**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF MICHIGAN**
**SOUTHERN DIVISION**

SALITA PROMOTIONS CORP.,

Plaintiff,

v.

SHOHJAHON ERGASHEV and
OLEG BOGDANOV,

Defendants.

Case No. 2:20-cv-12547-LJM-EAS
Hon. Laurie J. Michelson

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**PLAINTIFF'S RESPONSE IN OPPOSITION**
**TO DEFENDANTS' MOTION TO DISMISS**

NOW COMES Plaintiff, Salita Promotions Corp. ("Plaintiff"), by its attorneys Clark Hill PLC, and for its Response in Opposition to Defendants Shohjahon Ergashev ("Ergashev") and Oleg Bogdanov's ("Bogdanov") (collectively, "Defendants") Motion to Dismiss, states as follows:

1. Plaintiff denies as untrue that this Court lacks subject matter jurisdiction and personal jurisdiction or that Plaintiff fails to state a claim upon which relief can be granted as to Plaintiff's Cause of Action for Breach of Contract for the reasons stated in the Brief in Support.

2. Plaintiff denies as untrue that this Court lacks subject matter jurisdiction and personal jurisdiction or that Plaintiff fails to state a claim upon which relief can be granted as to Plaintiff's Cause of Action for Tortious Interference with Contract for the reasons stated in the accompanying Brief in Support.

3. Plaintiff denies as untrue that this Court lacks subject matter jurisdiction and personal jurisdiction or that Plaintiff fails to state a claim upon which relief can be granted as to Plaintiff's Cause of Action for Accounting for the reasons stated in the Brief in Support.

4. Plaintiff denies as untrue that this Court lacks subject matter jurisdiction and personal jurisdiction or that Plaintiff fails to state a claim upon which relief can be granted as to Plaintiff's Cause of Action for Injunctive Relief for the reasons stated in the Brief in Support.

5. Plaintiff admits the concurrence was requested, that the parties met and conferred, and that Plaintiff did not and does not concur in the relief requested in Defendants' Motion to Dismiss.

WHEREFORE, Plaintiff respectfully requests that this Court deny Defendants' Motion in its entirety, and grant Plaintiff, Salita Promotions Corp., such further relief the Court determines is just and equitable.

Respectfully submitted,

CLARK HILL PLC

By: /s/ Charles E. Murphy .

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Dated: March 24, 2021

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**PLAINTIFF'S RESPONSE BRIEF**
**IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

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## STATEMENT OF ISSUES PRESENTED

Does the Court have jurisdiction over Defendants were (i) Plaintiff is a New York corporation; Defendants are foreign citizens, (iii) the amount in controversy exceeds $75,000; and (iv) Defendants consented to jurisdiction in this Court?

Plaintiff answers: YES

Does the consent provision and the purse bid provision in the Promotional agreement violate 15 U.S.C §6308 (b) of the Muhammad Ali Act?

Plaintiff answers: NO

Do the purse negotiation provisions and the termination provisions in the Promotional Agreement make the agreement illusory?

Plaintiff answers: NO

Can Defendant Bogdanov as the manager of Defendant Ergashev tortiously interfere with the Promotional Agreement?

Plaintiff answers: YES

Does Plaintiff's First Amended Complaint state a claim for accounting?

Plaintiff answers: YES

**BRIEF IN SUPPORT OF PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

## I. INTRODUCTION

On November 16, 2020, Ergashev, as boxer and Bogdanov, as his manager, disobeyed this Court's preliminary injunction and participated in a boxing match against Dzmitry Miliusha. Defendants chose not to participate in the preliminary injunction hearing and willfully disobeyed this Court's order. Now, Defendants ask this Court to find that the parties' exclusive Promotional Agreement (the "Agreement") is void as a matter of law and that this Court lacks jurisdiction over Defendants. Notably, Defendants do not argue that this Court does not have jurisdiction and their arguments are nothing more than feeble jabs that miss the mark. Because, *inter alia*, (i) this Court has subject matter jurisdiction; (ii) Defendants agreed to jurisdiction in this Court; (iii) the Agreement is not void under the Muhammad Ali Act ("Ali Act"); and (iv) the Agreement is not illusory, the Court should deny Defendants' Motion and hold Defendants in contempt[1] for willfully violating its injunction order.

