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IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

PULERA COLLISION, INC., a Wisconsin Corporation, ARMANDO'S COLLISION CENTER, INC., a Wisconsin Corporation, JAY-BEE COLLISION REPAIR CENTER, INC., a Wisconsin Corporation)
Plaintiffs,)
v.)
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, an Illinois Mutual Insurance Company)
Defendant.)

No. 16 CH 821
Judge Luis A. Berrones
JURY DEMAND

FILED
NOV 04 2016
Keith Brim
CIRCUIT CLERK

FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

NOW COMES the Plaintiffs PULERA COLLISION, INC., a Wisconsin Corporation, ARMANDO'S COLLISION CENTER, INC., a Wisconsin Corporation, and JAY BEE COLLISION REPAIR CENTER, INC., a Wisconsin Corporation, by and through their attorneys, NOVOSELSKY LAW OFFICES and JONATHAN NOVOSELSKY, P.C. and for their FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF against Defendant, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, an Illinois Mutual Reserve Insurance Company, in support thereof, states as follows:

PARTIES

1. Plaintiff PULERA COLLISION, INC. ("Pulera"), is a Wisconsin Corporation headquartered in Kenosha County in the State of Wisconsin.
2. Plaintiff ARMANDO'S COLLISION CENTER, INC. ("Armando's"), is a Wisconsin Corporation headquartered in Kenosha County in the State of Wisconsin.
3. Plaintiff JAY-BEE COLLISION REPAIR CENTER, INC. ("Jay-Bee"), is a Wisconsin Corporation headquartered in Kenosha County in the State of Wisconsin. The entities

described in the foregoing paragraphs are collectively referred to as “Plaintiffs”.

4. Defendant STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY (“State Farm”), is an Illinois Mutual Reserve Insurance Company headquartered in Bloomington, Illinois does business throughout the State of Illinois and nationwide.

VENUE

5. Venue is proper pursuant to 735 ILCS 5/2-101 as State Farm was at all times relevant to this action headquartered in the State of Illinois and remains headquartered in the State of Illinois. Further, Plaintiffs do business with consumers in Lake County, Illinois.

6. An actual case or controversy has arisen between the parties.

7. Plaintiffs have been injured by State Farm’s conduct, described herein, and have suffered damages resulting therefrom.

STATEMENT OF FACTS

8. Defendant State Farm is the largest provider of automobile insurance in the State of Illinois, State of Wisconsin and in the nation.

9. Plaintiffs are engaged in the business of providing collision repair, commonly referred to as a “body shop”, to the general public, including consumers in Lake County, Illinois.

10. As a day-to-day aspect of operating a body shop, Plaintiffs repair customer vehicles. The vast majority of those repairs are paid for by automobile insurance.

11. Upon information and belief, State Farm is the largest provider of automobile insurance in the area.

12. A large number of Plaintiffs’ customers are insured by State Farm.

13. Plaintiffs have been in business for a number of years and have worked hard to establish reputations as high quality body shops.

14. As a result of Plaintiffs reputation in the community, they each have a significant

number of repeat customers, both individual consumers and “fleet” customers.

15. Recognizing the above, all Plaintiffs enrolled in State Farm’s “Select Service Agreement” to become “Select Service Providers” (a copy of this agreement is attached hereto as Exhibit “A”).

16. As part of being a “Select Service Provider” each of the individual Plaintiffs had to strictly comply with the terms of State Farm’s “Select Service Agreement”.

17. As part of maintaining their status as a “Select Service Provider” the individual Plaintiffs had to expend a significant amount of financial resources on training their employees and updating their equipment so as to comply with State Farm’s “Select Service Agreement”.

18. All Plaintiffs had been State Farm “Select Service Providers” for a number of years.

19. Part of maintaining one’s status as a “Select Service Provider” is to charge a Labor Rate, which as determined by State Farm, is appropriate for the region where a body shop is located.

20. On November 5, 2015, State Farm sent a correspondence to Pulera indicating that it would be unilaterally reducing the Labor Rate for collision repair for all Select Service Providers from \$56.00 per hour to \$50.00 per hour, a significant reduction.

