UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

TIM JAMIL, an individual, and **LISA JAMIL**, an individual, and **TL JAMIL LLC**, a Florida limited liability company,

Plaintiff,

v

KEVIN LONGE, an individual, **CHRIS RYAN**, an individual**, KEITH RYAN**, an individual, **GREGORY A. LONGE**, an individual, **LONGE ACQUISITIONS LLC**, a Michigan limited liability company; **SPRAY FOAM GENIE MANAGED SERVICES, LLC**, a Delaware limited liability company, **RHINO 7 CONSULTING COMPANY d/b/a RHINO7 FRANCHISE DEVELOPMENT COMPANY, INC.**, a North Carolina company; **PHOENIX FRANCHISE CONSULTING LLC d/b/a PHOENIX FRANCHISE BRANDS**, a Michigan limited liability company, **MARIA LONGE a/k/a MARIA SHINABARGER**, an individual; **SHELLY CHAVEZ**, an individual; **STEVEN LONGE a/k/a STEVEN MCENTIRE**, an individual; an individual; and **RILEY MCENTIRE**, an individual.

Defendants.

Case No.
Hon.

COMPLAINT

Plaintiffs Tim Jamil ("Mr. Jamil"), Lisa Jamil ("Mrs. Jamil"), and TL Jamil LLC ("TL Jamil") (collectively, the "Plaintiffs" or the "Jamils") through their attorneys, Taft Stettinius & Hollister, LLP, submit their Complaint against Defendants Kevin Longe ("Kevin"), Chris Ryan ("Chris"), Keith Ryan ("Keith"), Gregory A. Longe ("Gregory"), Long Acquisitions, LLC ("Long Acquisitions"), Spray Foam Genie Managed Services, LLC ("SFGM"), Rhino7 Consulting Company d/b/a Rhino7 Franchise Development Company, Inc. ("Rhino7"), Phoenix Franchise Consulting LLC d/b/a Phoenix Franchise Brands ("Phoenix"), Maria Longe a/k/a Maria Shinabarger ("Maria"), Shelly Chavez ("Shelly"), Steven Longe a/k/a Steven McEntire ("Steven"), and Riley McEntire ("Riley"), (collectively, the "Defendants") and states and alleges as follows:

PARTIES

1. Tim Jamil is an individual who resides in Florida.

2. Lisa Jamil is an individual who resides in Florida.

3. TL Jamil LLC is a limited liability company which is organized under the laws of the State of Florida, with its principal place of business in Florida. TL Jamil has two members, Mr. Jamil and Mrs. Jamil, who are residents of Florida.

4. Defendant Kevin Longe is an individual who is an officer of non-party Spray Foam Genie International, LLC ("SFG") and who, upon information and belief, resides in Denver, Colorado. Kevin does business in Livonia, Michigan.

5. Defendant Chris Ryan is an individual who is an officer of SFG and who, upon information and belief, resides in Alabama. Chris does business in Livonia, Michigan.

6. Defendant Keith Ryan is an individual who is an officer of SFG and who, upon information and belief, resides in Alabama. Keith does business in Livonia, Michigan.

7. Defendant Gregory A. Longe is an individual who is an officer of SFG and who resides in this district.

8. Defendant Longe Acquisitions, LLC is a Michigan limited liability company which has its registered office in Royal Oak, Michigan.

Upon information and belief, Longe Acquisitions' members are residents of Michigan.

9. Defendant Spray Foam Genie Managed Services, LLC is a Delaware limited liability company which has its principal place of business in Livonia, Michigan. Upon information and belief, SFGM members are residents of Michigan.

10. Defendant Rhino 7 Consulting Company d/b/a Rhino7 Franchise Development Company, Inc. is a North Carolina company which does business in Wayne County, Michigan. Rhino7's principal place of business is in North Carolina.

11. Defendant Phoenix Franchise Consulting LLC d/b/a Phoenix Franchise Brands is a Michigan limited liability company which does business in Wayne County, Michigan. Upon information and belief, Phoenix's members are residents of Michigan.

12. Defendant Maria Longe is an individual who resides in this district and does business in Livonia, Michigan.

13. Defendant Shelly Chavez is an individual who, upon information and belief, resides in Shawnee, Kansas. Shelley does business in Livonia, Michigan.

14. Defendant Steven Longe a/k/a Steven McEntire is an individual who resides in Tuscaloosa, Alabama. Steven does business in Livonia, Michigan.

15. Defendant Riley McEntire is an individual who resides in Tuscaloosa, Alabama. Riley does business in Livonia, Michigan.

JURISDICTION AND VENUE

16. This Court has diversity jurisdiction over this lawsuit under 28 U.S.C. § 1332(a)(1) because all Plaintiffs have different citizenship than all Defendants and the amount in controversy exceeds $75,000, excluding interest and costs.

17. The Court has personal jurisdiction over Defendants because Defendants conduct business in this district.

18. Venue is proper in this district under 28 U.S.C. § 1391 as a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in Wayne County, Michigan.

