



IN THE COURT OF CHANCERY FOR THE STATE OF DELAWARE

_____	)	
ACT III MANAGEMENT, LLC	)	
Plaintiff,	)	
	)	
v.	)	
	)	
PANERA BREAD COMPANY	)	C.A. 2019-0111-MTZ
Defendant,	)	
	)	
and	)	DECLARATORY RELIEF
	)	PURSUANT TO
JIM DOBSON, JAMES KYLE PHILLIPS	)	10 DEL. C. §6501 <i>et seq.</i>
KRISH GOPALAKRISHNAN AND	)	AND 10 DEL. C. § 341
PANERA, LLC	)	PUBLIC VERSION
	)	FILED: February 19, 2019
Interested parties.	)	
_____	)	

**VERIFIED COMPLAINT**

COMES NOW, Plaintiff Act III Management, LLC (“Act III”) by and through undersigned counsel, with this action against Panera Bread Company (“Panera”) for breach of the parties’ agreement and seeking specific performance, declaratory relief and damages, and in support thereof states as follows:

***Introductory Statement***

Plaintiff Act III is a portfolio management company managing investments in the restaurant, hospitality and entertainment industries. Act III’s principal, Ronald Shaich, founded defendant Panera and served as its CEO for more than 30 years until his departure as board chair last year. Panera entered into a series of

agreements with Mr. Shaich at the time of his transition. In one, Mr. Shaich, through Tatte Act III, LLC, purchased Panera's interest in Tatte Bakery & Café ("Tatte"). As part of that agreement, Panera agreed that Mr. Shaich and his Act III entity could hire two Panera employees with non-competes.

Almost immediately, however, Panera began taking steps to block the success of Act III and Tatte. For example, in 2018, Panera hired Tatte's president, Karen Kelley, notwithstanding that she had a non-compete with Tatte. In the course of that matter, Panera informed Act III that, given the long-standing and ongoing relationship between Panera and Tatte, there would be no basis to enforce a non-compete.

Following that, in December 2018, Panera and Shaich set forth the overarching framework for the movement of people from Panera to Tatte and other entities owned or controlled by Shaich. In that written agreement (the "Settlement Agreement"), Panera expressly acknowledged that Mr. Shaich and his Act III entities could solicit current Panera employees for employment. In the Settlement Agreement, the parties agreed to follow a specific process for any such solicited Panera employees with a Panera non-compete (Panera has a practice of attempting to place all of its mid-and-senior-level employees under non-competes regardless of whether the employees possess any trade secrets, etc.). Pursuant to that process, the parties agreed that Act III would provide Panera written notice of any

anticipated hire(s) at least two weeks before the anticipated start date(s). The Settlement Agreement then obligates Panera to consider in good faith whether it is reasonably necessary to restrict any such employee.

On February 4, 2019, Mr. Shaich informed Panera's owner that he would be offering employment to three information technology employees with Panera non-competes. On February 6, 2019, Mr. Shaich informed Panera's owner that Act III would be delivering the requisite notice under the Settlement Agreement for the first three hires. Mr. Shaich delivered the notice on February 8, 2019 (the "Notice"). The Notice explained that Panera lacked a basis to enforce the non-competes and that Act III would work with Panera to effect an orderly transition. The Notice also explained that Act III has no interest in any Panera information, and is hiring the first three employees for their general skills and not for any information they possess. Act III also stated in the Notice that it would work with Panera with respect to any concerns Panera might have.

Panera categorically rejected Act III's request without considering it in good faith or otherwise and without objectively determining that it is reasonably necessary to enforce the non-competes under governing law. Instead, senior Panera management and personnel immediately interrogated and challenged the employees about their decision to leave Panera for Act III, defamed and disparaged Mr. Shaich and his partners to the employees and challenged Act III's ability to

succeed, demanded permission to image the employees' iPhones, threatened that their actions would lead to litigation and that Panera was preparing for such litigation, fired them on the spot, escorted them from the building and informed them that Panera would seek to enforce its non-competes.

Given that Act III needs to hire these three individuals and ensure that Panera follows the Settlement Agreement here and in the future, Act III brings this action. Act III seeks an order that Panera specifically perform its obligations under the Settlement Agreement, and a declaratory judgment that Panera breached the Settlement Agreement by failing to act in good faith as set forth therein, that the non-competes are unenforceable and that Panera therefore lacks any basis to conclude that their enforcement is "reasonably necessary" under existing law.

