

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

DAVID ZWANIGA and JENNIFER ZWANIGA

- and -

**REVOLUTION FOOD TECHNOLOGIES INC.
and JOHNVINCE FOODS DISTRIBUTION L.P.**

REGISTERED THIS
MOUVE CE
RÈGLE 26.02 1
POURSUANT À
CONFORMEMENT À
Aug 30/11
THE ORDER OF
L'ORDONNANCE DU
DATED / FAIT LE
REGISTRAR
SUPERIOR COURT OF JUSTICE
OFFICIER
COURT SUPÉRIEURE DE JUSTICE

Defendants

Proceeding under the Class Proceedings Act, 1992

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the rules of court, serve it on the Plaintiffs' lawyer or, where the Plaintiffs do not have a lawyer, serve it on the Plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the rules of court. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

ISSUE DATE: March 24, 2011 Issued by *"S. Slawwhite"*
Local Registrar

Address of court office:

10th Floor
393 University Avenue
Toronto, Ontario
M5G 1E6

TO: JOHNVINCE FOODS DISTRIBUTION L.P.
 o/a Planters Canada
 105 Adelaide Street West
 No. 904
 Toronto, Ontario
 M5H 1P9

AND TO: REVOLUTION FOOD TECHNOLOGIES INC.
 23 Small Crescent
 Oro-Medonte, Ontario
 L0L 1T0

C L A I M

1. THE PLAINTIFFS, DAVID ZWANIGA and JENNIFER ZWANIGA, claim on behalf of themselves and on behalf of each member of the Class:

- (a) damages for fraudulent misrepresentation or alternatively, for negligent misrepresentation in respect of representations made to class members and relied on by them and/or made to induce class members to purchase the Revolution 650™ peanut vending machines and related services and products hereinafter described and/or to enter into agreements for the acquisition of Planters®/MD peanut products and other products described hereafter, in the sum of \$20,000,000.00;
- (b) Rescission of the Franchise Documents, as hereinafter described, pursuant to section 6 of the *Arthur Wishart Act (Franchise Disclosure)*, 2000, S.O. 2000, c. 3, as amended;
- (c) damages for breach of section 3 of the *Arthur Wishart Act (Franchise Disclosure)*, 2000, S.O. 2000, c. 3, as amended, in the amount of \$20,000,000.00;
- (d) special damages in the amount of \$500,000.00 for each;
- (e) general damages in the amount of \$250,000.00 for each;
- (f) an accounting of all monies received by the Defendants from class members for peanut vending machines, fees and otherwise, along with a declaration that the Defendants or either of them return all such monies to the class members and an Order compelling that payment;
- (g) punitive and exemplary damages in the sum of \$20,000,000.00;
- (h) prejudgment and post-judgment interest pursuant to the *Court of Justice Act*, R.S.O. 1990, c, C. 43;
- (i) costs of this action on a substantial indemnity basis, including HST; and,
- (j) such further and other relief as counsel may advise and this Honourable Court may permit.

NATURE OF THE CLAIM

2. David and Jennifer Zwaniga were interested in operating their own business. They attended a presentation given by the Defendants during which they were made the promises and given the representations described below. The presentation by the Defendants was designed to induce attendees such as David and Jennifer Zwaniga into purchasing peanut vending machines and agreeing to subscribe to a system for selling peanuts to the public that was based on a business plan created by the Defendants to improperly obtain money from the putative class members.

3. In particular, the Defendants misrepresented that class members would achieve weekly incomes of \$300 to \$2,400, would receive location assistance for the placement of the peanut vending machines they purchased from professional locators and training provided by the Defendants, amongst other things. These representations were not based in fact and were false.

THE PARTIES

4. The Representative Plaintiffs, David Zwaniga and Jennifer Zwaniga (hereinafter together referred to as the "Zwanigas"), reside in the City of Kitchener, in the Province of Ontario. The Zwanigas are

representative of a national class of persons (the "Class Members") all of whom entered into Membership Agreements with the Defendant, Revolution Food Technologies Inc., and subscribed for and purchased one or more Revolution 650™ peanut vending machines and other related products and services, based on the misrepresentations described below.

5. The Defendant, Revolution Food Technologies Inc., is a company incorporated pursuant to the laws of the Province of Ontario, and carries on business as a manufacturer of vending machines and as a distributor or licensee of Planters®/MD peanut products. At all material times, the Defendant Revolution Food Technologies Inc. was the manufacturer, distributor and retailer of the peanut vending machines described below, throughout Canada. In addition, the Plaintiffs plead that the Defendant, Revolution Food Technologies Inc., was a Franchisor and/or Franchisor's Associate, as defined by the *Arthur Wishart Act (Franchise Disclosure)*, 2000, S.O. 2000, c. 3, as amended (the "*Arthur Wishart Act*"), and as set out in paragraphs 61-74 below.

6. The Defendant, Johnvince Foods Distribution L.P., is a limited partnership registered pursuant to the laws of the Province of Ontario and carries on business as a food manufacturer and distributor. At all material times, the Defendant Johnvince Foods Distribution L.P. was a licensee and/or duly authorized exclusive distributor of Planters®/MD

peanut products in Canada and operated and carried on business as Planters Canada. At all material times, Johnvince Foods Distribution L.P. operated, associated and/or participated in a partnership and/or joint-venture with Revolution Food Technologies Inc. in the marketing, promotion, distribution and/or sale of the peanut vending machines throughout Canada. In addition, the Plaintiffs plead that the Defendant, Johnvince Foods Distribution L.P., was a Franchisor and/or Franchisor's Associate, as defined by the Arthur Wishart Act (Franchise Disclosure), 2000, S.O. 2000, c. 3, as amended (the "Arthur Wishart Act"), and as set out in paragraphs 61-74 below

7. All acts and omissions of Revolution Food Technologies Inc.'s sales representatives, directors, agents and/or employees were within the scope of their employment and agency, and as such, the Defendants are vicariously liable for the acts and omissions of these salespersons, directors, agents and/or employees.