FACTS

19. SFG is the franchisor of Spray Foam Genie franchises, which claims to be the "leading spray foam insulator contractor."

20. SFG is partially owned by Phoenix, which owns numerous franchise brands, including "Fetch!" which is a pet care franchise.

21. SFG is a non-party to this case, but Plaintiffs have a pending arbitration against SFG. *See* Franchise Agreement, attached as **Exhibit A**.

22. SFG is also, partly, owned by Rhino7, which owns numerous franchise brands.

23. Not only is SFG owned by Rhino7, but Rhino7 helps to operate SFG and its franchise operations with its franchisees.

24. SFG is also associated with Rhino Linings, a company which provides sprayed-on bed lining for vehicles and uses Rhino Lining's products in its offerings to its franchisees.

25. SFG is also owned and operated by Kevin, Chris, Keith, and Gregory, who are the officers of SFG.

26. Gregory also operates Phoenix with Maria.

27. According to its Franchise Disclosure Document (the "FDD"), SFG's parent is "Long Acquisitions LLC." *See* Franchise Disclosure Document, attached as **Exhibit B**.

28. The according to the FDD, the “franchise seller offering the [SFG] franchise is” Gregory, Maria, Shelly, Steven, and Riley (collectively with Phoenix, the “Franchise Sellers”).

29. Both Phoenix and Rhino7 control SFG.

30. As part of their franchise operations, SFG requires its franchisees to enter into Management Agreements with SFGM (the “Management Agreement”). *See* Management Agreement, attached as **Exhibit C**.

31. SFGM, upon information and belief, shares common ownership with SFG.

32. Kevin, Chris, Keith, Gregory, SFGM, Rhino7, Phoenix, Maria, Shelly, Steven, and Riley knowingly exploit the contract that SFG has with its franchisees and obtain direct benefits from those contracts.

33. In fact, the Franchise Sellers advertise that they provide “affordable” franchises like SFG through Phoenix which have an investment range of under $100,000 to $650,000. *See* https://www.franchisetimes.com/franchise_news/four-and-counting-as-phoenix-franchise-brands-builds-portfolio/article_17bd58d0-ac98-11ed-819b-67d95911d336.html.

SFG's Solicitations For The Sale Of Its Franchises

34. SFG advertises a number of franchise models and opportunities – "Franchisee Investor" where the "Franchisee acts as 'Investor' – Corporate will set up and manage the business for the Franchisee;" "Semi-Absentee (Part-time and can keep your job) – Franchisee will manage a manager, the budget, proforma, and oversee the company. Corporate will train the Manager to run the business for the Franchisee;" and "Owner-Operator (Full Time) – CEO role/Manager."

35. SFG also advertises that it provides "very detailed" training "prior to opening and is ongoing forever. It takes one week of training to get you launched to be ready for you and your team to go to work" which includes "online tools and programs to help you," "technical training with Akurate Dynamics for the equipment and Rhino Linings to educate on the various foams," and "on-site field training where we come to your shop, then help you open and do jobs for customers."

36. SFG says that it provides "24/7 Franchise Technical Support System" and "Proprietary Spray Foam Genie Software" which is an "all-encompassing software, designed explicitly for Spray Foam Genie" that is a single system that can "track leads, quote jobs, schedule appts through the

call center, invoicing, job contracts, track material yields, labor, and work with Akurate Dynamics' equipment."

37. SFG also promises its prospective franchisee that it will provide "operational systems support" to "assist with payroll, HR, Employee Benefits, and insurance," "will assist with any local regulatory compliance," and "provides safety manuals, employee handbooks, policies, protocols."

38. SFG claims that it has a "highly motivated Inside Salespeople as our Call Center Agents. Our Call Center Agents perform inside sales techniques while also scheduling the appointments" at its "Customer Sales & Marketing Center."

39. Additionally, SFG together with Rhino7, make numerous express representations about the operation of SFG franchises to SFG's franchisees and potential franchisees in their franchise sales brochures and online.

40. These representations include, but are not limited to, that:

a. Kevin Kelly, SFG's Director of Purchasing will train franchisees and their general managers on inventory management and will spearhead national sales with national homebuilders and general contractors;

b. 24/7 technical support is available for all spray-foam rights;

c. SFG "can remotely review jobs in real time" to provide feedback on the chemicals used by its franchisees;

d. "Call center employees are highly trained inside salespersons" who will schedule appointments for franchisees;

e. That the call center has "dedicated sales people and estimators for residential sales and commercial estimates and sales;"

f. Their management company will run the day-to-day operations for its franchisees;

g. Safety equipment and materials packages will be provided by SFG;

h. They will provide oversight of its franchisees' business plan and manage their operational workflow;

i. They would handle the billing and collection of fees for its franchisees; and

j. They would perform all bookkeeping.

See Brochure, attached as **Exhibit D**.

