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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT

BETTER COLLECTIVE USA, INC,

Plaintiff/Counterclaim
Defendant,

v.

BOSTON GLOBE MEDIA PARTNERS, LLC,

Defendant/Counterclaim
Plaintiff.

Civil Action No. 2384CV00990

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
2023 MAY 10 P 2:21
JOHN E. POWERS JR.
ACTING CLERK MAGISTRATE

BOSTON GLOBE MEDIA PARTNERS, LLC'S ANSWER AND COUNTERCLAIMS

Defendant Boston Globe Media Partners, LLC ("BGMP") hereby answers the Complaint of Plaintiff Better Collective USA, Inc. ("BC"), filed April 28, 2023. To the extent the Complaint's headings or prayer for relief require a response, BGMP denies any allegations therein. Any factual allegation that is not expressly admitted is hereby denied.

With respect to the numbered paragraphs of the Complaint, BGMP responds as follows:

1. BGMP admits that it held itself out as, and in fact is, a willing, reliable, good faith and committed business partner. BGMP admits that BC seeks damages in its suit, but denies that BC is entitled to any damages. BGMP lacks information or knowledge sufficient to form a belief as to the truth of the allegations in the second and third sentences of paragraph 1 of the Complaint. BGMP denies the remaining allegations in paragraph 1 of the Complaint.

2. BGMP lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2 of the Complaint.

3. BGMP admits the allegations in paragraph 3 of the Complaint.

4. BGMP admits that the Court has jurisdiction over this matter, that venue is proper, that BGMP has a place of business in Boston, and that the parties expressly consented to the jurisdiction of this Court. BGMP denies the remaining allegations in paragraph 4 of the Complaint.

5. BGMP admits the allegations in the first, second, fourth, and fifth sentences in paragraph 5 of the Complaint. BGMP admits that it understood that it would take time for the Massachusetts Gaming Commission to promulgate regulations related to sports betting. BGMP lacks knowledge or information sufficient to form a belief as to the truth of what BC or others recognized. BGMP denies the remaining allegations in paragraph 5 of the Complaint.

6. BGMP lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Complaint.

7. BGMP admits that it owns Boston.com. BGMP admits that it had discussions with several companies, including BC, about developing betting-related content, odds data, and other information for readers of Boston.com. BGMP admits that it held itself out as, and in fact is, a committed and cooperative business partner. BGMP denies the remaining allegations in paragraph 7 of the Complaint.

8. BGMP admits the allegations in paragraph 8 of the Complaint.

9. To the extent the Complaint characterizes the Agreement's provisions, BGMP denies those characterizations and instead refers to the Agreement itself for its contents and context. BGMP denies the remaining allegations in paragraph 9 of the Complaint.

10. To the extent the Complaint characterizes the Agreement's provisions, BGMP denies those characterizations and instead refers to the Agreement itself for its contents and context. BGMP denies the remaining allegations in paragraph 10 of the Complaint.

11. BGMP admits that it received a February 8, 2023 letter from BC titled “Notice of Reduction Events and Material Breaches.” BGMP denies the remaining allegations in paragraph 11 of the Complaint.

12. BGMP denies the allegations in paragraph 12 of the Complaint.

13. BGMP denies the allegations in paragraph 13 of the Complaint.

14. BGMP denies the allegations in paragraph 14 of the Complaint.

15. BGMP admits that it raised a number of failures and breaches by BC, among them that BC requested that BGMP engage in improper and/or deceptive conduct. BGMP denies the remaining allegations in paragraph 15 of the Complaint.

16. To the extent the Complaint characterizes certain written communications between the parties, BGMP denies those characterizations and instead refers to those written communications themselves for their contents and context. BGMP admits that the screenshot of the Boston.com website was taken in February 2023 and that links to the Betting Content existed on Boston.com’s header navigation section as early as September 2022. BGMP denies the remaining allegations in paragraph 16 of the Complaint.

17. To the extent the Complaint characterizes certain written communications between the parties, BGMP denies those characterizations and instead refers to those written communications themselves for their contents and context. BGMP admits that it was aware of BC’s lobbying efforts with respect to the Gaming Commission’s draft regulations. BGMP admits that BC requested BGMP participate in BC’s lobbying efforts and that BGMP declined to do so. BGMP denies the remaining allegations in paragraph 17 of the Complaint.

18. BGMP denies the allegations in paragraph 18 of the Complaint.

19. BGMP admits that BC has paid some but not all the fees it owes under the Agreement. BGMP denies the remaining allegations in paragraph 19 of the Complaint.

