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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

KEVIN BLANCHAT, an individual resident of Washington; CHRISTOPHER BLANCHAT, an individual resident of Utah; SHILPI BLANCHAT, and individual resident of Utah; and GORDON RUPP, an individual resident of Alberta Canada;

Plaintiffs,

v.

SMASH FRANCHISE PARTNERS, LLC, d/b/a SMASH MY TRASH, an Indian limited liability company;

Defendant.

CASE NO. _____

COMPLAINT FOR VIOLATION OF THE FRANCHISE PROTECTION ACT, VIOLATION OF THE CONSUMER PROTECTION ACT, VIOLATION OF THE LANHAM ACT, NEGLIGENT MISREPRESENTATION, INTENTIONAL MISREPRESENTATION, UNJUST ENRICHMENT, VIOLATION OF THE LANHAM ACT, AND DECLARATORY RELIEF.

DEMAND FOR JURY TRIAL

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INTRODUCTION AND SUMMARY OF RELIEF REQUESTED

1. Plaintiffs Kevin Blanchat, Christopher Blanchat, Shilpi Blanchat, and Gordon Rupp (collectively, "Plaintiffs") bring this action against Defendant Smash Franchise Partners, LLC d/b/a Smash My Trash ("SMT" or "Defendant") for numerous violations of law arising out of SMT's unfair, deceptive, and misleading acts in the sale of a trash compacting franchise. SMT, through brokers motivated by commissions on franchises sold, sought rapid expansion of its burgeoning franchise model. While soliciting Plaintiffs to become franchisees, SMT and its agents and brokers made numerous unsubstantiated claims and omitted material information.

2. Further, SMT, its agents, and/or its brokers attempted to skirt the protections of Washington law and the financial limitations imposed on SMT by the State of Washington by misrepresenting and refusing to acknowledge the Washington residency of one of the Plaintiffs. Through its calculated, deceptive, and unfair practices, SMT extracted nearly $500,000 from Plaintiffs in just months after signing a franchise agreement. When Plaintiffs discovered SMT's deception, they simply asked to return the franchise, and have SMT return the money it received. SMT refused and left Plaintiffs no choice but to bring this action.

PARTIES, JURISDICTION, AND VENUE

3. Plaintiff Kevin Blanchat is a resident of the State of Washington with his primary residence located in Spokane, Washington. Kevin Blanchat is a graduate

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of Gonzaga University, and in addition to starting and running his own local business, he has devoted time and energy to local youth coaching, and several non-profit boards.

4. Plaintiffs Christopher Blanchat and Shilpi Blanchat are residents of the State of Utah with their primary residence located in Sandy, Utah. Christopher Blanchat is graduate of Washington State University, a veteran of the United States Navy, and a small business owner. Shilpi Blanchat is an entrepreneur and avid outdoorsman. Christopher and his wife Shilpi raise their six daughters in Utah, where they are both active and charitable members of the community.

5. Plaintiff Gordon Rupp is a resident of Canada with his primary residence located in Champion, Alberta, Canada. In addition to running a small trucking company, he raises cattle and harvests grain from his farm in Canada. Mr. Rupp is a longtime member of the Champion Lions Club, and active supporter of the Champion Legion and Champion Fire Association.

6. Defendant Smash Franchise Partners, LLC d/b/a Smash My Trash is an Indiana limited liability company with its principal place of business located in Carmel, Indiana.

7. This Court has personal jurisdiction over SMT because SMT has intentionally availed itself to the laws of this State by, among other actions, selling and offering to be sold a franchise to a resident of this State, filing an application to

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register as a franchisor in this State, and assenting to be bound to the Franchise Investment Protection Act ("FIPA") for sales of franchises in this State. SMT is also subject to the jurisdiction of this State through RCW 19.100.160, which states that "[a]ny person who is engaged or hereafter engaged directly or indirectly in the sale or offer to sell a franchise or a subfranchise or in business dealings concerning a franchise, either in person or in any other form of communication, shall be subject to the provisions of this chapter, shall be amenable to the jurisdiction of the courts of this state and shall be amenable to the service of process under RCW 4.28.180, 4.28.185, and 19.86.160." The facts and claims asserted in this action arise directly from SMT's franchising activities in this State and with a resident of this State.

8. This Court has jurisdiction over the subject matter of this dispute pursuant to 28 U.S.C. §1332(a) because there is complete diversity between the Plaintiffs and Defendant, and the amount in dispute is in excess of $75,000. This Court has original subject matter jurisdiction over Plaintiffs' Lanham Act claim pursuant to 15 U.S.C. §1121(a) and federal question jurisdiction under 28 U.S.C. §§1331 and 1338(a), and further jurisdiction over the remaining state law claims pursuant to 28 U.S.C. § 1367(a), as those claims arise out of the same set of facts that give rise to Plaintiffs' Lanham Act claim.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391 because a substantial part of the events or omissions giving rise to the claims herein

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occurred in this judicial district, and because Defendant is subject to the Court's personal jurisdiction in this judicial district.

FACTUAL BACKGROUND

Plaintiffs and SMT's Business.

10. Plaintiffs are all small business owners and dedicated members of their communities. Their business experiences range from operating a family farm, to starting a software company, to running a deli distribution business.

11. SMT is a franchisor that licenses waste compaction services businesses under the trade name "Smash My Trash." On information and belief, SMT's president and sole member, Justin Haskin, is a resident of Texas. On information and belief, Mr. Haskin owned and operated trash compaction companies in Texas. On information and belief, on or about May 22, 2018, Mr. Haskin formed SMT for purposes of franchising his budding trash compaction services in order to rapidly expand into other markets.

12. SMT offers prospective franchisees the opportunity to enter the field of waste compaction services, which it describes as an "undeveloped" market "in high demand." SMT offers franchisees purportedly "proprietary machines." These machines are trucks with a backhoe on the flatbed that utilizes a large roller to crush and compact refuse in garbage containers. SMT claims that by compacting the refuse, customers' garbage containers do not need to be hauled away as frequently,

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thereby saving customers money.

13. An image of one of SMT's supposedly "proprietary Smash Trucks" is below:

14. On information and belief, there is nothing proprietary about SMT's compaction machines. On information and belief, SMT does not own any patents to the truck or trash compaction technology, and several other companies offer the same or similar services with nearly identical machines.

15. On information and belief, SMT neither invented the Smash Truck, nor owns exclusive rights to this concept.

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SMT's Sale of a Franchise to Plaintiffs.