41. Unbeknownst to Plaintiffs at the time, these representations were false.

42. SFG and Rhino7 also state that they have a "heavy focus on individuals looking for our Managed Services Program. Individuals

looking to make a large investment with great potential to make LARGE RETURNS."

43. In fact, upon information and belief, Kevin Longe and Chris Ryan met with the Jamils on Zoom several times before they executed any agreements for the SFG franchise and promised the Jamils they would be millionaires.

44. Based upon SFG's numerous representations about its franchises and Rhino7's representations about the franchises, Plaintiffs became interested in purchasing a SFG franchise. Ultimately, SFG purchased two SFG franchises on or around March 27, 2023 – one in West Palm Beach Florida (the "Florida Franchise") and the other in Washington DC (the "DC Franchise") (collectively, the "Franchises").

45. Plaintiffs opened the Florida Franchise but were granted a 2-year delay in opening the DC Franchise, due to the numerous problems that they experienced with the Florida Franchise.

46. Plaintiffs have invested over $1.3 million in the Franchises.

<u>The Franchise Agreement</u>

47. Plaintiffs entered into the franchise agreement for the Franchises (the "Franchise Agreement") on March 27, 2023 for the Florida Franchise and April 29, 2023 for the DC Franchise. **Exhibit A**.

48. The Franchise Agreement was incorporated into SFG's Franchise Disclosure Document and is a part of the representations SFG made to Plaintiffs in the FDD. *See* Franchise Disclosure Document, attached as **Exhibit B**.

49. Under the Franchise Agreement, Plaintiffs paid an initial franchise fee of $450,000 for "two (2) Market Areas" – West Palm Beach and Washington DC; SFG charged this franchise fee because it considered West Palm Beach as a "5 rig territory" and Washington DC as a "9 right territory." **Exhibit A** at § III(A).

50. Plaintiffs also paid SFG a "sales and market fee of $2,000 per month. ('Sales and Market Fee') for access to and use of certain technology, including the Sales & Marketing Center, support from the franchisor, and access to the local marketing library." *Id*. at § III(D).

51. However, despite Plaintiffs paying the Sales and Market Fee, SFG did not provide the technology, support, or marketing that they represented it would provide.

52. Instead, SFG provided an incomplete software system, failed to support Plaintiffs, and did not provide the marketing services that it represented they would in the Franchise Agreement.

53. SFG also represented that it would provide training through an "initial training program" which would provide the information necessary to operate the Franchises. *Id*. at § V(A).

54. When Plaintiffs went to Tuscaloosa for their initial training, they, along with other franchisees of SFG, did not receive any meaningful training.

55. Even though Plaintiffs were the second class of franchisees receiving SFG initial training, SFG did not have a training syllabus, provided very little training at the initial training, and the little training that Plaintiffs did receive were from people that were not qualified to provide training to the franchisees.

56. Along with this initial training, SFG also represented that it would provide "opening assistance by a trained representative of Franchisor. The trainer will provide on-site training, supervision, and assistance to Franchisee for up to four (4) days. . . ." *Id*. at § V(C).

57. When Plaintiffs were scheduled to open the Florida Franchise the first week in October, SFG failed to provide the opening assistance and training that it represented it would, which resulted in Plaintiffs losing booked jobs and referrals, as they were not able to complete the booked jobs for a well-known professional in the home industry in Palm Beach county.

58. SFG also failed to provide the continuing assistance that they were required to under the Franchise Agreement. *Id*. at § V(F).

59. The Franchise Agreement also required SFG to "conduct, determine, maintain, and administer all general, national, and/or regional advertising funds. . . ." *Id*. at § XV(A).

60. This was to be financed through a "Brand Development Fund Contribution" that "is intended to maximize general public recognition and acceptance of the Markets for the benefit for all franchisees within the System or within a region." *Id*. at § XV(B)(2).

61. The Brand Development Fund "and any earning thereon shall be used exclusively to meet any and all costs of maintaining, administering, researching, directing, and preparing advertising and/or promotional activities. . . ." *Id*. at XV(B)(3).

62. Funds paid by Plaintiffs into the Brand Development Fund were to be held in trust and were "not be used to defray any of Franchisor's expenses. . . ." *Id*. at XV(B)(5).

63. SFG was also required to provide Plaintiffs with an operations manual which was to contain SFG's "System Standards" and other information necessary to operate the Franchises (the "Operations Manual"). *Id*. at § VI(A), XIII.

64. Plaintiffs did not receive an Operations Manual from Defendants until May 2024 – 7 months after Plaintiffs opened the Florida Franchise.

65. Furthermore, the Operations Manual that Plaintiffs did receive did not provide meaningful information about how to operate a SFG franchise, but instead provided information about how to do business with SFG and to comply with SFG's needs.

SFGM's Management Agreement

66. Plaintiffs purchased the Franchises under SFG's Investor/Absentee model, which according to the Brochure and all related representations required Defendants to provide managed services and to operate the Franchises for Plaintiffs.

