

FILED

STATE OF NORTH CAROLINA
COUNTY OF CABARRUS

IN THE GENERAL COURT OF JUSTICE
2017-01-03 SUPERIOR COURT DIVISION
17-CVS-_____

STEWART-HAAS RACING, LLC,

Plaintiff,

vs.

NATURE'S BAKERY, LLC, individually,
and as successor by merger to Bella Four
Bakery, Inc., and Brick by Brick, LLC,
DAVID B. MARSON and JAN MARSON,
as Trustees of THE MARSON FAMILY
TRUST, and DAVID B. MARSON,
individually,

Defendants.

COMPLAINT

Plaintiff, complaining of Defendants, alleges and says as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff Stewart-Haas Racing, LLC ("SHR" or "Plaintiff") is a North Carolina limited liability company with its principal office located in Kannapolis, Cabarrus County, North Carolina.

2. Upon information and belief, Nature's Bakery, LLC ("Nature's Bakery") is a Delaware limited liability company with its principal office located in Reno, Nevada.

3. Upon information and belief, Nature's Bakery is the successor by merger of Bella Four Bakery, Inc. (a Nevada corporation, and hereinafter, "BFB") and Brick by Brick, LLC (a Nevada limited liability company, and hereinafter, "BBB").

4. Upon information and belief, David B. Marson and Jan Marson are the Trustees of The Marson Family Trust (the "Marson Trust"). Upon further information and belief, the Marson Family Trust owned BFB and BBB in their entirety, and is a majority owner of Nature's Bakery.

5. Upon information and belief, David B. Marson ("Mr. Marson") and Jan Marson ("Mrs. Marson") (collectively, the "Marsons") are adult citizens and residents of Nevada.

6. Nature's Bakery (for itself, and as successor to BFB and BBB), the Marson Trust and Mr. Marson are hereinafter referred to collectively as "Defendants."

7. This Court has jurisdiction over the parties to this lawsuit because SHR is located here, and all Defendants agreed, pursuant to Section 15(g) of the parties' Sponsorship Agreement (defined below), to the exclusive jurisdiction of North Carolina state courts for all matters in controversy in this action.

8. Venue is proper here both because SHR is located here, and because all Defendants agreed, pursuant to Section 15(g) of the parties' Sponsorship Agreement (defined below), to the exclusive venue of North Carolina state courts located within either Cabarrus or Mecklenburg Counties, for all matters in controversy between SHR and Defendants.

9. The amount in dispute exceeds \$25,000.

10. This is an action to recover substantial damages for the Defendants' unfair trade practices and associated intentional and bad faith breaches of a multi-year primary sponsorship agreement associated with the #10 SHR race team.

FACTUAL ALLEGATIONS

Background of the Parties

11. SHR owns and operates four (4) full time race teams that compete in the Monster Energy NASCAR Cup Series. One of those race teams is the #10 team, which SHR has operated on a full time basis since 2013, with Danica Patrick as the driver of the race car.

12. Nature's Bakery is a company that specializes in manufacturing and selling fig bars and brownies.

13. In early 2015, SHR began looking for a primary sponsor for the #10 car for the 2016 race season, and beyond. In the course of that search, SHR personnel met with Mr. Marson, who expressed significant interest in a long-term sponsorship arrangement with SHR for the #10 car, due to its affiliation with Danica Patrick.

14. Because Nature's Bakery was virtually a start-up company (being founded only in 2010), SHR expressed significant concern that Nature's Bakery would be unable to afford a primary sponsorship of the magnitude it requested. Mr. Marson, for himself, and the Marsons, for the Marson Trust, and Nature's Bakery, provided repeated assurances that Nature's Bakery had the cash flow and funds to meet all financial requirements of the proposed sponsorship agreement. As further assurance of Nature's Bakery's ability to pay, Mr. Marson and the Marson Trust agreed to be equally responsible with Nature's Bakery for all financial consideration and other obligations owed to SHR, as expressly set forth in Section 15(h) of the Sponsorship Agreement (defined below).

The Sponsorship Agreement and Amendments Requested by Nature's Bakery

15. In reliance upon the Defendants' repeated assurances, effective July 30, 2015, SHR and all Defendants entered into a written contract (the "Sponsorship Agreement" or "Agreement") to govern the parties' relationship.