20. BGMP responds to the allegations in paragraph 20 as it did when those allegations were made separately.

21. BGMP admits the allegations in paragraph 21 of the Complaint.

22. BGMP denies the allegations in paragraph 22 of the Complaint.

23. BGMP denies the allegations in paragraph 23 of the Complaint.

24. BGMP denies the allegations in paragraph 24 of the Complaint.

25. BGMP denies the allegations in paragraph 25 of the Complaint.

26. BGMP responds to the allegations in paragraph 26 as it did when those allegations were made separately.

27. Paragraph 27 contains legal conclusions to which no response is required.

28. BGMP denies the allegations in paragraph 28 of the Complaint.

29. BGMP denies the allegations in paragraph 29 of the Complaint.

30. BGMP responds to the allegations in paragraph 30 as it did when those allegations were made separately.

31. BGMP admits that BC has paid some but not all the fees it owes under the Agreement. BGMP denies the remaining allegations in paragraph 31 of the Complaint.

32. BGMP lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning what BC “expected” in paragraph 32 of the Complaint. BGMP denies the remaining allegations in paragraph 32 of the Complaint.

33. BGMP admits that BC has paid some but not all the fees it owes under the Agreement. BGMP denies the remaining allegations in paragraph 33 of the Complaint.

34. BGMP denies the allegations in paragraph 34 of the Complaint.

35. BGMP responds to the allegations in paragraph 35 as it did when those allegations were made separately.

36. BGMP denies the allegations in paragraph 36 of the Complaint.

37. BGMP denies the allegations in paragraph 37 of the Complaint.

38. BGMP denies the allegations in paragraph 38 of the Complaint.

To the extent any allegations in the "Wherefore" paragraph of the Complaint require a response, BGMP denies them.

AFFIRMATIVE DEFENSES

Without assuming any burden of proof it would not otherwise bear, BGMP asserts the following affirmative or other defenses. BGMP reserves the right to assert further defenses as the case proceeds.

FIRST DEFENSE

BC's claims are barred, in whole or in part, for failure to state a claim upon which relief can be granted.

SECOND DEFENSE

BC's claims are barred, in whole or in part, by the doctrines of waiver or estoppel.

THIRD DEFENSE

BC has failed to mitigate its damages.

FOURTH DEFENSE

BC's claims are barred, in whole or in part, by the doctrine of unclean hands.

FIFTH DEFENSE

BC's claims are barred, in whole or in part, because of ratification, agreement, acquiescence, or consent to BGMP's alleged conduct.

SIXTH DEFENSE

BC's claims are barred, in whole or in part, by the doctrine of accord and satisfaction.

SEVENTH DEFENSE

BC's claims are barred, in whole or in part, because BC breached the Agreement and because of BC's own fraud, illegality, and misconduct.

EIGHTH DEFENSE

BC's claims are barred, in whole or in part, because BGMP's alleged breaches were not material.

WHEREFORE, BGMP respectfully requests that the Court dismiss the Complaint with prejudice, enter judgment in its favor and against BC, award it attorneys' fees, costs, and expenses, and grant it such further relief as is just and equitable.

BOSTON GLOBE MEDIA PARTNERS, LLC'S
COUNTERCLAIMS AND JURY DEMAND

INTRODUCTION

Plaintiff Boston Globe Media Partners, LLC (“BGMP”) brings this action against Defendant Better Collective USA, Inc. (“BC”) seeking treble damages, attorneys’ fees, costs, and other relief arising out of BC’s willful material breaches of a Media Partner Agreement made as of August 19, 2022 (the “Agreement”) and related unfair and deceptive trade practices.

Under the Agreement, BGMP granted BC the exclusive right to develop content for a sports betting webpage on Boston.com, which BGMP owns and operates. BGMP also granted BC the exclusive right to monetize Boston.com’s betting webpage, including by selling advertisements on the webpage to casinos, sportsbooks, and other sports betting operators who are licensed in Massachusetts. In consideration for these valuable rights, BC agreed to pay BGMP \$1.25 million a year for at least two years.

Within weeks of the Agreement’s execution, it became evident that BC had misrepresented its capabilities. The Agreement required BC to, among other things, dedicate sufficient resources to develop high-quality content for Boston.com’s betting webpage; to hire and deploy personnel with the required skill, experience, and qualifications to make the project a success; and to abide by applicable BGMP’s policies and guidelines and industry-wide digital marketing standards and best practices. BC failed to do any of these things. BC was incapable of generating a critical mass of betting-related articles, backlinks to gaming content on other websites, and advertisements to populate the Boston.com webpage and increase website traffic. To make matters worse, BC tried to overcome its performance deficiencies by urging BGMP to engage in a variety of unscrupulous activities, including publishing commercial betting content on Boston.com’s editorial sports section to try to deceive readers into believing that the content was written by BGMP reporters;

and to use prohibited gimmicks to artificially increase the website's ranking and search engine optimization. BGMP refused to agree to these and other improper practices.

