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Bellator Sport Worldwide, LLC

Plaintiff,

v.

Quinton “Rampage” Jackson

Defendant.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
BURLINGTON COUNTY

Docket No.: C-025-15

Civil Action

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF’S APPLICATION FOR  
PRELIMINARY INJUNCTION PURSUANT TO R. 4:52**

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Plaintiff Bellator Sport Worldwide, LLC (“Bellator”), by and through its undersigned counsel, respectfully submits this Memorandum of Law in support of its application for preliminary injunction pursuant to R. 4:52.

### **PRELIMINARY STATEMENT**

Quinton “Rampage” Jackson (“Jackson”) is a Mixed Martial Arts (“MMA”) fighter. Under a fully integrated written agreement with Bellator, Jackson expressly agreed to fight exclusively for Bellator until he completed six fights. At the time Bellator and Jackson entered their agreement in May 2013, Jackson’s career was in decline as he had lost his three prior fights for the Ultimate Fighting Championship (“UFC”) -- and four of his last five prior fights for UFC. After the parties entered into their agreement, Bellator rebuilt Jackson’s reputation in the MMA industry -- arranging and promoting three fights which Jackson won -- and linked its future to his continued performance. Three fights into his six-fight commitment, with his career rebounding, Jackson attempted to renegotiate his agreement but after that attempt failed, he purported to alter the status quo by abandoning his obligations, based on patently baseless trumped up allegations of breach by Bellator. In fact, Bellator complied fully with its obligations under the parties’ agreement, and Jackson breached by terminating the contract in bad faith, solely in order to fight on behalf of Bellator’s biggest competitor, UFC. Jackson is now scheduled to fight for UFC in Montreal, Canada on April 25, 2015. Bellator brings this action for breach of contract, for breach of the covenant of good faith and fair dealing and for a preliminary injunction and permanent injunction to enjoin Jackson from participating in any fight in breach of his obligations to Bellator and for such other and further relief as the Court deems just and reasonable.

Bellator is plainly entitled to the injunction it now seeks. *First*, Jackson expressly agreed in the parties’ contract that his services are “special, unique, unusual and extraordinary in character” and “in the event of a breach,” Bellator would suffer “irreparable damage and injury” and be entitled

to “injunctive relief.” Without an injunction, Bellator will suffer irreparable harm to its business and reputation because Bellator’s fortunes are linked with those of Jackson. *Second*, Bellator’s underlying legal claim is well settled because courts regularly issue injunctions to enforce exclusive service contracts for unique talents. *Third*, Bellator has more than established that it is reasonably likely to succeed on the merits because Jackson is in clear breach of his exclusive services contract and his claims regarding Bellator’s purported breach are all without merit. *Finally*, the equities weigh heavily in Bellator’s favor because Bellator has invested millions of dollars in promoting and marketing Jackson and his fights and Jackson’s departure would cause Bellator to not only lose that investment but would also cause serious non-economic harm to its reputation in the industry. In contrast, Jackson will not suffer any hardship should the injunction issue. Indeed, it is well settled that is not an unreasonable burden on a fighter to refrain from competing until his contractual obligations are satisfied.

Accordingly, this Court should grant Bellator’s motion and: (i) enjoin Jackson from negotiating with, or fighting for any MMA promoter, including but not limited to UFC, during the term of his exclusive contract to fight on behalf of Bellator; and (ii) enjoin Jackson from fighting on April 25, 2015 for UFC or any other MMA promoter; and (iii) grant such other relief as the Court deems equitable and just.

## **STATEMENT OF FACTS**

### **A. THE MMA INDUSTRY**

MMA is a full-contact combat sport that allows the use of striking techniques from a variety of other combat sports and martial arts. (Certification of Scott Coker dated February 25, 2015 (“Coker Cert.”) ¶ 6). Professional MMA has been legal in New Jersey since 2009. (*Id.*) Professional MMA fighters are well known throughout the world. (*Id.*) MMA fighters are not organized into teams as is common in many organized sports. (*Id.*) MMA fighters -- who are under contract with



the same MMA promoter and who are within the same weight class -- compete against one another. (Id.)

MMA promoters put on events that have a number of fights, or “bouts” scheduled for a particular event. (Id. ¶ 7). This is commonly referred to as the “card.” (Id.) The card typically includes some preliminary fights, the “undercard” and the “main card” which typically features the better known fighters. (Id.) The strength of the card is dependent on the notoriety of the fighters. Fans can purchase tickets to watch the fights live, can watch the fights on television and -- on occasion -- can watch the fights through pay-per-view (“PPV”) access. (Id.) The strength of the card drives ticket sales, television ratings, merchandise sales, dictates the rates paid by sponsors and advertisers and, to some extent, also dictates the venue for the event and the scope of promotion and marketing. (Id.)

MMA promoters invest significant resources to develop their fighters and their fights and go to great lengths to ensure that the marketing of their fighters promotes each fighter and their public personalities in a manner that raises awareness, generates revenue, creates brand loyalty and provides the fighter the best opportunity to become a superstar not only in the MMA industry but around the world. (Id. ¶ 8).

## **B. BELLATOR AND UFC**

Bellator is the second largest MMA promoter in the MMA industry. (Id. ¶ 9). Bellator offers the most exciting sporting events for fans and viewers across the globe, while featuring some of the top-athletes in the world. (Id.) Bellator currently airs in over 120 countries, including Argentina, Brazil, Cuba, The United Kingdom, France, Russia and several African nations. (Id.) Bellator has over 150 fighters on its roster and has seven weight divisions for men and one division for women. (Id.) Bellator’s biggest competitor in the MMA industry is UFC. (Id.) UFC is the largest MMA promoter in the MMA industry. (Id.) UFC’s programming is available in over 145

countries, including in many of the same countries as Bellator's. (Id.) UFC has over 500 fighters on its roster and has eight weight divisions for men and two divisions for women. (Id.) Bellator and UFC compete both domestically and internationally for the same fan base which is made up of individuals who are MMA enthusiasts. (Id.)

Fighters who are under contract with Bellator typically fight other Bellator fighters in Bellator-promoted events which are aired on Spike TV in the US and Canada or distributed on PPV. (Id. ¶ 10). Bellator derives revenue from live ticket sales, merchandising, digital sales, sponsorships, and advertising sales for broadcast events on Spike TV and on international platforms in over 120 countries and, in the case of PPV, viewer purchases of specific events. (Id.) Fighters who are under contract with UFC fight other UFC fighters in UFC-promoted events which air on Fox Sports and on UFC's on-line platform called Fight Pass or distributed on PPV. (Id.)

### **C. MMA IS A STAR-DRIVEN BUSINESS**

MMA is a star-driven business. (Id. ¶ 11). An MMA promoter's success is based upon the ability to develop and promote MMA fighters that are not only successful in their fights but also have the personality and charisma to draw a public following. (Id.) Star power is what draws fans to MMA events and MMA viewers to watch on television and to purchase PPV. (Id.) Star power also drives merchandise sales, television ratings, international distributions, sponsorship, live gate revenue and advertising revenue. (Id.) Fans want to see familiar fighters and sponsors want to sponsor those household names. (Id.) A successful promotion of an MMA event requires elite MMA fighters who have reputations for winning fights or have gained notoriety with the MMA fan base and can attract a wide audience. (Id.) To succeed, MMA promoters must demonstrate that they can promote fights that feature well-known fighters and which result in high ratings. (Id.)

Becoming an MMA star is difficult. (Id. ¶ 12). MMA athletes train for years before competing professionally. (Id.) A successful fighter must climb the ranks of competitors by

winning fights and fighting increasingly better competition until the fighter has the opportunity to fight for a championship. (Id.) A successful fighter must also have a public persona that is attractive to MMA fans. (Id.) That persona must be promoted to create that “something special” that translates into the star power that draws viewers to events and drives ratings. (Id.)

An MMA fighter’s development is a long and expensive process. (Id. ¶ 13). Each fight must be carefully chosen not only to provide the fighter with the right opportunity to advance but also to create the kind of event that will excite the MMA public and drive ticket sales and viewership. (Id.) Each fight must be promoted and marketed not only to advertise the event but to also create public interest in the MMA fighter himself. (Id.) Bellator is in the star-building business. (Id.)