THE SCHEME

8. In or about September 2009, the Defendants entered into a partnership and/or joint-venture to create the "Revolution 650™/Planters®/MD Program" (the "Planters®/MD Program"). The Planters®/MD Program was marketed, promoted and advertised as a business opportunity for those who wanted to operate their own business.

The Planters^{®/MD} Program was expressly endorsed by Johnvince Foods Distribution L.P., acting as Planters^{®/MD} Canada, and in particular, Johnvince Foods Distribution L.P. permitted Revolution Food Technologies Inc. to use the Planters^{®/MD} brand and trademarks on promotional materials, make representations regarding the relationship between Planters^{®/MD} and Revolution Food Technologies Inc., enter into agreements of purchase and sale with class members regarding vending machines intended to sell the Planters^{®/MD} peanut products, and sell the Planters^{®/MD} peanut products to class members. Further, Johnvince Foods Distribution L.P. represented to others that Revolution Food Technologies Inc. was its partner in this enterprise.

9. The Planters^{®/MD} Program was based on the sale of peanut vending machines which dispensed the Planters^{®/MD} peanuts and bore the Planters^{®/MD} brand name and trademarks. Class Members were invited to purchase multiple numbers of the peanut vending machines, which were to be strategically located in certain geographical areas. Class Members were told that there would be controls on the number of distributors placed in each territory. They were told that “professional locators” would help place the machines in ideal locations to maximize revenues. They were told that the Planters^{®/MD} peanuts could only be sold using these vending machines and that each machine was specifically designed to dispense exactly 4 ounces of Planters^{®/MD} peanut product per paid vend.

10. The Vending Machines were to be located in existing business establishments. Class Members were offered the following packages at the following costs:

| | | |
|---|----|-----------|
| Plan A – (72) Revolution 650™ Vendors - | \$ | 64,440.00 |
| Plan B – (51) Revolution 650™ Vendors - | \$ | 48,195.00 |
| Plan C – (36) Revolution 650™ Vendors - | \$ | 35,820.00 |
| Plan D – (18) Revolution 650™ Vendors - | \$ | 18,810.00 |
| Plan E – (9) Revolution 650™ Vendors - | \$ | 9,855.00 |

11. To be eligible to purchase the Planters^{®/MD} nuts and use the Planters^{®/MD} brand name, Class Members were required to enter into a “Membership Agreement” with Revolution Food Technologies Inc. Each Membership Agreement required an initial fee of \$995.00 (plus GST), followed by annual renewal fees of \$495.00 (plus GST).

12. Class Members heard the representations at sales presentations, which were intentionally marketed by the Defendants as being organized by Planters^{®/MD} in unison with Revolution Food Technologies Inc. At such presentations, Planters^{®/MD}, promotional materials were widely disseminated. The promotional materials supplemented and repeated the oral representations made by sales representatives at the presentation regarding the \$300.00 to \$2,400.00 of weekly income the peanut vending machines would generate, the advantages of associating with the Planters^{®/MD} brand name, the ongoing

location support provided by the Defendants, that no selling was required by purchasers, and that the individual vend size was 4 ounces for each purchase from the peanut vending machines, amongst other things (hereinafter the “Representations”). The Representations were false and were made for the purpose of inducing Class Members to purchase as many peanut vending machines as possible for the financial gain of the Defendants.

13. The Defendants did not properly, or at all, disclose to Class Members the inherent financial risks associated with the Planters^{®/MD} Program. In addition, the peanut vending machines that were provided did not have the capacity for the promised vend serving sizes of 4 ounces.

THE MARKETING INFORMATION PROVIDED TO CLASS MEMBERS

14. A Planters^{®/MD} Canada “Letter of Introduction” was distributed at seminars held by the Defendants, which emphasized Planters^{®/MD} involvement and support for the Planters^{®/MD} Program. It encouraged Class Members to “seriously consider this opportunity for you and your family” to participate in the Planters^{®/MD} Program and specifically stated the following:



Planters® Canada - Letter of Introduction

Planters® Canada, Johnvince Foods Distribution LP is pleased to introduce Revolution Food Technologies Inc. as the exclusive manufacturer and distributor of *The Revolution 650™*/ Planters® Program, throughout Canada.

The Revolution 650™ wall mounted vendor is ideal for the dispensing of Planters® premium nut products in thousands of new locations across Canada. With its unique design, *The Revolution 650™* presents our products in an appealing way to hungry consumers and represents an excellent opportunity for both our company and you as a potential distributor to benefit from incremental sales opportunities.

Industry statistics prove that Planters® brand nut products are the most popular brand within the entire nut product snack sales category in Canada and our brand name and beloved Mr. Peanut® character have been recognized as a symbol of quality to consumers in your home market and around the world for over 100 Years.

Planters® Canada, Johnvince Foods Distribution LP will be supporting members of the Revolution Buying GroupTh by making available customized machine graphics as well as offering exclusive promotions and product selections that you and your customers will appreciate.

Automatic Merchandising has been a profitable and popular choice for small business people in Canada for over 80 years. With Planters® Canada, Johnvince Foods Distribution LP participating as a sponsor and supplier to *The Revolution 650™* program, we believe you should seriously consider this opportunity for you and your family.

Thank you for your interest in *The Revolution 650™*/ Planters® Distributorship opportunity.