Unable to fulfill its contractual obligations, in February 2023, BC raised a series of pretextual grievances and threatened to terminate the Agreement unless BGMP agreed to an unspecified reduction in the annual fee that BC had agreed to pay fewer than six months before. Seeking to optimize its leverage, BC made its threat just eight days after in-person betting became operational in Massachusetts, and a month before mobile betting was to begin. BGMP refuted BC's allegations and rejected its demands. On March 15, 2023, BC walked away from the Agreement, which it had already materially breached.

PARTIES

1. Plaintiff Boston Globe Media Partners, LLC is a Delaware limited liability company with a principal place of business in Boston, Massachusetts.

2. On information and belief, Defendant Better Collective USA, Inc. is a Delaware corporation with a principal place of business in New York, New York.

JURISDICTION AND VENUE

3. This action is within the Court's general subject matter jurisdiction because BGMP seeks over \$25,000 in damages and its claims arise under (a) a contract governed by Massachusetts law and (b) G.L. c. 93A §§ 2, 11.

4. This Court may exercise personal jurisdiction over the parties because pursuant to Section 17(d) of the Agreement, they each expressly consented to the jurisdiction of this Court. The Court may also exercise personal jurisdiction over BC pursuant to the Massachusetts long-arm statute, G.L. c. 223A, §§ 3(a), (b), (c), and (d).

5. Venue is proper in Suffolk County Superior Court under G.L. c. 223, § 1 because BGMP's principal place of business is in Boston, Massachusetts; and because pursuant to Section 17(d) of the Agreement, the parties expressly consented to venue in this Court.

FACTUAL ALLEGATIONS

A. Massachusetts Authorizes Sports Betting

6. On August 10, 2022, Massachusetts became the 36th state to legalize sports betting. Sports betting in Massachusetts did not, however, become immediately operational. The Legislature charged the Massachusetts Gaming Commission (the "Commission") with first promulgating licensing and advertising regulations for the sports betting industry.

7. The Commission, which also regulates casino gaming and horse racing in the Commonwealth, is known in the gaming industry to be one of the strictest regulators of gaming advertising in the United States. In the months leading to the legalization of sports betting in Massachusetts, the Commission announced that it had directed its staff to "strengthen MGC regulations" of gaming advertising.¹ It was thus no surprise to anyone knowledgeable about the gaming industry that the Commission was expected to take an active role in regulating sports betting advertising.

8. In-person sports betting in Massachusetts became fully operational on January 31, 2023, and mobile sports betting began on March 10, 2023. After a series of meetings during which the Commission heard testimony from the Massachusetts Attorney General and gaming industry stakeholders, the Commission promulgated final regulations for sports betting in March 2023.

¹ Responsible Gaming Consideration for Gambling Advertising, presented to the Massachusetts Gaming Commission, March 14, 2022, available at: <https://massgaming.com/wp-content/uploads/Meeting-Materials-3.14.22-1.pdf>

The Commission's final regulations on advertising, which apply to affiliate marketers, became effective on April 14, 2023 (the "Final Regulations").

9. BC is an affiliate marketer. It calls itself the "world's leading sports betting group" and touts its "experience in producing data, betting tips, and sports content of high quality to sports fans that want to learn more about their favorite sport before they place a bet." As an affiliate marketer, BC generates revenue by contracting with casinos, sportsbooks, and other betting operators ("Operators") to place advertisements for Operators, and links to Operators' websites, on the websites of media companies such as Boston.com. In substance, affiliate marketers pay media companies to place advertisements on behalf of Operators on the media companies' websites, and then they charge the Operators for driving readers of Boston.com, for instance, to the Operators' websites using links. The fees that affiliate marketers pay companies such as BGMP are based on the revenue that the affiliate marketers believe they can earn from Operators.

10. In anticipation of the legalization of sports betting in Massachusetts, BGMP had discussions with several media companies in the betting space, including BC, about developing betting-related content, odds data, and other information for readers of Boston.com. BC represented to BGMP that it was party to successful betting-content arrangements with the Chicago Tribune, Philadelphia Inquirer, and New York Post. During the parties' negotiations, BC presented earnings projections for a betting hub on Boston.com that proved to be wildly inflated.

B. The Media Partner Agreement

11. Based on BC's representations about its capabilities, experience, and projected earnings, BGMP selected BC over other compelling offers to provide sports betting content on Boston.com. On or about August 19, 2022, BGMP and BC executed the Agreement. BGMP had every incentive to make its relationship with BC successful, not only because it expected to receive

substantial annual fees from BC, but because it also wanted to provide a comprehensive sports betting resource for Boston.com readers and grow its readership. BGMP expressed its enthusiasm for its relationship with BC in a press release that BC issued on August 23, 2022: “We are thrilled to partner with Better Collective to provide Boston.com’s millions of readers with a holistic one-stop resource for all the data and information they crave as some of the world’s most passionate sports fans. Boston.com provides readers with the best in class content, data and statistics through its award-winning sports coverage and now will be a hub for information on the exciting world of sports betting.”

