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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

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 BETTER COLLECTIVE USA, INC., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 BOSTON GLOBE MEDIA PARTNERS, LLC, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

Civil Action No. \_\_\_\_\_

**COMPLAINT AND JURY DEMAND**

**i. Introduction**

1. Through this action, Plaintiff Better Collective USA, Inc. (“BC”), seeks damages, including multiple damages and attorneys’ fees, arising from Defendant Boston Globe Media Partners, LLC’s (“Globe Media”) knowing, willful and material breaches of the parties’ August 19, 2022 Media Partner Agreement (the “Agreement”) and Globe Media’s related knowing and intentional unfair and deceptive trade practices violative of General Laws Chapter 93A, Sections 2 and 11. BC entered into the Agreement with Globe Media in order to take advantage of the exciting and lucrative opportunity presented by the recent legalization of online sports wagering in the Commonwealth of Massachusetts and in other already legalized existing and upcoming states. BC is a leader in the industry with regard to the creation of online content and assets related to sports wagering. To induce BC to do business with it and pay it substantial fees, Globe Media held itself out as a willing, reliable, good faith and committed business partner. As it turned out, Globe Media was the exact opposite.

## **ii. Parties**

2. Plaintiff BC is a corporation organized and existing under the laws of Delaware with a principal place of business in New York, New York.

3. Defendant Globe Media is a limited liability company organized and existing under the laws of Delaware with a principal place of business in Boston, Massachusetts.

## **iii. Jurisdiction and Venue**

4. The Court has jurisdiction over this matter where BC has suffered and seeks damages in an amount well in excess of \$50,000. The parties contractually agreed to bring any dispute between them arising from the Agreement in this forum, and Globe Media has a place of business in Boston and engaged in many of the unlawful acts and omissions at issue in this lawsuit in Suffolk County.

## **iv. Facts**

5. In 2022, Massachusetts legalized sports wagering in the Commonwealth. In doing so, the Massachusetts Legislature directed the Massachusetts Gaming Commission (the “Commission”) to promulgate licensing and other regulations for the sports wagering industry. The sports wagering industry generally, and BC and Globe Media in entering into the Agreement specifically, recognized that the Commission’s process of putting in place regulations would take place over time including after the effective date of the Agreement. In-person sports wagering in Massachusetts commenced on or about January 31, 2023, and mobile sports wagering commenced on or about March 10, 2023. The Commission promulgated regulations related to sports wagering advertising effective on or about April 14, 2023.

6. BC develops and publishes online content and assets related to betting and gambling. BC has commercial relationships with casinos and sportsbooks that provide gambling services and which pay BC for its services, including without limitation, advertising.

7. On information and belief, Globe Media owns the website Boston.com. In order to leverage Boston.com financially through sports wagering, Globe Media sought out BC to help develop sports wagering related content for the website. In so doing, Globe Media held itself out as a business that would be a committed and cooperative business partner to BC including with respect to the need to adapt the Agreement based upon the impact of, among other things, the Commission's regulations, licensure, and operationally in order to maximize BC's opportunity to monetize the content created by BC and displayed on Boston.com's site.

8. Effective as of August 19, 2022, BC and Globe Media entered into the Agreement.

9. The Agreement provides for BC to produce content related to sports wagering relevant primarily to the Massachusetts market and other legal sports wagering states and to leverage its commercial relationships to provide advertisements for sports wagering Operators, such content and advertisements defined as "Betting Content". Boston.com was required to develop, maintain and host a subsection of its website to display the Betting Content on agreed-upon URLs, such subsection defined as the "Betting Hub."

10. In recognition of the nascent nature of the sports wagering industry in Massachusetts and other states, the potential impact regulatory changes could have on the fairness and viability of the Agreement, and continued licensing requirements across the country, BC and Globe Media expressly agreed that certain defined Reduction Events (as defined in the Agreement), including without limitation Globe Media's failure to meet Marketing

Commitments (as defined in the Agreement), Regulatory Changes (as defined in the Agreement), and other changes that diminish the financial viability of the Agreement, required the parties to timely negotiate a reduction of any fee owed by BC to Globe Media under the Agreement and/or provided BC the right to terminate the Agreement.

11. On or about February 8, 2023, BC provided written notice to Globe Media of certain Reduction Events as well as material breaches of the Agreement committed by Globe Media.

12. The material breaches of the Agreement include, without limitation, Globe Media's failure to:

- a. Use all reasonable endeavors to facilitate BC's monetization of the agreed upon Betting Hub (as defined in the Agreement) to be created under the Agreement;
- b. Perform and/or timely perform its obligations with respect to the development of website content under the Agreement;
- c. Take into account reasonable recommendations made by BC with respect to website operations;
- d. Timely implement changes to website content requested by BC;
- e. Make changes to URL subpages;
- f. Use best practice in relation to search engine optimization;
- g. Design the Betting Hub with input from BC;
- h. Comply with Marketing Commitments; and
- i. Comply with Globe Media's obligations to obtain certain licenses.

BC demanded that Globe Media cure its breaches within 30 days.

13. The Reduction Events include, without limitation, the following:
  - a. Regulatory Changes (as defined in the Agreement);
  - b. Reduction in Operators (as defined in the Agreement) fees;
  - c. Restrictions on Operators; and
  - d. Globe Media's failure to comply with Marketing Commitments (as defined in the Agreement).

BC requested that Globe Media participate in contractually mandated good faith negotiations of the called for fee reduction.

14. In breach of the Agreement and in bad faith, Globe Media refused even to discuss any reduction in fees and failed to cure its material breaches of the Agreement. On information and belief, Globe Media refused to negotiate because it wanted to end its relationship with BC so that it could enter into and/or expand its business relationship with DraftKings on more favorable terms to Globe Media.