16. To help get SMT's fledgling franchising business off the ground, it enlisted the services of at least one franchise broker named Franchise FastLane. On information and belief, Franchise FastLane earns a "success fee" for each new franchisee it can sign up. On information and belief, this fee is a percentage of the new franchisee's franchise fee. This incentivizes Franchise FastLane to push large franchises with higher fees.

17. Plaintiffs, through Kevin Blanchat, were introduced to the Smash My Trash franchise opportunity through a broker named Marilyn Imparato in or about February 2020. On information and belief, this broker stood to gain an approximate 30% commission on initial franchise fees if it was successful in attracting new franchisees.

18. When Plaintiffs responded to the national broker's offer, they were referred to Franchise FastLane, another intermediate broker, that performed due diligence and closed the sale of franchises to new franchisees. Ms. Imparato passed along a summary of Kevin Blanchat's experience to Franchise FastLane which provided an Idaho address for Mr. Blanchat.

19. On information and belief, Franchise FastLane did not request any other documents from Ms. Imparato, nor did it request any from Mr. Blanchat.

20. On information and belief, Franchise FastLane also stood to collect a

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commission on any franchisees it signed up with SMT.

21. Plaintiffs and Franchise FastLane representatives spent several weeks discussing the SMT franchise opportunity. They requested detailed information on training programs, costs of running a franchise, and franchise and referral fees. Franchise FastLane provided Plaintiffs reassuring and accommodating responses. Plaintiffs often requested backup to substantiate various policies or accountings, but given the burgeoning status of SMT, while Plaintiffs were often given vague responses, they were accompanied by numerous assurances by SMT brokers.

22. On April 27, 2020, Plaintiffs entered into a franchise agreement with SMT (the "Franchise Agreement"). Pursuant to the Franchise Agreement, Plaintiffs purchased eleven (11) franchise territories located in the State of Arizona. The initial franchise fee for this large number of territories was $304,500.

23. Plaintiffs would quickly come to learn, however, that the franchise SMT delivered was materially different from the one promised.

SMT's Misrepresentations to Plaintiffs.

24. Jennifer Cain of Franchise FastLane was one source of misinformation. She acted as a broker and SMT's agent in soliciting Plaintiffs. As part of the solicitation process, Plaintiffs were provided a Franchise Disclosure Document ("FDD") on or about March 6, 2020. Ms. Cain offered Plaintiffs explanations of certain portions of the FDD to entice them to become franchisees.

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25. The FDD provided Plaintiffs information on SMT's business and franchises, and it was intended to help potential franchisees "make up [their] mind." As was uncovered later, the FDD was out-of-date, contained numerous misrepresentations regarding SMT and the franchise, and failed to disclose numerous material facts required by law.

26. For example, the FDD did not disclose that SMT's affiliate, Custom Hydraulics, LLC ("Custom Hydraulics"), was the *only* approved supplier of the "proprietary" Smash Trucks that franchisees were obligated to purchase. These trucks cost between $220,000 and $240,000 *each*. The fact that there was only a single approved supplier of these expensive trucks should have been disclosed in the FDD.

27. On information and belief, the Smash Trucks could be obtained for approximately 30%-40% less than the $220,000-$240,000 price Custom Hydraulics charged.

28. This disclosure failure was especially egregious because SMT hid the fact that its sole member and president, Mr. Haskin, had an ownership interest in Custom Hydraulics and Waste Technologies, LLC, which, on information and belief, received money, value, and/or other benefits from the sale of the quarter-million-dollar Smash Trucks to SMT franchisees.

29. Despite the fact that SMT and Mr. Haskin were directing franchisees to

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purchase Smash Trucks from his affiliated company Custom Hydraulics, the FDD stated that "[w]e do not currently receive payments from any designated suppliers based on purchases by you or other franchisees. However, the franchise agreement does not prohibit us from doing so."

30. While the franchise agreement may not prohibit SMT from receiving payments from designated suppliers, it is required to disclose whether Mr. Haskin obtains any money, goods, services, anything of value, or any other benefit from any other person or entity with whom the franchisee does business. Despite the requirement to disclose, the FDD made no such mention of this self-dealing.

31. The FDD also failed to make adequate disclosures regarding SMT's financial performance. Although the FDD acknowledged that the "typical franchise will contain 1 truck," the financial performance figures reported in the FDD reflected a double-truck business without adjusting the revenues to disclose revenues and expenses that a large franchise, like the one sold to Plaintiffs, would expect.

32. Although the FDD stated that "[w]ritten substantiation for the financial performance representation will be made available to the prospective franchisee upon reasonable request," such substantiation was not provided to Plaintiffs when it was requested. Rather, when Plaintiff Blanchat inquired about the written substantiation referenced in the FDD, he was informed by SMT's agent, Ms. Cain, that "[t]here is not additional information as it relates to the Item 19…."

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33. On information and belief, there was additional information, but SMT decided to conceal it from Plaintiffs. For instance, Item 19 did not break down the expected revenue figures. Importantly, much of the expected revenue would – unbeknownst to Plaintiffs – be subject to additional undisclosed franchisee fees and referral fees.

34. One such example is the hidden franchise fee that SMT placed on third-party refuse haulers. As Smash My Trash franchisees, Plaintiffs were encouraged to work with third-party haulers who would service the franchisees' clients by taking away the trash receptacles when full. To streamline invoicing and trash services for clients, franchisees would add the pass-through third-party hauler fees on the Smash My Trash invoices to the clients.

35. Franchisees could then offer full service trash compaction and removal services to clients as a one-stop-shop, which was important to securing clients. Franchisees would pass on the third-party hauler fees without a service or convenience charge.

36. However, despite the fact that the franchisees made no revenue from including third-party hauler fees on their invoices to clients, SMT imposed a substantial 25% franchise fee on this pass-through cost. The high franchisee fee on a pass-through cost meant that franchisees would have to pay significant amounts to SMT for delivering desired services to the franchisees' customers. Not only was

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this significant fee undisclosed in the FDD (and materially impacted Plaintiffs' expected costs and revenues), but it was contrary to SMT's prior representations.

37. In fact, during phone calls with potential franchisees, SMT's president, Mr. Haskin, stated there would be no franchise fees on revenue from third-party haulers. Plaintiff Kevin Blanchat later sought confirmation that third-party hauler fees would not be subject to franchise fees from Ms. Cain of Franchise FastLane. She responded that a franchise fee may be charged, but it would be minimal, such as 2%.