## II. FACTUAL HISTORY

### A. Defendants Irrevocably Agreed to Jurisdiction in Michigan.

On November 17, 2017, Plaintiff and Ergashev entered into the Agreement,

[1] Plaintiff will be filing a motion requesting this Court hold Defendants in contempt for their willful violation of the injunction.

which had an initial term of five (5) years. [ECF No. 23, *Plaintiff's First Amended Verified Complaint (*"FAC*")*, ECF No. 23-1, Ex. A]. As it relates to jurisdiction, Ergashev agreed that he and his manager, Bogdanov:

> ***irrevocably submits*** (and ***shall cause his manager***, trainers, and other persons associated with him who are connected with the Bouts (collectively, the "Fighter Team Members") ***to irrevocably submit to the jurisdiction of the United States District Court for the Eastern District of Michigan*** ("Michigan Federal Court")…***Fighter hereby waives (and shall cause the Fighter Team Members to waive) any objection to venue in the Michigan Federal Court or the Michigan State Court on the basis of forum non conveniens.***

*Id.* (emphasis added), [ECF No. 23-1, Page ID 6, ¶ XX]. Ergashev was provided the opportunity to have the Agreement reviewed by independent legal counsel and represented that he knowingly and voluntarily entered the Agreement. *Id.*, [ECF No. 23-1, Page ID 7, ¶¶ XXXIV and XXXV]. As such, Ergashev knowingly and voluntarily agreed that jurisdiction for any dispute would be in this Court.

**B. <u>Defendants' Contacts with Michigan.</u>**

As set forth in more detail in the accompanying Affidavit of Salita President, Dmitriy Salita, Defendants also have a long history of contacts with the State of Michigan; living in Oak Park Michigan and training in the Kronk Gym in Detroit. Those contacts were a direct result of Defendants' relationship with Plaintiff and were not in any way random, fortuitous, or attenuated. **Ex. A,** *Affidavit of Dmitriy Salita.*

## III. ANALYSIS

### A. Standards of Review

#### 1. *Standards Relating to Fed. Rule of Civ. Procedure 8(a)(1).*

"To comply with the pleading requirements of Rule 8(a)(1), a complaint need not set forth the statutory basis for the court's subject-matter jurisdiction. Rather, allegations of jurisdictional facts alone are sufficient." *Brown v. Chinatown, Inc.*, No. 1:10–cv–730, 2011 WL 846571, at *2 (W.D. Mich. 2011) (unpublished) [**Ex.E**]

#### 2. *Standards Relating to Fed. Rule of Civ. Procedure 12(b)(1).*

In a facial attack on subject matter jurisdiction, the court must consider the allegations in the complaint as true. In a factual attack, the court may weigh the evidence and the plaintiff has the burden of proof that jurisdiction exists. *Mortensen v. First Federal Savings and Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977); *see also RMI Titanium Co. v. Westinghouse Elec. Corp.*, 78 F.3d 1125, 1134 (6th Cir.1996); *McLeod v. Michigan Dept. of Treasury*, No. 11–15633, 2012 WL 2458405, at *5 (E.D. Mich. 2012) (unpublished). [**Ex. F**]

#### 3. *Standards Relating to Fed. Rule of Civ. Procedure 12(b)(2).*

When deciding a motion pursuant to Fed. R. Civ. P. 12(b)(2), the court has three procedural options: (1) decide the motion on the affidavits alone; (2) allow discovery; or (3) conduct an evidentiary hearing. *Ford Motor Co. v. Great Domains, Inc.*, 141 F. Supp. 2d 763, 770 (E.D. Mich. 2001); *see also Serras v. First Tennessee*

*Nat'l Bank Assoc.*, 875 F.2d 1212, 1214 (6th Cir. 1989). When deciding based on the affidavits, the court must consider the pleadings and affidavits in a light most favorable to the plaintiff. *Great Domains*, 141 F. Supp. 2d at 770. The court does not give weight to controverting statements of the party moving for dismissal, otherwise nonresident parties would routinely avoid jurisdiction. *Theunissen v. Matthews*, 935 F.2d 1454, 1459 (6th Cir. 1991). Defendants have not submitted affidavits, have not requested discovery, and have not requested an evidentiary hearing, and the court may rule on the pleadings in a light most favorable to Plaintiff. *Great Domains*, 141 F. Supp. 2d at 770.

**4. *Standards Relating to Fed. Rule of Civ. Procedure 12(b)(6).***

When ruling on a motion under Fed. R. Civ. P. 12(b)(6), the allegations in the complaint are accepted as true, and all reasonable inferences are drawn in favor of the plaintiff. *See Bassett v. Nat'l Collegiate Athletic Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008) (internal quotation omitted). A plaintiff must plead "enough factual matter" that, when taken as true, "state[s] a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 570 (2007). Plausibility requires showing more than the "sheer possibility" of relief but less than a "probab[le] entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Fabian v. Fulmer Helmets, Inc.*, 628 F.3d 278, 280 (6th Cir. 2010). Consideration of

a motion to dismiss under Fed. R. Civ. P. 12(b)(6) is confined to the pleadings.[2] *Jones v. City of Cincinnati*, 521 F.3d 555, 562 (6th Cir. 2008).