The present action will address the enforceability of Panera non-competes generally and specifically those of the first three hires, Jim Dobson, James Kyle Phillips and Krish Gopalakrishnan. Because Act III's overarching litigation with Panera will address the rights of these three hires, they are "interested parties" pursuant to Rule 19(a) of the Rules of Civil Procedure for the Superior Court of the State of Delaware. Accordingly, Act III has included the three hires as "interested parties" as is expressly provided for by Rule 19(a).

By this Complaint, Act III seeks specific performance of the Settlement Agreement to avoid irreparable harm and a declaratory judgment (1) that the

Settlement Agreement is valid and requires Panera to consider in good faith whether it is reasonably necessary to enforce any given non-compete and (2) that the Panera non-competes of the first three hires are unenforceable and therefore it is not reasonably necessary for Panera to refuse to waive them. Act III also brings a count for Panera's breach of the Settlement Agreement and a count for tortious interference as Panera lacks a basis to seek to enforce these unenforceable non-competes and is only doing so to impermissibly injure Act III.

### *The Parties*

1. Plaintiff Act III is a Delaware limited liability company having its principal office at 23 Prescott Street, Brookline, Massachusetts. Act III is the assignee of Ronald Shaich ("Shaich") pursuant to the Settlement Agreement for purposes of enforcing the requirements of the Agreement in this litigation. Act III manages a collection of investments in the restaurant, hospitality and entertainment industries. The portfolio of companies managed by Act III includes Tatte, which is an Act III affiliate company purchased from Panera in January 2018.

2. Defendant Panera is, on information and belief, a Delaware corporation with its executive offices in Needham, Massachusetts.

3. Interested Party Jim Dobson ("Mr. Dobson") is an individual to whom Act III has extended an offer of employment and who signed a Panera non-compete during the course of his employment at Panera. Mr. Dobson has executed

a consent submitting to the personal jurisdiction of this Court with respect to this action, a copy of which is attached hereto as Exhibit A.

4. Interested Party James Kyle Phillips (“Mr. Phillips”) is an individual to whom Act III has extended an offer of employment and who signed a Panera non-compete during the course of his employment at Panera. Mr. Phillips has executed a consent submitting to the personal jurisdiction of this Court with respect to this action, a copy of which is attached hereto as Exhibit A.

5. Interested Party Krish Gopalakrishnan (“Mr. Gopalakrishnan”) is an individual to whom Act III has extended an offer of employment and who signed a Panera non-compete during the course of his employment at Panera. Mr. Gopalakrishnan has executed a consent submitting to the personal jurisdiction of this Court with respect to this action, a copy of which is attached hereto as Exhibit A.

6. Interested Party Panera LLC is, on information and belief, a wholly owned subsidiary of Panera Bread and is a limited liability company organized under the laws of Delaware. Panera LLC is party to the non-competes that the three Employees signed.

### ***Jurisdiction and Venue***

7. This is a civil proceeding seeking a declaration of rights and other relief arising from Panera’s breach of the Settlement Agreement.

8. Personal jurisdiction over Plaintiff and Defendant is proper because both parties are incorporated or organized in Delaware and the parties consented to the personal and exclusive jurisdiction of the Delaware courts in the Settlement Agreement. Additionally, personal jurisdiction over the Interested Parties is proper because the three Employees have expressly consented in writing to the personal jurisdiction in Delaware with respect to this action and Panera LLC is organized under the laws of the State of Delaware.

9. This Court possesses subject matter jurisdiction pursuant to 10 Del. C. § 341.

*Facts Common to All Counts*

**I. Mr. Shaich Founds and Builds Panera**

10. Mr. Shaich and Panera are not strangers. Mr. Shaich is a long-time entrepreneur in the café and bakery industry and was instrumental in the rise of Panera in the late 1990s and early 2000s. He began his first business as a student at Clark University in Worcester, Massachusetts, running a convenience store for students. After earning an M.B.A. from Harvard in 1978, he eventually opened Cookie Jar bakery shops in the Boston area. Mr. Shaich then merged his bakery shops with Au Bon Pain, which at the time was a fledgling bakery shop with only three locations.