67. Defendants, further, represented that under the Investor/Absentee model Plaintiffs would not have to manage the Franchises, but that they would only have to provide the initial capital for the Franchises.

68. Under this model, Defendants represented that Plaintiffs would only have to meet once a month to go over financials for the Franchises.

69. Accordingly, Plaintiffs purchased the Franchises from Defendants and entered into the Management Agreement with SFGM.

70. Defendants' representation proved to be false, as Plaintiffs were forced to work 40-50 hours per week on the Franchises, even though they were paying Defendants to manage most of the business, as Defendants failed to perform the work that they agreed to and were being paid for.

71. Defendants had no intention of providing the management services for the Franchises that they represented they would, and Plaintiffs were required to run the Franchises, and all of their operations, from day one.

72. Under the Management Agreement, SFGM was required to provide numerous services to Plaintiffs, including, but not limited to:

a. Acquiring the shop and mobile vehicle for Site Franchise Business Site. . . . Management Company shall perform all tenant responsibilities under the lease agreement for the Site. . . . including, but not limited to, paying rent, acquiring and maintaining connections to utilities, phone, and internet services, and performing, or causing to be performed, maintenance, repair, replacement, and janitorial services;

b. Acquiring all fixtures, equipment, and furnishings necessary for the operation of a Spray Foam Genie Site and the operation of the Franchised Business, and maintaining, repairing, and replacing such fixtures, equipment, and furnishings;

c. Developing and implementing a business plan for the Franchise Business and managing the operational workflow of the Franchised Business;

d. Providing office management for the Franchised Business;

e. Recruiting, training, and scheduling Franchised Business staff;

f. Processing payroll and all insurance and fringe benefit plans of Franchisee;

g. Billing and collecting fees charged by Franchisee for the services, or for other goods or services sold at or through the Franchised Business;

h. Performing all bookkeeping and accounting for the Franchised Business operations;

i. Managing and establishing advertising, promotions, and marketing programs;

j. Obtaining and managing Franchisee's insurance and other necessary insurance coverages; and

k. Apply funds transfers and otherwise making payments from the Franchisee Account to pay the designated operating expenses of the Franchised Business;

(collectively, the "Management Services"). **Exhibit C** at § 2.

73. For the Management Services, Plaintiffs agreed to pay SFGM "5% of Gross Revenues." *Id*. at § 4.

74. Instead of providing the services that it represented it would in the Management Agreement, SFGM took its significant fees and left Plaintiffs to fend for themselves. For example:

a. SFGM failed to acquire a location for the Florida Franchise and did not provide any guidance on how much space would be needed or what kind of access would be needed for the Florida Franchise's building. Because of that, Plaintiffs were unable to properly receive the chemicals that they purchased, as there was no space for the delivery trailer to offload the chemicals, which resulted in the 30 minute offloading processing taking over four fours. To remedy this, Plaintiffs purchased a walk-behind forklift that Defendants recommended, for several thousand dollars, which did not work in this situation and was dangerous to use, as an ATV forklift, not walk-behind forklift, was required. This caused Plaintiffs to have to have to rent an ATV forklift for each chemical delivery.

b. SFGM failed to acquire the mobile vehicle for the Florida Franchise and instead left it to Plaintiffs to figure out how to obtain and finance the vehicle.

c. While SFGM assigned a Franchise Success Leader ("FSL") to Plaintiffs, the FSL never went to Plaintiffs' franchise to see anything and was a "no show" even though she was scheduled to visit the franchise in February.

d. SFGM failed to acquire any fixtures or equipment for the Florida Franchise and did not have anyone in the area to help Plaintiffs obtain the materials and/or supplies that they required for their business. SFGM, along with Defendants, also failed to provide supply lists and/or other information necessary about what equipment was required for the Franchises.

e. SFGM did not develop any business plan for Plaintiffs, did not review Plaintiffs' business plan, and did not provide or create an employee handbook. SFGM failed to provide an operations manual until May 2024, after Plaintiffs requested it several times.

f. No office management was provided by SFGM, and SFGM did not make any purchases, or help Plaintiffs make any purchases, of office equipment.

g. SFGM only provided information and facilitated Zoom interviews of three candidates for Plaintiffs' General Manager, one for a sales representative, and one for a spray technician. Plaintiffs were forced to find, hire, and interview all other employees on their own and were not given any guidance on what to look for in an employee. Furthermore, the General Manager that SFGM found was unqualified and did not have the experience to run the Franchises.

h. SFGM required Plaintiffs to use Paychex for its payroll, but Paychex and SFGM did not provide any insurance information, plans, or help with benefits or other human resources, even though it was supposed to provide full-service human

resources. Plaintiffs were forced to locate and implement most of the plans for their employees. Plaintiffs were also forced to apply for and manage their health insurance plan and manage all of their employees' benefit plans on an ongoing basis.

i. SFGM did not collect any customer payments but only withdrew the royalty payments for Defendants.

