT**

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure, the undersigned counsel for Plaintiff Jonathan Scheurer, LLC ("Plaintiff"), hereby certifies that Plaintiff is a non-governmental corporate party, has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

*[Remainder of page intentionally left blank]*



**MARKS & KLIEN, LLP**  
Attorneys for Plaintiff

s/Justin M. Klein  
JUSTIN M. KLEIN  
63 Riverside Avenue  
Red Bank, NJ 07701  
Tel: (732) 747-7100

**Law Office of Marisa Rauchway Sverdlov, Esq.**  
Attorneys for Plaintiff

s/Marisa Rauchway Sverdlov  
MARISA RAUCHWAY SVERDLOV  
51 JFK Parkway, First Floor West  
Short Hills, New Jersey 07078  
Tel: 973-826-4098

Dated: November 28, 2016

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Snyder's-Lance Facing Franchisees' Class Action Over NJFPA Infractions](#)

---