11. Under Mr. Shaich's leadership as CEO, Au Bon Pain opened hundreds of bakery-cafes along the east coast of the United States and overseas. In 1993, Au Bon Pain acquired Saint Louis Bread Company, which was a 19-store operation that baked its own breads and sold sandwiches made from them. Mr. Shaich recognized the company's potential and recommended selling Au Bon Pain to further focus on and develop Saint Louis Bread Company. Au Bon Pain was sold in 1999 and Mr. Shaich re-branded Saint Louis Bread Company as Panera Bread. Shaich became Panera's CEO.

12. Under Mr. Shaich's leadership, Panera was a huge success. It reached the \$1 billion annual sales mark by 2003. By 2010, there were nearly 1,500 Panera bakery-café locations, and today Panera has more than 2,000 bakery-cafes, 100,000 employees and annual sales of more than \$5 billion. Panera was the best-performing restaurant stock of the past 20 years, generating annualized returns in excess of 25% over the past two decades and delivering a total shareholder return 44 times better than the S&P 500 from July 18, 1997, to July 18, 2017 (when Mr. Shaich led a take-private transaction for Panera).

13. Mr. Shaich served as Panera's CEO until 2010. He returned as CEO in early 2012 and helped to re-brand Panera and further expand its growth opportunities. During his 30 years as Panera's CEO, Mr. Shaich was instrumental in the company's ventures, including its sales, marketing, operations and



technology visions. Additionally, as a result of his 40 years in the café-bakery industry, Mr. Shaich is very familiar with all facets of in the industry and has acquired substantial industry knowledge and know-how.

## **II. JAB Holding Purchases Panera, and Mr. Shaich Departs as CEO**

14. Panera's continued growth and success led to its eventual sale. On or around July 18, 2017, JAB Holding Co. purchased Panera for approximately \$7.5 billion. As part of the transaction, Mr. Shaich agreed to remain as CEO.

15. Mr. Shaich continued to serve as Panera's CEO through December 2017. On or around December 12, 2017, Panera entered into a Termination Agreement with Mr. Shaich. Pursuant to that agreement, Mr. Shaich stepped down as Panera's CEO, but agreed to continue to serve as the Chairman of Panera's Board of Directors.

## **III. Panera Sells Tatte to A Shaich-Controlled Entity**

16. In or around the fourth quarter of 2015, Panera acquired a controlling interest in Tatte, which Panera described as a "five-unit, upscale bakery-café concept offering breakfast and lunch in Boston, Cambridge and Brookline, Massachusetts. Tatte appeals to high-end consumers with its artisanal pastries, homemade breads, salads and sandwiches."

17. During his time as Panera's CEO, Mr. Shaich also supervised Tatte's business and operations. Upon stepping down as Panera's CEO, Mr. Shaich

became interested in acquiring Tatte. Although Tatte, like Panera, is a bakery-café concept, it does not compete with Panera. Tatte currently operates just 11 locations, all in the Boston area, compared to the thousands of locations that Panera operates nationally. Tatte is also an “upscale” concept with restaurant-quality chefs in every café that “appeals to high end consumers,” and targets urban locations compared to Panera’s suburban focus.

18. On or around January 11, 2018, Tatte Act III, LLC (“Tatte Act III”), an affiliate of Act III that is owned and controlled by Shaich, purchased 7,312.5 units in Tatte Holdings, LLC (the “Tatte Acquisition Agreement”), which at the time represented 90 percent of Panera’s interest in Tatte and 55.72 percent of the total interest in Tatte. The Tatte Acquisition Agreement expressly permitted Tatte Act III to hire up to two Panera employees, including those with non-competes. Tatte Act III hired Keith Pascal (“Mr. Pascal”), a former Panera employee and Mr. Shaich’s current business partner, pursuant to the Tatte Acquisition Agreement. Mr. Pascal also currently works for Act III.

19. At the time Tatte Act III acquired its interest in Tatte, Mr. Shaich still served as the Chairman of Panera’s Board. Panera knew and understood that Mr. Shaich was intimately familiar with all aspects of Panera’s business as a result of his long-time leadership of the company and also knew and understood that he would use his industry knowledge to continue growing Tatte’s business.

#### **IV. Panera and Tatte Reach An Agreement Regarding Future Employment Disputes**

20. Following Tatte Act III's January 2018 acquisition of a controlling interest in Tatte, Karen Kelley ("Ms. Kelley") served as Tatte's President. Ms. Kelley had signed a non-compete.

