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Of Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

AT EUGENE

NINKASI HOLDING COMPANY, INC. an Oregon corporation, and **NINKASI BREWERY, LLC**, an Oregon limited liability company,

Plaintiffs,

v.

NUDE BEVERAGES, INC., a Colorado corporation; and **MXM BEVERAGES LTD.**, doing business as **NUDE BEVERAGES CO.**, a Canadian corporation,

Defendants.

Case No.

COMPLAINT

**BREACH OF CONTRACT ACTION
(28 U.S.C. § 1332)**

DEMAND FOR JURY TRIAL

PARTIES

1. Plaintiff Ninkasi Holding Company, Inc. (“Ninkasi Holding Co.”) is an Oregon corporation with its principal place of business in Eugene, Oregon. Plaintiff Ninkasi Brewery, LLC (“Ninkasi Brewery”) is an Oregon limited liability company with its principal place of

business in Eugene, Oregon.

2. Defendant Nude Beverages, Inc. (“Nude”) is a Colorado corporation with its principal place of business in Boulder, Colorado.

3. Defendant MXM Beverages, Ltd., doing business as Nude Beverages Co. (“MXM”), is a Canadian corporation with its principal place of business in Vancouver, British Columbia, Canada.

JURISDICTION

4. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332 because Plaintiffs are citizens of Oregon and defendants are citizens of Colorado and Canada, and because the amount in controversy exceeds \$75,000, exclusive of interest and costs.

5. Plaintiffs further seek a declaration of their rights in this case pursuant to 28 U.S.C. § 2201 and 2202.

VENUE

6. Venue is proper in the United States District Court for the District of Oregon because a substantial part of the events giving rise to Plaintiffs’ Claims for Relief occurred in this District.

7. Assignment to the Eugene Division is proper under District of Oregon LR 3-2 because the events giving rise to Plaintiffs’ Claims for Relief occurred in the Eugene Division.

FACTS

8. Plaintiffs manufacture and package malt beverages and other alcohol beverage products in Eugene, Oregon.

9. Defendant Nude is in the business of developing recipes for, and brewing and selling, certain hard seltzer beverage products.

10. Defendant MXM is the parent company of defendant Nude and owns all of the intellectual property under which defendant Nude sells its beverage products.

11. On December 21, 2019, Nude and Plaintiffs entered into a Co-Packing Agreement, whereby Plaintiffs agreed to manufacture and package certain beverage products for sale by Nude, among other provisions as identified in the Co-Packing Agreement.

12. In November 2020, Nude was in the process of qualifying as a brewer, as defined by the United States Alcohol and Tobacco Tax and Trade Bureau (the “TTB”) and was also in the process of obtaining licensure with the Oregon Liquor Control Commission (the “OLCC”).

13. While Nude was awaiting its licensures, Nude and Plaintiffs entered into a Manufacturing Services Agreement, dated November 19, 2020 (the “MSA”). Plaintiffs and Nude agreed that the MSA replaced their prior Co-Packing Agreement and that the Co-Packing Agreement terminated effective November 19, 2020. The initial term of the MSA was from October 1, 2020 through January 31, 2028, unless it was terminated in accordance with the MSA, and provided for two renewal terms of five (5) years, each at the option of Nude.

14. Pursuant to the MSA, Nude engaged Ninkasi to manufacture and package certain Nude products at Plaintiffs’ facility in Eugene while Nude awaited its licensures from the TTB and the OLCC. Nude and Plaintiffs agreed that, during this time period, Plaintiffs would make available such products to Nude or its designee.

15. The MSA further provided that, after Nude obtained its licensures from the TTB and the OLCC, Plaintiffs would provide equipment and services to Nude for the manufacture and packaging of Nude’s beverage products.

16. The MSA contained a process by which Nude was to issue purchase orders to Plaintiffs for either co-packing services (prior to licensure) or manufacturing services (following licensure). Plaintiffs and Nude agreed that Plaintiffs could invoice Nude for products delivered or services provided to Nude, and that Nude was responsible for paying such invoices within thirty (30) days. The MSA allowed interest at a rate of 1.5% from the date any invoice was originally issued until paid.

17. The MSA contained other material provisions, including a right for the prevailing party to recover its reasonable attorney fees for any dispute brought pursuant to the MSA. In Section 27 (“Notice”), the parties agreed that any notices required to be given under the MSA be directed to defendant Nude’s principal place of business in Boulder, Colorado, with a copy sent to defendant MXM’s place of business in Vancouver, British Columbia.

18. Also on November 19, 2020, Nude and Ninkasi Brewery entered into an Alternating Brewer Proprietorship Agreement, whereby Ninkasi Brewery agreed to provide Nude certain services in support of Nude’s operations (the “Alternating Brewer Agreement”). Pursuant to the Alternating Brewer Agreement, Ninkasi Brewery agreed to periodically alternate its facility in Eugene, including any equipment located at its facility, to allow Nude or Ninkasi to manufacture Nude’s beverage products. Further, Nude agreed to procure and install certain equipment at the facility for the benefit of Nude (and, when not in use by Nude, for use by Ninkasi). The term of the Alternating Brewer Agreement began on November 2, 2020, at which time Nude became obligated to install the identified equipment or, failing that, to terminate the Alternating Brewer Agreement and remit to Ninkasi Brewery the negotiated termination fee.

19. Also on November 19, 2020, Plaintiff Ninkasi Brewery and defendant MXM entered into a Guaranty Agreement (the “Guaranty”). Pursuant to the Guaranty, MXM agreed to absolutely and unconditionally guaranty the payment to Ninkasi Brewery of any indebtedness, liabilities or obligations whatsoever owed by Nude to Plaintiffs by virtue of the MSA.

20. Also pursuant to the Guaranty, MXM represented and warranted to Ninkasi Brewery that it had reviewed Nude’s financials such that MXM was fully apprised of Nude’s financial condition as of the date of the Guaranty, and that MXM made its own credit analysis of Nude. Further, MXM agreed that Ninkasi Brewery had no obligation to institute suit or exhaust its legal remedies against Nude in order to enforce the Guaranty.

21. MXM and Ninkasi Brewery agreed that the Guaranty would be governed by Oregon law and that the prevailing party would be entitled to recover its reasonable attorney fees

and costs in connection with any action under the Guaranty, among other provisions.

22. In reliance on the promises in the MSA, the Alternating Brewer Agreement and the Guaranty, including Nude's agreement to increase production capacity and lengthen the contract term as compared to the provisions in the prior Co-Packing Agreement, Plaintiffs incurred significant costs to purchase and prepare the additional equipment needed to meet Nude's requested and projected beverage production volumes.

23. In addition, Plaintiff Ninkasi Brewery LLC and Nude entered into a Warehousing and Storage Agreement, dated April 12, 2021 (the "Warehousing Agreement"). Pursuant to the Warehousing Agreement, Plaintiffs permitted Nude to store inventory and products in Plaintiffs' warehouse facility, in return for a monthly payment from Nude as calculated under the Warehousing Agreement.

24. Following its execution of the MSA and the Alternating Brewer Agreement, Nude issued purchase orders to Plaintiffs. Plaintiffs, in reliance on the promises in the MSA, the Alternating Brewer Agreement, the Warehousing Agreement and the Guaranty, manufactured and packaged beverage products and issued invoices to Nude for its services.

25. As of the filing of this complaint, Nude has failed to pay Plaintiffs for amounts due under several invoices issued pursuant to the MSA, the Alternating Brewer Agreement and the Warehousing Agreement, in the total amount of \$1,054,486.98. A summary of the unpaid invoices is as follows:

(see next page)

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