21. State Farm also reduced the corresponding paint and materials rate by \$6.00 per hour at the same time.

22. The last time the Labor Rate assigned to Kenosha County, Wisconsin had been as low as \$50.00 per hour was in 2008.

23. In making their Labor Rate determination, State Farm included Kenosha County, Wisconsin in the Chicago-Naperville-Elgin metro area.

24. State Farm based their inclusion of Kenosha County, Wisconsin in the Chicago-Naperville-Elgin metro area on a survey document referred to as the “Core-Based Statistical Area”

or CBSA (attached hereto as Exhibit “B”).

25. The CBSA, which is not based on insurance law but, rather, is based on simple demographic data, includes Kenosha County, Wisconsin and Lake County, Illinois in the same demographic area.

26. The CBSA was not created to determine Labor Rates.

27. The CBSA does not factor in differences between the laws of the respective states that it encompasses.

28. State Farm included Kenosha County, Wisconsin in the aforementioned metro area with Lake County, Illinois despite the significant difference in insurance and general law between the State of Wisconsin and the State of Illinois, including, but not limited to:

- a. Wisconsin charging tax on labor;
- b. Differences in how a vehicle is determined to be a total loss, 70% threshold in Wisconsin whereas Illinois uses a formula $\text{cost of repair} + \text{salvage} > \text{actual cost of vehicle}$;
- c. Differences in state labor laws; and
- d. Differences in state workers compensation laws.

29. Plaintiffs, attempted to resolve this issue of the erroneous Labor Rate calculation with State Farm through their respective agents.

30. Plaintiffs sent several correspondences to State Farm, through State Farm’s agents requesting that the error in the prevailing Labor Rate for Kenosha County, Wisconsin be corrected to properly reflect the differences between Kenosha County, Wisconsin and Lake County, Illinois.

31. Upon information and belief, State Farm has left the Labor Rate, as well as the paint and materials rate for neighboring Racine County, Wisconsin unaffected.

32. State Farm, to date, has been unwilling to reconsider their erroneous Labor Rate

calculation.

33. Plaintiffs cannot afford to be competitive, or, indeed maintain their businesses at the Labor Rate State Farm dictates Plaintiffs may charge State Farm insureds.

34. As a result, Plaintiffs are no longer listed as “Select Service Providers” by State Farm and on State Farm’s website.

35. As a direct consequence of the above and State Farm’s unilateral erroneous Labor Rate change, Plaintiffs have lost significant business.

36. Upon information and belief, State Farm, through its agents has advised new customers both in Kenosha County, Wisconsin and Lake County, Illinois to not utilize Plaintiffs’ body shops for automotive repairs.

37. Upon information and belief, State Farm, through its agents have steered its insureds away from utilizing Plaintiffs’ body shops for repairs.

38. Upon information and belief, State Farm, through its agents has advised existing customers of Plaintiffs to no longer utilize their services.

39. Upon information and belief, State Farm, through its agents has been steering business to other Kenosha area body shops who are listed as “Select Service Providers”.

40. Upon information and belief, State Farm has significantly reduced Plaintiffs’ quality rating on State Farm’s website.

41. Upon information and belief, State Farm, through its agents has ceased sending any customers to Plaintiffs’ body shops.

COUNT I – DECLARATORY JUDGMENT

42. Plaintiff incorporates the facts stated in Paragraphs 1 through 41 as if fully set forth herein as this Paragraph 42.

43. Defendant State Farm has implemented a practice of basing the Labor Rates its

“Select Service Providers” in Kenosha County, Wisconsin on the Labor Rates charged in Lake County, Illinois.

44. Defendant State Farm unilaterally imposed this rate change upon Plaintiffs and other Select Service Providers.

45. Defendant State Farm’s actions have a direct effect on Plaintiffs’ ability to operate their respective businesses.

46. As a direct and proximate result of this action by State Farm, Plaintiffs have suffered and continue to suffer economic losses in the form of a significant reduction in the number of vehicles they are able to repair at an economically viable rate.

47. Illinois courts require a party seeking an injunction establish four elements with specific facts: (1) a protectable right; (2) irreparable harm; (3) an inadequate remedy at law; and (4) a likely success on the merits. *Murges v. Bowman*, 254 Ill. App. 3d 1071, 1081 (1st Dist. 1993).