j. SFGM did not provide adequate bookkeeping services and would not timely respond to requests for Profit/Loss statements, which forced Plaintiffs to obtain extensions for their taxes. Furthermore, the statements that Plaintiffs did receive were incorrect. SFGM also failed to file state tax returns for Plaintiffs, which resulted in Plaintiffs having to pay thousands of dollars in fines.

k. SFGM required Plaintiffs to spend $2,000 a month on Market360 for Google Ads, but refused to provide any accounting of the funds Plaintiffs paid were spent. Plaintiffs also had to pay an additional $540 per week in Google search engine optimization. Instead, those funds simply disappeared, even though Plaintiffs should have over $10,000 in Google Spend credits. Plaintiffs, further, only received 29 visits to their website due to the mismanagement of its marketing that SFGM was responsible for.

l. SFGM did not provide any help or information about fund transfers.

75. The Management Agreement was incorporated into SFG's FDD. **Exhibit B**.

<u>The Franchise Disclosure Document</u>

76. Unbeknownst to Plaintiffs at the time, Defendants' offer and sale of the Franchises to Plaintiffs was made in violation of numerous state and federal laws that regulate the sale of franchises, including, but not limited to, the Michigan Franchise Investment Law, MCL 445.1501 *et seq*, (the "MFIL") and the FTC Rules governing the franchise industry.

77. The MFIL applies to "all written or oral arrangements between a franchisor and franchisee in connection with the offer or sale of a franchise" that is "made in this state. . . ." MCL 445.1504(1)-(2).

78. "An offer or sale of a franchise is made in this state when an offer to sell is made in this state, or an offer to buy is accepted in this state, or, if the franchisee is domiciled in this state, the franchised business is or will be operated in this state." MCL 445.1504(2).

79. The transaction at issue was "made in this state" as "[t]his Agreement was accepted by Franchisor in Michigan." **Exhibit A** at XXII(C).

80. While Defendants delivered to Plaintiffs a written FDD which is required by the MFIL, prior to the sale of the Franchise, Defendants' FDD contained numerous misrepresentations in violation of MCL 445.1505.

81. Beyond Defendants' incorporation of the Franchise Agreement and Management Agreement into its FDD, and the numerous

misrepresentations Defendants made in the Franchise Agreement and Management Agreement that are discussed above, Defendants made numerous other misrepresentations in the FDD.

82. For example, the FDD represented that the total "initial investment" was "$243,200 to $299,200." *Id*. at Item 7.

83. This "$243,200 to $299,200" was for the "Initial Franchise Fee;" "Your Training Expenses;" "Utilities deposits;" "Leasehold Improvements, Construction and/or Remodeling;" "Furniture, Fixtures and Equipment;" "Business Licenses and Permits;" Initial Foam Purchase;" "Spray Guns;" "Trailer Rig Financing;" "Truck Lease;" "Computer Equipment;" "Professional Fees;" "Grand Opening Advertising;" "Insurance;" "Rent – 2 months;" and "Operating Expenses / Additional Funds – 3 months." *Id*.

84. This was a gross misrepresentation by Defendants in many ways.

85. To start, Defendants represented that the total, initial, cost of a trailer rig was "$20,000-$35,000." *Id*.

86. It was also represented to Plaintiffs that Rhino7 – that would finance spray foam trailers.

87. However, that Rhino7 refused to provide any financing for the trailers, which cost $196,000 – almost double what a normal spray foam trailer cost; even though Rhino7 told Plaintiffs that they have "wall street money backers" who would purchase the rigs and allow Plaintiffs to lease the rigs and misrepresented the cost of the rigs.

88. Accordingly, Plaintiffs were unable to secure the trailer rig as Defendants represented, which delayed Plaintiffs' opening of their franchise by 3 months.

89. Likewise, Defendants claimed that the investment for insurance was "$8,000 - $10,000." *Id*.

90. However, when Plaintiffs went to Defendants' insurance broker, they were informed that the insurance costs for the franchise was, roughly, $40,000 a year.

91. In total, instead of the "$243,200 to $299,200" that Defendants represented it would take to launch the Franchise, Plaintiffs were required to spend over a million dollars to get their Florida Franchise operational.

92. Defendants made further misrepresentations about the funds it would take to operate the Franchises in its financial performance

representations that were represented as "a reasonable basis for the information." *Id*. at Item 19.

93. According to SFG's financial performance representations, the total labor cost required to run a franchise was "84,878.36" to "$220,543.21." *Id*. But this was false as the salespersons' salaries was not included at all.

94. Defendants intentionally misclassified their employees as contractors and "day laborers" in order to hide the true, required, cost of their wages.

95. When confronted with this information, Defendants instructed Plaintiffs to, illegally, not pay employees for travel time to a jobsite and to not pay overtime for spray technicians.

96. Upon information and belief, Defendants also misreported and misrepresented the total revenue that they received from their spray foam operations.

97. Furthermore, Defendants misrepresented the profitability of its already existing franchises, which were owned by Defendants, by intentionally removing and/or omitting costs, such as the netting that is required to be used to apply spray foam, from its financial disclosures.