38. Given that third-party hauler fees would comprise a significant portion of revenue – approximately 15% of top-of-line sales – the imposition of a previously undisclosed 25% franchise fee was a significant impact on Plaintiffs business. Plaintiffs would not have agreed to these terms if they were properly disclosed to them before becoming franchisees.

39. Franchise FastLane, Ms. Cain, and other SMT agents or representatives also made numerous oral and written misrepresentations and omissions of material facts to Plaintiffs regarding SMT, the Franchise Agreement, and Plaintiffs' obligations as SMT's franchisees.

40. For instance, Ms. Cain misrepresented SMT's referral fee requirements. Days before signing the Franchise Agreement, Plaintiff Kevin Blanchat asked Ms. Cain about the current policy on referral fees, particularly

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national advertising to other Franchisees in the Phoenix market." Ms. Cain's answer was: "I am assuming you are talking about national, state or regional accounts? If so, this is determined on a per account basis and will be addressed accordingly. If you are referring to the other franchisees in the Phoenix/Scottsdale market working together on referrals, I believe you can negotiate/set up a system with the guidance of Smash My Trash."

41. Contrary to Ms. Cain's representations, SMT had formulated a referral fee requirement that imposes a significant financial obligation on its franchisees. Pursuant to an SMT memorandum dated April 22, 2020 entitled "Guidelines for Franchisee to Franchisee Referrals," SMT required that a franchisee must pay a referring franchisee 10%, 20%, and 30% "of the net monthly revenue . . . in perpetuity." Further, SMT required that "[a]ny revenue sharing shall remain consistent regardless of future changes to the local customer relationship (i.e., the customer adds significant services 6 months into the relationship)." These and other requirements in the memorandum directly conflict with Ms. Cain's representations that such referral fees would be negotiated by and between the franchisees on a per account basis.

42. The referral fee requirements contained in the April 22, 2020 memorandum were also not disclosed in the FDD, or otherwise provided to Plaintiffs until well after Plaintiffs had entered into the Franchise Agreement. In fact,

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Plaintiffs did not see a copy of the April 22, 2020 memorandum until July 2, 2020. Had Plaintiffs known of the referral fee requirements, or the memorandum, prior to the signing of the Franchise Agreement, Plaintiffs would not have agreed to purchase the franchise.

43. Upon reviewing the memorandum, Plaintiffs immediately attempted to contact SMT regarding the burdensome and previously undisclosed referral fee requirements. In response to Plaintiffs' concerns, SMT admitted that the fee requirements were unfair and inequitable. In a communication from SMT's counsel to Plaintiffs dated July 14, 2020, SMT acknowledged: "We know the revenue share between participants in a national account setting is changing. As it stands today, it is not equitable for all parties."

44. In addition to her misrepresentations about information that should have been—but was not—disclosed in the FDD, Ms. Cain also misrepresented to Plaintiffs other aspects of the franchisees' obligations. When Plaintiffs asked whether franchisees would have the option of completing franchisee training online via virtual training sessions in light of health concerns related to travel arising out of the COVID-19 pandemic, Ms. Cain's answer was: "Yes! My husband [a franchisee] has been going through virtual training and they have done an excellent job."

45. However, after signing the Franchise Agreement, Plaintiffs were informed that they must attend *in person* training across the country in Indiana,

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despite the serious health and travel concerns associated with the COVID-19 pandemic.

46. SMT's requirement for franchisees to attend in-person training in Indiana was unreasonably burdensome to out-of-state Plaintiffs, especially Canadian Plaintiff Gordon Rupp, when the pandemic-related border restrictions between the United States and Canada made such travel nearly impossible for a Canadian resident. This required training was also particularly burdensome in light of the fact that Kevin and Chris Blanchat had medical circumstances that precluded them from traveling across the country in the middle of a pandemic.

47. Of course, Plaintiffs described the situation to SMT, but it insisted that they attend in-person training nonetheless.

48. Had Plaintiffs been informed prior to signing the Franchise Agreement that they would be required to travel in person to Indiana despite legal and medical travel restrictions during the COVID-19 pandemic, they would not have agreed to the purchase.

49. Plaintiffs relied on the representations of SMT and its agents when they made the decision to enter into the Franchise Agreement. Had Plaintiffs been aware of the misrepresentations and omissions made in the FDD and by SMT's agent(s), Plaintiffs would not have chosen to become SMT's franchisees.

50. Plaintiffs have suffered losses as a result of their reliance on SMT's

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misrepresentations and omissions in connection with the FDD and Franchise Agreement.

51. Following execution of the Franchise Agreement, Plaintiffs paid to SMT the Initial Franchise Fee of $304,500 on April 30, 2020. Thereafter, Plaintiffs continued to pay additional fees and charges, including, but not limited to, at least $15,000 in start-up fees and costs, and a $134,950 deposit for the purchase of two trucks paid on May 12, 2020.

SMT Refuses to Defer Collection of the Franchise Fees.

52. On information and belief, Franchise FastLane expected its "success fee" and portion of the franchise fees within five (5) days of Plaintiffs' payment of franchise fees to SMT. However, SMT was required to defer collection of all upfront fees on franchises sold to Washington residents, including initial franchise fees, until SMT had performed all its initial pre-sale obligations and the franchisee was open for business.

53. On information and belief, this requirement was imposed by Washington's Department of Financial Institutions because SMT had little experience operating as a franchisor, and its capital reserves were virtually non-existent.

54. SMT's deferred collection requirement meant it could not pay Franchise FastLane its fee for soliciting Plaintiffs as new franchisees. SMT itself

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stated, through its counsel, "For obvious cash flow reasons, SMT refuses to sell franchises to residents of franchise registration states where SMT is required to defer collecting initial franchise fees."

55. During the negotiation of the franchise, Plaintiff Kevin Blanchat informed both Franchise FastLane and SMT that he was a resident of Washington State. Mr. Blanchat's Spokane, Washington address is also listed on his signature block of the Guaranty and Non-Compete Agreement, which is Attachment 2 to the Franchise Agreement and the only place where Mr. Blanchat personally represented his address during the signing of the Franchise Agreement.

56. However, on information and belief, to avoid the deferral requirements imposed by the State of Washington, SMT and/or its agent or broker intentionally omitted any references to Mr. Blanchat's Washington residency in the Franchise Agreement.