16. The Sponsorship Agreement was a three-year agreement, to govern the 2016, 2017 and 2018 race seasons.

17. Pursuant to the Sponsorship Agreement (as originally executed), Defendants agreed to pay base fees (the "Base Fees") to SHR pursuant to the following payment schedule:

- a. For the 2016 season, \$15,212,000, as follows: (i) \$5,000,000 on or before October 1, 2015; (ii) \$3,404,000 on or before February 1, 2016; (iii) \$3,404,000 on or before May 1, 2016; and (iv) \$3,404,000 on or before July 1, 2016;
- b. For the 2017 season, \$15,212,000, as follows: (i) \$5,000,000 on or before October 1, 2016; (ii) \$3,404,000 on or before February 1, 2017; (iii) \$3,404,000 on or before May 1, 2017; and (iv) \$3,404,000 on or before July 1, 2017; and
- c. For the 2018 season, \$15,212,000, as follows: (i) \$5,000,000 on or before October 1, 2017; (ii) \$3,404,000 on or before February 1, 2018; (iii) \$3,404,000 on or before May 1, 2018; and (iv) \$3,404,000 on or before July 1, 2018.

18. In return for the Base Fees, SHR agreed to provide Defendants with primary sponsorship branding on the #10 race car for the great majority of all Monster Energy NASCAR Cup Series races (as agreed upon by the parties), along with myriad other forms of branding and marketing consideration.

19. Pursuant to Section 6(a) of the Agreement, Defendants also agreed to pay SHR for Driver Production Fees ("Production Fees") of up to \$300,000 per year for time spent by Danica Patrick performing media production tasks for the Defendants.

20. Pursuant to Section 4(g) of the Agreement, SHR also agreed to provide Defendants with various public relations, media relations and hospitality/activation services from a third party, for an amount not to exceed \$200,000 per year (the "PR Services"). As a gesture of good faith, SHR later agreed to provide the PR Services for Defendants in 2016 for a total of \$50,000 (billed in five \$10,000 increments). SHR incurred costs much greater than \$50,000 to provide the PR Services to Defendants in 2016.

21. In reliance upon the Sponsorship Agreement and Nature's Bakery's repeated assurances of payment, SHR entered into downstream agreements, promising to pay multiple

third parties tens of millions of dollars to ensure that it could competitively field the #10 car for the 2016, 2017 and 2018 race seasons, including, but not limited to the following:

- a. Entering into a multi-year agreement for Danica Patrick to drive the #10 car through the end of the 2018 season;
- b. Purchasing a NASCAR charter member agreement (commonly referred to as a "Charter");
- c. Entering into agreements to purchase engines, and all other parts necessary to operate competitive race cars in all races;
- d. Entering into agreements to retain or hire employees and contractors necessary to field and competitively operate the #10 team in all races; and
- e. Rebranding the entire #10 team as the "Nature's Bakery" team (which entailed rewrapping the team trailer and pit box, ordering new firesuits for Danica Patrick and pit crew personnel, revising all SHR social media and digital platforms, and the like).

22. Soon after executing the Sponsorship Agreement, Mr. Marson and Joe Marshall (Nature's Bakery's Chief Financial Officer) reached out to SHR executives, and stated that Nature's Bakery was having cash flow issues, and asked if the payment amounts and deadlines in the Sponsorship Agreement could be modified to assist Nature's Bakery with its cash crunch.

23. In reliance upon Defendants' repeated promises of their ability to (ultimately) pay, and as a gesture of good faith, SHR agreed to modify the Sponsorship Agreement via a written First Amendment to Sponsorship Agreement (hereinafter, the "First Amendment"). Pursuant to the First Amendment, which was effective January 19, 2016, the Base Fee payment schedule was modified as follows:

- a. For the 2016 season, \$15,212,000, as follows:
 - i. \$2,500,000 on or before October 1, 2015;
 - ii. \$1,000,000 on or before January 15, 2016;
 - iii. \$1,000,000 on or before February 15, 2016;
 - iv. \$1,000,000 on or before March 15, 2016;
 - v. \$1,000,000 on or before April 15, 2016;
 - vi. \$1,000,000 on or before May 15, 2016;
 - vii. \$1,928,000 on or before June 15, 2016;
 - viii. \$1,928,000 on or before July 15, 2016;
 - ix. \$1,928,000 on or before August 15, 2016; and
 - x. \$1,928,000 on or before September 15, 2016; and
- b. For the 2017 season, as follows:

- i. \$2,500,000 on or before October 1, 2016;
- ii. \$2,500,000 on or before December 1, 2016;
- iii. \$3,404,000 on or before February 1, 2017;
- iv. \$3,404,000 on or before May 1, 2017; and
- v. \$3,404,000 on or before July 1, 2017.