Best Regards,



Don Lock
Vice President, Sales & Marketing
Planters® Canada, Johnvince Foods Distribution LP

Note: If you wish to confirm our involvement with *The Revolution 650'* Program via phone or email please contact:

Lily Mokry,
Executive Assistant to the Vice President of Sales & Marketing
Toll Free: 800-268-7950 ext. 7102
Email: lv@johnvince.com / type in Subject line: "Revolution 650 Inquiry"
Website: www.plantersfoods.ca

15. A sales brochure was distributed by the Defendants. It was entitled "New Wall Mountable Planters®^{MD}/Revolution 650™ Vendor" and it stated the following with respect to the profitability of the Planters®^{MD} Program:

So How Much Do I Make?*

1 Machine = \$350-\$700 Per Year

2 Machines = \$700 - \$1,400 Per Year

3 Machines = \$ 1,400 - \$ 2,100 Per Year

***Qualifying Locations Only Based on Average Volumes**

16. The Defendants repeatedly misrepresented the profitability of the Planters^{®/MD} Program by providing examples of income generation that had no basis in fact and were unachievable. Examples of such misrepresentations are contained in the "Revolution 650[™] Profit Potential (National)" worksheet which sets out expected profit based on 4 and 2 sales per day per vending machine, at each level of investment in the following specific terms (showing the lowest rate of return in the first year as 80% to a high of 197%):

Revolution 650™ Profit Potential (National)



“See how small change can truly add up to be Big Bucks!”

| | | |
|---------------------|----|------|
| Vend Price | \$ | 2.00 |
| G.S.T. | \$ | 0.09 |
| Cup | \$ | 0.05 |
| Location Commission | \$ | 0.25 |
| Product Cost | \$ | 0.40 |
| Total Cost / Vend | \$ | 0.79 |
| Profit Per Vend | \$ | 1.21 |

| Sales / Day / Machine | 2 | 3 | 4 | 5 | 6 |
|-------------------------|-----------|-------------|-------------|-------------|-------------|
| Profit / Day / Machine | \$ 2.42 | \$ 3.63 | \$ 4.84 | \$ 6.05 | \$ 7.26 |
| Profit / Week / Machine | \$ 16.94 | \$ 25.41 | \$ 33.88 | \$ 42.35 | \$ 50.82 |
| Profit / Year / Machine | \$ 880.88 | \$ 1,321.32 | \$ 1,761.76 | \$ 2,202.20 | \$ 2,642.64 |

| Profit Based on 4 Sales / Day | | | | | |
|-------------------------------|--------------|--------------|--------------|--------------|---------------|
| | Plan E | Plan D | Plan C | Plan B | Plan A |
| Profit / Day | \$ 43.56 | \$ 87.12 | \$ 174.24 | \$ 246.84 | \$ 348.48 |
| Profit / Week | \$ 304.92 | \$ 609.84 | \$ 1,219.68 | \$ 1,727.88 | \$ 2,439.36 |
| Profit / Year | \$ 15,855.84 | \$ 31,711.68 | \$ 63,423.36 | \$ 89,849.76 | \$ 126,846.72 |
| Number of Locations* | 3 | 6 | 12 | 17 | 24 |
| Investment Required | \$ 9,855.00 | \$ 18,810.00 | \$ 35,820.00 | \$ 48,195.00 | \$ 64,440.00 |
| Number Of Machines | 9 | 18 | 36 | 51 | 72 |
| Cost Per Machine | \$ 1,095.00 | \$ 1,045.00 | \$ 995.00 | \$ 945.00 | \$ 895.00 |
| Return On Investment | 161% | 169% | 177% | 186% | 197% |

| Profit Based on 2 Sales / Day | | | | | |
|-------------------------------|-------------|--------------|--------------|--------------|--------------|
| | Plan E | Plan D | Plan C | Plan B | Plan A |
| Profit / Day | \$ 21.78 | \$ 43.56 | \$ 87.12 | \$ 123.42 | \$ 174.24 |
| Profit / Week | \$ 152.46 | \$ 304.92 | \$ 609.84 | \$ 863.94 | \$ 1,219.68 |
| Profit / Year | \$ 7,927.92 | \$ 15,855.84 | \$ 31,711.68 | \$ 44,924.88 | \$ 63,423.36 |
| Number of Locations* | 3 | 6 | 12 | 17 | 24 |
| Investment Required | \$ 9,855.00 | \$ 18,810.00 | \$ 35,820.00 | \$ 48,195.00 | \$ 64,440.00 |
| Number Of Machines | 9 | 18 | 36 | 51 | 72 |
| Cost Per Machine | \$ 1,095.00 | \$ 1,045.00 | \$ 995.00 | \$ 945.00 | \$ 895.00 |
| Return On Investment | 80% | 84% | 89% | 93% | 98% |

All of the above figures are examples only. Taxes, product costs, and location commissions may vary. Revolution Food Technologies Inc. does not guarantee any sales or profits of distributors machines as sales and profit will depend on the quality of service rendered by the distributor.

* Based on a typical placement of 3 machines per location.

17. These written representations were supplemented by oral representations made by the Defendants at sales presentations including the following representation made by Rod Knight, the President of Revolution Food Technologies Inc., at a presentation for the Planters^{®/MD} Program held in British Columbia in November 2010 (the “B.C. Seminar”), wherein Mr. Knight emphasized the profitability of the peanut vending machines by specifically stating to Class Members:

“...the average Plan C distributor [36 Vending Machines] spends approximately 6 to 10 hours per week and has earnings of between \$31,000.00 and \$63,000.00 per year, based on minimal to average sales.”

18. In addition, the Defendants distributed a “Frequently Asked Questions” information package to Class Members (the “FAQ”). The FAQ disclosed that the Defendants were associated with the Planters^{®/MD} Program. The FAQ also emphasized the benefits of having the Planters^{®/MD} brand attached to the Vending Machines.

19. The Planters^{®/MD} Canada website (www.planterspeanuts.ca) also promoted and endorsed the Planters^{®/MD} Program. Under the “What’s New” heading on the Planters^{®/MD} Canada website, there was a link to a company announcement relating to Revolution 650[™]. The Company Announcement stated specifically:



APRIL 7, 2010

COMPANY ANNOUNCEMENT

Planters^{®/MD} Canada, Johnvince Foods Distribution LP are pleased to provide an update on The Revolution 650™ / Planters^{®/MD} program launched in September 2009.

To date more than 150 Canadian entrepreneurs have been appointed as independent Revolution 650™ / Planters^{®/MD} distributors, representing a combined allocation of over 4,500 machines to the market. From cities as large as Toronto and Vancouver to smaller markets such as Kelowna and Sudbury, the program has been enthusiastically embraced.

Revolution Food Technologies Inc. will continue the ongoing selection of distributors during 2010 with a series of seminar campaigns covering cities in multiple provinces. The company expects to have appointed over 350 distributors and allocated over 10,000 machines by December of 2010.