48. Plaintiffs have a protectable right that is threatened by Defendants’ conduct *vis a vis* Plaintiffs’ continued ability to conduct business.

49. As stated above, Plaintiffs are facing irreparable harm through the loss of a significant portion of their business should Defendants not be enjoined from continuing erroneously dictate Plaintiffs’ Labor Rates based on improper demographic data which includes Kenosha County, Wisconsin with Lake County, Illinois despite the differences in insurance law between Illinois and Wisconsin.

50. If Plaintiffs are not able to charge the standard labor rate for Kenosha County, Wisconsin, and not Lake County, Illinois, Plaintiffs face a significant loss of business and may be forced to lay off a number of employees.

51. There is no adequate remedy at law available to Plaintiffs which will allow them to continue to operate their businesses based on Lake County, Illinois labor rates instead of Kenosha

County, Wisconsin labor rates.

52. Plaintiff has exhausted all reasonable means of resolving this issue with State Farm and is only moving for this injunction as a last resort.

53. Plaintiff has a high likelihood of success on the merits as there is ample evidence that the Labor Rates dictated to Plaintiffs by State Farm are based on erroneous demographic information used by State Farm which improperly categorizes Kenosha County, Wisconsin with Lake County, Illinois despite the differences in insurance law and regulations between Illinois and Wisconsin

WHEREFORE Plaintiff respectfully requests that this Court enter judgment declaring State Farm's practice of basing rates for Kenosha County, Wisconsin on Lake County, Illinois rates invalid, enter an Injunction barring State Farm from basing the Labor Rate Plaintiffs may charge as Kenosha County, Wisconsin body shops on Lake County, Illinois rates and ordering State Farm to reinstate the prevailing rate, \$56.00 per hour, for Kenosha County, Wisconsin until a hearing on a permanent injunction may take place, award Plaintiffs their reasonable attorney's fees and court costs, and any other relief this court deems just and equitable.

**COUNT II – TORTIOUS INTERFERENCE
WITH PROSPECTIVE ECONOMIC ADVANTAGE**

54. Plaintiffs incorporate the facts stated in Paragraphs 1 through 41 as if fully set forth herein as this Paragraph 54.

55. Plaintiffs had established relationships with numerous clients and businesses that utilized their services to the substantial benefit of Plaintiffs. Defendant State Farm knew of these relationships as a result of their insurance contract with Plaintiffs' clients.

56. The conduct of Defendant State Farm as described above was designed to disrupt the economic relationships between Plaintiffs and their clients, and indeed, the relationships were disrupted as a result of Defendant State Farm's interference in that prospective customers and

merchants have declined to do business with Plaintiffs as a result of the conduct of Defendant State Farm in advising its insureds to no longer do business with Plaintiffs' body shops.

57. As a result of Defendant State Farm's interference with Plaintiffs' economic relationships, Plaintiffs have lost approximately 80% of their business with individual State Farm insured consumers.

58. As a result of Defendant State Farm's interference with Plaintiffs' economic relationships, Plaintiffs have lost approximately of their business with State Farm insured "fleet" customers.

59. Defendant State Farm's interference with Plaintiffs' economic relationships constitutes an unfair trade practice.

60. As a proximate result of Defendant State Farm's conduct, Plaintiffs have suffered damages, and continue to suffer damages in an amount to be proven at trial.

61. The conduct of Defendant State Farm in interfering with Plaintiffs' economic relationships was intentional, willful, and calculated to cause damage to Plaintiffs' lawful business.

62. The conduct of Defendant State Farm was perpetrated with actual malice and ill will toward Plaintiffs, and with the intentional and improper purpose of causing damage. There was no justifiable cause for Defendant State Farm's actions. As a result, an award of punitive damages is warranted.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendant in an amount to be determined at trial, award punitive damages in excess of five million dollars (\$5,000,000.00), award Plaintiffs their reasonable attorney's fees and court costs, and any such other and further relief that this Court deems just and equitable.

COUNT III – BREACH OF CONTRACT

63. Plaintiffs incorporate the facts stated in Paragraphs 1 through 41 as if fully set forth herein as this Paragraph 63.

64. Each of the named Plaintiffs to this cause of action was a “Select Service Provider” and executed State Farm’s “Select Service Agreement”.