15. To the contrary, Globe Media actively set about to concoct in bad faith excuses including, without limitation, alleged breaches by BC. Globe Media also raised false allegations of impropriety on the part of BC in a transparent and improper effort to leverage a resolution to avoid the consequences of its numerous breaches of the Agreement and mandatory reduction in fees.

16. By way of example only, BC's February 8, 2023 notice stated it was entitled to a fee reduction and that Globe Media breached the Agreement because, among other things, Globe Media failed to include a link to the Betting Content (as defined in the Agreement) in Boston.com's header navigation section. In Globe Media's March 1, 2023 response, it claimed "To the contrary, as evidenced in the below screenshot, we have included not only one but *two*

Betting Content links on the main navigation page – one in the in the main page’s hamburger dropdown menu and in the other in the header navigation section.” Globe Media also included the referenced screenshot. However, despite the inclusion of the screenshot, the link was not present in the header navigation section of Boston.com’s website at any time when BC checked, including on February 8, 2023 when BC’s notice was delivered or on March 1, 2023 when Globe Media sent its response. In fact, the screenshot provided by Globe Media was not taken until February 23, 2023 – *after* BC sent its February 8 notice. Furthermore, BC had repeatedly requested the inclusion of such link throughout meetings in October and November, 2022, but was told by Globe Media representatives that such inclusion was not possible. This is the epitome of bad faith.

17. Another example demonstrates BC’s ongoing good faith and Globe Media’s bad faith efforts to salvage their relationship as business partners. Globe Media’s March 1, 2023 response states that BC provided only vague reasoning for the unfavorable regulatory environment. However, Globe Media is aware of BC’s lobbying activities in Massachusetts related to such adverse regulations, including a detailed and substantive letter that BC submitted to the Commission, because BC provided the letter to Globe Media and requested assistance from Globe Media in those lobbying efforts. Globe Media ignored those requests. For Globe Media to then claim that BC’s notice was too vague when it was in possession of BC’s detailed letter to the Commission is disingenuous at best.

18. While BC was hopeful to continue its business relationship with Globe Media at the time of its February 8, 2023 notice, it became clear that Globe Media was unwilling to work with BC in good faith to address the Reduction Events and resolve Globe’s Media’s material breaches prior to launch of the mobile sports wagering market in Massachusetts, thus rendering

the business relationship unviable. As a result of Globe Media's failure to negotiate a reduction in fees and its failure to cure its material breaches of the Agreement, BC elected to terminate the Agreement on March 15, 2023 by a written Notice of Termination.

19. To date, BC paid Globe Media hundreds of thousands of dollars of fees which it did not earn, to which it is not entitled, and by which it has been unjustly enriched. Globe Media's breaches of the Agreement also caused BC to miss highly lucrative market windows and opportunities thereby causing BC additional damages.

**COUNT ONE**  
**(Breach of Contract)**

20. BC repeats and realleges here the allegations set forth above.

21. BC and Globe Media entered into a binding and enforceable Agreement.

22. Globe Media materially breached the Agreement.

23. BC satisfactorily performed its obligations under the Agreement, and satisfied any and all conditions precedent.

24. Globe Media's breaches of the Agreement and other unlawful conduct caused BC to make payments to Globe Media that it was not entitled to receive and excuse BC from making any further payments to Globe Media.

25. As a direct and proximate cause of Globe Media's breach of the Agreement, BC has suffered damages in an amount to be determined at trial.

**COUNT TWO**  
**(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

26. BC repeats and realleges here the allegations set forth above.

27. Every contract contains an implied covenant of good faith and fair dealing.

28. Globe Media breached its duty of good faith and fair dealing.

29. As a direct and proximate cause of Globe Media's breach of the implied covenant of good faith and fair dealing, BC has suffered damages in an amount to be determined at trial.

**COUNT THREE**  
**(Unjust Enrichment)**

30. BC repeats and realleges here the allegations set forth above.

31. BC paid Globe Media hundreds of thousands of dollars in fees which Globe Media did not earn and by which Globe Media has been unjustly enriched.

32. BC reasonably expected that in return for making these payments, Globe Media would perform certain services and undertake certain conduct.

33. Globe Media accepted BC's payments with knowledge of BC's expectations.

34. Globe Media is liable in damages to BC for the full amount of the fees paid and BC is entitled to an order requiring Globe Media to disgorge all fees.

**COUNT FOUR**  
**(G.L. c. 93A, sec. 2, 11)**

35. BC repeats and realleges here the allegations set forth above.

36. As set forth above, Globe Media committed numerous knowing and intentional unlawful and deceptive acts and practices towards and against BC in the course of the parties' dealings. Globe Media did so in order to receive fees from BC and later in an effort to try and avoid the consequences of its own multiple breaches of the Agreement.

37. Globe Media's unfair and deceptive trade practices were, at a minimum, willful and occurred primarily and substantially in the Commonwealth.

38. As a result of Globe Media's unfair and deceptive trade practices, Globe Media is entitled to treble damages and attorneys' fees.

WHEREFORE, Plaintiff BC respectfully requests that the Court:



- i. enter judgment after trial in favor of BC on each of its claims;
- ii. award BC damages in an amount to be determined at trial;
- iii. award BC treble damages and attorneys' fees and costs pursuant to G.L. c. 93A, sec. 2 and 11;
- iv. award pre-judgment and post-judgment statutory interest; and
- v. grant such other and further relief as the Court seems just and proper.

**JURY DEMAND**

**PLANTIFF DEMANDS A TRIAL BY JURY ON ALL CLAIMS AND ISSUES SO TRIABLE.**

Respectfully submitted,

BETTER COLLECTIVE USA, INC.

By its Attorneys,

*/s/ Ian Pinta*

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Dated: April 28, 2023