Planters^{®/MD} Canada and Johnvince Foods Distribution LP continue to work with the Revolution Buying Group™ to expand the range of products available to Revolution 650™ / Planters^{®/MD} distributors and to support their efforts with innovative marketing solutions. "We continue to be impressed by the advertising value and incremental sales impact the program has created for our company" says Don Lock, Vice President, Sales & Marketing for Planters^{®/MD} Canada.

For more information on upcoming seminars go to: www.businessevent.ca
To contact Revolution Food Technologies Inc. email: info@revolution650.com

###

20. As at the date of issuance of the Statement of Claim, the reference to the Planters^{®/MD} Program on the Planters^{®/MD} Canada website remained.

21. At the B.C. Seminar, Mr. Knight also stated the following with respect to the involvement of Johnvince Foods Distribution L.P., operating as Planters Canada, with the Planters^{®/MD} Program:

“This Program comes directly from the head office at Planters and is supported in all ways through training, marketing and development of our distributors.”

22. The Planters^{®/MD} Program was controlled and maintained by the Defendant Johnvince Foods Distribution L.P, which required, at least initially, that Class Members ensure that their credit accounts were maintained at or above \$300.00 (the “Credit Account”) and that a minimum number of 9 cases of Planters^{®/MD} peanut product were ordered. The minimum Credit Account requirements are detailed in the following letter distributed to Class Members by the Defendants:



Important Announcement With Regards To
RBG Credit Account Deposits!

The Revolution Buying Group Administration staff is very excited to announce that we have negotiated a special arrangement with Planters^{®/MD} Canada to allow all members a once per year, "special credit account deposit". Please read below for details.

As you are aware, our agreement with Planters^{®/MD} in regards to the maintenance of members Credit Accounts is as follows; once a member's credit account balance drops below the \$300 level, the member must immediately make a deposit to replenish the account back up to the initial deposit amount. This deposit requirement varies according to the size of the member's distributorship, in many cases this can be as much as \$3,000 - \$5,000.

On more than one occasion we have found that this deposit requirement has put distributors into a tight financial spot and left our administration staff in the unenviable position to have to enforce the Agreement regardless. In some cases we have had no choice but to cancel a membership due to a member's inability to adhere to the Agreement. This new arrangement with Planters could prevent us from having to do so in the future if members use this special arrangement strategically.

We have also noticed a number of member's accounts hovering just above the \$300 level, with no new orders having been placed for many months. We believe these distributors are avoiding placing orders for new products that they know would help their business, for fear of dropping below the \$300 level and having to replenish their account all the way back to the top.

We have explained the above to Planters^{®/MD} Canada and they have responded by amending the Revolution Buying Group members Agreement to include the option for any member to make a deposit to their credit account in an amount **LESS** than the full refill amount on a **once per calendar year basis**.

The \$300 minimum deposit level is still in effect and the standard online re-fill deposit process will still work the same way it does currently. If you would like to exercise your (once per calendar year) option to deposit less than the required amount, this must be done by contacting Angela or Liz in our admin office during normal business hours or by email at the following addresses: angela@revolution650.com or liz@revfoodtech.com.

We sincerely hope that this new policy and our efforts on behalf of our members continue to contribute to your success and our long term business relationship.

Sincerely;

Devan Hawbolt,
General Manager

23. The Defendant Johnvince Foods Distribution L.P. was acting in partnership and/or joint-venture with Revolution Food Technologies Inc. in relation to the Planters^{®/MD} Program and shared in the profits of the Planters^{®/MD} Program.

24. Class Members were induced into purchasing peanut vending machines based on the representations in the above-mentioned promotional materials and/or at the presentations they were invited to. In particular, Class Members reasonably relied upon the accuracy and completeness of the promotional materials that were disseminated concerning Planters^{®/MD} involvement which provided credibility to the Planters^{®/MD} Program, the income generation projections, the location assistance provided for placing the peanut vending machines, control over the number of distributors placed in each territory, that no selling was required by purchasers, and information regarding the size of the serving of each vend, amongst other things.

DEALINGS WITH THE DEFENDANTS

25. Class Members first became aware of the Planters^{®/MD} Program through invitations received by regular letter mail. The invitation presented the seminar as a joint initiative between Planters^{®/MD} and Revolution Food Technologies Inc., as it contained the following information:

“You’re Invited To The Planters^{®/MD} / Revolution 650[™]
Dinner / Business Presentation & Performance”

The back side of the same invitation represented the “\$300 to \$2,400 / week” income investors could expect, amongst other advantages, in the following specific words:

‘Revolution’-ize your Income!
Earn \$300 to \$2,400 / Week*

**New Planters^{®/MD}/Revolution 650[™]
Vendors To Be Placed In Your Area Require
Local Distributors To Maintain and Fill**

- Substantial Tax Benefits
- Work Your Own Hours
- No Selling - Locations Provided
- Marketing Support from Planters^{®/MD} Canada
- Investments Start as Low as \$9,855
- Limited Number of Distributors Appointed

FREE Information Presentation to be Held
In Your Area - Details on Back

www.businessevent.ca

26. The promotion at the presentations held by the Defendants included Planters^{®/MD} posters and marketing items. In addition, sales staff wore Planters^{®/MD} clothing. It was the intention of the Defendants to represent the involvement of Planters^{®/MD} so as to increase the credibility and exposure of the Planters^{®/MD} Program and induce Class Members to participate in the Planters^{®/MD} Program, pay the required fees and

charges, and purchase multiple peanut vending machines from the Defendants.

27. The Planters^{®/MD} Program consisted of options to purchase a certain number of peanut vending machines. The peanut vending machines were marketed as having the ability to hold up to 3.8 kilograms of Planters^{®/MD} nuts. Further, it was represented to Class Members that each vend would produce 4 ounces of nuts for a customer at a cost of \$2.00 per vend. The promotional materials heavily relied upon representations regarding the “generous portion size”. In fact, the peanut vending machines are unable to produce vend sizes of 4 ounces due to their design and customers are dissuaded from subsequent purchases because the portions are not “generous” at all.

