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Preferred Product Placement Corporation dba Product Placement Corporation

UNITED STATES DISTRICT COURT,

DISTRICT OF NEVADA – LAS VEGAS

PREFERRED PRODUCT)
PLACEMENT CORPORATION dba)
PRODUCT PLACEMENT)
CORPORATION, a Nevada)
corporation,)

Plaintiff,)

v.)

HCG PLATINUM L.L.C., a Utah)
Limited Liability Company; RIGHT)
WAY NUTRTION L.L.C. (sic), a Utah)
Limited Liability Company; KEVIN)
WRIGHT, an individual; and DOES 1-)
10, inclusive,)

Defendants.)

Civil Action, Case No.

COMPLAINT FOR DAMAGES:

1. Breach of Contract

PRELIMINARY STATEMENT

1. This is an action for damages, resulting from the anticipatory breach and breach of contract between the parties.

THE PARTIES

2. Plaintiff Preferred Product Placement Corporation dba Product Placement Corporation (hereinafter "Plaintiff"), is a Nevada corporation which has its principal place of business located at 9811 West Charleston Blvd., # 2155, Las Vegas, NV 89117.
3. On information and belief, Defendant HCG Platinum, L.L.C. (hereinafter "HCG") is, and at all times relevant herein was, a Utah Limited Liability Company, with its principal place of business located at 14513 South Center Point Way, Suite 100, Bluffdale, Utah 84065.
4. On information and belief, Defendant Right Way NUTRTION (sic), L.L.C. (hereinafter "RWN") is, and at all times relevant herein was, a Utah Limited Liability Company with its principle place of business located at 201 East Bay Blvd., Provo, Utah 84606. Plaintiff is informed and believes and thereon alleges that HCG is a Limited Liability Company, and Defendant RWN operates HCG as one of Defendant RWN's "doing-business-as" monikers.
5. Plaintiff is informed and believes and thereon alleges that Defendant Kevin

Wright is, and at all times relevant herein was, a resident of the State of Utah. (Defendants Kevin Wright, RWN, and HCG are collectively referred to as “Defendants.”)

6. The true names and capacities, whether individual, corporate, associate or otherwise, of Defendants DOES 1 through 10, are unknown to Plaintiff at this time, and Plaintiff therefore sues said Defendants by such fictitious names. Plaintiff will amend this Complaint to state the true names and capacities of Defendants DOES 1 through 10 when the same have been ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Defendants are legally responsible in some manner for the events and happenings herein referred to, and has thereby proximately caused injuries and damages to Plaintiff as herein alleged.
7. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned, each of Defendants, including each of the DOE Defendants, was the agent, ostensible agent, servant, representative, associate, borrowed servant and/or employee of each of the remaining Defendants, and was at all times herein mentioned acting within the course and scope of said agency, ostensible agency, and/or borrowed servant authority and employment and with the consent, permission and/or ratification of his co-Defendants, and each of them.

8. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, acted as the alter ego of each other, in commingling business operations and funds, having failed to observe corporate formalities, and having formed shell business entities to avoid valid debts, among other things. As a result, each of them are liable for the acts and omissions of each other and which give rise to liability to Plaintiff as stated herein.

JURISDICTION AND VENUE

9. Plaintiff is a Nevada corporation, with its principle place of business in Nevada. Plaintiff is informed and believes that HCG is a Utah Limited Liability Company, with its principle place of business in Utah. Plaintiff is informed and believes that Defendant RWN is a Utah Limited Liability Company with its principle place of business in Utah. Plaintiff is informed and believes that Defendant Kevin Wright is a resident of the State of Utah and domiciled in Utah. In addition, the amount in controversy, exceeds \$75,000.00. As a result, there exists complete diversity between Plaintiff and Defendants, and the amount in controversy exceeds the statutory minimum for diversity jurisdiction. Thus, this Court has jurisdiction over this action, pursuant to 28 U.S.C. § 1332.
10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 (b) in that a substantial part of the events giving rise to this claim occurred in the State

of Nevada.

