

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

DAVID ZWANIGA and JENNIFER ZWANIGA

Plaintiffs

- and -

**RODERICK KNIGHT, EDWARD VALLEAU
and DEVAN HAWBOLT**

Defendants

Proceeding under the Class Proceedings Act, 1992

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: *Sept 28/2011*

Issued by _____


Local Registrar

Address of court office:

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

TO: RODERICK KNIGHT
23 Small Crescent
Oro-Medonte, Ontario
L0L 1T0

AND TO: EDWARD VALLEAU
379 Codrington Street
Barrie, Ontario
L4M 1S9

AND TO: DEVAN HAWBOLT
23 Small Crescent
Oro-Medonte, Ontario
L0L 1T0

CLAIM

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

- (a) 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;
- (b) 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;
- (c) 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;
- (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) prejudgment and post-judgment interest pursuant to the *Court of Justice Act*, R.S.O. 1990, c. C. 43;
- (g) costs of this action on a substantial indemnity basis, including HST; and,
- (h) such further and other relief as counsel may advise and this Honourable Court may permit.

THE PARTIES

2. 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 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 (the "*Franchise Program*").

3. Revolution Food Technologies Inc. ("*Revolution 650*") 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, *Revolution 650* was the manufacturer, distributor and retailer of the peanut vending machines described below, throughout Canada.

4. The Defendant, Roderick Knight, was at all material times a director, officer and/or primary owner of *Revolution 650*. In addition, at all material times, the Defendant, Roderick Knight, was the President and/or Chief Executive Officer of *Revolution 650* and/or was a controlling and directing mind of *Revolution 650*. The Plaintiffs plead that the Defendant, Roderick Knight, was at all material times, a Franchisor's Associate and/or Franchisor's Agent, as defined by the *Arthur Wishart Act (Franchise Disclosure)*, 2000, S.O. 2000, c. 3, as amended (the "*AWA*"), and, as such, is responsible for misrepresentations and failures to disclose, amongst other things, as set out herein, by *Revolution 650*.

5. The Defendant, Edward Valleau, was at all material times a director, officer and/or owner of *Revolution 650*. In addition, at all material times, the Defendant, Edward Valleau, was the Vice-President and/or General Manager of *Revolution 650* and/or was a controlling and directing mind of *Revolution 650*. The Plaintiffs plead that the Defendant, Edward Valleau, was at all material times, a Franchisor's Associate and/or Franchisor's Agent, as defined by the AWA, and, as such, is responsible for misrepresentations and failures to disclose, amongst other things, as set out herein, by *Revolution 650*.

6. The Defendant, Devan Hawbolt, was at all material times an officer and/or director of *Revolution 650*. In addition, at all material times, the Defendant, Devan Hawbolt, was the General Manager and/or a representative of *Revolution 650* and/or was a controlling and directing mind of *Revolution 650*. The Plaintiffs plead that the Defendant, Devan Hawbolt, was at all material times, a Franchisor's Associate and/or Franchisor's Agent, as defined by the AWA, and, as such, is responsible for misrepresentations and failures to disclose, amongst other things, as set out herein, by *Revolution 650*.

NATURE OF THE CLAIM

7. David and Jennifer Zwaniga were interested in operating their own business. They attended a presentation given by *Revolution 650* at which *Revolution 650* and/or one or more of the Defendants made the promises and gave the representations described below. The presentation by *Revolution 650* was designed to induce attendees such as the *Zwanigas* 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*.

8. In particular, *Revolution 650* and/or one or more of 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 *Revolution 650*, amongst other things. These representations were not based in fact and were false.

THE SCHEME

9. In or about September 2009, *Revolution 650* and/or one or more of the Defendants created the *Franchise Program*. The *Franchise Program* was marketed, promoted and advertised as a business opportunity for those who wanted to operate their own business. The *Franchise 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 650* and the Defendants to use the Planters^{®/MD} brand and trademarks on promotional materials, make representations regarding the relationship between Planters^{®/MD} and *Revolution 650*, 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*.

10. The *Franchise 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 each machine was specifically designed to dispense exactly 4 ounces of Planters^{®/MD} peanut product per paid vend.