28. The Planters^{®/MD} Program was presented as a time-limited offer in which Class Members were instructed to sign up as soon as possible as there was only limited availability for participants in the Planters^{®/MD} Program. Pressure tactics were employed, such that class members were advised that if they did not sign up immediately, they would miss the opportunity to do so. This denied Class Members the opportunity to thoroughly consider and investigate the Planters^{®/MD} Program prior to investing in it.

29. The Defendants also hosted question and answer sessions regarding the Planters^{®/MD} Program. Rod Knight, the President of Revolution Food Technologies Inc., led these sessions. All of the representations made in the promotional materials were reinforced orally. Class Members were told that following their initial order of peanut vending machines, it could be some time before they could purchase additional peanut vending machines and, therefore, they were pressured to purchase as many as possible initially.

30. In reliance on the Defendants' representations, Class Members purchased peanut vending machines in varying amounts. They were also required to provide an initial deposit if they wanted to have the opportunity to participate in the Planters^{®/MD} Program. The required deposit was equivalent to 30% of the total amount of the start-up plan applied for. The deposit was non-refundable. The remaining balance had to be paid within one week from the date of deposit, failing which the deposit would be lost. This is alleged to be an oppressive business tactic.

31. In addition, stands, promotional materials (including Planters^{®/MD} apparel) and initial Planters^{®/MD} peanut product for the peanut vending machines had to be purchased by Class Members. The Defendants also provided advice regarding the appropriate amount of Planters^{®/MD} peanut product to purchase. The Defendants' advice in this

respect was grossly inaccurate and many of Class Members have been forced to discard large quantities of Planters^{®/MD} peanut product because it became stale and/or inedible before it could be sold. Class Members have not achieved anywhere close to the minimum 80% rate of return promised by the Defendants in the above-mentioned promotional materials.

32. The Planters^{®/MD} Program also required Class Members to maintain an ongoing Credit Account to purchase Planters^{®/MD} peanut product. The required deposit ranged between a minimum of \$1,000.00 to a maximum of \$5,000.00, depending upon the size of the purchase order (i.e. the number of peanut vending machines purchased).

33. Class Members were presented with and asked to immediately sign the “Revolution 650[™] Distributorship & Equipment Purchase Agreement”, which included Addendums “A” and “B” (“Sale of Business Agreement”), and “The Revolution Buying Group[™] Membership Agreement”, and a “Letter of Understanding” (referred to collectively as the “Franchise Documents”). These documents were not adequately explained to Class Members, such that they were not aware of the agreements they were entering into. Class Members were simply directed as to where to sign.

34. Prior to purchasing the peanut vending machines, Class Members received and/or reviewed the promotional materials provided by the Defendants. These materials, as outlined above, were designed to encourage peanut vending machine sales and were disseminated with the intention that Class Members would rely on the representations therein, and they did so.

35. All of the above-mentioned sales brochures and other promotional materials are hereinafter together referred to as the "Promotional Materials".

THE ZWANIGAS' SPECIFIC DEALINGS WITH THE DEFENDANTS

36. The Zwanigas first became aware of the Planters^{®/MD} Program through an invitation received by regular letter mail in or about February 2010. The Zwanigas attended a presentation held on March 1, 2010 in Kitchener, Ontario. At this presentation, the Planters^{®/MD} Program was described as consisting of options to purchase a certain number of peanut vending machines. The Planters^{®/MD} Program was presented as a time-limited offer in which the Zwanigas had to sign up as soon as possible or risk losing the opportunity to participate.

37. On March 3, 2010, the Zwanigas attended a question and answer session hosted by the Defendants. All of the representations made in the Promotional Materials were reinforced orally at the Defendants' organized sales presentation. The Zwanigas were told that following the initial order of peanut vending machines, it could be some time before they could purchase additional peanut vending machines and, therefore, they were pressured to purchase as many as possible initially.

38. On March 4, 2010, in reliance on the Representations, the Zwanigas elected to purchase 51 peanut vending machines (Plan "B" of the Planters^{®/MD} Program), at a total cost of \$56,232.51 (inclusive of taxes and membership fees). As the Zwanigas purchased Plan "B", they were required to provide a non-refundable deposit of \$15,000.00.

39. After their initial down payment of \$15,000.00 made on March 4, 2010, the Zwanigas were required to pay the balance of \$41,232.51 by March 12, 2010, which they did. In addition, the Zwanigas were required to purchase stands, promotional materials (including Planters^{®/MD} apparel) and Planters^{®/MD} peanut product for the peanut vending machines at a cost of \$9,120.04, as well as headers at a cost of \$135.60. In total, the Zwanigas spent \$65,488.15 simply in start-up costs as a result of participating in the Planters^{®/MD} Program. The Zwanigas were advised by the Defendants as to the appropriate amount of

Planters^{®/MD} peanut product to purchase. The Defendants' advice in this respect was grossly inaccurate and the Zwanigas have been forced to discard large quantities of Product because it became stale and/or inedible. In their first 8 months of operation, the Zwanigas generated a mere \$2,100.00 in sales, despite all reasonable and appropriate efforts by them.

40. Also on March 4, 2010, the Zwanigas were presented with and asked to immediately sign the Franchise Documents ~~the "Revolution 650TM Distributorship & Equipment Purchase Agreement", which included Addendums "A" and "B" ("Sale of Business Agreement"), and "The Revolution Buying GroupTM Membership Agreement", and a "Letter of Understanding"~~. These documents were not adequately explained to the Zwanigas, such that they were not aware of the agreements they were entering into. The Zwanigas were simply directed as to where to sign.

41. After one year of operations and despite all efforts to make this business a success, including the hiring of professional locators, purchasing of Planters^{®/MD} peanut product and contact with the Defendants regarding successful business strategies, the Zwanigas invested \$65,488.15 in start-up costs and generated only \$2,100.00 in sales. Accordingly, the Zwanigas experienced approximately a less than 3% return on their investment in year 1. Despite the Defendants'

projections, the Zwanigas' return on investment is consistent with that of other Class Members.