(For the 2018 season, the payment amounts and due dates remained unchanged.)

24. Throughout the 2016 race season, SHR delivered, in full, all consideration required by the Sponsorship Agreement, and then some. Without any requirement to do so, and purely as gestures of good faith, SHR provided at least the following additional benefits to Defendants:

- a. Two additional races free of charge, with Nature's Bakery as the primary sponsor (both the #10 team and the #14 team at Dover). The schematic utilized on the #14 car at Dover featured a new brownie product that Nature's Bakery hoped to distribute to Kroger. SHR worked with NASCAR for the Nature's Bakery #14 car to be featured in NASCAR's official Facebook Live event. SHR, on behalf of the Defendants, used this platform to promote Nature's Bakery's new Brownie product, and expressed enormous gratitude for the free additional sponsorship and marketing efforts;
- b. Free travel to race events for Defendants' personnel;
- c. Free office space at SHR, with wireless internet connectivity and telephone access;
- d. Assisted Defendants' in avoiding a \$5,000 fee associated with the exposure generated by an appearance by Danica Patrick along with a Nature's Bakery-branded #10 car at a college football game held at Bristol Motor Speedway;
- e. Assisted Defendants in avoiding track fees for activation access of between \$20,000 and \$30,000, by negotiating Danica Patrick appearance obligations with Dover International Speedway;
- f. Whenever possible, augmented contractual branding obligations with value add exposure opportunities. As an example, at the July Monster Energy NASCAR Cup Series race in Pocono, SHR provided Nature's Bakery with significant ancillary branding on the #10 Mobil 1 primary car;
- g. Routinely provided NASCAR hot passes at no charge to guests of Nature's Bakery, even when Nature's Bakery exceeded its contractually-allowed number of hot passes; and
- h. Upon learning of the mold outbreak in Defendants' product, SHR worked to open and dispose of many samples of Nature's Bakery products that contained

heavy mold, to avoid fans from receiving tainted product (and the resulting reputational issues that would surely follow).

25. Nature's Bakery had multiple setbacks during 2016, which were all wholly unrelated to its sponsorship of SHR's #10 team. These setbacks reportedly included, but are not limited to a lack of product distribution, recurring product mold issues, a fire in its St. Louis, Missouri plant, the termination of its vice president of sales and the subsequent long-term void of leadership within this area of Defendants' business, and recipe changes.

26. SHR is informed and believes that during the midst of Nature's Bakery's problems in 2016, a private equity firm, VMG Partners, purchased a minority of Nature's Bakery (the "Private Equity Purchase"). Upon further information and belief, along with its capital investment, VMG Partners received decision-making authority on all expenditures in excess of \$200,000, which includes, but is not limited to payments associated with the Agreement.

27. From the time of the Private Equity Purchase, the Nature's Bakery executive team gradually disengaged itself from the relationship with SHR, to the point that multiple telephone calls and emails from SHR went entirely unanswered, including those SHR delivered in an effort to assist Nature's Bakery with successfully activating its sponsorship of the #10 team in as many ways as possible.

28. In the midst of Nature's Bakery's disengagement from SHR and the various issues outlined above, Nature's Bakery reached out to SHR in the late summer of 2016 to again modify the Base Fee payment terms, representing that modification was again necessary due to Nature's Bakery's internal cash flow issues.

29. To induce SHR's agreement to the requested modification, Defendants once again assured SHR that it would and could pay all amounts owed under the Sponsorship Agreement, but needed greater flexibility in terms of payment timing and amounts.

30. At no point during these or any other discussions between SHR and Defendants did Defendants ever state or imply that SHR had ever violated any of its contractual duties under the Sponsorship Agreement. To the contrary, Defendants were effusive in their praise for SHR, and thankful for SHR's willingness to assist Defendants in getting through hard times.