11. 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 TM Vendors -	\$	64,440.00
Plan B – (51) Revolution 650 TM Vendors -	\$	48,195.00
Plan C – (36) Revolution 650 TM Vendors -	\$	35,820.00

Plan D – (18) Revolution 650™ Vendors -	\$	18,810.00
Plan E – (9) Revolution 650™ Vendors -	\$	9,855.00

12. 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 650*. Each Membership Agreement required an initial fee of \$995.00 (plus GST), followed by annual renewal fees of \$495.00 (plus GST).

13. *Class Members* heard the representations at sales presentations, which were intentionally marketed by *Revolution 650* and/or one or more of the Defendants as being organized by Planters^{®/MD} in unison with *Revolution 650*. At such presentations, Planters^{®/MD}, promotional materials were widely disseminated. The promotional materials supplemented and repeated the oral representations made by *Revolution 650* and/or one or more of the Defendants 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 *Revolution 650*, 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 *Revolution 650* and/or the Defendants, who shared in the profits of *Revolution 650*.

14. *Revolution 650* and/or one or more of the Defendants did not properly, or at all, disclose to *Class Members* the inherent financial risks associated with the *Franchise 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

15. A Planters^{®/MD} Canada “Letter of Introduction” was distributed at seminars held by *Revolution 650*, which emphasized Planters^{®/MD} involvement and support for the *Franchise Program*. It encouraged *Class Members* to “seriously consider this opportunity for you and your family” to participate in the *Franchise 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: lvf@johnvince.com](mailto:lvf@johnvince.com) / type in Subject line: "Revolution 650 Inquiry"
Website: www.planterspeanuts.ca

16. A sales brochure was distributed by *Revolution 650* and/or one or more of the Defendants for *Class Members* to indicate to establishments the profit they would generate by housing the peanut vending machines. It was entitled “New Wall Mountable Planters®^{MD}/Revolution 650™ Vendor” and it stated the following with respect to the profitability of the *Franchise 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**

17. *Revolution 650* and/or one or more of the Defendants repeatedly misrepresented the profitability of the *Franchise 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)



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

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

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.

18. These written representations were supplemented by oral representations made by *Revolution 650* and/or one or more of the Defendants at sales presentations including the following representation made by the Defendant, Roderick Knight, at a presentation for the *Franchise 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.”

19. In addition, *Revolution 650* and/or one or more of the Defendants distributed a “Frequently Asked Questions” information package to *Class Members* (the “FAQ”). The FAQ disclosed that Johnvince Foods Distribution L.P., operating as Planters Canada, was associated with the *Franchise Program*. The FAQ also emphasized the benefits of having the Planters^{®/MD} brand attached to the Vending Machines.

20. The Planters^{®/MD} Canada website (www.planterspeanuts.ca) also promoted and endorsed the *Franchise 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.bussessevent.ca
To contact Revolution Food Technologies Inc. email: info@revolution650.com

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

22. At the *B.C. Seminar*, Roderick Knight also stated the following with respect to the involvement of Johnvince Foods Distribution L.P., operating as Planters Canada, with the *Franchise 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."

23. The following letter, signed by the Defendant, Devan Hawbolt, and distributed to *Class Members*, explained that *Revolution 650's* agreement with Johnvince Foods Distribution L.P. 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:



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

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 *Franchise 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 *REVOLUTION 650* AND/OR THE DEFENDANTS

25. *Class Members* first became aware of the *Franchise Program* through invitations received by regular letter mail. The invitation presented the seminar as a joint initiative between Planters^{®/MD} and *Revolution 650*, 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

*Based on Presentation for 2012

www.businessevent.ca

26. The promotion at the presentations held by *Revolution 650* and/or one or more of the Defendants included Planters^{®/MD} posters and marketing items. In addition, sales staff wore Planters^{®/MD} clothing. It was the intention of *Revolution 650* and/or one or more of the Defendants to represent the involvement of Planters^{®/MD} so as to increase the credibility and exposure of the *Franchise Program* and induce *Class Members* to participate in the *Franchise Program*, pay the required fees and charges, and purchase multiple peanut vending machines from *Revolution 650*.

27. The *Franchise 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 *Franchise 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 *Franchise 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 *Franchise Program* prior to investing in it.