**B. Plaintiff Has Established Diversity and Subject Matter Jurisdiction.**

Defendants argue that Plaintiff failed to allege the citizenship of Defendants, but this argument ignores Sixth Circuit precedent that "citizenship for the purpose of the diversity requirement is equated with domicile." *Von Dunser v. Aronoff*, 915 F.2d 1071, 1072 (6th Cir. 1990). Under Michigan law, "the words 'domicile' and 'residence' are treated as synonymous terms." *Gluc v. Klein*, 226 Mich. 175, 178; 197 N.W. 691 (Mich. 1924). Alienage subject matter jurisdiction has been upheld where foreign "citizenship" was not explicitly alleged. *See, e.g., FFOC Co. v. Invent AG*, 882 F. Supp. 642, 648 n.3–4 (E.D. Mich. 1994).[3] Plaintiff's First Amended Verified Complaint ("FAC") uses the word "resident" and alleges that (i) Plaintiff is a New York corporation; (ii) Ergashev is a "resident" of Moscow, Russia; (iii) Bogdanov is a "resident" of St. Petersburg, Russia; and (iv) under 18 U.S.C. §1332, there is complete diversity. [ECF No. 23, Page ID 2-3, ¶¶ 6, 8, 10 and 14].

To the extent Plaintiff's use of the word "resident" instead of "citizen" was improper (it was not), justice requires that leave to amend the FAC to change the

[2] "[D]ocuments attached to the pleadings may be considered on a motion to dismiss." *Commercial Money Ctr., Inc. v. Illinois Union Ins. Co.*, 508 F.3d 327, 335 (6th Cir. 2007).
[3] Finding "complete diversity" where citizenship is not alleged in the complaint but is asserted in the pleadings filed by the plaintiffs.

word "resident" to "citizen" be freely given. Fed. R. Civ. P. 15(a)(2). There is no factual dispute that Plaintiff is a citizen of New York, with an office in this District [ECF 23-1, Page ID 2], that Defendants are citizens of foreign states, and that the amount in controversy is over $75,000. Plaintiff has established diversity jurisdiction pursuant to 18 U.S.C. §1332(a)(2).

**C. Personal Jurisdiction Exists Over Defendants.**

Defendants cannot contest personal jurisdiction where they have agreed to it. [ECF No. 23, Page ID 3, ¶ 9] ("Ergashev agreed to submit to the jurisdiction of the United States Court for the Eastern District of Michigan for any disputes arising out of the Agreement."); [**Ex B,** Promotional Agreement ¶ XX ("Fighter irrevocably submits (and shall cause his manager . . . to irrevocably submit) to the jurisdiction of the United States District Court for the Eastern District of Michigan.")].

Forum selection clauses are "prima facie valid." *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 9–10 (1972). The forum is not being used to discourage "pursuing legitimate claims," there is no issue of "bad faith," or "ascension to forum by fraud," and Defendants are on notice of the forum clause, therefore the forum selection clause is enforceable. *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 595 (1991). Defendants bear the burden of showing that the clause should not be enforced." *Wong v. PartyGaming Ltd.*, 589 F.3d 821, 828 (6th Cir. 2009). Defendants make no argument whatsoever that the clause should not be enforced.

Where the Supreme Court has found "a forum-selection clause to be dispositive[,] . . . [it] need not consider [defendant's] constitutional argument as to personal jurisdiction." *Carnival Cruise Lines*, 499 U.S. at 589. "[A] forum selection clause should be upheld absent a strong showing that it should be set aside." *Wong*, 589 F.3d at 828; *see also Preferred Capital, Inc. v. Associates in Urology*, 453 F.3d 718, 721 (6th Cir. 2006)[4] (internal citations omitted). Objections to personal jurisdiction can be and frequently are waived. *Innovation Ventures, LLC v. Custom Nutrition Laboratories, LLC*, 912 F.3d 316, 332 (6th Cir. 2018); *Preferred Capital*, 453 F.3d at 721. A "forum selection clause is one way in which contracting parties may agree in advance to submit to the jurisdiction of a particular court." *Id.*; *see also M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15 (1972).

The Supreme Court has enunciated as much in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 n.14 (1985):

> We have noted that, because the personal jurisdiction requirement is a waivable right, there are a 'variety of legal arrangements by which a litigant may give 'express or implied consent to the personal jurisdiction of the court.' For example, particularly in the commercial context, parties frequently stipulate in advance to submit their controversies for resolution within a particular jurisdiction. Where such forum-selection provisions have been obtained through 'freely negotiated' agreements and are not 'unreasonable and unjust,' their enforcement does not offend due process. (internal citations omitted)

[4] "[A] forum selection clause contained in an agreement in connection with an arm's length commercial transaction…is valid and enforceable. The Supreme Court has stated that in light of present-day commercial realities, a forum selection clause in a commercial contract should control, absent a strong showing that it be set aside.") (internal citations omitted).

"[W]hen a federal court sitting in diversity exercises personal jurisdiction over a party pursuant to a forum-selection clause, state law controls the question of whether that clause is enforceable." *Stone Surgical, LLC v. Stryker Corporation*, 858 F.3d 383, 388 (6th Cir. 2017). "Michigan law favors forum-selection clauses," and the Sixth Circuit has found similarly. *Id.* By consenting to a forum selection clause, defendants "waive[] [their] right to challenge personal jurisdiction . . . in a Michigan forum." *Id.*

Bogdanov negotiated the Agreement for Ergashev and while he did not sign the Agreement he is bound to the forum selection clause because his role and conduct are so closely related to the contractual relationship that he should be subject to the foreign forum selection clause. *Allianz Insurance Co of Canada v. Cho Yang Shipping Co.*, 131 F. Supp. 2d. 787, 791 (E.D. Va. 2000).