57. SMT also omitted the Washington State rider from the Franchise Agreement, even though it was aware Mr. Blanchat was a Washington State resident. The omission of the rider forced Plaintiffs into unfair and unreasonable standards of conduct, such as unlawfully requiring actions to be brought in Indiana instead of Washington. SMT's omission also sought to deprive Plaintiffs of the protections afforded them under FIPA.

58. For instance, the Summary Page of the Franchise Agreement listed the

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"Franchisee's Address" as Mr. Blanchat's Idaho address. Plaintiffs did not include this information on the Summary Page, rather, on information and belief, Franchise FastLane included this information.

59. In addition, nothing in the Franchise Agreement indicated that the "Franchisee's Address" on the Summary Page was the residential address for any Plaintiff. Instead, the Franchise Agreement only refers to that as the "notice address."

60. All four Plaintiffs were persuaded into signing the Franchise Agreement. It was not until after they signed that Plaintiffs discovered the litany of SMT's omissions and misrepresentations, such as the training requirements and referral program details.

61. Upon learning of these materially altered requirements, Plaintiffs reached out to SMT and requested that it purchase back Plaintiffs' franchise or rescind the Franchise Agreement.

62. SMT refused to refund any fees or rescind the Franchise Agreement. SMT claimed that Plaintiffs were still obligated to abide by all the terms and conditions imposed on them by the Franchise Agreement.

63. Given SMT's refusal, Plaintiffs sought to sell their franchise independently. SMT even indicated that it was "willing to assist" with the resale of Plaintiffs' franchise. However, SMT has not made any good faith effort to assist in

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selling the franchise.

64. On information and belief, SMT is more interested in selling new franchises and collecting additional franchise fees than in reselling Plaintiffs' franchise.

65. Despite attempting to mitigate the disastrous situation and damage done by SMT, Plaintiffs have been ignored and denigrated. Their only option to vindicate their rights is by bringing this action.

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CAUSES OF ACTION

First Cause of Action
Violation of the Franchise Investment Protection Act
(RCW 19.100 *et seq*)

66. Plaintiffs re-allege and incorporate the allegations set forth in paragraphs 1 to 65 as though set forth herein.

67. SMT and/or its agents and brokers made untrue statements of material fact, omitted material facts, and misrepresented facts related to the profitability of the franchise, the benefit SMT reaped by forcing Plaintiffs to purchase goods from related entities, the training requirements and attendance policies, the referral program, and the franchise fee deferral requirements imposed on SMT by Washington's DFI.

68. SMT also violated an order of the Director of the DFI by not deferring the franchise fees paid by Plaintiffs.

69. These acts and omissions constitute violations of RCW 19.100.170 and RCW 19.100.190.

70. As a direct and proximate result of SMT's unfair, untrue, and illegal practices, Plaintiffs have suffered injury in an amount exceeding $450,000.

71. The actual amount of damages, as determined at trial can be trebled at the Court's discretion.

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Second Cause of Action
Violation of the Consumer Protection Act
(RCW 19.86 *et seq*)

72. Plaintiffs re-allege and incorporate the allegations set forth in paragraphs 1 to 71 as though set forth herein.

73. SMT, through its own conduct, and that of Mr. Haskin and its broker, violated FIPA's Bill of Rights (RCW 19.100.180) on numerous occasions.

74. SMT failed to deal with Plaintiffs in good faith as required by § 19.100.180(1) by, among other things, attempting to force residents of the State of Washington to bring actions or arbitrations in a foreign venues though unfair and non-negotiable contract clauses, refusing to make good faith efforts to sell Plaintiffs' franchise and actively interfering with Plaintiffs' attempts at a sale, omitting and withholding material information from Plaintiffs, and self-dealing without disclosing benefits Mr. Haskin reaped as a member of SMT and Custom Hydraulics.

75. SMT sold or offered to sell to Plaintiffs products or services for more than a fair and reasonable price as required by § 19.100.180(2)(d).

76. SMT, through Mr. Haskin, obtained money, goods, services, value, or other benefits from Custom Hydraulics, with which Plaintiffs were forced to do business, without disclosing those benefits to Plaintiffs in violation of

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§ 19.100.180(2)(e).

77. SMT, by omitting the Washington State rider and refusing to recognize Plaintiff Blanchat's residency, required Plaintiffs to assent to a release, assignment, novation, or waiver which would relieve SMT from liability imposed by this chapter in violation of § 19.100.180(2)(g).

78. SMT, by omitting the Washington State rider and refusing to recognize Plaintiff Blanchat's residency, and insisting on travel to in-person trainings, imposed unreasonable standards of conduct upon Plaintiffs in violation of § 19.100.180(2)(h).

79. The commission of any unfair or deceptive acts or practices or unfair methods of competition prohibited by RCW 19.100.180 shall constitute an unfair or deceptive act or practice under the provisions of chapter 19.86 RCW.

80. By virtue of SMT's rapid expansion and efforts to sell franchises in Washington State, its violations have significant potential to be repeated.

81. As a direct and proximate result of SMT's bad faith, unfair, and deceptive practices, Plaintiffs have suffered injury in an amount exceeding $450,000.

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Third Cause of Action
Negligent Misrepresentation
(Washington State Common Law)

82. Plaintiffs re-allege and incorporate the allegations set forth in paragraphs 1 to 81 as though set forth herein.

83. SMT and/or its agents or brokers, negligently provided information to Plaintiffs at the outset of the relationship regarding referral fees, training, and profitability of the franchise.

84. SMT knew or should have known that the information provided and promises made would influence Plaintiffs' decision to become a franchisee.

85. Plaintiffs reasonably relied on the information provided and assurances provided by SMT, its agents or brokers.

86. Plaintiffs' reliance was reasonable under the circumstances, especially where SMT's authorized agents were providing written and oral reassurances.

87. As a direct and proximate result of SMT's bad faith, unfair, and deceptive practices, Plaintiffs have suffered injury in an amount exceeding $450,000.

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Fourth Cause of Action
Intentional Misrepresentation
(Washington State Common Law)

88. Plaintiffs re-allege and incorporate the allegations set forth in paragraphs 1 to 87 as though set forth herein.

89. SMT and/or its agents or brokers, intentionally provided information to Plaintiffs at the outset of the relationship regarding referral fees, training, and profitability of the franchise.

90. SMT knew or should have known that the information provided and promises made would influence Plaintiffs' decision to become a franchisee.

91. Plaintiffs reasonably relied on the information provided and assurances provided by SMT, its agents or brokers.

92. Plaintiffs' reliance was reasonable under the circumstances, especially where SMT's authorized agents were providing written and oral reassurances.