98. Defendants intentionally hid the amount of money it would take to launch the Franchise and how much money the Franchises would make in order to induce franchisees, like Plaintiffs, into entering into Franchise and Management agreements with them.

99. Plaintiffs did not know that they would have to spend this much money to launch the Franchises when they received the FDD and entered into the Franchise and Management Agreements and relied on Defendants' representations that were made in the FDD when they entered into those agreements.

100. Plaintiffs would not have entered into the Franchise and Management Agreements if they knew that Defendants had materially misrepresented the amount of money it would actually take to launch the Franchise – over $1,000,000.

101. SFG also represented that it would provide "a tuition-free initial Spray Foam Genie Training program, which includes orientation to the Spray Foam Genie, LLC system; customer service; operational management; financial management; technical training, computer software use, advertising and marketing, and reporting procedures." *Id*. at Item 11.

102. The training program was represented to have 24 hours of total classroom training and 16 hours of total on-the-job training. *Id*.

103. All of the instructors for the training program were represented to "have experience in the operations and standards of the Spray Foam Genie System." *Id*.

104. Instead, when it came time to actually receive training from Defendants, Defendants failed to provide anywhere near the amount of training that they represented they would in the FDD and had no intention of providing the training that they represented they would in the FDD.

105. This is especially apparent from the amount of training that they provided to Plaintiffs in how to apply spray foam – instead of providing the 12 hours that they represented they would, Defendants provided approximately 45 minutes of training to Plaintiffs.

106. During this training time Defendants' instructor also spent most of the time taking care of someone else's rig.

107. Plaintiffs relied upon Defendants' above misrepresentations when it purchased the Franchises, only to find out that they were hoodwinked into purchasing Franchises which were unsustainable.

108. As a result, Plaintiffs are unable to continue to operate the Franchises, which have been racking up huge losses.

109. SFG has also advertised that Plaintiffs can provide services which they never received training or instruction for and which they were not instructed to purchase the proper equipment for.

110. Plaintiffs were not the only franchisees to face these problems as numerous other franchisees have experienced the exact same issues with their purchase of unsustainable franchises.

111. Under the MFIL, "[a] person who offers or sells a franchise in violation of [the MFIL] is liable to the person purchasing the franchise for damages or rescission, with interest at . . . 12% per year [ ] and reasonable attorney fees and court costs." MCL 445.1531(1).

112. Under MCL 445.1532, Kevin, Chris, Keith, and Gregory (the "Officers") together with the Franchise Sellers are liable for SFG's violations of the MFIL, as "[a]person who directly or indirectly controls a person liable under this act . . . a principal executive officer or director of a corporation so liable, a person occupying similar status or performing similar function, an employee of a person so liable who materially aids in the act or transaction constituting the violation, is also liable jointly and

severally with and to the same extent as the person," and the Officers and Franchise Sellers materially aided SFG in the sale of the Franchise to Plaintiffs and the operation of SFG in relation to Plaintiffs.

113. Rhino7 and Phoenix are also liable under the MFIL as people who directly or indirectly control SFG.

114. Defendants, through their actions above, have caused Plaintiffs in excess of $1,300,000 in damages, exclusive of interest, costs, and attorneys' fees which Plaintiffs are entitled to under both Michigan and Federal law.

115. Because of these tremendous losses, the Jamils had to mitigate their damages. So they wound down operations.

116. Upon information and belief, instead of accepting the wind down, Phoenix changed the franchisee of Miami's SFG franchise to "SFG of South Florida" and the franchisee assumed the Jamils' former territory without paying any franchise fee.

<u>Phoenix's Pattern of Behavior</u>

117. Unfortunately, the Jamils' story seems to be one of many. Reports of other franchisees under the Phoenix umbrella echo the story and travails the Jamils had to endure.

118. For example, the Independent Association of Fetch Pet Care Franchisees ("Association") filed a complaint with the Michigan Attorney General's Office and the Michigan Consumer Protection Division relating to Fetch.

119. In particular, the Association ("which represents franchisees with more than 70 locations") claims "Fetch uses misleading statements directly and in its disclosure documents to deceive prospective franchisees." See Franchise Times Article, (available at https://www.franchisetimes.com/franchise_news/fetch-pet-care-franchisees-allege-they-were-defrauded-as-complaints-mount-for-phoenix-franchise-brands/article_4eb98682-7fa1-11ef-b8e1-cba27eaefb4b.html last visited November 6, 2024).

120. Among many other issues, the Association alleges that "numerous locations have closed but that Fetch continues to list those unites as open and does not properly disclose shuttered units in its FDD." *Id.*

121. The Franchise Times article also outlines a story striking similar to the Jamils' with another Phoenix franchise, Furry Land, and a franchisee named Chris Galea.

122. "Chris Galea was a Furry Land franchisee for just 18 months and relinquished his business at the end of July. Galea, who lives in Michigan, said he was sold on the managed service option to run a Furry Land Territory in Florida after being told by Greg Longe that an entity called Furry Land Managed Services would handle all operations, with Galea as a passive investor." *Id*.