65. The “Select Service Agreement” described in the preceding paragraphs of this Complaint was a contract between Plaintiffs and State Farm.

66. Plaintiffs performed each and every obligation they had under the terms of the “Select Service Agreement” with State Farm.

67. Plaintiffs expended significant monies in maintaining compliance with the “Select Service Agreement”.

68. Plaintiffs expended significant time in maintaining compliance with the “Select Service Agreement”.

69. Plaintiffs complied with the terms of the “Select Service Agreement” in good faith.

70. Plaintiffs were never consulted by State Farm prior to State Farm unilaterally changing the Labor Rate for Kenosha County, Wisconsin.

71. State Farm breached the contract in one or more of the following ways, including, but not limited to:

- a. Unilaterally changed the Labor Rate from \$56.00 per hour to \$50.00 per hour based upon data and information contrary to the terms of the contract;
- b. Unilaterally reduced the paint and materials rate by \$6.00 per hour based upon data and information contrary to the terms of the contract;
- c. Unilaterally reduced Plaintiffs rating on State Farm’s corporate website without justification;

- d. Unilaterally advised its insureds to no longer utilize Plaintiffs' services contrary to the terms of the contract; and
- e. Unilaterally began steering its insureds to other Kenosha area body shops contrary to the terms of the contract.

72. As a result of, and proximately caused by the above breach, Plaintiffs have suffered damages including, but not limited to:

- a. Loss of business;
- b. Diminished reputation;
- c. Loss of goodwill; and
- d. General economic loss

73. State Farm's above described breach was intentional and done in bad faith. There was no justifiable cause for Defendant State Farm's actions. As a result, an award of punitive damages is warranted.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendant in an amount to be determined at trial, award punitive damages in excess of five million dollars (\$5,000,000.00), award Plaintiffs their reasonable attorney's fees and court costs, and any such other and further relief that this Court deems just and equitable.

COUNT IV – COMMON LAW FRAUD

74. Plaintiffs incorporate the facts stated in Paragraphs 1 through 41 and Paragraphs 64 through 73 as if fully set forth herein as this Paragraph 74.

75. Throughout the time that the "Select Service Agreement" was in effect State Farm fraudulently represented, through its agents and employees, to Plaintiffs that it would abide by the terms of the "Select Service Agreement" in good faith.

76. The representations made by State Farm, through its agents and employees, were

false. The truth was that State Farm intended to unilaterally reduce the Labor Rate and when Plaintiffs objected, actively directed consumers away from Plaintiffs' body shops, reduced Plaintiffs quality rating on Defendant's corporate website, and otherwise acted maliciously towards Plaintiffs' business interests.

77. Plaintiffs, at the time these representations were made by Defendant, through its agents and employees, and at the time Plaintiffs took the actions herein alleged, was ignorant of the falsity of Defendant's representations made, through its agents and employees, and believed them to be true.

78. Plaintiffs, at the time this promise was made, through Defendants agents and employees, and at the time plaintiff took the actions herein alleged, was ignorant of Defendant's secret intention not to perform and plaintiff could not, in the exercise of reasonable diligence, have discovered defendant's secret intention.

79. In reliance on these representations, Plaintiff were induced to and did continue to expend significant funds to maintain compliance with the "Select Service Agreement". Had plaintiff known the actual facts, Plaintiffs would not have taken such action.

80. If Plaintiffs had known of the actual intention of Defendant, Plaintiffs would not have taken such action.

81. As a result of Defendant's fraud, Plaintiffs have been damaged in an amount to be proven at trial.

82. In doing the acts herein alleged, Defendant acted with oppression, fraud, and malice, and Plaintiffs are entitled to punitive damages.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendant in an amount to be determined at trial, award punitive damages in excess of five million dollars (\$5,000,000.00), award Plaintiffs their reasonable attorney's fees and court costs, and any such other and further relief that this Court deems just and equitable.

Respectfully submitted,

PULERA COLLISION, INC., a Wisconsin Corporation, ARMANDO'S COLLISION CENTER, INC., a Wisconsin Corporation, JAY-BEE COLLISION REPAIR CENTER, INC., a Wisconsin Corporation, Plaintiffs,

By:

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One of Their Attorneys

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