93. As a direct and proximate result of SMT's bad faith, unfair, and deceptive practices, Plaintiffs have suffered injury in an amount exceeding $450,000.

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Fifth Cause of Action
Unjust Enrichment
(Washington State Common Law)

94. Plaintiffs re-allege and incorporate the allegations set forth in paragraphs 1 to 93 as though set forth herein.

95. SMT knowingly obtained a benefit from Plaintiffs in the form of franchise fees, costs, and other payments.

96. SMT obtained the benefit from Plaintiffs as a result of misrepresentation, and numerous violations of law.

97. When SMT was made aware of its misconduct, it refused to return the benefit to Plaintiffs.

98. Under the circumstances described, it would be unjust for SMT to retain the benefit received from Plaintiffs under false pretenses and without Plaintiffs enjoying the bargain promised

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Sixth Cause of Action
Violation of the Lanham Act 43(a)
(15 U.S.C. § 1125)

99. Plaintiffs re-allege and incorporate the allegations set forth in paragraphs 1 to 98 as though set forth herein.

100. SMT and/or its agents and brokers made false and misleading statements of facts relating to the profitability of the franchise, the benefit SMT reaped by forcing Plaintiffs to purchase goods from related entities, the training requirements and attendance policies, the referral program, and the franchise fee deferral requirements imposed on SMT by Washington's DFI.

101. SMT and/or its agents and brokers made these false and misleading statements in the advertising and promotion of its franchise to induce Plaintiffs to become SMT franchisees.

102. SMT's actions caused confusion, mistake, and deception concerning material facts about SMT's commercial activities and franchise services.

103. As a direct and proximate result of SMT's false and misleading statements, Plaintiffs have suffered injury in an amount exceeding $450,000

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Seventh Cause of Action
Declaratory Judgment
(28 U.S.C. § 2201)

104. Plaintiffs re-allege and incorporate the allegations set forth in paragraphs 1 to 103 as though set forth herein.

105. Plaintiffs seek a declaration that the Franchise Agreement was obtained through misrepresentation, and/or is otherwise unenforceable as a matter of statute and/or public policy.

106. As a consequence, the Franchise Agreement and all amendments thereto and any related agreements are null and void.

PRAYER FOR RELIEF

Accordingly, Plaintiffs hereby pray for the following relief:

1. Rescission of the Franchise Agreement;

2. Judgment absolving Plaintiffs of any obligations to SMT;

3. Awarding Plaintiffs a money judgment, including but not limited to compensatory and statutory damages as permitted by law against SMT in an amount exceeding $450,000, the precise amount to be proven at trial;

4. Awarding Plaintiffs their costs, disbursements, and reasonable attorneys' fees in the action, as permitted by statute and as stipulated to in the Franchise Agreement;

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5. Awarding Plaintiffs trebled damages, costs, and attorneys' fees pursuant to RCW 19.86 *et seq*;

6. Awarding Plaintiffs trebled damages, costs, and attorneys' fees pursuant to RCW 19.100 *et seq*;

7. Such other and further relief as the Court deems just and equitable.

DATED this 16th day of October, 2020

DORSEY & WHITNEY LLP

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

KEVIN BLANCHAT, an individual resident of Washington; CHRISTOPHER BLANCHAT, an individual resident of Utah; SHILPI BLANCHAT, an individual resident of Utah; GORDON RUPP, an individual resident of Alberta Canada; and SMASH HIT LLC, an Arizona limited liability company,

Plaintiffs,

v.

SMASH FRANCHISE PARTNERS, LLC, d/b/a SMASH MY TRASH, an Indiana limited liability company; JUSTIN HASKIN, an individual; and FRANCHISE FASTLANE, INC., a Nebraska corporation,

Defendants.

NO. 2:20-CV-0380-TOR

ORDER ON DEFENDANTS' MOTIONS TO SEAL, EXPEDITE, AND COMPEL ARBITRATION AND PLAINTIFFS' MOTION FOR PROTECTIVE ORDER

BEFORE THE COURT are Defendants Smash Franchise Partners, LLC and Justin Haskin's Motion to Seal Complaint and First Amended Complaint and

Strike Unsealed Filings (ECF No. 13), Motion to Expedite Hearing for Motion to Compel Arbitration and Motion to Seal (ECF No. 14), and Motion to Compel Arbitration and Dismiss Case (ECF No. 15). These matters were submitted for consideration with oral argument on December 3, 2020. Brian J. Janura and J. Michael Keyes appeared on behalf of Plaintiffs. Daniel Kittle, Per de Vise Jansen, and Pilar C. French appeared on behalf of Defendants. Following oral argument, Plaintiffs filed a Motion for Protective Order (ECF No. 27).

The Court has reviewed the record and files herein, heard from counsel, and is fully informed. For the reasons discussed below, Defendants' Motion to Seal Complaint and First Amended Complaint and Strike Unsealed Filings (ECF No. 13) is **DENIED**, Defendants' Motion to Expedite Hearing for Motion to Compel Arbitration and Motion to Seal (ECF No. 14) is **GRANTED**, Defendants' Motion to Compel Arbitration and Dismiss Case (ECF No. 15) is **GRANTED**, and Plaintiffs' Motion for Protective Order (ECF No. 27) is **DENIED as moot**.

BACKGROUND

This case concerns a franchise agreement regarding a trash compaction business in Arizona. On October 16, 2020, Plaintiffs filed a Complaint against Defendant Smash Franchise Partners LLC. ECF No. 1. On November 11, 2020, Plaintiffs filed the First Amended Complaint which added Defendants Justin Haskin and Franchise Fastlane Inc. and alleged the following causes of action: (1)

violation of the Washington Franchise Investment Protection Act, (2) violation of the Washington Consumer Protection Act, (3) Negligent Misrepresentation, (4) Fraud/Intentional Misrepresentation, (5) Unjust Enrichment, (6) violation of Washington's Noncompetition Covenants, (7) violation of the Lanham Act 43(a), and (8) Declaratory Judgment. *See* ECF No. 8.

Defendants Haskin and Smash Franchise Partners LLC then filed the instant sealed Motions to Seal, Expedite, and Compel Arbitration and Dismiss Case. [1]

FACTS[2]

Plaintiff Kevin Blanchat is a resident of the State of Washington with his primary residence located in Spokane. ECF No. 8 at 3, ¶ 3. Plaintiffs Christopher Blanchat and Shilpi Blanchat are residents of the State of Utah. ECF No. 8 at 3, ¶ 4. Plaintiff Gordon Rupp is a resident of Canada. ECF No. 8 at 3, ¶ 5. Plaintiff Smash Hit LLC is an Arizona limited liability company whose members include Plaintiffs Kevin Blanchat, Christopher Blanchat, Shilpi Blanchat, and Gordon Rupp. ECF No. 8 at 3-4, ¶ 6. The individual Plaintiffs are all small-business owners. ECF No. 8 at 6, ¶ 13.