31. In reliance upon Defendants' repeated promises of their ability to (ultimately) pay, and as a gesture of good faith, SHR again agreed to modify the Sponsorship Agreement via a written Second Amendment to Sponsorship Agreement (hereinafter, the "Second Amendment"). Pursuant to the Second Amendment, the parties agreed that effective as of September 20, 2016, the Base Fee payment schedule was modified as follows:

- a. For the 2016 season, no changes were made;
- b. For the 2017 season, as follows:
 - i. \$1,000,000 on or before January 15, 2017;

- ii. \$1,000,000 on or before February 15, 2017;
- iii. \$1,000,000 on or before March 15, 2017;
- iv. \$2,042,400 on or before April 15, 2017;
- v. \$2,042,400 on or before May 15, 2017;
- vi. \$2,042,400 on or before June 15, 2017;
- vii. \$2,042,400 on or before July 15, 2017;
- viii. \$2,042,400 on or before August 15, 2017;
- ix. \$1,000,000 on or before September 15, 2017; and
- x. \$1,000,000 on or before October 15, 2017;

c. For the 2018 season, as follows:

- i. \$1,000,000 on or before January 15, 2018;
- ii. \$1,000,000 on or before February 15, 2018;
- iii. \$1,000,000 on or before March 15, 2018;
- iv. \$2,042,400 on or before April 15, 2018;
- v. \$2,042,400 on or before May 15, 2018;
- vi. \$2,042,400 on or before June 15, 2018;
- vii. \$2,042,400 on or before July 15, 2018;
- viii. \$2,042,400 on or before August 15, 2018;
- ix. \$1,000,000 on or before September 15, 2018; and
- x. \$1,000,000 on or before October 15, 2018.

32. Upon full execution of the Second Amendment, the Defendants again expressed their enormous appreciation of SHR's willingness to be flexible in terms of the payment arrangements.

Nature's Bakery Concocts a Scheme to Try to Avoid Any Further Payments Under the Contract

33. The 2016 race season ended in late November 2016.

34. Despite Nature's Bakery's lack of communication, SHR again repeatedly reached out to Nature's Bakery to discuss plans for 2017 and to coordinate marketing efforts in conjunction with Nature's Bakery personnel.

35. During this process, Nature's Bakery informed SHR that Nature's Bakery decided to rebrand itself and was going to be rolling out new marks in 2017. On November 16, 2016, Nature's Bakery reached out to SHR, and requested a payment of over \$100,000 because Nature's Bakery complained that it ordered three (3) years' worth of brownie boxes that it supposedly could no longer could sell due to SHR's shift from Chevrolet to Ford for the 2017 season (meaning the graphics on the boxes would be out of date). Of course, Nature's Bakery couldn't sell that product anyway, given that Nature's Bakery committed to changing its own branding for 2017, and other graphics would be out of date anyway.

36. This communication from Nature's Bakery was a bad faith effort to extract money from SHR.

37. On November 29, 2016, SHR sent Nature's Bakery an invoice for \$10,000, which constituted the final payment owed for the PR Services provided by SHR in 2016 (the "Unpaid PR Invoice").

38. On November 30, 2016, SHR sent Nature's Bakery an invoice for \$300,000, which constituted the full amount of Production Fees owed by Nature's Bakery for the 2016 race season (the "Unpaid Production Fee Invoice").

39. As of the date of this Complaint, Defendants have failed and refused to pay the Unpaid PR Invoice and similarly have refused to pay the Unpaid Production Fee Invoice, notwithstanding their refusal to provide any justification whatsoever for failing to do so.

40. On December 15, 2016, SHR sent Nature's Bakery an invoice in the amount of \$1,000,000 for the first payment owed for the 2017 race season (the "First Unpaid Base Fee Invoice"). Had Defendants not pleaded with SHR to renegotiate the payment terms of the Sponsorship Agreement, a payment of \$5,000,000 would have been due by October 1, 2016 (under the original contract), and after entry of the First Amendment, that payment would have been \$2,500,000.