12. BGMP granted BC the exclusive right to monetize a sports betting webpage on Boston.com (the “Betting Hub”). Section 3(d) of the Agreement provided that “BC has the sole right to monetize the Betting Hub, including by selling advertising inventory and granting third parties the right to be associated with content on the Betting Hub.”

13. Under the Agreement, BC agreed to become the exclusive developer of “Betting Content” for the “Betting Hub.” The Agreement defined Betting Content to mean “[a]ny and all data feeds, odds, widgets, news articles, editorials, videos, sponsored content, and advertisements, (including the BC Ads) including the Operating Links contained in them but excluding any facilities for the processing of financial transactions (such as the actual placing of bets or wagers), related to online betting and any other forms of online gambling or gaming created by or on behalf of BC or its Affiliates and provided to BC to the Partner for publication on the Betting Hub.”

14. “Operating Links” referred to links to websites of Operators, who in turn were defined to mean “Operators of casinos and/or sportsbooks that have obtained all necessary licenses in the territory(ies) in which they provide gambling services to consumers (including, but not limited to, all gaming licenses).”

15. The Agreement called for a “soft launch” of the Betting Hub to be followed by a “Go Live Date” of September 1, 2022, with the “Go Live Date” defined as “the date on which BC considers that the Betting Hub has been sufficiently populated with Betting Content to maintain the standards expected of the resources made available by [BGMP] on [Boston.com].” BC knew that the Go Live Date would occur months before the Commission issued final regulations governing the advertising of sports betting.

16. Section 2 of the Agreement delineated BC’s “Services and Responsibilities.” Among them were BC’s obligation to provide BGMP, on a monthly basis, a written production plan that was to include “the estimated number, format and topic of Betting Content to be produced.” BC was also granted “the sole discretion to develop, determine, upload (if applicable as agreed between the Parties), update, replace and remove all Betting Content and any links provided therein,” provided that the any articles by BC complied with BGMP’s guidelines, did not contain prohibited content, were free of plagiarism and were factually correct, and did not infringe on copyrights or other rights of third parties.

17. BC agreed that it would “dedicate sufficient resources necessary for the development of Betting Content for the Betting Hub, including by: (i) using and hiring personnel of required skill, experience and qualifications; and (ii) using commercially reasonable efforts to ensure that personnel assigned to develop Betting Content for the Betting Hub comply with the Content Requirements and Partner Guidelines,” as those terms were defined in the Agreement. BC also agreed that it “shall comply with digital marketing industry standards and self-regulatory guidelines and best practices in complying with its obligations under this Agreement.”

18. Section 3 of the Agreement contained BGMP’s “Obligations and Responsibilities,” including its “Marketing Commitments.” BGMP’s Marketing Commitments included having

Boston.com “display the BC Ads to all non-US and US visitors to 100% of the traffic in the sports section in the ad slot specified . . . provided, however, that (1) placement of the BC Ads shall be subject to [BGMP’s] and BC’s final approval; (2) delivery of the BC Ads during the Soft Launch Period will not be guaranteed; and (3) display of the BC Ads shall be limited to sports related traffic only.”

19. The initial term of the Agreement commenced on the Go Live Date and continued for two years (the “Initial Term”). BC agreed to pay BGMP a fee of \$1,250,000 per year during the Initial Term in the following installments (the “Annual Fees”):

<u>PAYMENT DATE</u>	<u>AMOUNT</u>
Year 1	
Go Live Date	\$100,000
October 1, 2022	\$200,000
November 1, 2022	\$200,000
December 1, 2022	\$250,000
January 1, 2023	\$166,666.67
April 1, 2023	\$166,666.67
June 1, 2023	\$166,666.67
Year 2	
Payable Quarterly Starting September 1, 2023	\$312,500

20. Section 3 of Appendix 2 of the Agreement contained a provision that entitled BC to a reduction in the Annual Fee payable to BGMP in the event of a “Reduction Event,” which was defined to mean:

- BGMP materially fails to ensure that Betting Content is available on Boston.com for use with full functionality for 99% of the time during each calendar month, excluding outages and planned downtime;
- BGMP fails to comply with its Marketing Commitments;

- There is a “Regulatory Change”;
- There is a material reduction in the average amounts paid by Operators for affiliate services in the market generally which materially impacts (by more than 15%) BC’s ability to meet its earnings projections anticipated as of August 19, 2022; and/or
- BC, or any Operator material to BC, is restricted from operating as a result of licensing requirements.