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[1] Defendant Franchise Fastlane Inc. has yet to appear in this matter.

[2] The following facts are principally drawn from Plaintiffs' First Amended Compliant. ECF No. 8.

Defendant Smash Franchise Partners, LLC ("SMT") is an Indiana limited liability company whose sole member is Defendant Justin Haskin, also a resident of the State of Indiana. ECF No. 8 at 4, ¶¶ 7-8. SMT is a franchisor that licenses waste compaction service businesses under the trade name "Smash My Trash." ECF No. 8 at 6, ¶ 14.

Defendant Franchise FastLane is a Nebraska corporation with its principal place of business located in Omaha, Nebraska. ECF No. 8 at 4, ¶ 9. Franchise FastLane, a franchise broker, performs due diligence and closes on sales of franchises, earning a "success fee" for every new franchisee it enlisted with SMT. ECF No. 8 at 8, ¶¶ 20, 22.

On or about February 2020, third-party broker Marilyn Imparato introduced a franchise opportunity with SMT to Plaintiff Kevin Blanchat. ECF No. 8 at 8, ¶ 21. Ms. Imparato submitted a summary of Mr. Blanchat's experience to Franchise Fastlane; this summary provided an Idaho address for Mr. Blanchat. ECF No. 8 at 8, ¶ 22. Franchise Fastlane did not request any further information, including Mr. Blanchat's residence. ECF No. 8 at 8, ¶ 23.

For several weeks, the individual Plaintiffs, Franchise Fastlane, and SMT discussed a franchise opportunity, including information on training programs, costs, and fees. ECF No. 8 at 9, ¶ 25. During negotiations, Plaintiffs alleged that Mr. Blanchat informed Defendants Franchise FastLane and SMT that he was a

resident of Washington State. ECF No. 8 at 19, ¶ 63. The individual Plaintiffs were provided a Franchise Disclosure Document ("FDD") and Franchise FastLane broker Jennifer Cain provided the explanations regarding various provisions of the FDD. ECF No. 8 at 10, ¶ 30.

On April 27, 2020, the individual Plaintiffs entered into a franchise agreement with SMT, purchasing eleven territories in the State of Arizona for $304,500. ECF No. 8 at 9, ¶ 26. The franchise agreement did not include a Washington State rider, even though Plaintiffs allege that Defendants knew Mr. Blanchat was a Washington resident. ECF No. 8 at 19, ¶¶ 64-65. The Summary Page of the franchise agreement listed Mr. Blanchat's Idaho address as the "notice address." ECF No. 8 at 20, ¶¶ 66-67. The only place in writing that Mr. Blanchat personally represented his address in Washington was on the Guaranty and Non-Compete Agreement, an attachment to the Franchise Agreement. ECF No. 8 at 19, ¶ 63.

Approximately three months after entering into the franchise agreement, Plaintiffs and SMT entered into an Entity Transfer Addendum that transferred the individual Plaintiff's rights, interest, and obligations to Plaintiff Smash Hit LLC. ECF No. 8 at 9, ¶ 27.

Plaintiffs allege that Defendants made oral and written misrepresentations and omissions regarding the franchise, including that the FDD was out-of-date,

contained numerous misrepresentations, and failed to disclose information required by law regarding financial performance data, self-dealing, franchise fees, referral fees, and training requirements. *See generally* ECF No. 8 at 10-16, ¶¶ 31-53.

Defendants refused to refund or rescind the franchise agreement. ECF No. 8 at 20-21, ¶ 70. Plaintiffs also allege that Defendants "stonewalled" prospective buyers of the franchise agreement when Plaintiffs sought to transfer the franchise. ECF No. 8 at 21, ¶¶ 71-73. The present lawsuit and motions followed.

DISCUSSION

A. Motion to Seal

Defendants seek to seal the Complaint and Second Amended Complaint and strike unsealed filings on the grounds that they contain confidential information regarding "confidential fees and contents of internal memoranda relating to business practices." ECF No. 13 at 5. Defendants also allege that redaction is insufficient where they have suffered harm from a third-party competitor posting the complaint a website. ECF No. 13 at 7. Plaintiffs argue that there is no confidential information in the complaints where such information is publicly available. ECF No. 22 at 6-10.

"It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents." *Nixon v. Warner Commnc'ns, Inc.*, 435 U.S. 589, 597 (1978).

Accordingly, in the Ninth Circuit there is a "strong presumption in favor of access to court records." *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003) (citing *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995)). "A party seeking to seal a judicial record then bears the burden of overcoming this strong presumption by meeting the 'compelling reasons' standard." *Kamakana v City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citing *Foltz*, 331 F.3d at 1135). "In general, 'compelling reasons' sufficient to outweigh the public's interest in disclosure and justify sealing court records exist when such 'court files might have become a vehicle for improper purposes,' such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets." *Id.* at 1179 (quoting *Nixon*, 435 U.S. at 598).

Here, Defendants allege that Plaintiffs disclosed confidential information in the form of referral fees and information in internal memoranda. ECF No. 13 at 2-3. Defendants cite to Plaintiff's allegations regarding third-party hauler franchising fee rates. ECF No. 8 at 13-14, ¶¶ 43-46, 49. Plaintiffs counter that the information that Defendants assert is confidential – franchise information regulated by state statute – is publicly available and required to be disclosed by law. ECF No. 22 at 6-13. Such publicly available information is insufficient to demonstrate a compelling reason that outweighs the public's interest in disclosure. Redaction is likewise unnecessary. Therefore, Defendants' Motion to Seal is denied.

B. Motion to Compel Arbitration and Dismiss Case

Defendants seek to compel all of Plaintiff's claims to arbitration in Indiana according to the terms of the franchise agreement. *See* ECF No. 15 at 15. In the alternative, Defendants seek to dismiss the case on the basis of the forum selection clause included in the agreement. ECF No. 15 at 18. Defendants also seek attorney's fees in connection with bringing this motion. ECF No. 15 at 17.