21. Unbeknownst to Tatte, Panera met with Ms. Kelley about joining Panera in or around July or August 2018. Panera did so without contacting Mr. Shaich, even though Mr. Shaich continued to serve as Panera's Chairman of the Board. Ms. Kelly left Tatte to join Panera on or around August 10, 2018. At the time, Panera asserted that Ms. Kelly's Tatte non-compete was unenforceable because of the long-standing and ongoing relationship between Tatte and Panera.

22. On or around December 6, 2018, Shaich, Panera, Tatte Holdings, LLC and Tatte Act III entered into the Settlement Agreement, a copy of which is attached hereto as Exhibit B. In addition to resolving Tatte's claims related to Ms. Kelley, Section 6 of the Settlement Agreement expressly contemplates that Mr. Shaich, Tatte Act III, and other entities in which Mr. Shaich directly or indirectly owns a controlling interest (the "Act III Entities") may hire Panera employees in the future, including those with non-competition agreements.

23. Section 6 of the Settlement Agreement explicitly provides that the Act III Entities "may solicit past, current and future employees of Panera for

employment with an Act III Entity.” The same provision also expressly permits any Act III Entity to offer employment to past, current and future employees of Panera. The Act III Entities are permitted to do so notwithstanding any prior non-solicitation provisions.

24. Pursuant to Section 6 of the Settlement Agreement, if any Act III Entity offers employment to a Panera employee that is subject to non-competition covenants with Panera, the Act III Entity must provide written notice of the employment offer to Panera at least two weeks before the hire’s start of employment with the Act III Entity.

25. The Settlement Agreement further provides that during this two-week period, Panera may: (1) negotiate terms for the employee to remain employed by Panera; or (2) decide that it will waive the terms of any applicable non-competition agreement. In doing so, Panera “shall consider in good faith whether it is reasonably necessary to restrict any such employee from accepting an offer of employment from an Act III Entity under an applicable non-competition agreement in order to protect a legitimate Panera business interest recognized under applicable law, such as the protection of its confidential and proprietary information, or its vendor and franchise relationships (emphasis added).” Prior to the conclusion of the two-week period, Panera must notify the Act III Entity of its decision in writing.

26. Additionally, Section 6 of the Settlement Agreement permits the Act III Entities to employ two Panera employees, Bryan Griffith (“Mr. Griffith”) and Kat Ryder (“Ms. Ryder”), without following the above-described procedures and without regard to the existing non-competes in place regarding Mr. Griffith and Ms. Ryder. Act III subsequently hired Mr. Griffith and Tatte hired Ms. Ryder.

#### **V. Act III Offers Employment to Panera Employees**

27. In early February 2018, Act III made written offers of employment to five Panera employees. All of the employees were working in information technology roles for Panera. Three of the employees – Jim Dobson, James Kyle Phillips and Krish Gopalakrishnan (collectively, the “Employees”) – have six-month non-competition agreements with Panera. These Panera non-competition agreements include a list of entities that Panera perceives to be its competitors. Neither Act III nor Tatte is on the list. The two other employees do not have non-competition agreements with Panera.

28. Act III offered to hire Mr. Dobson as Senior Director of Engineering, Mr. Phillips as Vice President of Product Management, and Mr. Gopalakrishnan as Vice President, Enterprise Architecture and Group Chief Technology Officer.

29. As Senior Director of Engineering, Mr. Dobson will work with Act III’s Group CIO to lead software development and to implement management’s directives regarding Act III’s current and future software applications for potential

use in the Act III portfolio as well as for the broader restaurant, retail and entertainment industries.

30. As VP, Product Management, Mr. Phillips will work with the Act III Group CIO to implement management's directives regarding Act III's current and future technology with regard to the design and development of consumer facing technology products for Act III for potential use in the Act III portfolio as well as for the broader restaurant, retail and entertainment industries.

31. As Principal Enterprise Architect and Group CTO, Mr. Gopalakrishnan will work with the Act III Group CIO to implement management's directives regarding Act III's current and future technology, enterprise architecture and data science initiatives for potential use in the Act III portfolio as well as for the broader restaurant, retail and entertainment industries. In this capacity, Mr. Gopalakrishnan will establish technology and architecture standards and practices to be adhered to in the development of new digital apps and services at Act III.