An MMA fighter, due to the harsh physical aspects of the sport, has a limited time in which to compete in the sport. (Id. ¶ 14). The risk of career-ending injury is always present and an MMA promoter takes a substantial risk in making an investment in a fighter. (Id.) The loss of three fights in a row can have a severe detrimental effect on a fighter’s prospects and earnings. (Id.) While a star fighter on his/her way up may make many millions of dollars, if he/she then loses the next series of fights his/her earnings may well decrease significantly as MMA viewers’ interest in him/her wanes. (Id.)

An MMA promoter’s reputation is determined in large part by the quality of the fighters on its roster. (Id. ¶ 15). And a star fighter that has title prospects is incredibly valuable to a promoter. (Id.) That value cannot be measured in money alone. (Id.) Having a star in your stable drives the recruitment of future talent and provides a draw for other fighters to want to fight for that MMA promoter. (Id.) An MMA promoter that losses a star performer will be seen as a diminished force in the MMA industry and can have difficulty attracting the kinds of fighters that will become its future stars. (Id.) Thus, the recruitment and retention of star fighters is critical to the ongoing success of a promoter’s brand. (Id.)

These concerns are even more important for Bellator which is an up and coming, rapidly growing MMA promoter competing against the industry giant, UFC. (Id. ¶ 16). If Bellator were, for example, to lose one of its stars to UFC before that fighter's obligations to Bellator had been satisfied, it would send an extremely negative signal to the MMA industry. (Id.) Thus, Bellator's star fighters are zealously guarded, highly compensated, aggressively marketed and critical to the success of the Bellator brand. (Id.)

#### **D. JACKSON'S CAREER IN MMA**

Jackson is a long time MMA star whose fighting record goes back to 1999. (Id. ¶ 17). In 2002, Jackson fought in the highest rated MMA event in history on Spike TV. (Id.) In May 2007, Jackson won the UFC title from legendary UFC champion, Chuck Liddell. (Id.) The fight was aired on Spike TV and had over six million viewers. (Id.) This victory, along with Jackson's public persona, firmly established him as a world-wide MMA superstar. (Id.) Indeed, when Jackson fought Dan Henderson in London on Spike TV in September 2007, the entire telecast averaged 4.8 million viewers and his fight was the most-watched quarter-hour of the telecast with 5.9 million viewers. (Id.)

Following his victories over Liddell and Henderson in 2007, Jackson's fighting career continued and he remained extremely popular with the public, including co-starring in the movie the A-Team in 2010. (Id. ¶ 18). In September 2011, while fighting for UFC, Jackson lost a fight to Jon Jones. (Id.) In February 2012, again while fighting for UFC, he lost a fight to Ryan Bader. (Id.) In January 2013, Jackson lost his last fight for UFC to Glover Teixeira. (Id.) Thus, Jackson had a string of three losses while fighting for UFC -- and lost four of his last five fights -- between September 2011 and January 2013. (Id.) Following those losses, Jackson left UFC. (Id.)

#### **E. BELLATOR DECIDES TO SIGN JACKSON AND REBUILD HIS IMAGE**

Despite the damage caused to Jackson by his losing his last three fights for UFC, Bellator believed that Jackson was still a fan favorite. (Id. ¶ 19). Notwithstanding his losses, Jackson was still a star in MMA and had one of the highest “E-scores” in the MMA world.<sup>1</sup> (Certification of Kevin Kay dated February 25, 2015 (“Kay Cert.”) ¶ 8). Getting a star of Jackson’s popularity -- even in his diminished state -- would be a significant achievement for Bellator. (Coker Cert. ¶ 19). Bellator decided to take a risk with Jackson. (Id.) Bellator believed that if Jackson were properly promoted and put in competitive fights, he could again generate the kind of public interest that drives ticket sales and viewership. (Id.) In early 2013, Bellator and Jackson and his business manager, Anthony McGann, who is based in the U.K., began discussions about Jackson’s fighting exclusively for Bellator. (Kay Cert. ¶ 9).

#### **F. THE PARTIES ENTER INTO A FULLY INTEGRATED WRITTEN AGREEMENT**

On May 29, 2013, Bellator and Jackson entered into a fully integrated written exclusive promotional agreement (the “Agreement”). (Coker Cert. ¶ 20 & Exhibit A thereto). Under the Agreement, Jackson agreed that Bellator would be his “exclusive Promoter of” his future fights and he granted Bellator “the exclusive unrestricted and worldwide rights to secure, promote, arrange, present, coordinate, create and produce all MMA, martial arts, and unarmed combatant contests ... to be engaged in by” him “during the Term ....”<sup>2</sup> (Id.) Under paragraph 11(B) of the Agreement, Jackson granted Bellator the “exclusive, unrestricted, and irrevocable worldwide rights” to fully exploit and use to the fullest extent possible Jackson’s “names, images, likenesses” for the purpose

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<sup>1</sup> An E-score is a celebrity appeal ranking, comprised of 46 separate personality attributes. E-score evaluations are provided by E-Poll Market Research, which has a database of more than 2,800 celebrities. (Kay Cert. ¶ 8).

<sup>2</sup> The following paragraphs of the Agreement confirm that Bellator is Jackson’s exclusive promoter. **Paragraph 2:** Jackson grants Bellator the “exclusive unrestricted worldwide rights” to promote his fights during the Term. **Paragraph 11:** Jackson grants to Bellator the “exclusive, unrestricted, and irrevocable worldwide rights” to the ancillary rights, as defined in the Agreement. **Paragraph 20(E):** Jackson agrees that he would not enter into any agreement or understanding, whether oral or written, that “might interfere with the provisions” in the Agreement. (Ex. A to Coker Cert. ¶¶ 2, 11, 20(E)).

of “advertising and/or promoting and/or exploiting” Bellator’s events and brand. (Ex. A to Coker Cert. ¶ 11(B)).

Under Addendum B to the Agreement, executed on January 17, 2014, the Term of the Agreement commenced on May 29, 2013 -- the “Effective Date” of the Agreement. (Ex. A to Coker Cert. Addendum B). The Term of the Agreement shall end on the date when Jackson has participated in five fights promoted by Bellator “subsequent to execution of this Addendum B ....” (Id.) Thus, Jackson was required to participate in five fights promoted by Bellator after January 17, 2014.<sup>3</sup> (Coker Cert. ¶ 21). And since, as noted below, Jackson participated in one fight promoted by Bellator in November 2013, he is obligated to participate in a total of six fights promoted by Bellator under the Agreement. (Id.)

#### **G. BELLATOR’S PAYMENT OBLIGATIONS UNDER THE AGREEMENT**

Paragraph 3 of the Agreement provides that upon execution, Bellator shall purchase for Jackson “a 2013 Tesla Sport Automobile” as a “Signing Bonus.” (Coker Cert. 22 & Ex. A thereto ¶ 3). Addendum B of the Agreement also provides that upon execution, Bellator shall pay Jackson “an additional bonus of ... \$100,000.00.” (Ex. A to Coker Cert. Addendum B). Addendum B of the Agreement also provides that Bellator had the sole “right to place any bout on either Pay-Per-View or on a Non-Pay-Per-View distribution platform.” (Id.) Addendum B of the Agreement also provides that Bellator agreed to pay Jackson a guaranteed purse for non-PPV fights of \$200,000.00 for his first fight, \$225,000.00 for his second, \$250,000.00 for his third, \$275,000.00 for his fourth, and \$300,000.00 for his fifth. Bellator agreed to pay Jackson between \$200,000.00 and \$450,000.00

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<sup>3</sup> This provision modified Paragraph 14 of the Agreement which provided that the Term of the Agreement shall commence on May 29, 2013 and end on the later of: (i) “the date on which ... [Jackson] has participated in Five (5) Bouts” promoted by Bellator; or (ii) “Twenty-Four months after” May 29, 2013. This demonstrates the parties’ intended that Jackson would fight in six fights for Bellator without regard to how long it took to satisfy his contractual obligation. (Ex. A to Coker Cert. Addendum B).

for any PPV fight that Bellator chose to promote.<sup>4</sup> (Id.) Addendum B of the Agreement also provides that Bellator would pay Jackson \$50,000.00 in the event that he did not receive a certain revenue amount from sponsorships. (Id.) Bellator purchased Jackson a Tesla for \$129,603.00, paid him his \$100,000.00 additional signing bonus, \$650,000.00 in purses for his fights and \$50,000.00 for sponsorships. (Coker Cert. ¶ 23).