Although Ergashev does not live in Michigan, he signed the Agreement with a forum-selection clause for this Court, consented to litigating in this Court and waived his right to challenge this Court's personal jurisdiction. *See, RGIS, LLC v. Gerdes*, 817 Fed.Appx. 158, 161 (6th Cir. 2020); *see also H & H Wholesale Servs., Inc. v. Kamstra Int'l, B.V.*, 373 F.Supp.3d 826, 830, 840 (E.D. Mich. 2019) (Michelson, J.) (forum-selection clause stated that related litigation would take place in Michigan and was sufficient to establish personal jurisdiction).

Regardless, specific personal jurisdiction exists under a three-part test:

> First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.

*Beydoun v. Wataniya Restaurants Holding, Q.S.C.*, 768 F.3d 499, 505 (6th Cir. 2014).

Ergashev has purposely established minimum contacts in Michigan by entering the Agreement and living and training in Michigan. These contacts were not random or fortuitous.

> purposeful availment… requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts…The Supreme Court has emphasized, with respect to interstate contractual obligations, that 'parties who reach out beyond one state and create continuing relationships and obligations with citizens of another state are subject to regulation and sanctions in the other State for the consequence of their activities.

*Calphalon v. Rowlette*, 228 F.3d 718, 721–22 (6th Cir. 2000). Accordingly, "'prior negotiations and contemplated future consequences, along with the terms of the contract and parties' actual course of dealing' must be considered to determine whether 'the defendant purposefully established minimum contacts within the forum." *Id.* (citing *Burger King*, 471 U.S. at 478).

Regarding the second factor, "arising out of defendant's activities," the Sixth Circuit has found that transacting some slight amount of business in Michigan was sufficient the cause of action to arise out of defendant's in-state activities. *Lanier v.*

*Am. Med. Bd. Of Endodontics*, 843 F.2d 901, 905–06 (6th Cir. 1988). For the "substantial connection" factor, a "defendant's contacts with the forum state must relate to the operative facts and nature of the controversy." *Comm. Trust Bancorp, Inc, v. Comm. Trust Financial Corp.*, 692 F.3d, 469, 472 (6th Cir. 2012).

Here, all three personal jurisdiction elements are present and have been alleged. Plaintiff alleges that Defendants have agreed to jurisdiction in this Court. [ECF No. 23, Page ID 2-3, ¶¶ 8, 10]. Bogdanov visited and managed Defendant Ergashev in Detroit. *Id.* at ¶ 11. The Agreement, which was negotiated by Bogdanov on behalf of Ergashev, was executed in person in Detroit. [**Ex B**.] Ergashev trained in multi-month training camps in Detroit over the past three years and had an apartment in Oak Park. *Id.* at ¶ 8. These facts, taken as true, satisfy the three-part test of specific personal jurisdiction.

**D. <u>Plaintiff Asserted Claims Upon Which Relief Can Be Granted.</u>**

**1. *The Promotional Agreement Does Not Violate the Ali Act.***

The FAC states a facially plausible claim for breach of the Agreement by alleging (i) the existence of a contract; (ii) Ergashev's breach; and (iii) damages. [ECF No. 23, Page ID 9-11, ¶¶ 44-54]; *Miller-Davis Co. v. Ahrens Constr., Inc.*, 296 Mich. App. 56, 71 (2012), *rev'd in part on other grounds*, 495 Mich. 161 (2014).

Ergashev contends that his promise to obtain Salita's consent to change managers violates 15 U.S.C §6308 (b) of the Ali Act. Nothing could be further from

the truth. Ergashev was free to enter into any contract, provided it did not violate the law and does not contravene public policy. *Cudnik v William Beaumont Hosp.*, 207 Mich. App. 378, 383–84; 525 N.W.2d 891 (1994). A promoter earns revenue by selling television and streaming rights, tickets and sponsorships and pays expenses such as arena rental fees and purses of the boxers. The promoter makes a profit if the revenue exceeds expenses. A manager receives a percentage of the boxer's purse. A manager's incentive is to increase the purse, whereas a promoter has an incentive to decrease a purse in order to maximize net profit. It is this adverse economic relationship that §6308(b) protects by prohibiting promoters and managers from engaging in any business that would create a conflict of interest and undermine the manager's duty to negotiate the highest purse possible of his fighter.