GENERAL FACTUAL ALLEGATIONS

11. On March 30, 2010, Plaintiff and HCG entered into a contract. A true and correct copy of this contract is attached hereto as Exhibit "A." Pursuant to this contract, Plaintiff was to provide marketing and broker services to HCG, in an effort to assist HCG in selling its products (hereinafter "Agreement").
12. In return for Plaintiff's assistance in providing marketing and broker assistance to HCG, Plaintiff was to be paid 7% of all HCG's net sales to stores located on Appendix A of the Agreement; Plaintiff was to be paid 9% of all HCG's net sales to stores located on Appendix B of the Agreement; and Plaintiff was to be paid 10% of all net sales to stores located on Appendix C of the Agreement. In addition, Plaintiff was to be the exclusive sales representative of HCG with respect to stores located on Appendices A, B and C of the Agreement. Further, Plaintiff was to be paid a commission of 1% of each unit sold by HCG.
13. The Agreement went into effect on March 30, 2010 and remains in full force and effect until March 30, 2015 (see Exhibit "A," paragraph 6). Further, the Agreement specifies that should litigation result from the Agreement, the prevailing party will be entitled to its attorneys' costs and

fees (see Exhibit A, paragraph 10).

14. Between March 30, 2010 and March 20, 2011, HCG lived up to its end of the Agreement. However, on or about March 21, 2011, HCG, acting through Defendant Kevin Wright, contacted Plaintiff and informed Plaintiff that HCG would only pay Plaintiff 3% of its net sales to stores located on Appendix A of the Agreement; 4% of its net sales to stores located on Appendix B of the Agreement; and 4% of its net sales made to stores located on Appendix C of the Agreement. In addition, Defendant Kevin Wright informed Plaintiff that Plaintiff would no longer be the exclusive sales representative of HCG with respect to stores located on Appendices A, B, and C of the Agreement. In addition, Defendant Kevin Wright has declared that HCG will no longer comply with other, less material aspects of the Agreement. Further, Defendant Kevin Wright declared that these changes were to be retroactive, and to be deemed to have taken place on March 1, 2011.
15. Defendant Kevin Wright's proclamations of HCG's refusal to live up to the Agreement left no room for interpretation or negotiation. Defendant Kevin Wright specifically stated, in his proclamation purporting to change the Agreement, that the proposed new terms were not a negotiating position or open for debate.

16. Plaintiff attempted to seek an informal resolution to the dispute described hereinabove, and attempted to negotiate with Defendant Kevin Wright and HCG in good faith. During this attempt at informal resolution and negotiation, HCG paid Plaintiff pursuant to the Agreement for the months of March and April of 2011.
17. However, during the month of May, 2011, HCG, acting through Defendant Kevin Wright, informed Plaintiff that it no longer considered the Agreement to be binding, and informed Plaintiff that HCG had filed suit against Plaintiff, seeking to invalidate the Agreement.

FIRST CAUSE OF ACTION

BREACH OF CONTRACT

As Against All Defendants

18. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 17 as though fully set forth herein.
19. On or about March 21, 2011, the Agreement between Plaintiff and HCG was in full force and effect. On or about March 21, 2011, Defendant Kevin Wright, contacted Plaintiff and informed Plaintiff that HCG would only pay Plaintiff 3% of its net sales to stores located on Appendix A of the Agreement; 4% of its net sales to stores located on Appendix B of the Agreement; and 4% of its net sales made to stores located on Appendix C of the Agreement. In addition,

Defendant Kevin Wright informed Plaintiff that Plaintiff would no longer be the exclusive sales representative of HCG with respect to stores located on Appendices A, B, and C of the Agreement. In addition, Defendant Kevin Wright has declared that HCG will no longer comply with other, less material aspects of the Agreement. Each of these purportedly new terms of the Agreement were direct, material contradictions to the actual terms of the Agreement.

20. At the time of Defendant Kevin Wright's March 21, 2011 proclamation on behalf of HCG, HCG had a present duty of performance pursuant to the Agreement, and through Defendant Kevin Wright's proclamation, it evinced an intention on the part of HCG to refuse performance in the future. HCG further evinced an intention to refuse performance under the Agreement, in informing Plaintiff that it had filed a lawsuit against Plaintiff, seeking to invalidate the Agreement. At the time HCG informed Plaintiff of HCG's lawsuit against Plaintiff, HCG had a present duty of performance under the Agreement. As a result, HCG has breached its Agreement with Plaintiff.
21. As a result of HCG's breach of its Agreement with Plaintiff, Plaintiff has been damaged in an amount to be proven at trial.

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WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

ON THE FIRST CAUSE OF ACTION:

- (1) For general damages in an amount according to proof;
- (2) For special damages including consequential damages, in an amount according to proof;
- (3) For reasonable attorney's fees;
- (4) For costs of suit herein; and
- (5) For such other and further relief as the Court deems just and proper.

Dated: May 9, 2011

THE LAW OFFICES OF SCOTT E.
SCHUTZMAN

By: _____/s/_____
George B. Hibbeler, Esq.
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