29. *Revolution 650* and/or one or more of the Defendants also hosted question and answer sessions regarding the *Franchise Program*. The Defendant, Roderick Knight, 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 representations by *Revolution 650* and/or one or more of the Defendants, *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 *Franchise 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, *Revolution 650* and/or one or more of the Defendants encouraged *Class Members* to purchase stands, promotional materials (including Planters^{®/MD} apparel) and initial Planters^{®/MD} peanut product for the peanut vending machines. *Revolution 650* and/or one or more of the Defendants also provided advice regarding the appropriate amount of Planters^{®/MD} peanut product to purchase. The advice in this respect was grossly inaccurate and many *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 *Revolution 650* and/or one or more of the Defendants in the above-mentioned promotional materials.

32. The *Franchise 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 *Revolution 650* and/or one or more of 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 *REVOLUTION 650* AND/OR THE DEFENDANTS

36. The *Zwanigas* first became aware of the *Franchise 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. All of the Defendants were present. At this presentation, the *Franchise Program* was described as consisting of options to purchase a certain number of peanut vending machines. The Defendants, Roderick Knight and Edward Valleau, explained the benefits of participating in the *Franchise Program*. The *Franchise 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 *Revolution 650* and/or one or more of the Defendants. All of the representations made in the *Promotional Materials* were reinforced orally at the 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, the *Zwanigas* were presented with and asked to immediately sign the Franchise Documents. 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 by the Defendant, Devan Hawbolt. In reliance on the *Representations*, the *Zwanigas* elected to purchase 51 peanut vending machines (Plan "B" of the *Franchise 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, *Revolution 650* and/or one or more of the Defendants encouraged the *Zwanigas* 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 particular, stands were required as establishments, for the most part, would not permit wall mounting. In total, the *Zwanigas* spent \$65,488.15 simply in start-up costs as a result of participating in the *Franchise Program*. The *Zwanigas* were advised by *Revolution 650* and/or one or more of the Defendants as to the appropriate amount of Planters^{®/MD} peanut product to purchase. The 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. After one year of operation 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 *Revolution 650* and/or one or more of 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 projections, the *Zwanigas*' return on investment is consistent with that of other *Class Members*.

THE MISREPRESENTATIONS

41. *Revolution 650* and/or one or more of the Defendants created, reviewed, drafted, supervised, approved and authorized the design, contents and distribution of the *Promotional Materials* and made oral representations to *Class Members* at the sales presentations they hosted for the express purpose of marketing the *Franchise Program* and inducing *Class Members* to participate in the *Franchise Program*. *Revolution 650* and/or one or more of the Defendants 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 *Franchise Program* and, consequently, purchase the peanut vending machines.

42. *Revolution 650* and/or one or more of the Defendants negligently, knowingly or intentionally allowed or acquiesced to the dissemination of information with respect to the *Representations* which was inaccurate, incomplete, false, deceptive and/or misleading. *Revolution 650* and/or one or more of the Defendants negligently, knowingly or intentionally supplemented these false *Representations* with inaccurate, incomplete, false, deceptive and/or misleading oral representations.

43. Further, once *Revolution 650* and/or one or more of the Defendants became aware of the extent to which the information with respect to the *Franchise Program* was inaccurate, incomplete, false, deceptive and/or misleading, they failed to take any steps to correct, or have *Revolution 650* 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.

44. In order to attract purchasers, *Revolution 650* and/or one or more of the Defendants prepared and provided to *Class Members* the *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 *Revolution 650* and/or one or more of 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 were unable to secure locations due to the oversaturation by *Revolution 650* and/or one or more of the Defendants 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 *Revolution 650* and/or one or more of 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 *Franchise 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 *Franchise Program*, in particular, whether there existed market oversaturation, prior to purchasing the peanut vending machines.

45. At no time did *Revolution 650* and/or one or more of the Defendants ever correct the *Promotional Materials* or the Representations, including the oral representations they made at their sales presentations.

46. 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 *Franchise Program* and purchase peanut vending machines to their detriment causing them damages.

THE CAUSE OF ACTION AGAINST THE DEFENDANTS

47. The *Zwanigas* and other *Class Members* entered into Membership Agreements with *Revolution 650*. 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 AWA.

48. Upon entering into Membership Agreements with the *Zwanigas* and other *Class Members*, *Revolution 650* became a Franchisor within the meaning of the *AWA*.

49. The Plaintiffs plead that the Defendants owe to the *Zwanigas* and other *Class Members*, contractual, statutory and equitable obligations of utmost good faith and fair dealing, as well as disclosure obligations in respect of the *Franchise Program*.

