

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
IN THE GREENVILLE DIVISION**

Case No. _____

Ken Welch, East Coast Car Rental, LLC,
William Burch, Merit Rental Services,
Inc., Merit Rental Services Myr., Inc., and
Merit Rental Services CHS, LLC,

Plaintiffs,

v.

Sixt Franchise USA, LLC, Sixt Rent A
Car, LLC, Sixt Financial Services, LLC,
Erich Sixt, Johannes Boeinghoff, and
Florian Dern,

Defendants.

**COMPLAINT
(JURY-TRIAL DEMANDED)**

Plaintiffs Ken Welch, East Coast Car Rental, LLC, William Burch, Merit Rental Services, Inc., Merit Rental Services MYR, Inc., and Merit Rental Services CHS, LLC (hereinafter collectively referred to as “Plaintiffs”), for their Complaint against Defendants Sixt Franchise USA, LLC, Sixt Rent A Car, LLC, Sixt Financial Services, LLC, Mr. Erich Sixt, Mr. Johannes Boeinghoff, and Mr. Florian Dern (hereinafter collectively referred to as “Defendants”), state and allege as follows:

INTRODUCTION

1. Defendants induced Plaintiffs to enter into franchise agreements for the operation of Sixt rental car franchises in Tampa, Florida; Charlotte, North Carolina; Myrtle Beach, South Carolina; Greer, South Carolina; and Charleston, South Carolina based upon misrepresentations to the plaintiffs including, but not limited to: (1) Plaintiffs would generate more reservations than with any other rental company; (2) Plaintiffs would compete with Hertz and Avis; (3) Plaintiffs

would be able to purchase premium vehicles such as BMWs and Mercedes-Benzs for their rental car fleets at deeply discounted prices; and (4) Sixt would provide Plaintiffs with a “state of the art,” industry-leading software system that would assist them in the operation of their franchises.

2. Defendants failed to disclose material facts that would have caused Plaintiffs not to enter into the agreements if they had known all material facts related to the franchise investments.

PARTIES

3. Plaintiff Ken Welch is the sole owner of East Coast Car Rental, LLC, and is a resident of South Carolina. Hereinafter, Ken Welch and East Coast Car Rental, LLC will collectively be referred to as “Welch.”

4. Plaintiff William Burch is the sole owner of Merit Rental Services, Inc., Merit Rental Services MYR, Inc., and Merit Rental Services CHS, LLC, and is a resident of South Carolina. Hereinafter, William Burch, Merit Rental Services, Inc., Merit Rental Services MYR, Inc., and Merit Rental Services CHS, LLC will collectively be referred to as “Burch.”

5. Upon information and belief, Defendant Sixt Franchise USA, LLC is a limited liability company organized under the laws of Delaware, with its principal place of business at 1489 S.E. 17th Street, Fort Lauderdale, FL 33316. The members of this limited liability company are Mr. Johannes A. Boeinghoff, Mr. Dern, Mr. Vincent T. Sazera, and Mr. Rudiger Proske, all of Fort Lauderdale, Florida, along with Sixt Transatlantik GmbH, a company organized under the laws of Germany.

6. Upon information and belief, Defendant Sixt Rent A Car, LLC is a limited liability company organized under the laws of Delaware, which also has its principal place of business at 1489 S.E. 17th Street, Fort Lauderdale, FL 33316. The members of this limited liability company are Mr. Johannes A. Boeinghoff and Mr. Vincent T. Sazera, both of Fort Lauderdale.

7. Hereinafter, Sixt Franchise USA, LLC, Sixt Rent A Car, LLC, and Sixt Financial Services, LLC will be collectively referred to as “Sixt.”

8. Upon information and belief, Defendant Erich Sixt is a citizen and resident of Germany (hereinafter “Mr. Sixt”).

9. Upon information and belief, Defendant Johannes A. Boeighoff is a resident of Florida (hereinafter “Boeighoff”).

10. Upon information and belief, Defendant Florian Dern is a resident of Florida (hereinafter “Dern”).

JURISDICTION AND VENUE

11. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1332(a) because there is complete diversity between Plaintiffs and Defendants, and the amount in controversy is reasonably believed to be in excess of \$75,000, exclusive of interest and costs.

12. This Court also has jurisdiction over this matter pursuant to 28 U.S.C. §1331 because some of the alleged causes of action arise under one or more federal statutes, the Franchise Rule promulgated by the Federal Trade Commission (“FTC”), 16 C.F.R. § 436 and 437, and the Lanham Act, 15 U.S.C. § 1051, *et seq.*, and thus arise under the Constitution, laws, or treaties of the United States as required for federal question jurisdiction. The plaintiffs seek to enforce federal rights arising under these statutes.

13. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial portion of the events and omissions giving rise to the claim occurred in this district. The defendants actively marketed to the plaintiffs to open franchises in South Carolina. Additionally, substantial portions of the acts or omissions occurred within this venue and numerous witnesses reside within this venue.

14. This Court has personal jurisdiction over Sixt Franchise USA, LLC and Sixt Rent A Car, LLC because both have, upon information and belief, purposefully availed themselves of the privilege of doing business in South Carolina, intentionally done business in South Carolina, enjoyed the privileges and benefits of South Carolina's laws and regulations, and purposefully directed their actions toward South Carolina.

15. This Court has personal jurisdiction over Mr. Sixt because Mr. Sixt has purposefully availed himself of the privilege of doing business in South Carolina, has intentionally done business in South Carolina, including marketing franchises in South Carolina, has enjoyed the privileges and benefits of South Carolina's laws and regulations, and has purposefully directed his actions toward South Carolina.

16. This Court has personal jurisdiction over Boeighoff and Dern because Boeighoff and Dern purposefully availed themselves of the privilege of doing business in South Carolina, have intentionally done business in South Carolina, have enjoyed the privileges and benefits of South Carolina's laws and regulations, and have purposefully directed their actions toward South Carolina.

FACTUAL ALLEGATIONS

Background and Timeline

17. Welch has twelve years of experience in the rental car industry, beginning in 2004 and continuing through the present. During this time, he owned and operated a U-Save Car and Truck Rental franchise in Greer, South Carolina from 2009 until 2013.

18. Burch has twenty-one years of experience in the rental car industry. During this time, Burch owned and operated a U-Save Car and Truck Rental franchise in Myrtle Beach, South Carolina from November 2004 to September 2014.

19. In June 2012, Burch made inquiries for information about a Sixt franchise opportunity based on word-of-mouth communications from others in the rental car industry. Burch wanted to expand and open a franchise with a high-end brand such as Sixt which had corporate-owned locations in the United States. In December 2012, Dern and Craig Olson, Sixt's Executive Vice President of Franchise Development, visited Burch's U-Save location in Myrtle Beach to discuss franchise opportunities with Sixt.

20. Coincidentally, at approximately the same time that Burch began investigating a franchise opportunity with Sixt, Welch had discussions with Advantage Rental Car, Payless Rent A Car, & U-Save Car & Truck Rental about opening a franchise in Charlotte, North Carolina, because he likewise wanted to own a rental car franchise with a high-end brand. While considering whether to open an Advantage Rental Car franchise or a Payless Rent A Car, Welch made a request for information on a Sixt franchise opportunity based on an advertisement in the publication *Auto Rental News*. Shortly thereafter, Welch spoke with Olson regarding franchise opportunities with Sixt. In early 2013, Welch visited Fort Lauderdale, Florida to further investigate the Sixt rental car franchise opportunity. Welch met with Olson and Dern and toured the Sixt corporate office, Fort Lauderdale Sixt rental locations, and Miami Sixt rental locations. Olson and Dern emphasized that Sixt franchises rented premium cars such as BMWs and Mercedes-Benzs.

21. At the urging of the defendants, the plaintiffs prepared business plans reflecting the future profitable performance of their franchises. The business plans were approved by Olson, Dern, Boeighoff and Mr. Sixt.

22. Through his corporation Merit Rental Services, Inc., Burch opened the Tampa, Florida location in March 2013. Through his corporation Myrtle Beach Merit Rental Services MYR., Inc., Burch opened the Myrtle Beach, South Carolina airport location in September 2013

and the Myrtle Beach local location in October 2014. Through his company Merit Rental Services CHS, LLC, Burch opened the Charleston, South Carolina location in June 2015.

23. Through his company East Coast Car Rental, LLC, Welch opened the Charlotte, North Carolina location in September 2013 and opened the Greer, South Carolina location in August 2014.