32. The Employees' anticipated start date at Act III is March 1, 2019.

33. The Employees possess general information technology skills that they have developed over the course of their careers, but do not possess any Panera trade secrets. Accordingly, each of the Employees' Panera non-competes is unenforceable.

34. Act III will have protections in place to guard against requests for Panera information ever being made of the Employees. Act III will also require as a condition of employment that the Employees certify that they do not possess any confidential Panera information and that they will not disclose any confidential Panera information during the course of their employment at Act III.

35. On February 4, 2019, Mr. Shaich informed Panera's owner, JAB, that one of his entities intended to hire a number of Panera employees.

36. On February 5, 2019, the three Employees gave notice to Panera that they would be leaving Panera for Act III.

37. On February 6, 2019, Mr. Shaich informed Panera's owner, JAB, that its Notice under the Settlement Agreement would be issued imminently.

38. On February 8, 2019, Act III delivered its Notice to Panera under the Settlement Agreement. A copy of the Notice is attached hereto and incorporated herein as Exhibit C. The Notice explained that the non-competes are unenforceable under governing Missouri law because the three Employees possess no trade secrets. The Notice also recited that Act III has no interest in any Panera information that any of the three Employees might have and that, as a condition of employment, the three Employees would agree not to bring any Panera information to Act III. Act III also expressed in its Notice that it would work with Panera to assess any issues or concerns that Panera might have.

39. Rather than assess the Notice in good faith, Panera did the opposite. By the end of February 8, 2019, after having the Notice for less than two hours, Panera retaliated swiftly and unambiguously. Senior personnel, including Panera's CEO, interrogated the Employees about their decision to leave Panera and join Act III and told them that their actions would lead to litigation. Panera also directly made defamatory statements about Mr. Shaich, Mr. Pascal and the Act III Entities to the Employees, including by challenging Act III's ability to succeed. Panera then requested to image the iPhones and other personal devices of the Employees and had them sign legal documents relating to the same. Panera terminated the Employees, handed them legal letters threatening to enforce the non-competes in relation to their employment with Act III and escorted them from the premises.

40. Panera also undertook efforts to determine if other employees had plans to join Act III, including by searching the emails of any employees it believed may have communicated with Mr. Shaich in a scorched-earth campaign to intimidate employees from joining Act III.

41. On February 13, 2019, Mr. Shaich contacted a high-ranking JAB official in an attempt to address any concerns that Panera had about Act III hiring the Employees. The official informed Mr. Shaich that Panera would be enforcing the non-competes through litigation.



**VI. It Was Not Reasonably Necessary for Panera to Withhold its Waiver of the Non-Competes and Panera Failed to Proceed in Good Faith**

42. Act III duly delivered the Notice to Panera.

43. Rather than determine whether enforcement of the three non-competes is reasonably necessary or consider the Notice in good faith, Panera terminated the Employees and made it clear it would enforce the non-competes.

**COUNT I—Specific Performance**

44. Act III hereby repeats, repleads and incorporates herein by reference as though fully set forth herein each and every allegation contained in paragraphs 1 through 43, inclusive, of this Complaint.

45. The Settlement Agreement is valid and enforceable and it governs and specifies the relationship between each of the Act III Entities, including Act III, on the one hand, and Panera, on the other, regarding the hiring by Act III of Panera employees.

46. Act III, and all affiliated entities, have substantially complied with all of the terms of the Settlement Agreement.

47. Panera breached the Settlement Agreement by (a) refusing to waive the non-competes even though they are unenforceable and their enforcement is not reasonably necessary; and (b) failing to consider the Notice in good faith.

48. If Panera is not ordered to comply with the Settlement Agreement, both now and in the future, Act III will be irreparably harmed by being prevented from hiring employees that want to work for Act III, have substantial industry knowledge and experience and can help grow Act III's various business ventures.

49. Act III lacks an adequate remedy at law. Accordingly, Act III is entitled to specific performance to enforce these rights.

50. Act III specifically requests that the Court order Panera to comply with the terms of the Settlement Agreement, now and in the future, including by:

(a) requiring that Panera assess in good faith whether it is reasonably necessary for Panera to restrict the Employees' employment at Act III and make the same good faith assessment as required by the Settlement Agreement whenever Act III provides notice that it intends to hire a Panera employee; and

(b) ordering Panera to cease and desist from engaging in bad faith conduct toward both Act III and potential Act III hires, including by harassing, threatening, intimidating and retaliating against potential Act III hires and defaming Act III, its officers and employees, and its various business ventures.