50. The Plaintiffs plead that, at all material times, the Defendants, or any one of them, were Franchisor's Associates and/or Franchisor's Agents within the meaning of the *AWA*, as they:

- (a) directly or indirectly controlled *Revolution 650*;
- (b) directly or indirectly were controlled by another person who also controlled, directly or indirectly, *Revolution 650*;
- (c) were directly involved in the grant of the franchise by being involved in reviewing or approving the grant of the franchise and, in particular, in relation to entering into the *Franchise Agreement*;
- (d) were directly involved in the grant of the franchise by making representations to *Class Members* on behalf of *Revolution 650* regarding the granting and/or marketing of the *Franchise Program*;
- (e) exercised significant operation control over *Class Members* while *Class Members* owed a continuing financial obligation in relation to the *Franchise Program*;
- (f) held sufficient ownership, jointly and/or separately, of *Revolution 650*, pursuant to section 1(3) of the *AWA*, to be deemed to have direct or indirect control over *Revolution 650*, either jointly and/or separately; or,

- (g) were a controlling and/or directing mind over *Revolution 650*.

51. The Plaintiffs and *Class Members* claim damages from the Defendants pursuant to section 7(1) of the *AWA* in relation to the misrepresentations and failures to comply with section 5 of the *AWA* as set out herein.

52. The Plaintiffs plead that *Revolution 650* failed to provide a “disclosure document” to *Class Members*, as required by section 5(1) of the *AWA*. *Class Members* are entitled to rescission of the Franchise Documents pursuant to section 6(2) of the *AWA*, on the basis that *Revolution 650* has never delivered a “disclosure document” to *Class Members*. Alternatively or in addition, the information provided by *Revolution 650* and/or one or more of the Defendants to the *Class Members* fails to comply with the disclosure content requirements in the *AWA* and Ontario Regulation 581/00, as amended, passed under the *AWA* (the “*AWA Regulation*”). *Revolution 650* and/or one or more of 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 *AWA*;
- (b) a statement of material change as required by section 5(5) of the *AWA*;
- (c) the business background of the franchisor as required by section 2(1) of the *AWA 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 *AWA 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 *AWA 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 *AWA 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 *AWA 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 *AWA Regulation*;

- (i) financial statements for the most recently completed fiscal year of the franchisor's operations as required by section 3 of the *AWA 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 *AWA 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 *AWA Regulation*;

53. In the alternative, if *Revolution 650* and/or one or more of the Defendants did provide *Class Members* with a "disclosure document", that document was not compliant with section 5 of the *AWA* and contained misrepresentations as specified at paragraph 44 of the Statement of Claim.

54. The Plaintiffs plead that *Class Members* are deemed by section 7(2) of the *AWA* to have relied upon all deficiencies and misrepresentations with respect to the disclosure provided by *Revolution 650* and/or one or more of the Defendants and the Plaintiffs claim damages pursuant to section 7(1) of the *AWA*.

55. 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 *AWA* is suspended in favour of the *Class Members* upon the commencement of this proceeding.

56. 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 *AWA*, by virtue of the 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. *Revolution 650* and/or one or more of the Defendants negligently, knowingly or intentionally allowed or acquiesced to *Representations* that were inaccurate, incomplete, false, deceptive and/or misleading.

57. 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 *AWA* requires *Revolution 650* and/or one or more of the Defendants to provide accurate and truthful disclosure. *Revolution 650* and/or one or more of 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.

58. In the alternative to a claim against the Defendants as Franchisor's Associates and/or Franchisor' Agents under the *AWA*, the Plaintiffs plead that the Defendants should be liable for the acts and/or omissions by *Revolution 650* set out herein and that the corporate veil should be lifted to make the Defendants, and, in particular, the main controlling mind of *Revolution 650*, namely, the Defendant, Roderick Knight, personally liable to the Plaintiffs and *Class Members* for any such acts and/or omissions. The Plaintiffs plead that the circumstances set out herein, including the allegations of misrepresentation and fraudulent misrepresentation, warrant a lifting of the corporate veil against the Defendants as the controlling minds of *Revolution 650*.

DAMAGES

59. As a consequence of the misrepresentations of *Revolution 650* and/or one or more 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.

60. 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 28th day of September, 2011.

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SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

STATEMENT OF CLAIM

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