The Defendants' Promises and Misrepresentations

24. During the meetings and communications prior to the plaintiffs opening their respective franchises, numerous promises and representations were made by the defendants to the plaintiffs including, but not limited to:

- a. Sixt has a franchise-friendly and “state of the art” software system;
- b. Sixt is the largest rental car company internationally;
- c. Sixt is the most profitable rental car company internationally;
- d. Plaintiffs will generate ten-times more reservations with a Sixt franchise than with any other brand, including Advantage, Payless, or U-Save;
- e. Sixt will provide extensive sales and marketing support for the franchises;
- f. Sixt has excellent, long-standing relationships with international car manufacturers including BMW and Mercedes-Benz, owns the world’s largest premium car fleet, purchases more than 200,000 vehicles annually, and was the largest purchaser of BMW and Mercedes-Benz vehicles in the world;
- g. Because Sixt is the largest buyer of BMW and Mercedes-Benz vehicles in the world, Sixt is able to and will provide an affordable lease program for high-end vehicles with the same discounted rates that Sixt paid, and franchise owners can finance up to forty percent of the fleet through Sixt Financial Services, LLC;
- h. Franchise owners can purchase up to four locations at a time, and Sixt will help them grow and purchase more locations if the franchises are in good standing with Sixt;
- i. Franchises will compete with Hertz and Avis and in three years will have similar market shares as Hertz and Avis;

- j. Welch and East Coast Car Rental, LLC's Charlotte airport location will have between five and six percent of the airport's rental car market share after the first year of business; and
 - k. Sixt required at least ten percent of franchise entities to be owned by a person with five or more years of experience in the car rental industry.
25. Plaintiffs were also presented with data and figures purporting to show revenue and profits of various Florida franchise locations, Sixt earnings before taxes in 2011 and 2012, and Sixt's consolidated revenue in the past six years.
26. The data and information misrepresented the Sixt franchise opportunity, either by affirmative misrepresentations or by material omissions, and painted an incomplete and inaccurate picture of the financial merits of purchasing a Sixt franchise.

The Plaintiffs' Sixt Franchises

The Sixt Software Package

27. In connection with each Franchise Agreement, the plaintiffs were required to sign a Software License Agreement.
28. Sixt's Rental Software Package is mandatory to use and, according to the FDD, is comprised of software necessary to support reservations; generation, printing and storing of rental agreements; payment processing; distribution; sales; customer relationship management; rental operations; damage recording; rate and revenue management; and business intelligence gathering and analysis.
29. Defendants touted that Sixt's advanced, industry-leading hardware and software would speed up the rental process, create a unique brand experience, and be an asset to the plaintiffs and their franchises in the operation of their businesses.
30. Sixt failed to provide and maintain a software system to support the plaintiffs' businesses.

31. When Burch opened his first location, he learned that, rather than being “state of the art,” the software system was outdated, based on a ten-year-old browser, and flawed. Welch learned the same as of September 2013.

32. After opening their locations, Plaintiffs requested various reports from Sixt in a format so that Plaintiffs could utilize data such as booking, fuel, and fleet data to properly manage their businesses. Sixt was unable to provide reports that contained the data in a usable format, which indicated that the software was not properly equipped for the operation of franchises.

33. The plaintiffs were unable to effectively control the rental rate process and adjust rates seamlessly, a critical and well-known function in the rental car business. The rate process and logic is mandated by Sixt and implemented through the software.

34. The software was not able to provide reliable market data for pricing, which is a key factor in properly pricing rental rates. The pricing process relied upon outdated platforms and browsers. Sixt failed to provide the plaintiffs with a pricing system that would allow the plaintiffs to be competitive in their respective marketplaces, as the Sixt software was far behind the plaintiffs’ competitors’ software.

35. Plaintiffs repeatedly requested permission to use modern pricing software similar to software used by their competitors, such as Rate Highway. Sixt repeatedly denied the plaintiffs permission to use third-party software.

36. Sixt utilizes full-time professionals to handle pricing for all of its corporate locations. In contrast, the plaintiffs and other Sixt franchises received little to no support on pricing from Sixt corporate staff and were forced to use the flawed software to set prices. The prices were manipulated and adjusted by Sixt and were routinely inaccurate.

37. Plaintiffs learned that Sixt corporate utilized advanced reporting features to which the plaintiffs did not have access. Essentially, Sixt provided the plaintiffs with a pared-down version of the software that Sixt corporate had used for decades. The software was unusable and unworkable for franchise operations.

38. Plaintiffs had difficulty procuring assistance from Sixt in connection with information technology (“IT”) issues. IT support was nearly non-existent because questions were routed to an affiliated Sixt-brand technology center located in Germany. IT staff was not available on weekends, no real-time help was available, and Sixt did not provide 24-hour support as promised. When IT support could be reached, it was typically unable to fix the problems.

39. From the onset of operations, Plaintiffs experienced problems with Sixt signature pads which were meant to speed the rental process. The pads ceased functioning and could not be fixed by Sixt’s IT department.