41. As of the date of this Complaint, Nature's Bakery has failed and refused to pay the First Unpaid Base Fee Invoice.

42. Rather than pay its (renegotiated) debts, on December 19, 2016, Nature's Bakery's Chief Executive Officer, Kelly Allin, sent a letter to senior management at SHR (the "False Complaint Letter") purporting to want to "initiate a frank discussion of our Sponsorship Agreement and some concerns we have heading into the New Year."

43. In the False Complaint Letter, and for the very first time in the history of the relationship between Defendants and SHR, Defendants complained that Danica Patrick had been endorsing and promoting competing products. Worse, Defendants complained that Danica Patrick did not sufficiently endorse Nature's Bakery on social media, and that SHR supposedly did not sufficiently coordinate publicity activities and media interview with Danica Patrick. These claims are false.

44. Attached to the False Complaint Letter was a fourteen (14) page document purporting to show each of the areas in which Defendants claim that Danica Patrick either failed to sufficiently promote Nature's Bakery, or promoted and endorsed competing products.

45. The entirety of the False Complaint Letter, and the attached document, was a transparent and baseless effort to generate (fictitious) reasons to justify terminating the Sponsorship Agreement and withholding payments due SHR. This is so for at least the following reasons:

- a. The thrust of Nature's Bakery's complaints about Danica Patrick supposedly endorsing competing products is her personal endorsement of Six Star Pro

Nutrition's protein powder. Protein powder is not competitive with fig bars or brownies. Furthermore, Danica Patrick had been endorsing Six Star Pro Nutrition's protein powder, publicly, for many months prior to the execution of Sponsorship Agreement, and continued to do so afterwards. Never once did Defendants claim that her doing so amounted to a breach of the Sponsorship Agreement (nor could it, because, again, the protein powder is not a competing product). The False Complaint Letter states "[p]articularly upsetting is watching Danica endorse Six Star Pro Nutrition, whose products, such as protein bars, directly compete with Nature's Bakery products." Danica Patrick never endorsed Six Star Pro Nutrition's protein bars. Worse, Nature's Bakery "liked" numerous of Danica Patrick's Instagram posts regarding Six Star Pro Nutrition and other protein powders. Clearly, even Nature's Bakery did not consider Danica Patrick to be endorsing a competing product, until it decided to drum up reasons to terminate the Agreement. Attached as Exhibit A are a grouping of Danica Patrick's Instagram posts about protein powder and other food products, reflecting that Nature's Bakery "liked" those posts during 2016 (i.e., before Nature's Bakery decided to try to find a way out of the Agreement);

- b. The attachment to the False Complaint Letter argues that Danica Patrick endorsed a competing product by endorsing Purely Inspired Protein. Yet, Nature's Bakery repeatedly "liked" those very same posts throughout 2016 (i.e., before Nature's Bakery decided to try to find a way out of the Agreement). See Exhibit A;
- c. The False Complaint Letter specifically complains about an Instagram post in which Danica Patrick referenced home-made energy balls. A picture of that post is embedded into the False Claims Letter as supposed evidence of Danica Patrick endorsing competing products. Last year, Nature's Bakery "liked" that same energy ball post, as clearly even the Defendants didn't consider them competitive in any way. See Exhibit A;
- d. The attachment to the False Complaint Letter specifically references a homemade spinach smoothie as being a competitive product. Last year, Nature's Bakery "liked" that post as well. See Exhibit A;
- e. The False Complaint Letter takes issue with the number of times that Danica Patrick posted on social media regarding homemade food products. Yet in 2016, Nature's Bakery "liked" a large number of those posts as well. See Exhibit A.
- f. Nature's Bakery complained that Danica Patrick repeatedly posted on social media about other home cooked food items that she enjoys – things such as almond milk, smoothies, ice cream, parfaits and grilled cheese – which are plainly not competing products;

- g. Nature's Bakery complained that Danica Patrick did not post sufficiently often enough about its products, notwithstanding the fact that the Sponsorship Agreement contains no requirement that was not met (and in fact, SHR far exceeded any requirements set forth in the Agreement); and
- h. Nature's Bakery complained that Danica Patrick did not mention Nature's Bakery on a sufficient number of occasions during press interviews or in written articles, notwithstanding the fact that the Sponsorship Agreement contained no such requirement.

46. By "liking" Danica Patrick's various posts regarding protein powder and homemade food items, Nature's Bakery's public endorsement of those posts was open for the entire world to see, including Danica Patrick's (now) almost 350,000 Instagram "followers."