To determine whether a contract violates public policy, courts must look to the policies that have been adopted by legal processes and are reflected in state and federal constitutions, statutes, and the common law. *Rory v Continental Ins Co*, 473 Mich. 457, 471; 703 N.W.2d 23 (Mich. 2005). Ergashev claims that ¶ XXIV of the Agreement violates 15 U.S.C. §6308(b).[5] The Agreement does not give Plaintiff a direct or indirect financial interest in Ergashev's manager, Bogdanov. ¶ XIV of the

[5] §6308(b) provides that it is unlawful for (A) a promoter to have a direct or indirect financial interest in the management of a boxer; or (B) a manager (i) to have a direct or indirect financial interest in the promotion of a boxer; or (ii) to be employed by or receive compensation or other benefits from a promoter, except for amounts received as consideration under the manager's contract with the boxer.

Agreement states that the Ergashev is solely responsible for payment of all fees to his manager. [**Ex. B** ] The Agreement does not require Plaintiff to pay Bogdanov a manager fee. ¶ XXIV requires Ergashev to obtain Plaintiff's consent to a ***new*** manager, but does not create a financial relationship with or provide a benefit to Ergashev's existing management, and it likewise creates no financial relationship or provide a benefit to a prospective ***new*** manager.

¶ XXIV of the Agreement spells out why this consent is required:

> Fighter further acknowledges and agrees that Promoter's legitimate business interests, including, without limitation, Promoter's ability to promote first class combative sports events for Fighter and other fighters whom Promoter promotes, against world class opponents, at top venues, broadcast by top American and foreign broadcasters, requires a good faith business relationship with Fighter and his managers, advisors, consultants and representatives and that such representatives' cooperation, professionalism, reputation, compliance and relationship with Promoter is essential to the successful promotion of Fighter's career and that the same has been a material inducement to Promoter entering into this Agreement with Fighter.

Ergashev acknowledged Plaintiff's legitimate business interests to review in good faith the professionalism, reputation, compliance, and cooperation of a potential manager as part of Plaintiff's decision whether to consent, and that this was a material inducement to Plaintiff entering into the Agreement [**Ex B** ]. Casino venues operate in a highly regulated industry that does not permit any affiliation with a person with alleged ties to organized crime. Promoters are required to obtain a

casino vendor license if they regularly do business with a casino and are required to disclose any affiliation with any alleged organized crime affiliates.

A contract should not be construed as illegal if such a construction may be reasonably avoided. *Detroit Bank & Tr. Co. v Coopes*, 93 Mich. App. 459, 466; 287 N.W.2d 266 (1979). No reasonable construction of the Agreement results in a financial interest of Plaintiff in a ***new*** manager.

The Agreement is also not against public policy. Courts weigh several factors in determining whether a contract is contrary to public policy:

(a) the strength of that policy as manifested by legislation or judicial decisions,
(b) the likelihood that a refusal to enforce the term will further that policy,
(c) the seriousness of any misconduct involved and the extent to which it was deliberate, and
(d) the directness of the connection between that misconduct and the term.

Restatement (Second) of Contracts §178(3). The public policy must clearly outweigh the interest in enforcing the contract to void it on this basis. Restatement (Second) of Contracts §178(1).

There is no policy manifested in § 6308 (b) relating to consent and Ergashev cites no case law that a consent provision in a boxing promotional agreement constitutes a financial interest in a manager. Refusing to enforce the consent provision will not further the policy of § 6308 (b). The consent provision protects

the legitimate business interests of Plaintiff, does not constitute a direct or indirect financial benefit to Salita and is not a violation of §6308 (b) of the Ali Act.[6]

Every boxing industry promotional agreement has a purse bid clause, which provides that the promoter receives a fee if he or she does not obtain the rights to promote the event. In a purse bid situation, the boxer receives 100% of the purse and has an obligation to pay the promoter 25%. See World Boxing Council Rule 2 on Purse Offer Procedures. **[Ex. C,** World Boxing Council Rule 2**]**

It is customary in the boxing industry for a promotional agreement to have a purse bid clause, which provides that if a sanctioning organization orders a purse bid, the promoter receives a fee if he loses the right to earn money from promoting its fighter in a bout that would otherwise be covered by the promotional agreement. Indeed, if the Court finds that the purse bid provision violates the Ali Act and is unenforceable, almost every promotional agreement in the United States would likewise be rendered unenforceable.

¶ XXI of the Agreement on Purse Bids creates an exception to the ¶ XII grant of exclusivity to Plaintiff to promote all of Ergashev's bouts by allowing Ergashev's participation in a purse bid bout. [**Ex. B**]. In ¶ III of the Agreement, Ergashev agreed that his bouts would be conducted in conformity with the rules of the sanctioning

[6] While Plaintiff does not believe that consent provision violates the Ali Act, if the Court disagrees, Plaintiff alternatively argues that such provision should be severed in accordance with ¶ XXVII and as severed, the Agreement be found enforceable with respect to Plaintiff's exclusive right to promote Ergashev.

organizations and that he would fully comply with all such rules. In ¶ IX of the Agreement, Ergashev agreed to execute additional documents including bout agreements required by any sanctioning organizations.