40. The software lacked sufficient maintenance reporting.

41. Sixt’s charge monitor in its software was inaccurate and did not reflect actual incremental revenue per day. The inaccuracies resulted in the plaintiffs’ franchises overpaying employees on commission programs offered to the employees. For example, wholesaler accounts such as Hotwire were not included in the charge monitor to calculate commissions for the employees.

42. The software provided inaccurate historical rental data, which is necessary to operate a profitable rental car business.

43. If additional fees needed to be added to a customer’s original rental agreement because, for example, the customer chose to extend the rental, Sixt’s software would present the total charge to the merchant account. The bank would then read the merchant account’s charge as

a fraudulent transaction because the charge submitted was greater than the original authorization and would charge the total amount back to the franchise's merchant account ("chargebacks").

44. The plaintiffs repeatedly complained to the defendants about the chargebacks. The plaintiffs' franchises were overwhelmed by the charge backs, which required much time and legwork to be sorted out. From inception until the franchises closed, ninety to ninety-five percent of all charge backs to the franchises were never paid back to the franchises, including the money from the original transaction.

45. Due to having to use Sixt software, the plaintiffs were unable to effectively build reservations outside of sixty days without burdensome manual input and time, an unheard of requirement in the rental car industry and a major disadvantage in the market.

46. Since inception, the plaintiffs were forced to price fuel at unsustainable rates. Fuel prices were set through the Sixt software. Fuel prices were based on group cost and could not be changed or set locally. Sixt's pricing was often up to \$1.50 per gallon less than what should have been charged, resulting in thousands of dollars lost per month on fuel pricing alone.

47. In April 2015, the plaintiffs were advised that they would be able to adjust their own fuel pricing for pre-paid fueling in the new software system that was being developed. However, when the new system was received, the plaintiffs were still unable to choose their own fuel pricing.

48. Mistakes made by the pricing department and forced out to the franchises through bundle wholesale accounts such as Hotwire and Priceline caused major overbooking and revenue problems.

49. The accounting of taxes and fees through the software, for example, the taxes and fees required by the airports, were not properly implemented for months, causing the franchises to incur expenses when the expenses should have been passed through to the customer.

50. Sixt did not disclose or describe the Sixt Interfacing process (“Interface”) in the FDD or Franchise Agreement. Interface was the method by which Sixt made payments to the franchises through the Sixt software. Sixt insisted on holding non-cash payments in Sixt corporate accounts and only distributed money to the franchises during periodic Interfaces. Interface essentially acted as a reconciliation between Sixt’s accounting and the franchise. Interface was not completed in a timely fashion monthly. Actual payments to franchises were completed every thirty or forty-five days after a rental was completed in the preceding month. Sixt intentionally delayed paying the plaintiffs through the Interface system.

51. The mandatory training provided by Sixt to the plaintiffs and their staff was basic and inadequate to instruct them how to use the software to run the company profitably.

52. Software updates and maintenance were constantly performed during peak times.

53. Timestamp reporting was often in German time.

54. The software failed to charge the correct fees on long-term rentals.

55. Far from being “state of the art,” the software was a pared-down and outdated corporate software and was unusable in the franchise model. The software was less sophisticated than the software used by plaintiffs in the operation of their prior rental car businesses.

56. Sixt organized and held a marketing convention in early June 2014 called the Sixt Marketing Summit, which Burch attended. During this convention, Burch attended a presentation wherein Mr. Sixt stated that the franchise model in the United States was not working. Mr. Sixt

admitted that Sixt's software was not able to provide franchisees with the information and tools necessary to operate their businesses. The presentation was captured on video.

57. As heir to the Sixt family businesses, Mr. Sixt was in a position to have knowledge of the deficiencies of the software system before the plaintiffs entered into their Franchise Agreements. However, Sixt never disclosed the representations that the franchise model in the United States was not working or that Sixt's software was unable to provide franchisees with the necessary information and tools for operation.

The Sixt One-Way Program

58. Sixt and Boeighoff unilaterally implemented a mandatory one-way program in which rental customers could pick up corporate vehicles in one location and drop them off in other locations with a low drop fee.

59. The one-way program was supposed to provide for the return of the franchise-owned vehicles when franchise-owned vehicles dropped at Sixt locations were booked to customers travelling back to the franchise locations. Sixt, however, continued to rent its company cars to customers, even when the customer was travelling one-way to a franchise and that franchise's vehicle was at the renting Sixt's corporate location. The result was that franchises were required to book rentals of Sixt cars on their locations back to corporate locations, but corporate locations would not book the franchise vehicles back to them.