#### **H. BELLATOR'S EXCLUSIVE RIGHT OF FIRST REFUSAL**

Although the Term of the Agreement was for six fights, paragraph 24 of the Agreement provides Bellator the exclusive right to extend the term of the agreement based upon its exclusive right to negotiate with Jackson and its right of first refusal with respect to any offer that Jackson received either: (i) at the end of the Term; or (ii) if the agreement was terminated for any reason, including an alleged breach by Bellator, prior to the end of the Term. (Ex. A to Coker Cert. ¶ 24).

#### **I. OTHER RELEVANT PROVISIONS OF THE AGREEMENT**

The Agreement also provides that: (i) Jackson agreed that he had the opportunity to obtain independent legal counsel and that he voluntarily entered into the Agreement; (ii) the Agreement is fully integrated, the parties did not rely upon any representations -- either oral or written -- not contained in the Agreement and the Agreement could not be modified without a writing; (iii) Jackson's services were "special, unique, unusual and extraordinary in character" and that Bellator would suffer irreparable harm and would be entitled to injunctive relief if he were to breach the Agreement; (iv) a disclosure of confidential information would be a violation of the Agreement and cause Bellator to suffer irreparable harm; (v) Bellator had sole and absolute discretion with respect to

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<sup>4</sup> Jackson was also entitled to additional PPV and gate bonus payments for his fights if certain requirements were met. Paragraph 4(A)(i) of the Agreement provides for Jackson to receive \$4.00 "for each pay-per-view ("PPV") buy over 190,000 buys for any telecast live event" in which Jackson participated. Paragraph 4(A)(ii) of the Agreement provides that Jackson shall "receive Thirty Percent (30%) 'Net Gate Receipts' or 'Net Site Receipts' actually received by" Bellator above "\$400,000.00 in 'Net Gate Receipts' or 'Net Site Receipts' actually received" by Bellator for any fight in which in which Jackson participated. (Ex. A to Coker Cert. ¶¶ 4(A)(i)-(ii)).

promotion of Jackson's fights; and (vi) Bellator had a right to receive notice of an alleged breach and the right to cure any alleged breach. (Ex. A to Coker Cert. ¶¶ 12(B), (D), 23(F), 26, 35, 37, 39).

**Paragraph 39 (Voluntariness of Contract):** Jackson acknowledges that "he has been given the opportunity to obtain independent legal advice, by counsel of his choosing, prior to executing this Agreement, and that his entry into this contract is entirely voluntary."

**Paragraph 35 (Fully Integrated Agreement):** the Agreement contains their "full and complete understanding" and shall "supersede all prior representations ... whether written or oral" and that they relied upon "no oral or written representations or understanding of any nature" except those in the Agreement and that the Agreement "may be modified only by a writing signed by both parties."

**Paragraph 26 (Unique Services/Injunctive Relief):** Jackson agrees that: (i) his services are "special, unique, unusual and extraordinary" in character; (ii) his services "have peculiar value which cannot be reasonably or adequately compensated by damages in action at law and could cause" Bellator "irreparable damages and injury;" and (iii) agrees "that injunctive relief is appropriate" in the event of a breach.

**Paragraph 37 (Confidentiality):** Jackson shall not disclose, nor permit his representatives to disclose, "any information with respect to the terms of this Agreement" and agrees that a violation of this provision could place Bellator "at a competitive disadvantage" and "subject him to causes of action for injunctive relief and/or for damages."

**Paragraphs 12(B) and 12(D) (Bellator Has Full Discretion to Promote):** Bellator may "promote" Jackson's fights "in any manner" it chooses and all fights "shall be on dates and at sites to be designated by" Bellator, in its "sole and absolute discretion."

**Paragraph 23(F) (Notice of Alleged Breach):** if Jackson believes that Bellator breached the Agreement -- other than failing to pay him -- he shall serve written notice to Bellator and Bellator shall have a period of forty five days after its receipt to cure.

(Id.)

#### **J. BELLATOR PROMOTES THREE FIGHTS FOR JACKSON**

Jackson has participated in three fights of his six fight commitment with Bellator. (Certification of Jon Slusser dated February 25, 2015 ("Slusser Cert.") ¶ 4). The first was against Joey Beltran in November 2013 and aired on Spike TV. (Id.) The second fight was against



Christian M’Pumbu in February 2014 and aired on Spike TV. (Id.) The last fight was against Muahmmmed “King Mo” Lawal in May 2014 and aired on PPV. (Id.) Jackson won all three fights. (Id.) Bellator and its domestic and international distribution partners invested millions of dollars in order to promote and market Jackson and these fights. (Id. ¶ 5).

Bellator promoted and marketed Jackson and these fights across the nation using Bellator’s and Spike’s platforms, including their websites, mobile apps for use on i-Phones and i-Pads, and their various social media sites, including Facebook, Twitter, YouTube and Instagram. (Id.) Bellator also used: (i) grassroots marketing techniques to create fan interest and enthusiasm for the fight and Jackson in the area surrounding the chosen venues; (ii) off channel marketing, which included purchasing television advertising time from non-affiliated networks; and (iii) digital marketing on third party sites which included websites, social media platforms and search engine marketing ads. (Id.) By way of example, Bellator paid over \$250,000.00 for one television commercial that aired on ESPN, a non-affiliated network, on May 16, 2014, during the NBA playoffs the night before the “King Mo” fight, as well as spent \$200,000.00 to secure the rights for the use of a Rolling Stones song in connection with its advertising of Jackson. (Id.)

#### **K. BELLATOR PROVIDES JACKSON WITH OTHER ENTERTAINMENT OPPORTUNITIES**

In addition to setting forth the terms and conditions relating to Bellator’s exclusive promotion of Jackson’s fights, the Agreement expressly set forth additional “entertainment opportunities” that Bellator was required to offer to Jackson, including the production of a reality-based television program, film opportunities and other promotional opportunities in order to develop and promote Jackson’s brand. (Ex. A to Coker Cert. ¶¶ 6-7, 9).

Paragraph 6 of the Agreement provides that Bellator “shall ... broadcast four (4) reality-based television program episodes featuring and focusing on” Jackson and that he would be paid \$35,000.00 per episode. (Id. ¶ 6). Bellator performed as agreed and paid a production company

approximately \$1,000,000.00 to produce a reality show “Rampage 4 Real” featuring Jackson and his lifestyle. (Slusser Cert. ¶ 6). Bellator aired four episodes of the show on Spike TV. (Id.) The show focused on the daily routines of Jackson and his friend and family during Jackson’s preparation for one of his MMA fights. (Id.) Jackson was paid a total of \$140,000.00 for his appearance on the show. (Id.)

Paragraph 7 of the Agreement provides that Bellator “shall retain ... a screenwriter to work directly with” Jackson “to develop ... a treatment ... for a potential feature film project ... focused on” Jackson. (Ex. A to Coker Cert. ¶ 7). Bellator again performed as agreed and engaged the services of a screenwriter -- selected by Jackson -- who worked with him to attempt to develop a screenplay concerning Jackson’s idea for a movie. (Slusser Cert. ¶ 7).

Paragraph 7 of the Agreement also provides that Bellator shall secure “direct access to and communication with Paramount Pictures for the express purpose of attempting to develop film opportunities” for Jackson. (Ex. A to Coker Cert. ¶ 7). Bellator again performed as agreed and introduced Jackson to the President of Paramount Film Group, Adam Goodman. (Slusser Cert. ¶ 7). Jackson was provided a tour of Paramount’s grounds and met Goodman to discuss film opportunities for Jackson. (Id.)

Paragraph 9 expressly provides that Jackson will make “a Red Carpet appearance” at the “MTV Video Music Awards” in 2013. (Ex. A to Coker Cert. ¶ 9). Bellator arranged for the “Red Carpet” appearance at the MTV Video Music Awards at the Barclay’s Center in Brooklyn, New York. (Slusser Cert. ¶ 7).