Ergashev misreads 15 U.S.C §6308 in asserting that a promoter is only allowed to pay a boxer for the contracted purse to fight and therefore the purse bid provision is illegal. §6308 does not address purse bids and is limited to prohibiting the promoter from having a financial interest in the manager.

In ¶ XXI of the Agreement, Ergashev acknowledges that Plaintiff's promotional efforts are a significant contributing factor to Ergashev becoming eligible to participate in a purse bid bout and that the 25% fee to be paid to Plaintiff in the event Plaintiff loses the right to promote one of Ergashev's bouts due to a purse bid being ordered is "in consideration of Promoter's overall promotional obligations hereunder and with the understanding that Promoter will lose the opportunity to profit from said bout notwithstanding those efforts." Ergashev also acknowledged that the 25% fee bears a "relationship to the benefits realized by Fighter…"

Ergashev claims that these contractual provisions are evidence of a "plan to abuse" him in a way prohibited by the Ali Act. The years of effort and skill of Plaintiff as a promoter combined with Ergashev's success in the ring, have placed Ergashev in a position where the IBF offered him a mandatory eliminator bout,

which if he had accepted the bout and won would have resulted in him getting a world championship bout. [ECF No. 17, Page ID 4]. Ergashev alleges that the Agreement allows Plaintiff to abdicate his promotional responsibilities by underbidding, but this specious assertion ignores practical reality that the promoter of a boxing event is able to offer a number of advantages to the fighters its promotes, for example, by controlling the location of the fight to ensure the promoter's fighter is the hometown favorite, being aware of the selection and appointment of officials, controlling the hotel and airline tickets, fighter pickups, workout gyms, the number of timing of media interviews, etc. The simple reality is that after investing for years to get a fighter into a position to get an elimination bout or world title challenge, the promoter wants to give its fighter every possible advantage and therefore, with all other things being equal, promoters have an economic incentive to win purse bids.

If Plaintiff is not the highest bidder he can lose out despite his years of investment and work to develop Ergashev to be in a purse bid situation. There are numerous reasons a promoter may not win a purse bid. The promoter's network may not provide enough financial support in terms of proposed licensing fees, or the promoter may underestimate ticket sales in formulating the amount of its bid.

Nonetheless the promoter is entitled to be paid in consideration of all prior services. The purse bid provision does not violate the Ali Act.[7]

***2. The Promotional Agreement Is Not Illusory.***

Other than providing a definition of an illusory contract, Defendants cite no authority for their position. Unlike an illusory contract, the Agreement contains consideration and mutuality of obligation, hallmarks of a valid, enforceable contract. *Innovation Ventures v. Liquid Mfg.*, 499 Mich. 491, 508; 885 N.W.2d 861, 871 (Mich. 2016).

Plaintiff must offer a minimum number of bouts for Ergashev each year and for each bout, Plaintiff is obligated to pay Ergashev a "purse" pursuant to the terms of ¶ I (a) and (b). If Ergashev participates in the bout, Plaintiff *must* pay him the agreed purse. Since the inception of the Agreement, Ergashev received eight "purses" for eight bouts arranged by Plaintiff.

¶ I (b) does not "eviscerate" Plaintiff's contractual obligation to pay Ergashev the agreed upon "purse" amount if he participates in a bout. **[Ex B, ¶ I (b)].** In ¶ I (b), Ergashev acknowledges that "unanticipated circumstances" may make it "commercially unreasonable" for Plaintiff to offer a purse based on a variety of circumstances including, "unavailability of quality opponents, the imposition of a

[7] While Plaintiff does not believe that the purse bid provision violates the Ali Act, if the Court disagrees, Plaintiff alternatively argues that such provision should be severed in accordance with ¶ XXVII and as severed, the Agreement be found enforceable with respect to Plaintiff's exclusive right to promote Ergashev.

mandatory opponent by a sanctioning organization, the unavailability of television dates, the scheduling or competing sporting or other events, the effect of losses, injuries ….”

Plaintiff cannot alter unilaterally the “purse” agreed to be paid to Ergashev. To offer Ergashev less than the minimum purse, it has to be “commercially unreasonable” (or unprofitable for the promoter) and the offer must be “fair and reasonable given all of the then prevailing market conditions.” **[Ex. B, ¶ I (b)].** This language imposes on Plaintiff a continuing obligation to pay Ergashev if he agrees to a purse and participates in a bout. Nothing in ¶ I (b), or elsewhere in the Agreement, relieves Plaintiff of the obligation to pay Ergashev if he agrees to a purse and participates in a bout.

There are no set purse amounts in the Agreement. There are minimums and a requirement to negotiate in good faith a purse for each bout. The Agreement allows numerous factors which affect a boxer’s marketability to be taken into account, not the least of which is Ergashev’s opponent—is he fighting Mike Tyson or some unknown opponent. A minimum purse may not be commercially reasonable in certain circumstances, for example, if the fighter has lost five fights in a row.