Plaintiffs argues that the motion to compel must be denied as the franchise agreement is unenforceable according to state law principles. ECF No. 21 at 8-17.

1. Arbitrability

The Federal Arbitration Act ("FAA") makes agreements to arbitrate "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The FAA reflects "both a liberal federal policy favoring arbitration … and the fundamental principle that arbitration is a matter of contract." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (internal citations and quotation marks omitted). Thus, "courts must place arbitration agreements on an equal footing with other contracts … and enforce them according to their terms." *Id.* (internal citation omitted).

In determining whether to compel arbitration, generally the court must determine two threshold issues: (1) whether there is an agreement to arbitrate between the parties and (2) whether the agreement covers the dispute. *Brennan v.*

Opus Bank, 796 F.3d 1125, 1130 (9th Cir. 2015). However, these issues can be expressly delegated to the arbitrator by agreement. *Id.* "[W]hether the court or the arbitrator decides arbitrability is an issue for judicial determination unless the parties *clearly and unmistakably provide otherwise.*" *Oracle Am., Inc. v. Myriad Grp. A.G.*, 724 F.3d 1069, 1072 (9th Cir. 2013) (internal citations and quotation marks omitted). The Ninth Circuit has held "that incorporation of the AAA [American Arbitration Association] rules constitutes clear and unmistakable evidence that contracting parties agreed to arbitrate arbitrability." *Brennan*, 796 F.3d at 1130. While this decision limited its holding to an arbitration agreement "between sophisticated parties," the Court also noted that the holding "does not foreclose the possibility that this rule could also apply to unsophisticated parties or to consumer contracts." *Id.* at 1130-1131.

Here, the Court finds that the question of arbitrability should go to the arbitrator where the parties incorporated the AAA rules into the agreement. ECF No. 23-2 at 28, ¶ 17.1(a). The arbitration provision broadly states that "[a]ny controversy or claim arising out of or relating to this Agreement (including its formation) shall be resolved by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, including the Optional Rules for Emergency Measures of Protection." *Id.* Moreover, this is a commercial contract between sophisticated parties; all

individual Plaintiffs are business owners. ECF No. 8 at 6, ¶ 13. Therefore, the Court finds the parties clearly and unmistakably agreed that the arbitrator would determine the threshold issues of arbitrability.

Although the Court need not consider Plaintiffs' remaining arguments on challenging the arbitration agreement, the Court finds them unpersuasive. Plaintiffs are unlikely to gain the protection of the Washington Franchise Investment Protection Act. *See See Allison v. Medicab Intern., Inc.*, 92 Wash. 2d 199, 203 (1979) ("The failure to register does not make the agreement [to arbitrate] void."); *Taylor, Tr. For Estate of Taylor v. Rothschild*, No. C18-5863 BHS, 2019 WL 3067255, at *6 (W.D. Wash. July 12, 2019) (granting motion to compel under similar circumstances). The procedural and substantive unconscionability arguments are similarly unavailing under the totality of the circumstances; the parties are sophisticated business owners who spent weeks discussing the franchise opportunity before entering into the commercial contract. ECF No. 8 at 6, ¶ 13, 9, ¶ 25; *see generally Luna v. Household Fin. Corp. III*, 236 F. Supp. 2d 1166, 1183 (W.D. Wash. 2002).

Therefore, the Court finds this case must be referred to arbitration.

2. Parties Submitted to Arbitration

Defendants argue that claims against Defendant Haskin must be arbitrated where he is a signatory to the franchise agreement and against Defendant Franchise

FastLane under theories of equitable estoppel or agency. ECF No. 15 at 12-15. Plaintiffs argue that claims against Defendants Franchise FastLane and Haskin cannot be compelled where they are not parties to the agreement. ECF No. 21 at 17.

In "the absence of clear and unmistakable evidence that Plaintiffs agreed to arbitrate arbitrability with nonsignatories," the district court has the authority to decide whether such non-signatory can compel arbitration. *Kramer v. Toyota Motor Corp.*, 705 F.3d 1122, 1127 (9th Cir. 2013). Absent such evidence, a non-signatory may invoke arbitration "if the relevant state contract law allows the litigant to enforce the agreement." *Id.* at 1128. The parties dispute what state law would apply but both Washington and Indiana recognize agency principles. ECF No. 15 at 14; ECF No. 21 at 19; *see McClure v. Davis Wright Tremaine*, 77 Wash. App. 312, 315 (1995) (recognizing principle of agency); *Indiana Dep't of Pub. Welfare v. Chair Lance Serv., Inc.*, 523 N.E.2d 1373, 1378 (Ind. 1988) (same).

A non-signatory can compel a signatory to arbitrate based on ordinary contract and agency principles. *See Letizia v. Prudential Bache Secs., Inc.*, 802 F.2d 1185 (9th Cir. 1986); *Britton v. Co-op Banking Group*, 4 F.3d 742 (9th Cir. 1993). In *Letizia*, the Ninth Circuit held that brokerage employees as non-signatories were bound to the arbitration clause where "[a]ll of the individual defendants' allegedly wrongful acts *related* to their handling of [the plaintiff's]

securities account." *Id.* (emphasis added); *see also All for Kidz, Inc. v. Around the World Yoyo Entm't Co.*, No. C13–2001RAJ, 2014 WL 1870821, at *3 (W.D. Wash. May 8, 2014) (collecting cases reaching the same result).

Plaintiffs attempt to exclude Defendants Franchise FastLane and Haskin from arbitration based on allegations of personal omissions and misrepresentations. ECF No. 21 at 18. A plaintiff cannot "avoid an otherwise valid arbitration provision merely by casting its complaint in tort … The touchstone of arbitrability in such situations is the relationship of the tort alleged to the subject matter of the arbitration clause." *Kroll v. Doctor's Assocs.*, 3 F.3d 1167, 1170 (7th Cir. 1993) (internal quotation marks omitted). A broad arbitration clause "does not limit arbitration to the literal interpretation or performance of the contract" but rather "embraces every dispute between the parties having a significant relationship to the contract regardless of the label attached to the dispute." *JJ Ryan & Sons v. Rhone Poulenc Textile, S.A.*, 863 F.2d 315, 321 (4th Cir. 1988).