#### **L. BELLATOR REBUILDS JACKSON’S IMAGE**

Bellator’s performance under the Agreement and its marketing and promotion of Jackson personally and his fights propelled him back to the top of the MMA world and made him relevant again in the MMA industry. (Coker Cert. ¶ 25). To put it in perspective, Jackson lost his last three

fights -- and lost four of his last five fights -- for UFC. (Id.) His career was on a downward trajectory. (Id.) He signed with Bellator and Bellator put him in competitive fights, put huge marketing dollars into his events, gave him cross-platform exposure on Spike TV, put him in a reality show that showcased his ostentatious life outside the cage, hired a writer to create a movie treatment for a vehicle in which he could star, compensated him fairly, and made him relevant again in the MMA industry. (Id.) Jackson's previous string of losses was essentially forgotten and Jackson was once again a powerful draw. (Id.)

#### **M. JACKSON ATTEMPTS TO RENEGOTIATE THE AGREEMENT**

In June 2014, following his success in his third fight for Bellator and back on the top of the MMA world, Jackson attempted to renegotiate the Agreement with the then new president of Bellator, Scott Coker. (Coker Cert. ¶ 27). McGann told Coker that Jackson "was not happy" with his deal with Bellator and that it needed to be changed. (Id.) Because Jackson was -- and is -- extremely important to Bellator and its future plans, Coker agreed to discuss the Agreement with Jackson and McGann. (Id.)

Among Jackson's complaints was his dissatisfaction with the fact that the PPV buy performance of the "King Mo" fight was under the threshold for PPV buys at which he would get a bonus payment. (Kay Cert. ¶ 10). Jackson's view of his PPV potential was out of step with the current market realities. (Id. ¶ 11). Indeed, the ratings for regular cable programming of MMA events have been very good, while PPV purchases have lagged significantly over prior years. (Id.) By way of example, in 2014, UFC's PPV buys were reported to be down 40% from the year before. (Id.) Notwithstanding the general decline in viewership, although Jackson's PPV results were good, they were not sufficient to trigger a bonus payment under the paragraph 4(A)(i) of the Agreement. (Id. ¶¶ 11-12). Because Jackson was very important to the Bellator brand, in June 2014, Bellator made a \$200,000.00 payment to him even though Bellator was not obligated to do so under the

Agreement in order to resolve the concerns he and his manager were raising, including those regarding the “King Mo” fight. (Coker Cert. ¶ 27). Jackson picked up the check himself at Coker’s office. (Id.)

During these numerous and lengthy discussions, Jackson acknowledged the Agreement but said that he only signed it because McGann had insisted that he do so. (Id. ¶ 28). Jackson also explained that McGann was no longer representing him. (Id.) However, after a few conversations with Jackson, McGann began to again negotiate on Jackson’s behalf. (Id. ¶ 29). Jackson’s outrageous demands and the burden of determining who was handling the negotiation on his behalf made it difficult to negotiate with him. (Id.) In an effort to reach an amicable, and financially rational, resolution, Coker asked an MMA colleague, Mike Kogan, to assist in the negotiation to try to bridge the gap. (Id.) That effort failed. (Id.)

As Bellator considered how to respond to Jackson’s ever increasing and convoluted demands, McGann began to say that he would go to the press about Bellator’s supposed failures and that he would make public the details of the Agreement – despite the fact that he was aware that the Agreement contained a strict confidentiality provision. (Id. ¶ 30).

McGann also began to claim that Bellator had breached the agreement by failing to provide certain entertainment opportunities. (Id. ¶ 31). This was patently false. (Id.) Bellator had fully and completely performed under the Agreement. (Id.) McGann also claimed that Bellator breached the agreement by not properly promoting the fights even though Bellator had absolute discretion with respect to promotion of Jackson’s fights under paragraph 12 of the Agreement. (Id.) Notwithstanding that discretion, Bellator and its partners have invested millions of dollars promoting these fights and the fights succeeded in restoring Jackson’s tarnished image. (Id.)

McGann also claimed that Bellator’s former President, Bjorn Rebney, had made Jackson promises regarding Bellator’s performance, including his compensation, the reality show, the screen

play, the film making opportunities and the awards show. (Id. ¶ 32). But all of those claims are contravened by the express terms of the Agreement which at paragraph 35 provides that the parties agree that the Agreement contains their “full and complete understanding” and shall “supersede all prior representations ... whether written or oral” and that they relied upon “no oral or written representations or understanding of any nature except as set forth in writing herein.” (Id. ¶ 32 & Ex. A thereto ¶ 35).

All of these allegations, of course, were not true as Bellator had fully and completely performed under the Agreement. (Coker Cert. ¶ 33). Bellator negotiated in good faith and went above and beyond in order to resolve Jackson’s issues and maintain a good working relationship between the parties. (Id.) In contrast, Jackson acted in bad faith by resorting to subterfuge in an attempt to force Bellator to give in to Jackson’s outrageous demands or, as it turned out, so that Jackson could attempt to escape the Agreement based upon his trumped up claim of breach. (Id.)

On October 15, 2014, McGann -- in one of his frequent and erratic e-mails -- for the first time after over four months of negotiation with Bellator, claimed that Bellator materially breached the Agreement by violating paragraph 4 of the Agreement -- which relates to Jackson’s bonus payment based upon PPV buys for his fights. (Id. ¶ 34). McGann asserted that Bellator had materially breached paragraph 4(A)(i)(2) of the Agreement because Jackson had not been provided a “summary report of pay-per-view buys” promptly after the “King Mo” fight. (Id.)

But, shortly after the fight, Kevin Kay, President of Spike TV, told McGann the PPV results and explained to him that based upon these results Jackson was not entitled to a bonus payment under the Agreement. (Id. ¶ 35). At that time, neither Jackson nor McGann asked Kay for a copy of any summary reports -- which are highly confidential and proprietary. (Coker Cert. ¶ 35; Kay Cert. ¶ 14) Further, in June 2014, Kay publicly released the PPV results and those results -- which

confirm that Jackson is not entitled to a bonus payment -- were thereafter widely reported by the media. (Coker Cert. ¶ 35; Kay Cert. ¶ 14)

Moreover, while attempting to renegotiate the Agreement, McGann told Coker several times on the phone and in numerous e-mails that he was not subject to the confidentiality provision of the Agreement, notwithstanding that that provision binds Jackson and his representatives, including McGann. (Coker Cert. ¶ 36). McGann also told Coker to send the summary reports directly to him and that it was his intention to make public all the details of the Jackson/Bellator relationship. (Id.) Given these statements, and the highly confidential nature of the summary reports, Bellator was concerned that the summary reports would be disclosed by McGann in violation of the Agreement's confidentiality provisions. (Id.)

#### **N. JACKSON MATERIALLY BREACHES THE AGREEMENT**

On November 21, 2014, McGann sent a purported Termination Notice on behalf of Jackson alleging that Bellator breached the Agreement, that Jackson is entitled to rescission of the Agreement and that Bellator violated paragraph 4(A)(i)(2) of the Agreement. (Coker Cert. ¶ 38 & Ex. B thereto). After hearing that Jackson was speaking to UFC in violation of the Agreement, on December 4, 2014, Coker had a telephone call with Kirk Hendrick of UFC. (Coker Cert. ¶ 38). Hendrick confirmed that UFC was negotiating with Jackson and that McGann told him that Jackson was a free agent. (Id.) Coker told Hendrick that Jackson was under contract with Bellator and not a free agent. (Id.) Hendrick asked Coker if Bellator could send a letter to UFC indicating that Jackson was under contract with Bellator. (Id.) Coker then directed an e-mail be sent to UFC confirming that "it is Bellator's position that Quinton Jackson is still under contract with us." (Id.) In response, UFC sent an e-mail stating "that the representations made to us on this subject are directly contrary to those set forth in your email. We will look into the matter and follow up with you if necessary." (Id.)

Soon thereafter, UFC announced that it has re-signed Jackson and set a fight between Jackson and Fabio Maldonado to be held on April 25, 2015, in Montreal, Canada. (Id. ¶ 39). By opting to sign with UFC, Jackson materially breached the Agreement that Bellator would be his exclusive promoter and paragraph 11(B) which provides that Bellator has the exclusive right to use Jackson’s “names, images likenesses” for the purpose of “advertising and/or promoting and/or exploiting” Bellator’s events and brand. (Coker Cert. ¶ 40 & Ex. A thereto ¶ 11(B)). Jackson also breached paragraph 24 of the Agreement which provides that for twelve months following its termination, for any reason, Bellator has the exclusive right “to match the material terms of any agreement offered” made to Jackson “by any other promotional entity” and that Jackson must provide Bellator “with written notice of any such offer from another promotional entity within five (5) days of ... receiving said offer,” by failing to provide Bellator with notice of, and the right to match, the offer he received and accepted from UFC. (Coker Cert. ¶ 40 & Ex. A thereto ¶ 24).