60. Plaintiffs were forced to pay extra monies to retrieve the vehicles from other locations and had to pay crews of drivers or transport trucks to go to other Sixt locations to retrieve the vehicles. Often, when the drivers arrived, Sixt corporate locations would not have the vehicles ready for transportation back to the plaintiffs' locations even though the vehicles had been at the Sixt locations for months in some instances.

61. Sixt's one-way program provided no financial benefit to the plaintiffs. One-way rentals became a financial burden for the plaintiffs because Sixt kept seventy percent of the revenue generated on one-way rentals in which the franchise rented a Sixt corporate vehicle.

62. The one-way program was implemented without notice to the plaintiffs and without their knowledge or consent. The program was not disclosed in the Franchise Agreement or FDD.

63. The plaintiffs' franchises were responsible for all reservations fees, GDS fees, and royalties and marketing fees whenever a corporate vehicle that was dropped at their location was rented. There were no shared expenses with corporate. This was never disclosed to the plaintiffs prior to signing their franchise agreements.

64. The one-way program caused floods of corporate-vehicles to franchise locations because corporate vehicles were often transferred to franchise locations and vice-versa. These floods created logistical problems, including with the parking and tracking of vehicles, because parking was limited at the locations and the software could not track the vehicles effectively. The limited parking led to increased parking costs.

65. Because the Sixt software cannot separate corporate cars from franchise cars and because reporting lags by forty-five days, the plaintiffs were unable to accurately assess the damage the one-way traffic was having on their businesses.

66. Plaintiffs repeatedly requested the right to impose one-way rental fees to control the situation and slow the flow of cars, but Sixt controlled fees through the software and told the plaintiffs that they were required to participate in the one-way program even though Sixt was using the program to enrich itself at the expense of its franchises.

Sixt's Lease/Sell Program

67. Defendants represented and agreed that Sixt would finance a portion of Welch and East Coast Car Rental, LLC's rental car fleet. Specifically, Defendants represented and agreed that Sixt would finance the procurement of BMW and Mercedes-Benz rental cars. Sixt, however, had never previously financed vehicles for a franchisee. Accordingly, Sixt did not have the appropriate lease documents prepared or a business entity in place to handle the financing.

68. Welch opened the Charlotte location in September 2013 but was not presented with lease documents until around May 2014.

69. Upon opening and thereafter, Welch did not have the BMW or Mercedes-Benz vehicles that Sixt had agreed to finance, and thus rented lower-end cars. Welch never received the promised BMW or Mercedes-Benz vehicles.

70. In contrast, Burch eventually received some of the promised vehicles, but not until after he began operation of his Tampa franchise. Once he received the vehicles in early December, Sixt and Boeighoff charged Burch's franchise a month's lease payment and would not allow Burch to use the vehicles for his rental operation until the end of December 2013.

71. After the plaintiffs' opened their franchises, Olsen sent an email to United States franchisees stating that Sixt had run into "unforeseen complications" in sharing Sixt's purchasing program with BMW with the franchisees, and that Sixt was unsure if the complications could be remedied. Plaintiffs were shocked because one of the main reasons they had purchased the Sixt franchises was access to premium German cars at discounted prices. Plaintiffs were also disappointed to learn that Sixt would not finance up to forty percent of their fleet of vehicles as previously promised.

72. In 2014, Plaintiffs learned from Defendants that Mercedes-Benz restricts the number of cars sold to rental companies in the United States to keep used cars from flooding the

market. While franchisees such as Plaintiffs could not purchase these cars at the promised discounted rate, Sixt's corporate stores continued to purchase a large number of new Mercedes-Benz vehicles for Sixt's corporate stores.

Sixt's Prepaid Handling and Interface

73. Sixt did not disclose its Interfacing process in the FDD or Franchise Agreement.

74. Sixt intentionally delayed paying the plaintiffs through its Interfacing system. Interfacing was not completed in a timely fashion. Interfacing was completed typically around the fifteenth or twentieth day of the month for the preceding month, and payment of funds owed to the franchise followed in another seven to ten days. These payments averaged every thirty or forty-five days after the rental was completed or should have been completed if the rental was cancelled. The plaintiffs were never paid based on the date of booking or date of payment, but only after the rental was complete or should have been completed.

75. Prepaid rentals were rentals made and paid for by customers in advance of when the vehicles were needed by the customers. Sixt collected these funds ("prepaid funds") when advance reservations were made. Sixt routinely used prepaid funds for the plaintiffs' rentals to fund the Sixt corporation operations. This was not Sixt's money to use. Sixt did not disclose how it would handle prepaid rentals, including how Sixt would handle and/or process money that was received from customers at the time of booking.