THE CAUSE OF ACTION AGAINST THE DEFENDANTS

42. The Defendants collectively, in partnership and/or joint-venture, created, reviewed, drafted, supervised, approved and authorized the design, contents and distribution of the Promotional Materials and the representations made orally at the sales presentations they hosted and knew or ought to have known that Class Members would be receiving the Promotional Materials and/or oral representations and relying upon the accuracy and completeness of the information contained therein in making any decision to participate in the Planters^{®/MD} Program and purchase the peanut vending machines.

43. The Defendants knew or ought to have known that the information with respect to the Representations was inaccurate, incomplete, false, deceptive and/or misleading.

44. Further, once the Defendants became aware of the extent to which the information with respect to the Planters^{®/MD} Program was inaccurate, incomplete, false, deceptive and/or misleading, they failed to take any steps to correct the Promotional Materials and/or to contact

Class Members to advise them that the Promotional Materials were inaccurate, incomplete, false, deceptive, and/or misleading.

45. The Zwanigas state that the Defendants negligently breached their duty of care, are liable for deceit or fraudulent and/or negligent misrepresentation, as a result of which the Zwanigas suffered damages as set out herein. In particular and in addition to the allegations set out herein, the Zwanigas claim against the Defendants for:

- (a) providing to Class Members Promotional Materials which were inaccurate, incomplete, false, deceptive and/or misleading;
- (b) not providing Class Members with amended and accurate Promotional Materials once the Defendants were aware that the Promotional Materials were inaccurate, incomplete, false, deceptive and/or misleading;
- (c) negligently, recklessly and/or fraudulently allowing the Promotional Materials to contain information which they knew or ought to have known was inaccurate, incomplete, false, deceptive and/or misleading and in allowing these documents to be distributed to Class Members;
- (d) negligently, recklessly and/or fraudulently failing to provide Class Members with amended and accurate Promotional Materials once they became aware that the information in the Promotional Materials was inaccurate, incomplete, false, deceptive and/or misleading;
- (e) fraudulently and/or deceitfully allowing the intentional distribution to Class Members of Promotional Materials which it knew was inaccurate, incomplete, false, deceptive and/or misleading;
- (f) fraudulently and/or deceitfully failing to provide Class Members with amended and accurate Promotional Materials once they became aware that the Promotional Materials contained information that was inaccurate, incomplete, false, deceptive and/or misleading;

- (g) negligently, recklessly and/or fraudulently making Representations which they knew or ought to have known were inaccurate, incomplete, false, deceptive and/or misleading; and,
- (h) fraudulently and/or deceitfully failing to correct the Representations made once they became aware that the Representations were inaccurate, incomplete, false, deceptive and/or misleading.

46. Further, the Zwanigas state that the Defendants intentionally distributed Promotional Materials and/or made Representations to Class Members which it knew were inaccurate, incomplete, false, deceptive and/or misleading. The Defendants did so to entice Class Members to purchase peanut vending machines for the Defendants' collective profit and gain. The Defendants had knowledge and experience in the sale of food products and knew that by providing Promotional Materials associating the peanut vending machines with the Planters^{®/MD} brand name that the number of investors and size of the investments would increase. In addition, the Defendants employed oppressive business tactics as set out above.

47. Class Members reasonably relied upon the Representations and the Promotional Materials to contain information regarding the Planters^{®/MD} Program and the peanut vending machine specifications which was accurate and contained all material statements. As a consequence of this reliance, Class Members proceeded to participate in the Planters^{®/MD} Program and purchase peanut vending machines.

48. The Defendants' actions, in concealing the true extent and nature of their misrepresentations, misconduct, deception and/or deceit, operate to toll any possible statutes of limitation under principles of equitable tolling.

Misrepresentation and Fraudulent Misrepresentations

49. In order to attract purchasers, the Defendants prepared and provided to Class Members Promotional Materials and made statements to Class Members at sales representations they hosted and promoted which contained the following misrepresentations, all of which are inaccurate, incomplete, false, deceptive, and/or misleading:

- (a) the Promotional Materials promised income of between \$300.00 and \$2,400.00 per week without the Defendants undertaking appropriate due diligence to ensure this information was accurate or alternatively, intentionally and blatantly misrepresenting or covering up information regarding actual income levels;
- (b) the Promotional Materials stated that the individual vend size would be 4 ounces when, in fact, it is not possible for the peanut vending machines to produce vend sizes of 4 ounces due to its design. The holding area of the peanut vending machines, which measures the volume of the nuts prior to dispensing, is approximately 3 ounces. Accordingly, the peanut vending machines cannot dispense at 4 ounces;
- (c) the Promotional Materials stated that the locations for the peanut vending machines were to be provided, however, the professional locators hired by the Defendants were unable to secure locations due to the oversaturation by the Defendants of the market resulting from the large quantity of peanut vending machines sold to Class Members in each geographical area;

- (d) servicing of each peanut vending machine was to take no longer than five to ten minutes, when, in fact, it takes much longer and the need to remove the peanut vending machines from their location to be cleaned limits their exposure to potential purchasers and decreases their profitability;
- (e) Class Members would have their peanut vending machines placed in specific geographical territories so as not to oversaturate the market in these areas. In fact, there was no control placed on where Class Members could locate the peanut vending machines and, as a result, market oversaturation caused by the Defendants was inevitable;
- (f) training was to be provided to Class Members to qualify them as “company trained distributors”. Class Members were not provided with on-site training; and,
- (g) the Planters^{®/MD} Program was presented as a time-limited offer which created an impression of urgency that was false and oppressive, and prevented Class Members from investigating the viability of the Planters^{®/MD} Program, in particular, whether there existed market oversaturation, prior to purchasing the peanut vending machines.

50. At no time did the Defendants ever correct the Promotional Materials or the Representations, including the oral representations made at their sales presentations.

51. The Defendant Johnvince Foods Distribution L.P., acting as Planters Canada, made the above-mentioned misrepresentations and/or authorized, permitted and/or acquiesced in the drafting, issuance and dissemination of the Promotional Materials and the Representations.