21. Section 12(a) of the Agreement stated that a Regulatory Change occurs if:

(A) there is any replacement of or any change to any Applicable Law as they applied at the date of this Agreement including any changes to Applicable Law related to restrictions (x) on markets available for betting (including players props, college sports, or in game betting markets), (y) preventing or limiting promotions of signup and/or retention bonuses, or (z) with respect to vendor resignations, marketing affiliate certifications, licensing requirements or any other similar authorization required by Applicable Law or any governmental agency for operation in any applicable jurisdiction that is applicable to [BGMP], BC or any Operator; (B) obtaining or retaining such authorization, in such Party’s reasonabl[e] business judgment, is unduly burdensome; (C) there is an increase in the effective tax rate on Operators above 55% of gross gaming revenue; or (D) any regulator issues a notice, decision or guidance, which is material to this Agreement or materially affects either Party’s ability to perform its obligations under this Agreement, and/or the performance of the obligations of either Party under this Agreement, and/or materially and adversely impacts the fees receivable by BC from Operators by more than 15% (“Regulatory Change”)[.]

22. “Applicable Law” was defined to me “[a]ll federal, state and local laws, rules and governmental regulations applicable to a Party’s performance under this Agreement, including but not limited to those relating to the online advertising of gambling products, the provision of gambling products and services and Data Protection Law.”

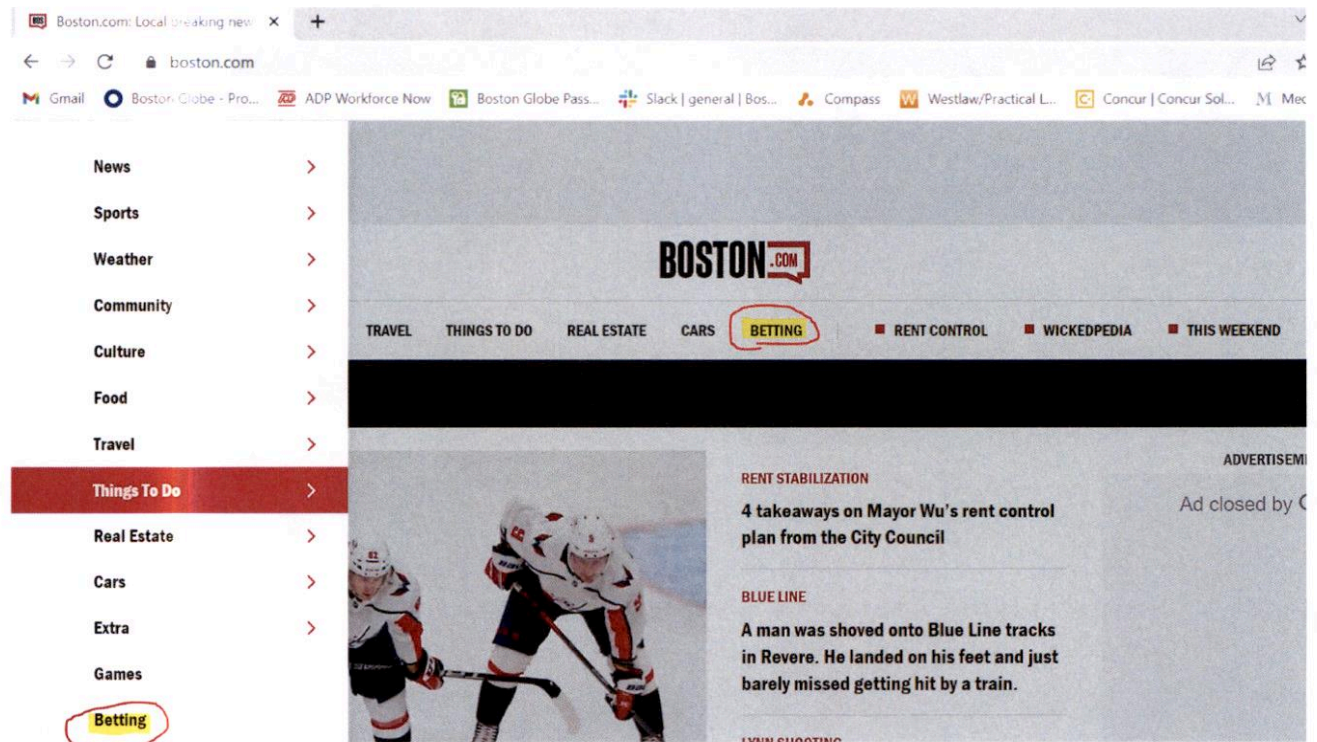
23. If BC were able to prove the occurrence of a Reduction Event, the Agreement stated, among other things, that “[a]ny reduction in the Annual Fee . . . shall be negotiated in good faith between the Parties” and “[i]f the Parties fail to agree to an appropriate reduction to the Annual Fee within 30 days of the notice being served by [BGMP] or BC . . . , either Party shall

be entitled to terminate the Agreement upon giving not less than 30 days' of written notice to the other Party.”