Here, Plaintiffs admit that Defendants Franchise FastLane and Haskin's actions "may be imputed to SMT under a theory of agency." ECF No. 21 at 18. This concession is further underscored by the fact that Plaintiffs' allegations against both Defendants all relate to the common goal of forming the underlying contract on behalf of SMT. *See* ECF No. 8. The Court also notes that compelling arbitration among all parties will avoid duplicative litigation and potentially

conflicting results. *See Hawkins v. KPMG LLP*, 423 F. Supp. 2d 1038, 1050 (N.D. Cal. 2006). Therefore, the Court finds that the non-signatories may be submitted to arbitration.[3]

3. Venue

Under the FAA, "the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearings and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. 9 U.S.C. § 4. This venue provision is discretionary and supplements the venue provision set forth in 28 U.S.C. § 1391. *Textile Unlimited, Inc. v. A..BMH and Co.*, 240 F.3d 781, 784 (9th Cir. 2001) (citing *Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193, 194-96 (2000).

The Ninth Circuit has yet to rule specifically on whether a court should enforce an arbitration agreement's venue provision when it calls for arbitration in a location outside of the district where the action is pending. *See Sovak v. Chugai Pharm. Co.*, 280 F.3d 1266, 1271, n.1 (9th Cir. 2002), *opinion amended on denial of reh'g*, 289 F.3d 615 (9th Cir. 2002) ("[Plaintiff] does not challenge the district

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[3] Because the issue of agency is dispositive, the Court need not address the parties' equitable estoppel arguments.

court's order compelling arbitration. Therefore, we express no view as to whether the district court properly compelled arbitration in Chicago, even though the federal action was filed in California.").

However, the Fifth Circuit has addressed similar circumstances to the case at bar. *See Dupuy-Busching Gen. Agency, Inc. v. Ambassador Ins. Co.*, 524 F.2d 1275 (5th Cir. 1975). In *Dupuy*, the defendants moved "the court for an order directing that such arbitration proceed in the manner provided for in such agreement" after the plaintiff filed suit in a district that was outside the designated location. *Id.* at 1276. The Fifth Circuit found that allowing a plaintiff to avoid a forum selection clause by filing in a different district "would create a procedural trap by which a party to an arbitration agreement might be deprived of its contractual right to arbitration at the location specified in the agreement." *Id.* at 1277-1288. District courts in the Ninth Circuit have found this reasoning persuasive under like circumstances. *See Krause v. Expedia Grp., Inc.*, No. 2:19-CV-00123-BJR, 2019 WL 4447317, at *8 (W.D. Wash. Sept. 17, 2019); *U.S. ex rel. Turnkey Const. Servs., Inc. v. Alacran Contracting, LLC*, No. 13-CV-01654 TLN-CMK, 2013 WL 6503307, at *3 (E.D. Cal. Dec. 11, 2013).

Here, the Court also finds the Fifth Circuit's reasoning persuasive. To deprive a court of the ability to compel arbitration merely because Plaintiffs chose to file in a forum in order to obtain a more favorable result would undermine the

strong public policy in favor of enforcing arbitration agreements. *See Marmet Health Care Center, Inc. v Brown*, 565 U.S. 530, 533 (2012) (The FAA "requires courts to enforce the bargain of the parties to arbitrate" and "reflects an emphatic federal policy in favor of arbitral dispute resolution.").

Therefore, the Court will order arbitration at the location designated in the agreement which is Carmel, Indiana. *See* ECF No. 23-2 at 29, ¶ 17.1(b) ("The place of arbitration shall be the city and state where the Franchisor's headquarters are located); ECF No. 15 at 5 (headquarters located in Carmel, Indiana).

4. Dismissal

Defendants argues that this Court should dismiss the case where all claims are arbitrable and Indiana law will apply. ECF No. 15 at 15.

Under the FAA, the court should stay proceedings when an issue involved in the lawsuit is subject to arbitration. 9 U.S.C. § 3. However, the Ninth Circuit has held that the court has discretion to dismiss the action if all of the claims before the court are arbitrable. *Nagrampa v. MailCoups*, 469 F.3d 1257, 1276 (9th Cir. 2006) (en banc) (stating the court "should stay or dismiss the action pending arbitration"); *Sparling v Hoffman Constr. Co., Inc.*, 864 F.2d 635, 638 (9th Cir. 1988) (finding the district court "acted within its discretion when it dismissed [the plaintiff's] claims"). "The weight of authority clearly supports dismissal of the case when *all* of the issues raised in the district court must be submitted to

arbitration .... retaining jurisdiction and staying the action will serve no purpose." *Alford v. Dean Witter Reynolds, Inc.*, 975 F.2d 1161, 1164 (5th Cir. 1992) (internal citation omitted).

Here, none of the parties have requested a stay. Dismissal is warranted where all issues will be determined by the arbitrator pursuant to the agreement's broad arbitration provision. No resources would be saved if the case were to remain on the docket until arbitration concludes. Because dismissal is appropriate here, the Court need not address Defendants' *forum non conveniens* argument. ECF No. 15 at 18.

5. Attorney's Fees

Defendants seek attorney's fees and costs in connection with the instant litigation. Plaintiffs argue that Defendants are not entitled to such fees and costs where litigation is not prohibited under the franchise agreement. ECF No. 21 at 21.

There is no provision under the FAA that awards attorney's fees to a party who is successful in pursuing a motion to compel arbitration. 9 U.S.C. §§ 1-16. Per the parties' agreement, a non-prevailing party shall pay a prevailing party's attorney fees, costs and other expenses of the legal proceeding" where the part "prevailed upon the central litigated issues and obtained substantial relief." ECF No. 23-2 at 29, ¶ 17.6. Where the Court submits all claims to the arbitrator, the

assessment of attorney's fees under the agreement is more appropriate in that forum. Therefore, Defendants' request for attorney's fees is denied.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. Defendants' Motion to Seal Complaint and First Amended Complaint and Strike Unsealed Filings (ECF No. 13) is **DENIED**. The Clerk of Court shall unseal all pleadings and filings.
2. Defendants' Motion to Expedite Hearing for Motion to Compel Arbitration and Motion to Seal (ECF No. 14) is **GRANTED**.
3. Defendants' Motion to Compel Arbitration and Dismiss Case (ECF No. 15) is **GRANTED**. The Court **ORDERS** the parties to conduct arbitration in Carmel, Indiana and this case is then **DISMISSED**.
4. Plaintiffs' Motion for Protective Order (ECF No. 27) is **DENIED as moot.**
5. Each party to bear their own attorney's fees and costs.

The District Court Executive is directed to enter this Order and Judgment accordingly, furnish copies to counsel, and **CLOSE** the file.

DATED December 15, 2020.

Thomas O. Rice

THOMAS O. RICE
United States District Judge