47. Furthermore, by "liking" those various posts, it is obvious that Nature's Bakery was well aware of them at the time those posts were made publicly available. Throughout 2016, Defendants said nothing whatsoever to SHR or, upon information and belief, Danica Patrick, about any of those Instagram posts supposedly being a violation of the Sponsorship Agreement or a problem in any way. Even as of the date of this Complaint, Nature's Bakery continues to "like" the items in Exhibit A.

48. At the conclusion of the False Complaint Letter, Mr. Allin declared that the relationship was no longer working for Nature's Bakery, and that it "needs to" transition out of the relationship. It told SHR to go find a replacement sponsor.

49. SHR was shocked to receive the False Complaint Letter. SHR was well into preparations for the 2017 race season, and the time had long since passed that SHR could have had any hope of finding a replacement sponsor for the minimum of twenty-five (25) races allocated to Defendants (as primary sponsor of the #10 team) pursuant to the Sponsorship Agreement.

50. On December 23, 2016, SHR's President, Brett Froot, responded to the False Complaint Letter (a) making clear that Nature's Bakery had no right to terminate, or "transition out of" the Sponsorship Agreement; (b) confirming that SHR would continue to abide by all of its duties and obligations under the Sponsorship Agreement; and (c) providing detailed information regarding the baseless nature of Nature's Bakery's supposed grievances (the actual facts reveal that SHR delivered substantial value to Defendants during the 2016 race season).

51. Regardless, and as a gesture of good faith, SHR asked Danica Patrick to stop posting on social media regarding various items that Defendants (wrongly) contended were competitive.

52. Follow-up correspondence revealed that Nature's Bakery had no intention of abiding by its past, present or future payment obligations under the Sponsorship Agreement, and simply wanted to end the relationship. In response, SHR made clear that it expected Defendants to fully comply with their contractual obligations.

53. During this same period (between December 19, 2016 and January 20, 2017), Nature's Bakery personnel showed interest in marketing and branding opportunities for the upcoming race season, and actively engaged in those discussions with SHR personnel as if the relationship would continue. Defendants' interest in pursuing marketing and branding opportunities in 2017 apparently was a ruse to convince SHR to continue to put effort and financial resources into the sponsorship.

54. On the 30th day after sending the False Claims Letter – January 19, 2017 – Nature's Bakery sent a letter unilaterally terminating the Sponsorship Agreement ostensibly due to SHR's purported violation of Section 5(a) of the Sponsorship Agreement (the "Termination Letter").

55. Section 5(a) of the Sponsorship Agreement states, in pertinent part:

If, during the Term, Driver (Danica Patrick) ... commercially endorses a Competitive Brand *in violation of this Agreement* ... and Driver is not properly disciplined by SHR ... then the parties hereto shall either amend the terms of this Agreement by a mutually acceptable written amendment after good faith and reasonable negotiations for a minimum of thirty (30) days, or if the parties are unable to agree to an amendment after reasonable, good faith negotiations for at least such minimum time period, then either party may terminate this Agreement by providing written notice to the other party hereto. ...

(Emphasis added).

56. Section 3(b) of the Sponsorship Agreement gives Nature's Bakery exclusivity rights as follows: "Subject to Section 3(b) (sic Section 3(c)), SHR shall not, and shall ensure that the Team and the Team Members shall not, advertise, sponsor, publicly promote, or publicly endorse any Competitive Brand."

57. The following definitions apply, pursuant to the Sponsorship Agreement: "Team" means SHR's No. 10 (which number is subject to NASCAR approval) Cup Series race team. "Team Members" means any SHR employee assigned to the Team. "Competitive Brand" means a Category product other than a Sponsor Product. "Category" means on-the-go-snacks. "Sponsor Product" means [Defendants'] goods in the Category that are distributed, supplied by, and/or sold or on behalf of [Defendants] to retailers.

58. Defendants' Termination Letter lists Section 5(a) of the Sponsorship Agreement as the sole basis to justify its termination of the Agreement.

59. Danica Patrick is not an SHR employee (and thus, not included in the definition of "Team" or "Team Members") so by definition, she could not cause SHR to violate the exclusivity provision stated above.