In *Echols v Pellulo*, 377 F. 3d 272, 277 (3rd Cir. 2004), the promotional agreement provided that for each bout the boxer and promoter would mutually agree on a purse. The boxer challenged the contract on the grounds of indefiniteness

because there was no price set for each bout. The Court rejected the challenge because the material obligation of the promoter was to promote a certain number of bouts each year and to make a bona fide offer of a purse for each bout. Factors that could be taken into account to alter a price did not render the contract indefinite. The parties could satisfy the agreement without any bouts occurring so long as the boxer continued to deal exclusively with the promoter and the promoter continued to make the required number of bona fide offers. *Id.* at 276. Like the contract in *Echols*, Ergashev breaches the Agreement if he deals with a promoter other than Plaintiff, and Plaintiff breaches the Agreement if he fails to make the requisite number of bona fide bout offers per year. *Id.* at 277–78. Like *Echols*, negotiating the price for a bout at a later time allows the parties to arrive at a more informed decision to address current market factors for the bout that is being made. *Id.* at 279.

Plaintiff has performed its material obligation to make an offer to Ergashev for a minimum number of bouts per year and cannot terminate the Agreement if Ergashev wins and continues to win. If Ergashev loses a bout or continues losing bouts, Plaintiff can terminate the Agreement because it may no longer make financial sense to proceed. The hypothetical cited by Ergashev does not withstand scrutiny. No rational promoter would terminate an agreement with a boxer with a 19-0 win-lost record due to disqualification from a head butt in the fourth round.

Promoters lose money on 99% of their fighters and only make money if the fighter is ranked in the top 10 and fights another top 10 fighter, or challenges for the world title, and/or defends a world title. This gives the promoter a chance to make money and the provision for termination allows the promoter to terminate the contract if it no longer makes business sense to continue.

Defendants' insinuations that Plaintiff is one of the corrupt promoters that Congress was concerned with when it enacted the Ali Act is false. Mr. Salita is an honest promoter who was a fighter himself. He has been a on both sides of the table, is not corrupt and runs an ethical, lawful business and has legitimate business interests for not wanting to be associated with alleged criminals, drug traffickers or money launderers. Upon information and belief Ergashev wants to hire as part of his management team, Daniel Kinahan, and Kinahan has said that he is financing Ergashev's defense. It has been alleged in federal proceedings that Kinahan is part of Ireland's Kinahan Cartel, known by law enforcement as the Kinahan Organized Crime Group, and that Kinahan is banned from entering the U.S. by U.S. Customs and Border Protection due to narco-terrorism concerns.[8]

Defendants' argument that the circumstances under which Plaintiff may terminate the Agreement render the contract illusory is specious. The Agreement is

[8] See *Heredia Boxing Management, Inc. v. MTK Global Sports Management LLC, Daniel Kinahan et al*, Central District of California, Case No. 5:20-cv-02618, ECF 20, Amended Complaint.

unambiguous and should be enforced as written. *Rory v. Cont'l Ins. Co.*, 473 Mich. 457, 468; 703 N.W.2d 23, 30 (Mich. 2005). Ergashev is free and competent to contract, the Agreement was voluntarily and fairly made and is valid and enforceable. *Id.* at 468, *citing Terrien v. Zwit*, 467 Mich. 56, 71; 648 N.W.2d 602 (Mich. 2002), quoting *Twin City Pipe Line Co. v. Harding Glass Co.*, 283 U.S. 353, 356, 51 S.Ct. 476, 75 L.Ed. 1112 (1931).

Contrary to Defendants' assertion, Plaintiff does not have the unilateral right terminate the contract. The Agreement allows Plaintiff to terminate it if Ergashev loses a bout (¶ XIII), if Ergashev becomes disabled or unable to participate in bouts due to license suspension, incarceration, or other legal restraint (¶ VIII), and if Ergashev fails a medical examination or drug and steroid screening (¶ XVIII). [**Ex. B**].

It is of no consequence that Ergashev agreed Plaintiff would have the right to terminate the Agreement if he loses a bout. Parties are free to contract as they see fit. *Quality Prod. & Concepts Co. v. Nagel Precision, Inc.*, 469 Mich. 362, 369; 666 N.W.2d 251, 256 (Mich. 2003). Defendants cite no authority for their position that this provision renders the Agreement illusory.

Finally, Defendants refer to the risk Ergashev takes when stepping into the ring. In ¶ XVII (c) Ergashev represented that he entered the Agreement with full knowledge of the risk of severe injury and death. This risk has nothing to do with

the enforceability of the Agreement. Defendants' assertion that the Agreement is illusory should be rejected.

**E. Plaintiff States a Claim for Tortious Interference with Contract.[9]**

Defendants' assert incorrectly that because Bogdanov is not alleged to be an independent third party, a cause of action for tortious interference with contract is not stated. [*See* ECF No. 30, p. 22]. The elements of tortious interference with a contract are (1) the existence of a contract; (2) a breach of the contract; and (3) an unjustified instigation of the breach by the other party. *Id*. at 366-367; *see also* M. Civ. JI 125.01 (adding the damage element to the cause of action). To prove tortious interference, a party must allege "the intentional doing of a *per se* wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another." *CMI Int'l, Inc v. Intermet Int'l Corp.*, 251 Mich. App. 125, 131; 649 N.W.2d 808 (2002).