76. Sixt provided no proof of separate accounting controls to ensure that prepaid funds at each location were held separately. Upon information and belief, Sixt routinely co-mingled funds between Sixt Franchise USA and Sixt Rent A Car, LLC.

77. Sixt did not have accurate reporting methods disclosing to the franchisees the amount of future prepaid rentals.

78. Sixt did not disclose that there would be a delay in the franchises receiving prepaid funds. The franchises would not get the funds from prepaid reservations until the month after the rental was completed.

79. During the first eighteen months of operation of the plaintiffs' franchises, Sixt refunded pre-paid monies collected by Sixt corporate out of the plaintiffs' merchant accounts, causing further cash delays for the franchises and violating the Visa/Mastercard Acceptance Agreement.

80. Sixt did not disclose the Sixt Corporate Customer Service Department and their ability to issue refunds to complaining customers. Sixt did not provide an accounting of processed refunds or references of processed refunds to the plaintiffs.

81. The Sixt Interface made numerous mistakes which put additional financial and logistical burdens on the plaintiffs, including wholesaler fees, re-booking double charges, and the inability to be paid on any rental agreements through Travel Long.

82. All pricing rule changes were required to go through the Pricing Manager who worked at Sixt headquarters in Pullach, Germany. All requested pricing changes took forty-eight to seventy-two hours to be updated.

83. Sixt mandated that the plaintiffs use First Data for credit card processing.

84. The plaintiffs were unable to process debit and bank cards efficiently. Charges were pushed through without correct approval amounts and with improper authorizations, which led to extremely high numbers of chargebacks, as described in paragraph 43.

85. Sixt required high authorization amounts on luxury rentals, pursuant to Sixt corporate standard. The plaintiffs were given no choice on authorization amounts, even though these cars belonged to the franchises through leases.

86. Invoice correction periods averaged three-day delays for point of arrival credit card deposits.

87. Plaintiffs had no way to reconcile deposits against their daily business.

88. Sixt did not disclose numerous fees related to payments and Interface, such as wholesaler two percent credential fees and customer service handling fees.

89. Sixt did not disclose that it would have access to the franchises' credit card merchant accounts.

90. Sixt routinely took fees out of monies collected on the franchises' behalf without explanation.

91. Sixt increased fees and rates in contravention of the Franchise Agreements and without their knowledge or consent.

92. Sixt charged "marketing fees" of two percent of revenue per month. Contractually, these fees were to be used to marketing Sixt franchises. The plaintiffs were never told how the fees were spent and never received the benefit of these "marketing fees."

93. Sixt established an ongoing practice of creating non-revenue producing rental agreements ("CCFs") to keep cars owned by the plaintiffs dropped off at a corporate location out of circulation. Essentially, Sixt would create a non-revenue rental agreement to show the vehicle as having been rented when, in fact, it was actually parked and generating no revenue for the franchisee. Nonetheless, the plaintiffs continued paying the expense of holding the vehicles.

94. Plaintiffs repeatedly requested that Sixt provide live access to verify the revenue generated by their vehicles while at corporate locations on a daily basis but never received this information.

95. Plaintiffs had no access to Sixt financial documents or information, including “revenue per unit” data which was left out of the FDD and unavailable through Sixt Interface.

96. Plaintiffs experienced numerous problems with accounting and reporting, including but not limited to: inaccurate reporting, inability to reconcile daily business reports, inability to reconcile credit card uploads against rental agreement totals, no official end date of daily business, and Sixt’s accounting methods did not adhere to GAAP principles. Sixt’s software system did not allow other accounting systems such as Quickbooks or Peachtree to interface into the Sixt software, creating logistical accounting issues for the plaintiffs. Sixt forbade Plaintiffs from using such other systems.

Sixt’s Lack of Support

97. Defendants eliminated Sixt’s United States Franchise Department in July 2015.

98. The plaintiffs experienced constant changes regarding where and to whom they should direct their questions and issues.

99. The time change and different holiday schedule in Germany caused delays when help was needed or requested by the plaintiffs.

100. The Franchise Department personnel had no franchise car rental experience.

101. New products and reporting were not understood or explained by the Franchise Department.

102. All advertising and marketing done by Sixt corporate was geared to the corporate stores and rarely, if ever, mentioned the Sixt franchises. The advertising and marketing did not benefit the franchises.

103. Corporate accounts are accounts with third party corporations for multiple rentals. Welch had a strong market in which to establish corporate accounts for other companies and

repeatedly asked defendants for help in setting up the corporate accounts, but lost the accounts before the Sixt sales team would respond or provide adequate information to finalize the new accounts. Welch continued to complain and ask for more support or help but never received any. The training and the response provided by the Sixt sales team to Welch was very poor and less than what he had received from previous car rental companies.