123. "I was flat out lied to," said Galea. "He told me things that never happened." *Id.* (internal quotations omitted).

124. "Instead, Galea, who said he paid $185,000 as an initial franchisee fee to secure a designated market area of 2 million to 2.5 million people, had to obtain and lease his vans and get them outfitted, and found himself spending dozens of hours each week on the business with no help from corporate." *Id*.

125. In October 2024, Kevin Longe tried to respond to the Fetch allegations and sent an email to Fetch and SFG franchisees. He started off by blaming a "small group of franchisees" that made "sensational claims based on the group's unsupportable conjectures."

126. He went on to ignore most of the allegations and note that the "primary complaint is that certain legacy Fetch! Franchisees have a

different franchise agreement than newer Fetch! Franchisees." He ignores the rest of the allegations and lumps together the complaints in a self-serving way, noting that when making a comparison, the "total costs are comparable to our newer franchisees' total costs – the costs just show up differently on Profit & Loss statements."

127. There's no mention of the projections, failure to provide managed services, or anything else. In response, the Association sent a letter to the franchisees.

128. The letter initially noted that over 50% of active Fetch! Franchise locations submitted rescission letters.

129. The Association also noted that there was no willingness to engage in dialogue, despite assertions to the contrary.

130. The letter also highlighted what seems to be happening here as a pattern Phoenix follows. The Association states that most struggling franchisees were "forced to give up their businesses due to the egregious fee structure imposed by Phoenix, making it impossible for them to remain profitable. In many cases, Phoenix acquired these failing franchises for a fraction of their value—and more often, they paid nothing at all."

131. But the story doesn't stop there. It continues with the SFG franchise that the Jamils were induced to sign up for. A SFG franchisee, Krystal Neumayer, faced the same issues. She voiced her concerns to the Federal Trade Commission during a public meeting.

132. "In July 2024 'we ended up closing our doors and walking away from our investment of over $700,000 . . . ."

133. Ms. Neumayer continued. "We were reassured [SFG] would handle real estate, hire employees. Materials indicated we would be leasing equipment from Phoenix Franchise Brands, such as spray foam trailers. To our surprise, we found out we needed to end up securing financing for this equipment, which we weren't prepared for."

134. That is the case with the Jamils, too.

COUNT I
Breach of Contract
(SFGM)

135. Plaintiffs reassert and incorporate all prior paragraphs as though fully restated here.

136. The Management Agreement constitutes a contract between SFGM and Plaintiffs.

137. SFGM breached the Management Agreement in the numerous ways which are discussed above.

138. SFGM's breaches of the Franchise Management are material breaches of that agreement and has caused Plaintiffs over $1,000,000 in damages.

WHEREFORE, Plaintiffs respectfully request entry of a judgment in their favor and against SFGM, in an amount to be determined at trial, plus their costs and attorneys' fees, and any such other and further relief that is just and proper under the circumstances.

COUNT II
Violations of the Michigan Franchise Investment Law, MCL 445.1501 *et seq*
(The Officers, Rhino7, Phoenix, and the Franchise Sellers)

139. Plaintiffs reassert and incorporate all prior paragraphs not inconsistent with this claim as though fully restated here.

140. SFG sold Plaintiffs an illegal franchise in violation of the MFIL through its sale of the Franchises to Plaintiffs.

141. SFG's FDD is in violation of MCL 445.1505 and the FTC Rules as it omitted numerous material facts and made numerous

misrepresentations in connection with the offer and sale of a franchise which is a violation of MCL 445.1505.

142. These omissions and misrepresentations include, but are not limited to:

a. Misrepresentations about the total "initial investment" that was required for the Franchises;

b. Misrepresentations about the funds it would take to operate the Franchises;

c. Misrepresentations and omissions about the actual financial performance of SFG's franchises;

d. Misrepresentations about the total revenue SFG received from its spray foam operations;

e. Misrepresentations and omissions about the profitability of SFG's pre-existing franchises; and

f. Misrepresentations about the amount of training SFG intended to provide to its franchisees.

143. SFG's omissions and misrepresentations in its FDD and its omissions and misrepresentations about the performance of its franchises and their retail locations has damaged SFG.

144. SFG's violations of the FTC Rules, MCL 445.1505, and MCL 445.1508, are violations of the MFIL and fraudulent inducement under the MFIL.

145. Under the MFIL, the Officers, Rhino7, Phoenix, and the Franchise Sellers are jointly and severally liable for SFG's actions and are liable to Plaintiffs for damages or recession, with interest at 12% per year plus reasonable attorneys' fees and court costs.

146. Plaintiffs have been damaged in an amount to be determined at trial, but in excess of $1,000,000, exclusive of interest, costs, and attorneys' fees by Defendants' fraudulent inducement and violations of the MFIL.