Taking all of Plaintiff's allegations as true, Plaintiff has sufficiently pled claims for Tortious Interference with Contract. In numerous instances, Plaintiff has pled the existence of the Agreement. [Plaintiff's FAC, ECF No. 23, Page ID 1-4, ¶¶ 1, 3, 12, 17.] Similarly, Plaintiff has pled that Defendants breached the Agreement,

[9] Defendants only address Plaintiff's claim for Tortious Interference with Contract. In Michigan, tortious interference with a contract is a cause of action distinct from tortious interference with a business relationship or expectancy. *Badiee v. Brighton Area Schools*, 265 Mich. App. 343, 365-367; 695 N.W.2d 521 (2005). Plaintiff pleads both. Since Defendant only addresses the interference with contract portion, Plaintiff will not address the business relationship argument.

particularly by violating the exclusivity provision, resulting in damages. [*id.* at ¶¶ 18–19, 56–64.] Lastly, Plaintiff has asserted that Bogdanov was "fully aware" of the Agreement's exclusivity yet proceeded to intentionally procure Ergashev's breach by arranging an unsanctioned bout on September 21, 2020. *Id.* at ¶¶ 40, 41, 56, 58. Bogdanov negotiated the Agreement on behalf of Defendant Ergashev. FAC, ECF No. 23 at ¶ 40. Plaintiff has properly alleged the necessary elements for this claim.

Moreover, Defendants' argument that Bogdanov cannot be sued as an agent of Ergashev relies on case law that discusses the relationship of corporate agents – not third-party relationships as is the case here. In *Cedroni Assoc. v. Tomblinson, Harburn Assoc.*, 290 Mich. App. 577, 607; 802 N.W.2d 682 (2010), *rev'd on other grounds*, 492 Mich. 40 (2015), the court cited *Reed v. Michigan Metro Girl Scout Counsel*, 201 Mich. App. 10, 13; 506 N.W.2d 231 (1993), and stated the following in its tortious interference analysis:

> For purposes of examining and applying this particular principle of law, we first question whether it is proper to classify defendant as a "corporate agent" rather than a "third party" relative to the relationship between plaintiff and the DCS. The caselaw addressing the principle has almost always been in the context of a situation in which the defendant was an actual employee or officer of the corporation or entity involved in the relationship or prospective relationship.

Bogdanov is not an employee or officer of Ergashev and this is not a corporate situation. As such, this argument misses the mark and is not grounds to dismiss this claim.

**F. A Claim for Accounting is Stated.**

Under Michigan law, "a demand for accounting is a free standing equitable cause of action, with elements that must be alleged and proven." *Lim v. Miller Parking Co.*, 548 B.R. 187, 207 (E.D. Mich. 2016). These elements are: (1) Defendants have control of money, property, and business opportunities belonging, in whole or in part, to the Plaintiffs; (2) the determination of what is due to the Plaintiffs involves difficult inquiries; (3) the information is in the possession of the Defendants; and (4) Plaintiffs cannot reasonably be expected to ascertain the amount due, even with liberal discovery. *Basinger v. Provident Life & Accident Insurance Company*, 67 Mich. App. 1 (1976).

The FAC satisfies all of the elements. [FAC, ECF No. 23 at ¶¶ 65–67.] The Court enjoined Ergashev from participating in a bout on November 16, 2020 in Moscow. [ECF No. 17, Page ID.133, p.4]. Ergashev disobeyed the injunction and fought. [**Ex. D,** BoxRec: Shohjahon Ergashev.] Plaintiff has no information relating to Ergashev's purse or the promoter's revenue. This bout occurred in Russia and information needed to compute damages may be located in Russia. Defendants are in the exclusive possession of financial information that relates to the November 16, 2020 bout, and without this information, Plaintiff is unable to calculate the amount it is rightfully due under the Agreement. Plaintiff has alleged all necessary elements of an accounting claim.

### G. Injunctive Relief Is Appropriate, Regardless of How Labeled.

Plaintiff inadvertently labeled "Count VI", as a claim for injunctive relief. The FAC alleged the factors necessary for injunctive relief and the Court ruled that these factors were met in issuing a temporary restraining order and a preliminary injunction. Plaintiff can re-characterize Count IV as a claim for relief.

## IV. CONCLUSION

WHEREFORE, Plaintiff, Salita Promotions Corp., respectfully requests that this Court deny Defendants' Motion in its entirety, and grant Plaintiff such further relief the Court deems just and equitable.

Respectfully submitted,
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Dated: March 24, 2021

**CERTIFICATE OF SERVICE**

I hereby certify that on March 24, 2021, my assistant, electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the counsel on record.

Respectfully submitted,

CLARK HILL PLC

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