Sixt's Responses and Proposed Solutions

104. The plaintiffs repeatedly informed the defendants of the problems with the software and difficulty in procuring reduced prices for premium cars. The plaintiffs also sought advice from Sixt on their difficulties with the franchises. For example, Welch opened the Charlotte location in September 2013 and received few to no reservations for approximately three weeks, so Welch sent his general manager to the Sixt corporate offices in Florida to meet with Dern. Welch's general manager was told the reservations were held up in a "software glitch." This "glitch" was only resolved when Welch's representative flew to Florida to complain. This "glitch" occurred on several occasions resulting in Welch receiving no reservations for extended periods of time.

105. When informed of the problems with the software and general financial difficulties of the franchises, the defendants expressed confusion as to the best way to manage the United States marketplace and admitted that Sixt management made big mistakes in their initial understanding of the United States market.

106. At one point, Mr. Sixt suggested that the plaintiffs should try renting a smaller number of vehicles at higher prices, which was not a workable solution.

107. At another time, Olsen and Dern recommended that the plaintiffs get more and larger high-end vehicles to make more money, a particularly frustrating suggestion given Sixt's failure to lease high-end vehicles at discounted prices as promised.

108. Mr. Olson repeatedly told the plaintiffs that the other United States franchises were doing well, growing, and making money.

109. Defendants led the plaintiffs to believe that the failure of their franchises was unique and their fault.

110. At a convention in Switzerland in November 2014, Welch had a discussion with Dern, Vincent Todd Sazera, and Boeinghoff regarding fleet mixes, purchasing vehicles, and the problems with their franchises. Boeinghoff told Welch that he needed to buy fifty BMWs if he wanted to be successful the Sixt way, and that if he went bankrupt, that was business. This was frustrating given Sixt's failure to lease high-end vehicles at discounted prices as promised.

Sixt's Retaliation to Franchise Closings

111. Welch contacted Olson several times, met with Dern in Charlotte, met with Dern & Olsen in Fort Lauderdale with his general manager, and spoke with Dern and Olsen on the phone to discuss the amount of monies he was losing at his Charlotte franchise. Welch asked Dern and Olson if other franchises were failing and having financial troubles. Dern and Olson repeatedly told Welch that the other franchises were doing fine and growing. Dern and Olson told Welch that the Charlotte franchise's troubles were because of his staff and the way he handled his business.

112. Despite trying to implement changes suggested by Sixt, Welch continued to lose money.

113. Welch informed Olson and Dern during a telephone conversation at the end of Summer 2014 that if he was unable to find someone to purchase the Charlotte franchise, he would need to close it because the Sixt franchise model was a failure. The next week over the phone Olsen suggested that Welch open a location in Greer, South Carolina to share some of the vehicles and expenses from the Charlotte location.

114. Welch agreed and entered into a separate contract to open a location in Greer. The Greer location was supposed to open in September 2014, but Sixt delayed the opening until November 2014. After it opened, the Greer location experienced the same problems as the Charlotte location and ultimately failed as a franchise.

115. Welch again told the defendants that he wanted to sell his franchises. Olson told Welch that Sixt would be interesting in purchasing the Charlotte location for \$150,000. Due to his financial difficulties caused by the failing franchise, Welch agreed to sell the Charlotte franchise back to Sixt. Welch entered into an agreement to sell the location back to Sixt for \$150,000. Olson later contacted Welch and told him that Sixt would withhold \$10,000 from the purchase price because Sixt wanted a cash deposit for Welch's Greer location. Welch agreed to Sixt withholding the funds.

116. The sale of the Charlotte location was supposed to occur in March 2015, but Sixt delayed signing the contract for three months until June 2015. The delay created three months of expenses and an average loss of \$35,000 per month to keep the location operating.

117. Immediately after Welch initiated discussions with Olson and Dern regarding closing the Charlotte franchise, Welch experienced an influx of one-way rentals without notice and despite his desire to downsize. Upon information and belief, the influx was orchestrated by Boeinghoff. The influx was intended to generate bills and gain more profits and fees from the corporate vehicles accumulating at the franchise before it closed.

118. On or around the same time, Welch also experienced a surge in reservations without notice and despite his desire to downsize. Welch was unable to adjust reservations through the software. Upon information and belief, the surge was likewise orchestrated by Boeinghoff. The

surge was intended to generate bills and gain more profits and fees from the franchise before it closed.