C. BC Fails To Dedicate Sufficient Resources To Developing The Betting Hub In Compliance With BGMP's Standards And Digital Marketing Standards

24. From the inception of the relationship, BGMP invested substantial time and resources to the project, including (i) assembling a team of at least a dozen BGMP employees to work on the project; (ii) hiring a Sports Betting Partnership Producer to support the project; (iii) assigning BGMP engineers to implementing and optimizing BC's recommendations; and (iv) hiring a Search Engine Optimization (“SEO”) consulting firm to optimize the success and monetization of the project. (SEO is the process of improving the quality and quantity of website traffic to a website or a web page from search engines.)

25. BGMP included two links to the Betting Content on Boston.com's main navigation page, one in the main page's dropdown menu and another in the header navigation section:



26. The “Betting” link in the dropdown menu was aligned in location with links to BGMP’s other top tier commercial partners. BC also received the benefit of a second link on Boston.com’s header navigation menu. None of BGMP’s other commercial partners received a second link on the header navigation menu. Before and after the launch of the Betting Hub, BC knew of the placement of the two links and BGMP explained to BC that the two links gave BC the same SEO irrespective of their location on the dropdown and header navigation menus.

27. In contrast to BGMP’s compliance, BC failed from the start to honor its contractual obligation to devote sufficient resources to generate best-in-class Betting Content. Among other things, BC delayed in hiring key personnel, including an editor. As a result, the Betting Hub was launched lacking key content. Under Sections 2(b)(i) and (ii) of the Agreement, BC was to provide up to 300 articles written by BC and approved by BGMP to be uploaded to the Betting Hub during the Soft Launch Period (which was to conclude around September 1, 2022); and up to 60 new articles per week thereafter. But at the time of the launch, BC had provided just a single article for uploading to the Betting Hub. BC’s generation of articles continued to be abysmal, averaging substantially less than the 60 weekly articles it had promised.

28. BC also failed to timely provide BGMP with sufficient information to implement “do-follow” (a/k/a “backlinks” or inbound links). A “do-follow” link is a link from one website to another, in this case from Boston.com to the Betting Hub. While BGMP was responsible for including a minimum number of “do-follow” links on Boston.com, BGMP could only do so once BC provided them to BGMP. But BC did not produce or provide any do-follow links until October 2022 at the earliest, many weeks after the Soft Launch Period ended.

29. Likewise, BC did not fulfill its obligations with respect to BC Ads. “BC Ads” are defined as “native ads provided by BC which show[] relevant information and odds, and which

may include Operator cookies (in BC's sole discretion), which is placed in the ad slot on [Boston.com] . . . , in accordance with this Agreement." Under the Section 3(a)(i) of the Agreement, BGMP was required to "display" the BC Ads but could not do so without BC providing the BC Ads in the first place. BC failed to provide sufficient BC Ads prior to December 13, 2022.

30. BC's failure to generate sufficient and relevant content, and its failure to provide BGMP with the necessary content to direct users to the Betting Hub, crippled the Betting Hub's reach and monetization potential. As stated above, SEO is the process of improving the quality and quantity of website traffic to a website or a web page from search engines. In establishing SEO ranking, Google and other search engines focus primarily on reputation and user experience built over the course of time. Because of the dearth of relevant articles, backlinks, and BC Ads, the Betting Hub experienced underwhelming website traffic and did not generate an SEO index that could match up with competing websites.

31. Attempting to compensate for its performance failures, BC requested that BGMP agree to various unscrupulous practices that violated industry standards, Google policies, and BGMP's guidelines and standards. For example, BC repeatedly requested that BGMP (i) remove its standard "provided by" disclosure language and sponsor references and (ii) publish Betting Content on Boston.com's editorial sports section to try to deceive readers into believing that the Betting Content was non-commercial editorial content written by BGMP reporters.

32. While the Commission's regulations on advertising for sports betting had not yet become final when BC was requesting that BGMP agree to these improper practices, it was foreseeable that the practices would be prohibited based on draft regulations that had been issued. The Commission's final regulations generally prohibit any advertising practice "that would

reasonably be expected to confuse and mislead patrons in order to induce them to engage in Sports Wagering.” 205 Code Mass. Regs. 256.04(1). Moreover, the Massachusetts Attorney General’s regulations applicable to all advertising provide that an advertiser may not “fail to clearly and conspicuously disclose in any advertisement any material representation, the omission of which would have the tendency or capacity to mislead reasonable buyers or prospective buyers.” 940 Code Mass. Regs. 6.04(2).

33. Thus, obfuscating the authorship, or failing to identify the sponsor, of Betting Content, as BC requested BGMP do, would likely have violated the Commission’s and/or the Attorney General’s regulations.