**O. JACKSON IRREPARABLY HARMS BELLATOR BY SIGNING WITH UFC**

As he agreed under paragraph 26 of the Agreement, Jackson’s breach of the Agreement and his abrupt defection to UFC has caused, and will continue to cause, harm to Bellator that goes far beyond economic losses. (Coker Cert. ¶ 41 & Ex. A thereto ¶ 26). To be sure, Bellator and its partners have invested millions of dollars promoting Jackson’s fights and Jackson himself. (Coker Cert. ¶ 41). Bellator rebuilt Jackson’s brand and put him back on top of his chosen sport. (Id.) Those losses are significant. (Id.) But the non-economic harm Bellator will suffer is far more serious. (Id.)

The departure of an MMA star while still under contract with a promoter sends ripples through the industry. (Id. ¶ 42). Other fighters and their managers take this kind of seismic disruption as a cue that they and their fighters can simply ignore their contracts and likewise bolt for

a perceived better opportunity if one seems possible. (Id.) Managers have informed Bellator that if Jackson is allowed to walk away from his contract, other fighters will do the same. (Id.)

The MMA social networking sphere is filled with negative chatter about Bellator simply because Jackson took the precipitous action that he did and has said the things he has said. (Id. ¶ 43). By way of example, on November 17, 2014, before McGann sent his purported Notice of Termination, Jackson tweeted that he should have stayed with UFC: “u should just stay with the devil you know” and on December 21, 2014, Jackson tweeted “Official statement on my UFC signing and what happening at Rampage.Jackson.com (so Scott Coker can shut up)”. (Id.) That chatter has ramifications in fan loyalty and damages the Bellator brand. (Id.) Jackson himself has used social media to denigrate Bellator and its honesty and business practices. (Id.) Bellator is on an upward trajectory and the departure of one of its top talents makes Bellator look small-time in an industry where perception is everything and injures Bellator. (Id.)

In addition, Bellator was poised to put Jackson into a fight against Bellator’s other top star, Tito Ortiz, in the near future. (Id. ¶ 44). That fight had been postponed due to an injury to Ortiz. (Id.) That fight is one of the most highly anticipated fights in MMA and would have been a huge fight for Bellator. (Id.) The loss of that fight injures Bellator in ways that are simply incalculable. (Id.) That fight would have propelled Bellator to a new level in the MMA world with a commensurate increase in stature, reputation and brand awareness. (Id.) Its loss, if Jackson does not fulfill his contractual obligations to Bellator, will cause damage to Bellator that cannot be compensated. (Id.)

Under the Agreement, Bellator bought Jackson a new car worth \$129,603.00 and paid him \$940,000.00 in signing bonuses, purses, sponsorship payment and his appearance on the reality show. (Id. ¶ 45). Jackson also received the non-contractual payment of \$200,000.00. (Id.) Bellator



and its partners also invested millions of dollars in order to promote and market Jackson and his fights. (Id.)

Yet Jackson now, in the middle of his contract, and having completed only three fights of his six-fight commitment and after trying to extract more money from Bellator, purports to alter the status quo by abandoning his obligations and fighting for Bellator's biggest competitor, UFC. (Id.) Jackson wants to deprive Bellator of the benefits of his unique services in the middle of his commitment, after Bellator rebuilt his reputation in the MMA industry and linked its future with his continued performance. (Id.)

Jackson has also breached his contractual commitment by failing to give Bellator written notice of, and the exclusive right to match, the offer he received from UFC. (Id.) Jackson expressly agreed that his services are "special, unique, unusual and extraordinary in character" and "in the event of a breach," Bellator would suffer "irreparable damage and injury" and be entitled to "injunctive relief." (Id.) Without an injunction, Bellator will suffer irreparable harm to its business and reputation. (Id.)

## **LEGAL ARGUMENT**

### **A. STANDARD OF REVIEW**

New Jersey courts analyze four factors to determine whether to issue preliminary injunctive relief: 1) whether the plaintiff will sustain irreparable harm, i.e., no adequate remedy at law; 2) whether the underlying legal claim(s) are well settled; 3) whether the plaintiff makes a preliminary showing that it is reasonably likely to succeed on the merits; and 4) whether the equities balance in the plaintiff's favor. Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982).

This flexible test gives the court wide discretion to do equity. See Waste Management of N.J., Inc. v. Morris County Mun. Util. Auth., 433 N.J. Super. 445, 453 (App. Div. 2013) (“The power to impose restraints pending the disposition of a claim on its merits is flexible ....”); see also Pasternoster v. Shuster, 296 N.J. Super. 544, 556 (App. Div. 1997) (the court “must balance [injunction] factors in a qualitative manner,” “[s]uch an inquiry ‘necessarily require[s] an individualized balancing of rights,” and “a sensitive evaluation of the entire situation”); Morris County Transfer Station, Inc. v. Frank’s Sanitation Serv., Inc., 260 N.J. Super. 570, 576 (App. Div. 1992) (affirming grant of preliminary injunction and finding “doctrine of relative hardships clearly favors plaintiff”); Poff v. Caro, 228 N.J. Super. 370, 375 (Law Div. 1987) (“The court must always consider and apply principles of justice [and] equity” when analyzing preliminary injunction application).

Indeed, where, as here, a plaintiff seeks to preserve the status quo, entry of a preliminary injunction is favored under this flexible application of the Crowe factors. See, e.g., Brown v. City of Paterson, 424 N.J. Super. 176, 183 (App. Div. 2012) (a court may take a less rigid view “when the interlocutory injunction is merely designed to preserve the status quo”). The Appellate Division has ruled that, at its core, injunctive relief “should be exercised ‘whenever necessary to subserve the ends of justice.’” Waste Management, 433 N.J. Super. at 453.

Where the irreparable injury is substantial or the hardship balances strongly in the plaintiff's favor, New Jersey courts grant injunctive relief. See Waste Management, 433 N.J. Super. at 454 (“This less rigid approach . . . permits injunctive relief preserving the status quo even if the claim appears doubtful when a balancing of the relative hardships substantially favors the movant, or the irreparable injury to be suffered by the movant in the absence of the injunction would be imminent and grave . . . .”); Brown, 424 N.J. Super. at 183 (“In acting only to preserve the status quo, the court may ‘place less emphasis on a particular *Crowe* factor if another greatly requires the issuance of the remedy.”); Nat’l Starch and Chem. Corp. v. Parker Chem. Corp., 219 N.J. Super. 158, 162 (App. Div. 1987) (finding preliminary injunction warranted where “[t]he circumstances here . . . constitute a rational basis for the trial court to conclude that there was sufficient threat of impending injury”); Poff, 228 N.J. Super. at 375 (“[M]ere doubt as to the validity of the claim is not an adequate basis for refusing to maintain the status quo.”).

The potential for irreparable harm to a plaintiff will support a preliminary injunction even for “a claim with only ‘some’ factual merit or based on uncertain or novel legal principles.” Waste Management of N.J., Inc. v. Union County Util. Auth., 399 N.J. Super. 508, 535-37 (App. Div. 2008) (“So long as there is some merit to the claim, a court may consider the extent to which the movant would be irreparably injured [and balance of the equities] . . . . If these factors strongly favor injunctive relief, the status quo may be preserved . . . even though the claim on the merits is uncertain or attended with difficulties.”); Waste Management, 433 N.J. Super. at 453 (it was error for the court to deny injunction merely because it found that plaintiff did not establish it was likely to succeed on the merits).

In sum, where, as here, the Crowe factors are applied in an effort to preserve the status quo, these factors “are not to be looked upon as hard and fast and sharply defined in scope; rather they are but factors, among others, which must be weighed, one with another, all going to the exercise of

... judicial discretion ....” Waste Management, 399 N.J. Super. at 534 (citation and internal quotation marks omitted).

Here, the relief requested is necessary to prevent irreparable harm to Bellator, Bellator’s claims are based on settled law, Bellator seeks to preserve the status quo by asking the Court to require Jackson to honor his contractual obligation, Bellator is likely to succeed on the merits, and the equities balance in Bellator’s favor. Bellator satisfies all of the Crowe factors and its request for preliminary injunctive relief should be granted.