52. The Zwanigas state that the Representations and the failure to disclose material facts were made or withheld by the Defendants falsely, with knowledge of their falsity or recklessly with the intention that Class Members would act on the Representations and non-disclosures and participate in the Planters^{®/MD} Program and purchase the peanut vending machines for the financial gain of the Defendants.

53. The Representations were repeated to the Zwanigas and other Class Members in the Promotional Materials and through oral statements by representatives of the Defendants.

54. The Zwanigas state that they and other Class Members relied upon the false Representations and that all relevant facts had been disclosed, which they were not, and by virtue thereof they and the Class Members were induced to and did participate in the Planters^{®/MD} Program and purchase peanut vending machines to their detriment causing them damages.

Misrepresentation and Negligent Misrepresentation

55. In the alternative, the Zwanigas state that these misrepresentations were made negligently with the intention that the Zwanigas and other Class Members would act on them to participate in the Planters^{®/MD} Program and purchase peanut vending machines which they did to their detriment causing them damages.

56. The Zwanigas state that in the circumstances of this action, the particulars of which are pleaded in this Statement of Claim, there existed a duty of care based on a sufficiently close and special relationship between the Zwanigas and other Class Members and the Defendants such that it was within the reasonable contemplation of the Defendants that carelessness on their part would cause damage to the Zwanigas and other Class Members.

57. The Zwanigas state that the Representations and non-disclosure set out above amounted to untrue, inaccurate or misleading representations which were made negligently or carelessly and without regard for proper due diligence.

58. The Zwanigas state that the Defendants made the Representations or withheld relevant disclosures with the intention that the Zwanigas and other Class Members in reliance upon them would participate in the Planters^{®/MD} Program and purchase peanut vending machines.

59. In all the circumstances involved with the promotion and sales of the Planters^{®/MD} Program and its peanut vending machines, the Zwanigas and other Class Members reasonably relied upon the misrepresentations or the fact of their existence and that all relevant facts had been disclosed, which they were not, and by virtue thereof the Zwanigas and other Class Members were induced to participate in the Planters^{®/MD} Program and did purchase peanut vending machines and have suffered damages as a result, including the loss of income and loss of opportunity, amongst others.

60. The Zwanigas and other Class Members demand rescission of their contracts with the Defendants, a full refund of all monies paid to the Defendants and damages against the Defendants for their losses.

Arthur Wishart Act (Franchise Disclosure), 2000

61. The Plaintiffs plead that the Defendants failed to provide a “disclosure document” to the Class Members as required by section 5(1) of the Arthur Wishart Act .

62. The plaintiffs plead that Class Members are entitled to rescission of the Franchise Documents pursuant to section 6(2) of the Arthur Wishart Act, on the basis that the Defendants have never delivered a “disclosure document” to Class Members. Alternatively or in addition, the information provided by the Defendants to the Class Members fails to comply with the disclosure content requirements in the Arthur Wishart Act and Ontario Regulation 581/00, as amended, passed under the Arthur Wishart Act (the “Wishart Regulation”). The Defendants failed to disclose to the Class Members:

- (a) all material facts, financial statements and statements for the purposes of assisting the prospective franchisee in making informed investment decisions as required by section 5(4) of the Arthur Wishart Act;
- (b) a statement of material change as required by section 5(5) of the Arthur Wishart Act;
- (c) the business background of the franchisor as required by section 2(1) of the Wishart Regulation;
- (d) the business background of the directors, the general partners and the officers of the franchisor as required by section 2(2) of the Wishart Regulation;

- (e) a statement, including a description of details, indicating whether, during the ten years immediately preceding the date of the disclosure document, the franchisor, the franchisor's associate or a director, general partner or officer of the franchisor has been convicted of fraud, unfair or deceptive business practices, or a violation of a law that regulates franchises or business or if there is a charge pending against the person involving such a matter as required by section 2(3) of the *Wishart Regulation*;
- (f) a statement, including a description of details, indicating whether the franchisor, the franchisor's associate or a director, general partner or officer of the franchisor has been subject to an administrative order or penalty imposed under a law of any jurisdiction regulating franchises or business or if the person is the subject of any pending administrative actions to be heard under such a law as required by section 2(4) of the *Wishart Regulation*;
- (g) a statement, including a description of details, indicating whether the franchisor, the franchisor's associate or a director, general partner or officer of the franchisor has been found liable in a civil action of misrepresentation, unfair or deceptive business practices or violating a law that regulates franchises or businesses, including a failure to provide proper disclosure to a franchisee, or if a civil action involving such allegations is pending against the person as required by section 2(5) of the *Wishart Regulation*;
- (h) details of any bankruptcy or insolvency proceedings, voluntary or otherwise, any part of which took place during the six years immediately preceding the date of the disclosure document, against: The franchisor or the franchisor's associate, a corporation whose directors or officers include a current director, officer or general partner of the franchisor, or included such a person at a time when the bankruptcy or insolvency proceeding was taking place, a partnership whose general partners include a current director, officer or general partner of the franchisor, or included such a person at a time when the bankruptcy or insolvency proceeding was taking place or a director, an officer or a general partner of the franchisor in their personal capacity as required by section 2(6) of the *Wishart Regulation*;

- (i) financial statements for the most recently completed fiscal year of the franchisor's operations as required by section 3 of the *Wishart Regulation*;
- (j) a description of the mediation or other alternative dispute resolution process used by the franchisor, and the circumstances when the process may be invoked, as well as the required statement about mediation as required by section 5 of the *Wishart Regulation*;
- (k) a certificate of disclosure signed by at least two of the franchisor's officers or directors as required by section 7 of the *Wishart Regulation*;

63. In the alternative, if the Defendants did provide Class Members with a disclosure document, that document was not compliant with section 5 of the *Arthur Wishart Act* and contained misrepresentations as specified at paragraph 49 of the Claim.

64. The Plaintiffs plead that Class Members are deemed by section 7(2) of the *Wishart Act* to have relied upon all deficiencies and misrepresentations with respect to the disclosure provided by the Defendants.