34. BC also insisted that BGMP publish content in a manner that would allow Google’s search engine to crawl and see it, but not permit a user to find and view the content. This improper practice is a type of “Black Hat SEO,” which generally refers to practices that are used to artificially increase a site or page’s rank in search engines through means that violate the search engines’ terms of service.

35. BC asserted that its other clients had agreed to such practices and that BGMP was unreasonable for refusing to do so. But when BGMP asked for examples or evidence of other BC clients engaging in such practices, BC failed to provide any.

36. BC made other unreasonable requests, including asking BGMP to remove its standard ad blocker messaging, which is critical to ensuring that accurate performance tracking and analytics are being reported for the Betting Hub. In September 2022, BC inquired about suppressing the ad blocker. BGMP responded that doing so would be against its internal policy. BC renewed this request in early 2023, and BGMP again rejected it.

37. Under Section 11(b) of the Agreement, BC agreed to provide BGMP with a dashboard (the “Dashboard”) showing data that would allow BGMP to track the performance of the Betting Hub, including new betting customers directed to Operators, signups, and earnings. BC was several months delayed in delivering the Dashboard, which, once produced, showed facially questionable data, including the reporting of supposed customers before it was possible to secure such customers.

D. BC Purports To Terminate The Agreement For A Host Of Pretextual And Baseless Reasons

38. By February 2023, it was clear that BC had failed to invest sufficient time and other resources to generate the content necessary to successfully monetize the Betting Hub. The parties had regular conferences during which BGMP expressed its dissatisfaction with BC’s lack of progress.

39. But rather than redoubling its efforts, on February 8, 2023, BC’s Chief Executive Officer Marc Pederson sent BGMP a letter titled “Notice of Reduction Events and Material Breaches” (the “Pretextual Notice”). The Pretextual Notice is less than three pages long and contains cursory descriptions of four purported Reduction Events and six alleged material breaches by BGMP. BC sent the Pretextual Notice the month before the Commission was expected to finalize regulations for sports betting advertising. Mr. Pederson concluded the Pretextual Notice by stating that BC “look[ed] forward together over the next thirty (30) days to resolve these issues and to reach an appropriate reduction to the Annual Fee.” He did not, however, propose a specific reduction to the Annual Fee.

40. BC lacked any good-faith basis to seek a reduction in the Annual Fee or assert a material breach against BGMP. The Pretextual Notice, on its face, did not identify a single bona

fide grievance. Instead, it listed in conclusory fashion a series of unsubstantiated complaints for which BC provided no evidence.

41. BC's principal complaint related to what it referred to as the "Unfavorable Massachusetts Market," specifically draft Commission regulations, 205 Code Mass. Regs 256, which had been proposed but not promulgated at the time of the Pretextual Notice (the "Draft Regulations"). BC summarily contended in the Pretextual Notice that the Draft Regulations "create[] incredibly unfavorable monetization conditions for BC in Massachusetts"; "will adversely impact the fees receivable by BC from Operators by more than 15%"; "includes a limitation on promotion that is likely to prevent or limit promotions of signup and/or retention bonuses" from Operators; and "will materially reduce the average amounts paid by Operators for affiliated services in the market generally, impacting BC's ability to meet its earnings projections anticipated at the Effective Date by more than 15%." It also alleged that "[c]ertain operators that are material to BC have been restricted from operating in Massachusetts as a result of licensing requirements."

42. As of August 19, 2022, the date of the Agreement, BC knew that the Commission had not promulgated any regulations applicable to sports betting in Massachusetts. Thus, any draft Commission regulations necessarily did not qualify as "Applicable Law as they applied at the date of this Agreement" within the meaning of Section 12(a)(A) of the Agreement and, therefore, could not have given rise to a Reduction Event. BC also knew that the Draft Regulations were subject to intense lobbying efforts by Operators, affiliate marketers, and other interests, as BC was itself involved in those efforts, and that it was likely that there would be revisions before the final regulations were promulgated.

43. BC did not provide BGMP any financial analyses or data, revised earning projections, agreements with Operators, or other evidence in the Pretextual Notice or otherwise to attempt to support their claims about the Draft Regulations, which had not been adopted. BC also never identified any alleged “operators that are material to BC [that] have been restricted from operating in Massachusetts as a result of licensing requirements.” And BC did not propose a specific reduction in the amount of its Annual Fee. These omissions removed any doubt that BC was simply looking for a way out of its contractual obligations and that it lacked any good-faith justification for doing so.

44. On March 1, 2023, BGMP sent a detailed, single-spaced 15-page letter to BC refuting all its allegations and demanding that BC remedy its material breaches under the Agreement. BC did not promptly respond to BGMP’s March 1 letter. On March 10, 2023, BGMP sent a second letter to BC demanding that BC make the overdue Annual Fee installment payment of \$166,666.67, which had been due and owing as of January 1, 2023. On March 15, 2023, Mr. Pederson of BC finally responded to BGMP’s March 1 and 10 letters and purported to terminate the Agreement.