60. Even if Danica Patrick were an SHR employee (again, she was not), she did not endorse a Competitive Brand in violation of the Agreement.

61. Even if Danica Patrick had endorsed a Competitive Brand in violation of the Agreement (she did not), SHR requested that Danica Patrick not endorse products that could arguably be competitive to Nature's Bakery's products.

62. To the extent there is any legitimacy to Nature's Bakery's complaints (there is not), SHR's actions constitute proper discipline of Danica Patrick pursuant to Section 5(a) of the Sponsorship Agreement, especially given that SHR does not believe she had actually endorsed Competitive Brands.

63. Furthermore, Defendants failed and refused to engage in good faith or reasonable negotiations, and certainly did not do so for the thirty (30) days mandated by Section 5(a) of the Agreement. Instead, Defendants unilaterally announced that the Sponsorship Agreement must be terminated and Defendants would no longer sponsor the #10 car.

64. In every respect, SHR complied with its obligations under the Sponsorship Agreement.

65. In every respect, Defendants materially breached their obligations under the Sponsorship Agreement, and did so using unfair, deceptive, manipulative and bad faith tactics.

66. Left with no options to protect its rights and interests, SHR files this action seeking to recover all amounts due pursuant to the Sponsorship Agreement, plus interest, and all other damages prayed for below.

67. Furthermore, pursuant to the Sponsorship Agreement, and because all Defendants acted in concert to cause SHR's damages, they should be held jointly and severally liable for all sums awarded to SHR in this action.

FIRST CLAIM FOR RELIEF
[Breach of Contract]

68. SHR realleges and incorporates the preceding paragraphs as if fully set forth herein.

69. The Sponsorship Agreement is a valid and enforceable contract, supported by valid and adequate consideration.

70. SHR performed all of its material duties and obligations under the Sponsorship Agreement.

71. Defendants materially breached the Sponsorship Agreement in at least the following ways:

- a. Defendants failed and refused to pay the Unpaid PR Invoice of \$10,000;
- b. Defendants failed and refused to pay the Unpaid Production Fee Invoice of \$300,000;
- c. Defendants failed and refused to pay the First Unpaid Base Fee Invoice of \$1,000,000; and
- d. Defendants have anticipatorily breached the Sponsorship Agreement in its entirety by sending the Termination Letter, and unilaterally declaring that they have terminated the Agreement and will not pay any further amounts owed under that Agreement for the 2017 and 2018 race seasons, including, but not limited to the \$30,424,000 of Base Fees, \$400,000 of fees for PR Services, and \$600,000 of Production Fees owed during the remainder of the Term of the Agreement.

72. To the extent not explicitly set forth in previous correspondence and demands upon Defendants, Defendants are hereby on notice of their failure to pay the sums set forth above.

73. As a direct and proximate result of Defendants' repeated and material actual and anticipatory breaches of contract, SHR is entitled to recover all consequential, incidental, special and other allowable damages under applicable law, including, but not limited to actual damages of at least \$31,734,000, plus interest, from all Defendants, jointly and severally.

SECOND CLAIM FOR RELIEF
[Unfair Trade Practices – N.C.G.S. § 75-1.1, *et seq.*]

74. SHR realleges and incorporates the preceding paragraphs as if fully set forth herein.

75. As set forth above, Defendants twice succeeded in convincing SHR to renegotiate the payment terms under the Sponsorship Agreement to ultimately avoid the duty to pay SHR \$5,000,000 (and later, \$2,500,000) in October 2016. Upon information and belief, they did so while simultaneously planning to terminate the Agreement early, and intentionally concealed that information from SHR in an illicit attempt to deceive SHR and extract contractual concessions from SHR. Defendants knew at the time they concealed this information from SHR that SHR was actively preparing for the 2017 race season, and relied upon Nature's Bakery's compliance with the payment terms in the Sponsorship Agreement to field the #10 team.

76. As a direct result of Defendants' concealment and bad faith conduct, SHR did not receive at least \$5,000,000 of funds owed under the Sponsorship Agreement which were and are necessary to operate its #10 team during the 2017 race season.