65. The Plaintiffs further plead and rely upon section 28 of the *Class Proceedings Act, 1992, S.O. 1992, c.6*, as amended and state that any limitation pertaining to the delivery of a notice of rescission under the *Arthur Wishart Act* is suspended in favour of the Class Members on the commencement of this proceeding.

66. Additionally, or in the alternative, the Zwanigas plead that the Defendants breached their duty of fair dealing in their commercial dealings with the Zwanigas and other Class Members under the *Arthur Wishart Act*, by virtue of their misrepresentations set out above, including disclosure regarding the income generation, vend portion size, ongoing business support, location assistance, control over the number of distributors placed in each territory, and servicing of the peanut vending machines, amongst others. The Defendants knew or ought to have known that the Representations were inaccurate, incomplete, false, deceptive and/or misleading.

67. The Defendant, Johnvince Foods Distribution L.P., upon entering into a partnership and/or joint-venture with the Defendant, Revolution Food Technologies Inc., for the sale of the peanut vending machines pursuant to the Planters^{®/MD} Program, became a Franchisor within the meaning of the *Arthur Wishart Act*. This Defendant owes to the Zwanigas and other Class Members, statutory and equitable obligations of utmost good faith and fair dealing.

68. In the alternative, the Defendant, Johnvince Foods Distribution L.P., upon entering into a partnership and/or joint-venture with the Defendant, Revolution Food Technologies Inc., for the sale of the peanut vending machines pursuant to the Planters^{®/MD} Program, became a Franchisor's Associate within the meaning of the *Arthur Wishart Act*. This Defendant owes to the Zwanigas

and other Class Members, statutory and equitable obligations of utmost good faith and fair dealing.

69. The Defendant, Revolution Food Technologies Inc., upon being appointed by the Defendant, Johnvince Foods Distribution L.P., to advance the Planters^{®/MD} Program and entering into Membership Agreements with the Zwanigas and other Class Members, became a Franchisor within the meaning of the *Arthur Wishart Act*. This Defendant owes to the Zwanigas and other Class Members, contractual, statutory and equitable obligations of utmost good faith and fair dealing.

70. In the alternative, the Defendant, Revolution Food Technologies Inc., upon being appointed by the Defendant, Johnvince Foods Distribution L.P., to advance the Planters^{®/MD} Program and entering into Membership Agreements with the Zwanigas and other Class Members, became a Franchisor's Associate within the meaning of the *Arthur Wishart Act*. This Defendant owes to the Zwanigas and other Class Members, contractual, statutory and equitable obligations of utmost good faith and fair dealing.

71. The Zwanigas and other Class Members entered into Membership Agreements with the Defendant, Revolution Food Technologies Inc. The Membership Agreement called for an annual renewal fee, as described above. The Membership Agreement was to grant the Zwanigas and other Class

Members a license to sell Planters^{®/MD} items and obtain assistance with the placement of the peanut vending machines, among other things. The Zwanigas and other Class Members are franchisees within the meaning of the *Arthur Wishart Act*.

72. The duty of fair dealing and good faith, and the obligation to act in accordance with reasonable commercial standards pursuant to sections 3 and 4 of the *Arthur Wishart Act* requires the Defendants to provide accurate and truthful disclosure. The Defendants breached this duty as a result of the misrepresentations made, as set out above, which the Zwanigas and other Class Members relied upon to their detriment.

73. The Plaintiffs plead that the Defendant, Revolution Food Technologies Inc., is liable as a Franchisor's Associate, pursuant to section 7(1) of the *Arthur Wishart Act*.

74. The Plaintiffs plead that the Defendant, Johnvince Foods Distribution L.P., is liable as a Franchisor's Associate, pursuant to section 7(1) of the *Arthur Wishart Act*.

DAMAGES

75. As a consequence of the misrepresentations of the Defendants, the Zwanigas and other Class Members have suffered damages and losses

including, but not limited to, a substantial investment loss, a loss of income, a loss of opportunity, pain and suffering and other consequential losses. Further particulars of damages will be provided prior to trial.

PUNITIVE DAMAGES

76._____The conduct of the Defendants is such as to justify an award of punitive and/or exemplary damages. The Zwanigas plead that the Defendants' conduct has been a breach of their duty of good faith and is a separate actionable wrong. The Defendants have behaved with arrogance and high-handedness, have shown a callous disregard and complete lack of concern for Class Members and the rights of Class Members, and ought to be punished and deterred from this sort of misconduct. The Defendants' conduct was sufficiently reprehensible so as to justify an award of punitive and/or exemplary damages from the Defendants. The Defendants were or ought to have been aware of the probable consequences of their conduct and the damage such conduct would cause to Class Members.

77._____The Defendants continue to be major participants in the food distribution market place. The Defendants have considerable assets. An award of \$20,000,000.00 for punitive and exemplary damages is justified and required to punish the Defendants and deter such inappropriate conduct in the future.

78. _____ The Class Members plead and rely upon the *Class Proceedings Act*, 1992, S.O. 1992, c.6, as amended and the *Arthur Wishart Act (Franchise Disclosure)*, 2000, S.O. 2000, c. 3, as amended.

PLACE OF TRIAL

The Class Members propose that this action be tried at the City of Toronto in the Province of Ontario.

DATE OF ISSUE: The 24th day of March, 2011.

THOMSON, ROGERS
Barristers and Solicitors
Suite 3100
390 Bay Street
Toronto, Ontario
M5H 1W2

L. CRAIG BROWN
ALAN FARRER and
DARCY R. MERKUR
416-868-3176
Fax No. 416-868-3134

Solicitors for the Plaintiffs

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

AMENDED STATEMENT OF CLAIM

THOMSON, ROGERS
Barristers and Solicitors
Suite 3100
390 Bay Street
Toronto, Ontario
M5H 1W2

L. CRAIG BROWN
ALAN FARRER and
DARCY R. MERKUR (L.S.U.C. No. 42899S)
416-868-3176
Fax No. 416-868-3134

Solicitors for the Plaintiffs

(098969 AAH/ait)