45. BC owes BGMP \$1,750,000 just for unpaid Annual Fees due for the Initial Term.

46. As stated, the Final Regulations for sports betting advertising became effective on April 14, 2023. The Final Regulations reflect material changes that were made in response to feedback from Operators, affiliate marketers, and other stakeholders, and specifically permit types of revenue-sharing arrangements between affiliate marketers and Operators that would have been prohibited had the Draft Regulations been promulgated without further revision. The Final Regulations do not constitute a Reduction Event or grounds for termination of the Agreement by BC, and BC did not provide BGMP with any evidence to the contrary.

COUNT I

Breach of Contract

47. Plaintiff repeats, reasserts, and incorporates the allegations set forth above.

48. The Agreement is a binding and enforceable contract governed by Massachusetts law.

49. At all relevant times, BGMP performed and was ready, willing, and able to perform its obligations under the Agreement.

50. As detailed above, BC materially breached the Agreement because of its failure to, among other things, dedicate sufficient resources to develop Betting Content for the Betting Hub; monetize the Betting Hub; hire personnel of the required skill, experience, and qualifications; meet critical deadlines and benchmarks; use commercially reasonable efforts to ensure that the personnel assigned to produce Betting Content complied with Content Requirements and BGMP's guidelines; and comply with digital marketing industry standards and best practices.

51. BC also materially breached the Agreement when, shortly after in-person sports betting became operational in Massachusetts and in the month prior to the expected launch of mobile sports betting, it sent the Pretextual Notice raising a series of baseless allegations, demanding a reduction of the Annual Fee, and threatening to terminate and then improperly terminating the Agreement.

52. As a direct result of BC's material breaches, BGMP has suffered single damages of at least \$1,750,000.

COUNT II

G.L. c. 93A, §§ 2, 11

53. Plaintiff repeats, reasserts, and incorporates the allegations set forth above.

54. BC and BGMP engaged in commerce in Massachusetts when they executed the Agreement

55. As detailed above, BC materially breached the Agreement because of its failure to, among other things, dedicate sufficient resources necessary to develop Betting Content for the Betting Hub; monetize the Betting Hub; hire personnel of the required skill, experience, and qualifications; meet critical deadlines and benchmarks; use commercially reasonable efforts to ensure that the personnel assigned to produce Betting Content complied with Content Requirements and BGMP's guidelines; and comply with digital marketing industry standards and best practices.

56. BC also repeatedly requested that BGMP that agree to various unscrupulous practices that violated industry standards, Google policies, and BGMP's guidelines and standards. Among other things, BC insisted that BGMP remove disclosure language and sponsor references; publish Betting Content on Boston.com's editorial sports section to try to deceive readers into believing that the Betting Content was non-commercial editorial content; publish content in a manner that would allow Google's search engine to crawl and see it, but not permit a user to find and view the content, a type of Black Hat SEO; and attempted to thwart BGMP from maintaining its own ad blocker messaging.

57. By the Pretextual Notice, BC attempted to leverage its own failings to exact a reduction of the Annual Fee shortly after in-person sports betting became fully operational in Massachusetts and just prior to the launch of mobile sports betting. BC threatened to terminate the Agreement unless BGMP acceded to its improper demands, and then wrongfully terminated the Agreement when BGMP rightfully refused to agree to those demands.

58. BC's unfair and deceptive trade practices were, at a minimum, willful and occurred primarily and substantially in Massachusetts.

59. As a result of BC's unfair and deceptive trade practices, BGMP is entitled to treble damages and attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

- A. Enter judgment for Plaintiff on each of its claims;
- B. Award Plaintiff damages in an amount to be determined at trial;
- C. Award Plaintiff treble damages, attorneys' fees, and costs pursuant to G.L. c. 93A, §§ 2, 11;
- D. Award Plaintiff pre-judgment and post-judgment interest under Massachusetts law; and
- E. Award Plaintiff such other and further relief as the Court deems just and equitable.

JURY DEMAND

Plaintiff demands a jury trial on all claims and issues so triable.

Dated: May 10, 2023

Respectfully Submitted,

BOSTON GLOBE MEDIA PARTNERS, LLC

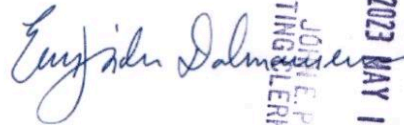
By its attorneys,



Euripides Dalmanieras (BBO No. 650985)
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon counsel of record for Plaintiff and Counterclaim-Defendant by U.S. mail and email on May 10, 2023.



Euripides Dalmanieras

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
MAY 10 P 3:21
JOHN E. POWERS III
ACTING CLERK MAGISTRATE