77. Furthermore, throughout the entire Term of the Sponsorship Agreement, through and including December 18, 2016, Defendants never stated, or even insinuated that they believed SHR or Danica Patrick had ever endorsed a Competing Product or taken any action that they deemed to be a violation of the Sponsorship Agreement. Nor did the Defendants give any indication that they would not, or could not, meet their financial obligations to SHR for the upcoming race season.

78. Instead, Defendants sent the False Complaint Letter out of the blue, in a transparent effort to try to avoid all further financial obligations under the Sponsorship Agreement, notwithstanding the fact that Defendants knew, or should have known, that by December 19, 2016 it would be nearly impossible for SHR to find a primary sponsor to replace Defendants for the 2017 and/or 2018 race seasons.

79. Defendants' actions are no simple material breach of contract. Rather, Defendants' conduct evidenced a complete and total disregard for SHR's rights and interests; set SHR up for a devastating loss of revenue just before the beginning of the 2017 race season; and rendered it nearly impossible for SHR to have any reasonable hope of mitigating its damages.

80. Defendants' conduct constitutes substantial aggravating factors to their material breaches of the Sponsorship Agreement, and alone are unfair and deceptive within the meaning of the Unfair Trade Practice Statute, N.C.G.S. § 75-1.1, *et seq.*

81. Defendants' actions were in and affecting commerce.

82. As a direct and proximate result of Defendants' unfair trade practices, SHR has been damaged in an amount to be proven at trial, such amount believed to exceed \$25,000.00.

83. Such damages specifically include, but are not limited to the \$5,000,000 SHR was entitled to receive in October 2016 pursuant to the Sponsorship Agreement as originally drafted, or alternatively, the \$2,500,000 it would have received pursuant to the First Amendment.

84. As a result of Defendants' actions, SHR is entitled to recover from all Defendants, jointly and severally, all consequential, incidental, special and all other allowable damages under applicable law, including, but not limited to its actual damages, plus treble damages pursuant to N.C.G.S. § 75-16, as well as its reasonable attorneys' fees pursuant to N.C.G.S. § 75-16.1.

THIRD CLAIM FOR RELIEF

[Declaratory Judgment – N.C.G.S. § 1-253, *et seq.*, Rule 57 of the North Carolina Rules of Civil Procedure]

85. SHR realleges and incorporates the preceding paragraphs as if fully set forth herein.

86. Defendants have claimed, and SHR denies, that SHR violated the Sponsorship Agreement, and Defendants terminated the Sponsorship Agreement on that basis.

87. Accordingly, an actual controversy now exists between SHR and all Defendants as to whether SHR violated Section 5(a) of the Sponsorship Agreement.

88. SHR seeks a declaration that it did not violate its duties and obligations to Defendants as set forth in Section 5(a) of the Sponsorship Agreement, or in any other respect.

89. An actual controversy now exists between SHR and all Defendants as to whether Defendants' Termination Letter constitutes an anticipatory material breach of the Sponsorship Agreement, in full.

90. SHR seeks a declaration that all Defendants anticipatorily and materially breached the Sponsorship Agreement by sending the Termination Letter, and that SHR is entitled to recover judgment for all sums remaining due under the Agreement, believed to be at least \$31,734,000, plus interest at the legal rate.

PRAYER FOR RELIEF

WHEREFORE, SHR respectfully prays the Court for the following relief:

1. For entry of judgment against all Defendants, jointly and severally, in an amount to be proven at trial, believed to be at least \$31,734,000, plus interest at the legal rate, for their material actual and anticipatory breaches of the Sponsorship Agreement;
2. For entry of judgment against Defendants, jointly and severally, for their unfair trade practices, in an amount that exceeds \$25,000 plus interest at the legal rate;
3. For an award of SHR's reasonable attorneys' fees pursuant to N.C.G.S. § 75-16.1, the Sponsorship Agreement, N.C.G.S. § 6-21.6, and all other applicable North Carolina law;
4. For an award of treble SHR's damages pursuant to N.C.G.S. § 75-16;
5. For entry of declaratory relief as set forth above;
6. That the costs of this action be taxed against all Defendants;
7. That Defendants be held jointly and severally liable for all damages awarded to SHR;
8. For a trial by jury; and
9. For all such other and further relief that the Court deems just and equitable.

[SIGNATURE PAGE FOLLOWS]

This the 3rd day of February, 2017.

JAMES, McELROY & DIEHL, P.A.



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