**B. BELLATOR WILL SUFFER IRREPARABLE HARM IF AN INJUNCTION IS NOT ISSUED**

Jackson is an MMA legend. He is one of the most recognizable figures in the sport. He is a unique talent whose “unusual and extraordinary” services are irreplaceable. And Bellator rebuilt his image after he lost three fights fighting on behalf of UFC and his career was on a downward trajectory. As demonstrated above, the loss of Jackson’s unique services will irreparably damage Bellator.

In New Jersey, where “the services of the actor are shown to be unusual, unique, or extraordinary, and that the damage to the plaintiff will be irreparable and unascertainable” a plaintiff “may enjoin the performer from appearing elsewhere during the period of his contract ....” Essex Specialty Co. v. Bueschel, 116 N.J. Eq. 337, 339 (Ch. 1934); accord UCB Mfg. v. Tris Pharma, Inc., 2013 N.J. Super. Unpub. LEXIS 2126, at \*19 (App. Div. Aug. 27, 2013) (restrictive covenant may be enforced where employee services are unique). Thus, an injunction should be issued here.

In *Essex Specialty*, the Court enjoined a toy designer from working for a competitor during the term of the contract, even where there was no covenant not to compete. 116 N.J. Eq. at 339. This proposition is supported by well-established legal precedent that in personal service contracts relief may be granted on a such a contract “even though it contains no negative clause, upon the

ground that a contract to act or play at a particular place for a specified time necessarily implies a prohibition against performing at any other place during that period.” *Id.*

New Jersey courts and courts nationwide have repeatedly issued injunctions preventing athletes, actors, musicians, and other entertainers from ignoring their exclusive contracts to join a competitor. See, e.g., Savoy Record Co. v. Mercury Record Corp., 108 F. Supp. 957, 958-59 (D.N.J. 1952) (issuing injunction to prevent sale of records by competitor for vocalist that had two-year exclusive recording deal with plaintiff); see also Stiefel & Co. v. Blitz, 1993 U.S. Dist. LEXIS 17478, at \*10-11 (S.D.N.Y. Dec. 13, 1993) (commercial director enjoined from working for competitor where substantial time and money were spent developing career of defendant and “losses could not be quantified”); Nassau Sports v. Peters, 352 F. Supp. 870, 881 (E.D.N.Y. 1972) (holding that hockey player was “not free to offer his services to defendant Metropolitan for this season in disregard of contractual commitment”); Washington Capitols Basketball Club, Inc. v. Barry III, 304 F. Supp. 1193, 1197, 1202 (N.D. Cal. 1969) (granting injunction to prevent professional basketball player from joining ABA team when he was still under contract with NBA team); Houston Oilers, Inc. v. Neely, 361 F.2d 36, 40, 43 (10th Cir. 1966) (issuing injunction precluding football player from signing contract with NFL team while under contract to play for AFL team); Philadelphia Ball Club, Ltd. v. Lajoie, 51 A. 973, 974 (Pa. 1902) (enforcing negative covenant against Hall of Fame baseball player Nap Lajoie to prevent him from contracting with another team while under contract with Philadelphia club); Philadelphia Hockey Club, Inc. v. Flett, 58 Pa. D. & C. 2d 367, 371-72 (Pa. Com. Pl. 1972) (issuing injunction stopping professional hockey player from performing contract signed with different team while he was still under contract with Philadelphia Flyers); King Records, Inc. v. Brown, 252 N.Y.S.2d 988, 990-92 (1st Dep’t 1964) (issuing injunction to enforce plaintiff’s “exclusive professional services” contract with singer James Brown).

This rule has been well-recognized in the world of combat sports. Indeed, courts have routinely enjoined boxers from flouting their exclusive services contracts. See, e.g., Madison Square Garden Corp. v. Carnera, 52 F.2d 47, 49 (2d Cir. 1931) (enjoining boxer from breaching covenant not to fight without promoter's permission); Marchio v. Letterlough, 237 F. Supp. 2d 580, 585-90 (E.D. Pa. 2003) (issuing injunction in favor of promoter because boxer's breach of exclusive promotional agreement threatened irreparable harm to promoter's reputation); Arias v. Solis, 754 F. Supp. 290, 295 (S.D.N.Y. 1991) (injunction issued where "Solis is a unique and extraordinary boxer and [the manager] Arias will suffer irreparable harm if the fight with Calvin Grove goes forward"); Madison Square Garden Boxing, Inc. v. Shavers, 434 F. Supp. 449, 452 (S.D.N.Y. 1977) (injunction granted as "terms of the agreement between the parties are fair and reasonable . . . [and] it would not unreasonably burden [the boxer] to enjoin him" from fighting).

By way of example, the Court in Arias issued an injunction against a boxer who violated his exclusive management contract with plaintiff. 754 F. Supp. at 291, 296. There, the boxer signed a contract with a promoter to promote his next fight while under an exclusive management deal with the plaintiff. Id. at 291. This violated the agreement with plaintiff because plaintiff had to approve all bouts pursuant to their contract. Id. The court found that the boxer's services were "unique and extraordinary" and that the absence of an injunction would cause irreparable harm to plaintiff. Id. at 294-95.

Applied here, this precedent compels a finding of irreparable harm.

*First*, Jackson already agreed that: (1) his services are "special, unique, unusual and extraordinary in character;" (2) his services have "peculiar value" which "cannot be ... adequately compensated by damages in action at law;" (3) his breach would cause Bellator "irreparable harm;" and (4) "injunctive relief is appropriate" for his breach. These are valid clauses that courts will consider when determining whether a breach will cause irreparable harm. See King Records, 252

N.Y.S.2d at 990 (issuing injunction to enforce negative covenant and noting that “contract recites [defendant’s] ‘services are unique and extraordinary’”); see also Winnipeg Rugby Football Club, Ltd. v. Freeman, 140 F. Supp. 365, 365, 367 (N.D. Ohio 1955) (enjoining defendant football players from playing for another team and noting that players’ contracts “contained provisions, among others, that the defendants had special skills and unique ability and that they would not during the life of the contract play with any other team”).

*Second*, the law provides that the loss of the services of a unique and extraordinary talent results in irreparable harm. See Cent. N.Y. Basketball, Inc. v. Barnett, 181 N.E.2d 506 (Ohio Com. Pl. 1961) (granting injunction enforcing negative covenant against professional basketball player and observing “[p]rofessional players ... have unusual talents and skills ... [and] are not easily replaced”). Indeed, courts have found that the loss of an athlete with much less star cache than Jackson would cause irreparable harm to his exclusive promoter. See Arias, 754 F. Supp. at 294 (holding that services of boxer that defendant claimed “not even ranked” deemed sufficiently unique to afford injunctive relief).

*Third*, the risk to Bellator’s reputation because of Jackson’s breach is extreme and unquantifiable. Jackson’s abrupt departure mid-contract has already sent, and will continue to send, shockwaves through the MMA industry. This has caused other Bellator fighters to believe they can do the same thing, ignoring their contractual obligations once another opportunity arises. Moreover, Jackson’s departure and his derogatory comments, and the attendant negative social media wave, will make it harder for Bellator to remain as UFC’s top competitor in the MMA industry, which is a position that Bellator has worked tirelessly to achieve. See Parks v. Commerce Bank, N.A., 377 N.J. Super. 378, 387 (App. Div. 2005) (affirming injunction and finding that to hold otherwise would “significantly undermine the [plaintiff’s] economic relationships” and “[s]uch loss is not susceptible to monetary quantification”); see also Eh Yacht, LLC v. Egg Harbor, LLC, 84 F.

Supp. 2d 556, 570 (D.N.J. 2000) (“Grounds for irreparable injury include loss of reputation, loss of trade, and loss of goodwill.”).

Indeed, it is well recognized that a fight promoter’s reputation can be irreparably damaged when a fighter defects during the term of his exclusive contract. This is especially true, where, as here, the fighter leaves for the promoter’s main competitor and leaves a trail of negative press in his wake. See Marchio, 237 F. Supp. 2d at 589 (“Plaintiff faces serious damage to his reputation as a boxing promoter.”). The holding in Shavers is instructive:

the Garden is, to a measurable extent, irreparably injured as a viable promoter of major boxing matches were Shavers with impunity able to simply disavow a prior agreement with the Garden to take advantage of a later-made more attractive offer. The Garden’s credibility could be destroyed in the eyes of boxing managers, as well as various media representatives, such as television producers, or others, who, in reliance, enter into further contracts that in fact may well represent the major source of income from the event being promoted, possibly being the difference between profit and loss for the promoter.