## **COUNT II—Declaratory Judgment**

51. Act III hereby repeats, repleads and incorporates herein by reference as though fully set forth herein each and every allegation contained in paragraphs 1 through 50, inclusive, of this Complaint.

52. The Settlement Agreement is valid and enforceable and it governs and specifies the relationship between each of the Act III Entities, including Act III, on the one hand, and Panera, on the other, regarding the hiring by Act III of Panera employees.

53. Act III, and all affiliated entities, have substantially complied with all of the terms of the Settlement Agreement.

54. Panera breached the Settlement Agreement by (a) refusing to waive the non-competes even though they are unenforceable and their enforcement is not reasonably necessary; and (b) failing to consider the Notice in good faith.

55. Act III lacks an adequate remedy at law. Act III has been and will be irreparably harmed if such breaches continue. Accordingly, Act III is entitled to declaratory relief to enforce those rights.

56. Act III specifically requests that this Court issue a declaratory judgment that:

- (a) the Settlement Agreement is valid and enforceable;
- (b) each of the Panera non-competes of Mr. Dobson, Mr. Phillips and Mr. Gopalakrishnan is unenforceable for the reasons set forth in the Notice;
- (c) it is therefore not reasonably necessary for Panera to attempt to restrict the Employees' employment at Act III; and
- (d) Panera failed to act in good faith pursuant to the Agreement.

### **Count III—Breach of Contract**

57. Plaintiff hereby repeats, repleads and incorporates herein by reference as though fully set forth herein each and every allegation contained in paragraphs 1 through 56, inclusive, of this Complaint.

58. The Settlement Agreement is valid and enforceable and it governs and specifies the relationship between Act III, on the one hand, and Panera, on the other, regarding the hiring by Act III of Panera employees.

59. Act III has fully performed all of its promises, performances, duties and obligations under the Settlement Agreement.

60. Panera breached the Settlement Agreement by (a) insisting on enforcing the three Employees' non-competes even though it is not reasonably necessary for Panera to do so; and (b) failing to assess in good faith the request that it waive the non-competes.

61. As a direct and proximate result of Panera's breaches as set forth herein, Act III has suffered irreparable harm, along with compensatory and other damages.

### **Count IV—Tortious Interference With Contractual Relations**

62. Act III hereby repeats, repleads and incorporate herein by reference as though fully set forth herein each and every allegation contained in paragraphs 1 through 61, inclusive, of this Complaint.

63. In February 2018, Act III offered employment to the Employees and the Employees accepted the offers.

64. Panera's actions and omissions as set forth herein have knowingly, intentionally and maliciously interfered with Act III's contract rights with each of the Employees. In particular, Panera is threatening the Employees with legal action and otherwise intimidating and harassing the Employees, defaming Mr. Shaich, Mr. Pascal and the Act III entities all in an effort to wrongfully interfere with and harm Act III and its contractual relationships with the three Employees.

65. Panera's actions as set forth herein were not privileged or justified under applicable law.

66. As a result of Panera's actions, the Employees cannot perform the responsibilities set forth in their offers of employment.

67. As a direct and proximate result of Panera's interference with Act III's contractual relations as alleged herein, Act III has suffered direct and consequential damages, including, without limitation, damages resulting from the Employees' inability to start employment with Act III, expenditures of time, money, and lost profits, and attorneys' fees and costs and other damages in an amount according to proof at trial.

**WHEREFORE**, Act III prays that this Honorable Court:

(A) Enter an Order declaring that (i) the Settlement Agreement is valid and enforceable; (ii) Panera must comply with all aspects of the Settlement Agreement with respect to the Employees and in the future; (iii) each of the Panera non-competes of Mr. Dobson, Mr. Phillips and Mr. Gopalakrishnan is unenforceable for the reasons set forth in the Notice; (iv) it is therefore not reasonably necessary for Panera to attempt to restrict the Employees' employment at Act III; and (v) Panera failed to act in good faith pursuant to the Agreement;

(B) Enter judgment for Act III on all counts;

(C) Award damages to Act III in an amount to be proven at trial, plus costs, attorneys' fees, and prejudgment interest beginning from the date of breach and post judgment interest

(D) Award any and all other relief that this Court deems equitable and just.

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