WHEREFORE, Plaintiffs respectfully request entry of a judgment in their favor and against Defendants, jointly and severally, in an amount to be determined at the trial, enter a judgment rescinding the Franchise Agreement, and enter a judgment granting Plaintiffs interests, costs, and attorneys' fees, together with such other and further relief that is just and appropriate under the circumstances.

COUNT III
Common Law and/or Statutory Conversion and/or Embezzlement (Defendants)

147. Plaintiffs reassert and incorporate all prior paragraphs as though fully restated here.

148. Plaintiffs made monthly payments to SFG which were to be held in trust as part of the Brand Development Fund.

149. Instead of using those funds for advertising, Defendants diverted those funds to themselves.

150. By doing so, Defendants have exercised a distinct act of dominion over Plaintiffs' property.

151. Defendants have used those funds for their own use.

152. Defendants' actions constitute common law and statutory conversion and/or embezzlement and are a violation of MCL 600.2919a.

153. Plaintiffs have been damaged by Defendants conversion and/or embezzlement.

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment in their favor and against Defendants, jointly and severally, grant Plaintiffs damages against Defendants, including, but not limited to, actual damages and treble damages, plus Plaintiffs' costs and attorneys' fees, together with such other and further relief this Court deems just and appropriate under the circumstances.

COUNT IV
Common Law and/or Statutory Conversion and/or Embezzlement
(Defendants)

154. Plaintiffs reassert and incorporate all prior paragraphs as though fully restated here.

155. Plaintiffs made monthly payments in the amount of $2,000 to SFGM for advertising.

156. Those funds were to be held on to by SFGM in trust for Plaintiffs, for the use for advertising.

157. Instead of using those funds for advertising, Defendants diverted those funds to themselves.

158. By doing so, Defendants have exercised a distinct act of dominion over Plaintiffs' property.

159. Defendants have used those funds for their own use.

160. Defendants' actions constitute common law and statutory conversion and/or embezzlement and are a violation of MCL 600.2919a.

161. Plaintiffs have been damaged by Defendants conversion and/or embezzlement.

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment in their favor and against Defendants, jointly and severally, grant Plaintiffs damages against Defendants, including, but not limited to, actual damages and treble damages, plus Plaintiffs' costs and attorneys' fees, together with such other and further relief this Court deems just and appropriate under the circumstances.

COUNT V
Fraud and/or Misrepresentation
(Defendants)

162. Plaintiffs reassert and incorporate all prior paragraphs not inconsistent with this claim as though fully restated here.

163. Defendants made material representations about the financial condition of their franchises and about how the Franchises would perform financially.

164. Defendants, further, made material misrepresentations about the services that they would perform for Plaintiffs and the materials and support that they would provide to Plaintiffs.

165. Defendants knew that the Franchises could not meet the financial projections that they provided and that their representations about their past financial performance were false.

166. Defendants also knew, at the time that they made their misrepresentations, that they would not, and could not, provide the materials and/or support and would not perform the services that they represented they would provide to Plaintiffs.

167. Defendants also made misrepresentations about what services and support were already available to its franchisees and potential franchisees like Plaintiffs.

168. For example, Defendants represented that they had a "24/7 Franchise Technical Support System" and "Proprietary Spray Foam Genie Software" that could do things such as "track material yields" and which had inventory control features.

169. However, when Defendants made those representations, they did not have any 24/7 technical support system and their software did not have the functionality that they claimed that it did.

170. When confronted with this by Plaintiffs, Chris responded that he did not have the time to "sort it out with the developer," which forced Plaintiffs to track their inventory manually.

171. Defendants also represented that they had 24/7 support for rigs.

172. This was false, as Defendants do not provide any after-hours support for rigs, are closed on holidays, and only inform their franchisees that they will be closed the day before they decide to close.

173. Defendants' call center also does not have any dedicated sales people and/or estimators, as they represented it had; their management company did not provide the services they represented it would; and they did not have the safety equipment and materials packages that they represented they had.

174. Defendants required Plaintiffs to pay $2,000 a month for the call center, which could not perform the functions they represented it would.

175. In fact, due to months of complaints by all of the owners regarding the failure of the call center, they disbanded the call center in 6/2024.

176. Defendants made their misrepresentations in order to induce Plaintiffs to enter into the Franchise Agreement and the Management Agreement with SFG and Defendants.

177. Defendants knew that their other misrepresentations were false when they made them, and even falsified the alleged the information provided in the FDD to support their misrepresentations.

178. Plaintiffs relied on Defendants' representations and entered into the Franchise Agreement and Management Agreement.

179. Plaintiffs have been damaged in an amount to be determined at trial, but in excess of $1,000,000, exclusive of interest, costs, and attorneys' fees by Defendants' fraud and/or misrepresentation.

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment in their favor and against Defendants, jointly and severally, in an amount to be determined at trial, along with interest, costs, and attorneys' fees, together with such other and further relief this Court deems just and appropriate under the circumstances.

Respectfully Submitted,

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