434 F. Supp. at 452. These exact considerations are present here.

*Fourth*, the loss of a star is especially harmful to a promoter. See Lajoie, 51 A. at 974 (granting injunction, finding that: “Lajoie is well known, and has great reputation among the patrons of the sport . . . and was thus a most attractive drawing card for the public . . . he is certainly a bright, particular star”). Moreover, the loss of a legendary fighter, like Jackson, harms a promoter’s future business prospects. See Lewis, 147 F. Supp. 2d at 233 (“[T]he exclusive promoter of the heavyweight champion has business opportunities that other promoters do not have. These include being able to negotiate more fight cards with cable television broadcasters, increased visibility and prestige, major advantages in recruiting new fighters and promoting other fighters more successfully.”). Bellator was poised to square Jackson off against Bellator’s other MMA star, Tito Ortiz, for the heavyweight championship. A Jackson/Ortiz fight would have been a marquee fight



for Bellator that would have propelled Bellator to a new level, further increasing fan loyalty and the strength of its brand.

*Last*, Bellator has promoted Jackson in ways that would benefit the next phase of his career and inure to Bellator's future benefit. By way of example, in addition to investing millions into the promotion and marketing of his fights, Bellator retained a production company to produce a reality show for Jackson and aired four episodes of the show on Spike TV. Bellator also introduced Jackson to the President of Paramount Film Group to discuss film opportunities for Jackson, and engaged Jackson's chosen screenwriter to draft a screenplay for Jackson and enabled him to appear at the MTV Video Music Awards. The potential losses stemming from these investments cannot be quantified. See Stiefel & Co., 1993 U.S. Dist. LEXIS 17478, at \*9-12 ("Steifel has invested substantial time and money developing the career of Blitz. Steifel protests that Blitz's departure would deprive it of the most profitable period of the contract. It has shown that its losses could not be quantified."). The value of the loss of the fruits of this promotion cannot be quantified.

Thus, it is manifest that Bellator will suffer irreparable and unquantifiable harm if its star is allowed to ignore his contractual obligations and fight for its main competitor, UFC.

### **C. BELLATOR'S LEGAL RIGHTS ARE WELL-SETTLED**

Bellator seeks to enforce established legal rights. Bellator and Jackson entered into a valid contract and Jackson fought -- and was handsomely paid -- for three fights for Bellator before attempting to bolt mid-contract. As set forth above, courts for more than a century have issued injunctions to enforce exclusive services contract for unique talents. See Washington Capitols, 304 F. Supp. at 1197 ("The precedents for granting injunctive relief against 'star' athletes 'jumping' their contracts . . . are numerous."); Corbin on Contracts § 65.25 (2014) ("The tendency is to regard all professional athletes as possessing unique and extraordinary skills. Injunctive relief is frequently granted against breaching players to preserve the organizational structure of professional athletics,

without reference to the question of the degree of injury to the employer by breach of the negative covenant not to work for another.”); cf. Savoy Record, 108 F. Supp. at 959 (holding that court has “power to enjoin the performances of [personal] services for others and will do so where the services are unique” and observing that “[t]he courts of [New Jersey] have consistently followed the philosophy of these cases”). Thus, this factor also weighs in favor of injunctive relief.

#### **D. BELLATOR’S LIKELIHOOD OF SUCCESS IS MORE THAN REASONABLE**

Bellator is likely to succeed on the merits as Jackson is in clear breach of his exclusive services contract. This factor militates in favor of an injunction here. See Marchio, 237 F. Supp. at 585 (holding that where party has demonstrated “clear contractual right to act as [Defendant’s] exclusive promoter ... Plaintiff is likely to ultimately succeed on the merits of his claim of breach of contract”). Bellator’s claim of breach is straightforward and likely to succeed.

Under New Jersey law, to establish a breach of contract, Bellator needs to show: (1) an agreement between the parties; (2) its own performance; (3) a material breach; and (4) damages. New Jersey Model Civil Jury Charges, The Contract Claim -- Generally §4.10(A) (2009); see also Nat’l Reprographics, Inc. v. Strom, 621 F. Supp. 2d, 204, 222 (D.N.J. 2009) (granting preliminary injunction based on breach of contract claim and stating four elements for breach of contract under New Jersey law). Bellator satisfies these elements for its breach claim.

The existence of an agreement cannot be disputed. Jackson and Bellator executed the Agreement on May 29, 2013.

Bellator fully performed its obligations under the Agreement. Bellator promoted three Jackson fights, gave him his luxury sports vehicle, paid him well and spent millions of dollars advancing his reputation with MMA fans. Jackson’s fights were heavily promoted on social media, television, radio, and other digital and grassroots marketing platforms. Jackson won each of the three fights, and Bellator paid Jackson for these fights. These victories re-established Jackson as a

premier MMA fighter and his stock quickly rose, erasing the taint from his previous string of losses with UFC.

Bellator also complied with its other contractual obligations. Bellator caused four episodes of a reality show featuring Jackson to be aired on Spike TV. Jackson was paid for those appearances. Bellator also hired and paid a screenwriter to develop Jackson's concept for a motion picture, secured access for Jackson at the highest levels of Paramount Pictures, and caused Jackson to make a red carpet appearance at MTV's 2013 Video Music Awards.

On the other hand, Jackson's material breach is manifest. Jackson agreed to make Bellator his exclusive promoter for six fights with the right of first refusal to potentially extend the relationship after the six fights. But Jackson purported to leave after three fights without providing notice of his offer or an opportunity to match. This bad faith conduct destroyed the fruit of Bellator's bargain and contravened multiple specific provisions in the Agreement, all of which confirm that Bellator is Jackson's exclusive promoter.

Any arguments by Jackson that Bellator materially breached the Agreement should be seen for what they are: Jackson acting in bad faith by resorting to subterfuge in an attempt to force Bellator to give in to Jackson's outrageous demands or, as it turned out, so that Jackson could attempt to escape the Agreement based upon his trumped up claim of breach. By way of example, after negotiating for weeks to get his fighter a better deal than the one he agreed to when his career was in decline, on October 15, 2014, McGann claimed, for the first time, that Bellator breached the Agreement because it failed to provide "a summary report of pay-per-view buys" for his May 2014 fight against "King Mo" Lawal. But this post-hoc theory of breach fails.<sup>5</sup>

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<sup>5</sup> The same is true for any claim by Jackson that Bellator did not properly promote the "King Mo" fight. Jackson not only agreed that Bellator had the sole right to determine how to promote any event but this position ignores Bellator's multi-million dollar efforts and the current PPV market.

As an initial matter, Jackson is simply wrong. Shortly after the “King Mo” fight, Bellator informed Jackson about the PPV results. Jackson’s manager did not ask for a copy of any summary report and by June 2014, the PPV results were publicly released and widely reported in the media. Thus, Bellator substantially performed. See DialAmerica Mktg., Inc. v. Citicorp Credit Servs., Inc., 2008 N.J. Super. Unpub. LEXIS 3039, at \*21-22, 28-30 (Law Div. Nov. 19, 2008) (finding non-material breach and substantial performance where telemarketers used abridged phone scripts for calls instead of reading full, approved scripts verbatim); Amerada Hess Corp. v. Quinn, 143 N.J. Super. 237, 252-53 (Law Div. 1976) (substantial performance “allows one who has performed in good faith, though making some slight omissions or deviations from the letter of the contract or its specifications, so as to provide the other party substantially what he bargained for....”); see also 15 Williston on Contracts, §44:52, (4th Ed. 2014) (under the doctrine of substantial performance, “minor or technical breaches of a contract are excused, not because the breaching party could not have performed completely but because the performance that was rendered was so similar or close to that required under the contract that the failure to perform exactly results in an immaterial breach.”). And this issue was addressed when Jackson accepted the \$200,000.00 payment.

But, even if Bellator somehow failed to fulfill this technical obligation, such a failure would not be a material breach that would provide a basis for termination of his agreement by Jackson. Indeed, terminating an agreement is improper if the purported breach is non-material. See 5907 Blvd. L.L.C. v. West NY Suites, L.L.C., 2013 N.J. Super. Unpub. LEXIS 1807, at \*15-17 (App. Div. July 19, 2013) (“For breaches that are not ‘material,’ the duty of both parties to perform remains intact.”). And, in New Jersey, rescission is an “extreme” right that does not arise from every breach. Miller & Sons Bakery Co. v. Selikowitz, 4 N.J. Super. 97, 102 (App. Div. 1949). A party seeking rescission “must show special circumstances justifying a departure from the generally controlling principal that parties are bound by the contracts they make for themselves.” Intertech Assoc., Inc.

v. Paterson, 255 N.J. Super. 52, 60 (App. Div. 1992); see also DialAmerica, 2008 N.J. Super. Unpub. LEXIS 3039, at \*42 (“Termination is an ‘extraordinary remedy’ to be permitted only when the breach goes to ‘the root of the agreement.’”). Jackson cannot satisfy this high standard.

New Jersey courts look to Section 241 of the Restatement (Second) of Contracts to determine whether a breach is material. 5907 Blvd. L.L.C., 2013 N.J. Super. Unpub. LEXIS 1807, at \*15-17; Neptune Research & Dev., Inc. v. Teknics Indus. Sys., 235 N.J. Super. 522, 532 (App. Div. 1989). That section provides that: in determining whether a breach is material, the following factors are significant: (a) the extent to which the injured party will be deprived of the benefit which he/she reasonably expected; (b) the extent to which the injured party can be adequately compensated for the part of that benefit of which he will be deprived; (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture; (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances; and (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing. Restatement (Second) of Contracts §241 (1981).

Viewed through this lens, the alleged failure to provide the summary report is immaterial and therefore an insufficient basis for termination. *First*, the summary reports were ancillary to the Agreement’s main purpose and the failure to provide the reports did not thwart Jackson’s reasonable expectation of being paid to fight exclusively for Bellator. *Second*, Jackson was not entitled to a bonus payment under paragraph 4(A)(i) of the Agreement and he therefore cannot point to any damage caused by this alleged failure. *Third*, Bellator will suffer greatly if Jackson does not honor his contractual commitment to fight exclusively for Bellator and is allowed to fight for Bellator’s main competitor. *Fourth*, because of McGann’s threats of disclosure of confidential information, Bellator was fearful of providing any more detailed information. *Finally*, Bellator is ready, willing and able to

perform the Agreement. On the other hand, Jackson's claim of breach is simply made up out of whole cloth in order to justify his conduct.

Further, because Jackson has not complied with his contractual obligations, he cannot claim breach. See Cotter v. Newark Hous. Auth., 422 Fed. Appx. 95, 98 (3d Cir. 2011) (an essential element for breach of contract claim is that "the person suing for breach performed his own contractual duties"); see also, New Jersey Model Civil Jury Charges, The Contract Claim -- Generally §4.10(L) (2009) (an essential element for a breach of contract claim is that the party claiming breach demonstrates it has complied with its own contractual obligations).

Under paragraph 23 of the Agreement, Bellator had 45 days to cure any alleged breach upon receiving notice from Jackson. Jackson's representative put Bellator on notice of this purported breach on October 15, 2014. But Jackson and his representatives prevented Bellator from exercising its right to cure. See Adler Eng'rs, Inc. v. Dranoff Props., Inc., 2014 U.S. Dist. LEXIS 153497, at \*15-16, 27-29 (D.N.J. Oct. 29, 2014) (a party must provide a contracting party a reasonable opportunity to cure); DialAmerica, 2008 N.J. Super. Unpub. LEXIS 3039, at \*46-47 (finding against defendant that improperly terminated agreement and noting that defendant did not provide "written notice of any claimed breach or an opportunity to cure any alleged breach, prior to the discontinuation of the relationship"). Indeed, as he was making the demand for the summary reports, Jackson's manager simultaneously threatened that he was going to share all the information about the Bellator/Jackson relationship with the public. Further, he asserted that he was not bound by any duty of confidentiality. Thus, because Bellator could not be assured that any information given to McGann would remain confidential, Jackson deprived it of a reasonable opportunity to cure to which it was entitled to under the Agreement and Jackson cannot therefore claim breach. Cf. Miller & Sons Bakery Co., 4 N.J. Super. at 102-03 (failing to permit plaintiff to rescind based on

claimed anticipatory breach when “Plaintiff refused to give defendant an opportunity to comply with the contract of sale when defendant sought it”).

Jackson should also not be heard to argue that he was fraudulently induced into entering into the Agreement based on oral representations made prior its execution, including those about his compensation, the reality show, the screen play, the film making opportunities and the awards show.

*First*, the Agreement contains a merger clause that provides that Jackson “relied upon no oral ... representations except as set forth in writing herein” and New Jersey courts hold that such a clause reflects the full intention of the parties. Catlin Ins. Co. v. Flight Light, Inc., 2014 N.J. Super. Unpub. LEXIS 1709, at \*16 (App. Div. July 15, 2014) (“where a contract includes a merger clause ... such a clause is meant to reflect the full intention of the parties.”); Viglione v. Frisina, 2013 N.J. Super. Unpub. LEXIS 829, at \*16-17 (App. Div. Apr. 11, 2013) (barring parol evidence and quoting New Jersey precedent stating that “voluntary integration” is deemed “to be the sole and indisputable repository of the intention of the parties”). *Second*, any such claim would be barred by the parol evidence rule which operates to prohibit the introduction of oral promises to alter or vary a fully integrated written agreement. See Filmlife, Inc. v. Mal “Z” Ena, Inc., 251 N.J. Super. 570, 573 (App. Div. 1991) (explaining parol evidence rule); see also Miranda v. Marinemax, Inc., 2013 N.J. Super. Unpub. LEXIS 2419, at \*14-17 (App. Div. Oct. 7, 2013) (affirming that parol evidence was inadmissible and holding that “[e]ven when a party asserts fraudulent inducement, the parol evidence rule precludes the party from introducing extrinsic evidence that contradicts the express terms in an integrated agreement”); Kern v. Huettl, 2009 N.J. Super. Unpub. LEXIS 2233, at \*7-9 (App. Div. Aug. 13, 2009) (same). All the matters about which Jackson could complain are specifically addressed in the Agreement and cannot be contradicted by the introduction of extrinsic evidence which purports to vary those terms.

Accordingly, Bellator is likely to succeed on the merits and this favors injunctive relief.<sup>6</sup>

#### **E. THE EQUITIES WEIGH IN BELLATOR'S FAVOR**

The last Crowe factor, balancing of the equities, favors Bellator. Bellator and its partners made a substantial investment of both money and effort in rebuilding Jackson's reputation and status. Bellator compensated Jackson well and even paid him amounts not required under the Agreement because Jackson was a cornerstone for Bellator's growth strategy. Those expenditures tip the balance in favor of an injunction. See Nassau Sports, 352 F.Supp. at 870 (sports team's expenditure for athletes exclusive services tips the balance of hardships).

In contrast, Jackson will not suffer any hardship should the injunction issue. It is well settled that it is not an unreasonable burden on a fighter to refrain from fighting for a competitor until his contractual obligations are satisfied. Shavers, 434 F. Supp. at 452 ("it would not unreasonably burden Shavers to enjoin him from fighting until October 11 or such earlier time as the agreement with Gardens is satisfied. . . .") Indeed, Jackson need not suffer at all. Jackson could simply honor his commitment to Bellator, be well compensated, and then move on. See generally Lewis, 147 F. Supp. at 237 ("As soon as Rahman complies with his obligation, he will be free to fight other bouts. The power to end the restriction is in his hands.").

Thus, the balance of hardships tips decidedly in favor of an injunction.

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<sup>6</sup> Even if Jackson raises any issue of fact relating to Bellator's contract claim, the other three Crowe factors drastically tip for Bellator, which still compels that the injunction be issued. See Waste Management, 433 N.J. Super. at 453-54.

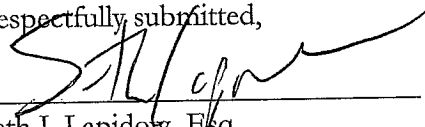


CONCLUSION

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For the foregoing reasons, Bellator's motion for a preliminary injunction pursuant to R. 4:52 should be granted.

Respectfully submitted,



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