119. Once the contract for sale of the Charlotte location was finalized in 2015, Sixt generated a bill that was withheld from Welch's payment. The bill was created by the increase in one-way vehicles and reservations as described above. Sixt offset the purchase price of the Charlotte franchise by the amount of fees owed without Welch's permission or consent. Welch contacted Olson about the bill and during their conversation Olson told him Sixt assumed he would close the Greer location in addition to the Charlotte location.

120. After taking over the Charlotte location, Sixt was only able to keep it open for eight months. The manager told Welch that Sixt was closing all locations where it was losing money. Welch was able to keep the Charlotte location open for over two years when it was under his management.

121. Welch ultimately closed the Greer location on or around February 2016.

122. Dern did not help, fix, or offer support for the situation, but instead removed himself from the Franchise department and did not communicate with the franchises any longer.

123. Burch experienced a similar influx of one-way rentals and reservations without notice and despite his desire to downsize after initiating discussions with Sixt about selling his Tampa location. Upon information and belief, the influx and surge was likewise orchestrated by Boeinghoff and were intended to generate bills and gain more profits and fees from the franchises before they were acquired by corporate operations.

124. Similar to Welch, Burch was also told repeatedly by the defendants that the other franchises were doing fine and growing. He was told that his franchises' troubles were because of his staff and the way he handled his businesses.

125. When Burch closed his Tampa location and sold it back to Sixt, Burch was charged approximately \$147,000 in fees due to the corporate vehicles at his location. Of the \$147,000 charged, approximately \$118,000 was taken from the interface of a different corporation, Merit Rental Services MYR, Inc., on the Interfacing processed for August 2015. Sixt did not give Burch an opportunity to pay the fees himself and, instead, took the fees from a separate business entity without permission or consent.

126. The plaintiffs would have closed their franchises earlier but were unable to because Sixt kept creating and pushing reservations, which the plaintiffs were unable to adjust or control, and because Sixt continued to blame the plaintiffs for their locations' poor performance or offered non-workable solutions. Sixt led the plaintiffs to believe that the Sixt franchise model was working nationwide, that the plaintiffs' problems were unique, and that if the plaintiffs implemented Sixt's "solutions," their locations would be profitable.

127. Instead of enjoying profits, the plaintiffs invested millions of dollars in a business that sustained and continues to sustain operating losses.

128. Ultimately, because the problems experienced by the plaintiffs were nationwide, contrary to Sixt's misrepresentations, Sixt discontinued its franchise model in the United States. The discontinuation of Sixt franchises in the United States devalued Burch's remaining franchise in Myrtle Beach.

129. The out of pocket losses incurred by Welch exceed \$1.6 million.

130. The out of pocket losses incurred by Burch exceed \$2.5 million.

LAWS REGULATING SALE OF FRANCHISES

131. Defendants violated statutes regulating the sale of franchises, as well as statutes regulating the relationship between franchisor and franchisee.

The Inception of Franchise Regulation

132. In the 1950s and 1960s, modern franchising took off as a method of doing business, but was unregulated and subject to widespread abuse. State and federal regulators began to study the situation in the late 1960s and concluded that the sale of franchises was similar to the unregulated sale of securities in the 1920s. Accordingly, in 1979, the Federal Trade Commission (“FTC”) adopted the original Franchise Rule to govern the sale of franchises that is roughly modeled on the SEC Act. In 2007, the FTC amended the Franchise Rule, including its requirements related to disclosure (the “Amended FTC Franchise Rule”). 16 C.F.R. 436-7.

133. As of July 1, 2008, a franchisor could meet its disclosure obligations under both federal and applicable state law if it provided franchisees with a Franchise Disclosure Document (“FDD”) consistent with the 2008 NASAA Franchise Registration and Disclosure Guidelines (the “2008 NASAA Guidelines”). The 2008 NASAA Guidelines and Amended FTC Franchise Rule, 16 C.F.R. 436.3 – 436.5, require a franchisor to make disclosure with respect to 23 different “Items” of information, including the nature of the franchise, the principals who own and run it, the costs of obtaining or operating the franchise, the existence of litigation in which the franchisor has been involved, the material terms of the contract, the existence of other franchisees and their locations, and, if the franchisor chooses to provide information on the financial performance of its outlets or projections of the franchisee’s performance, a fair presentation of those figures and the factual bases therefore.

134. A very significant disclosure item in the FDD that is ripe for abuse is Item 19. A franchisor’s Item 19 disclosure “is one of the most important sections [of the FDD] to franchisees” because it deals with the question most frequently posed by prospective franchisees—*i.e.*, “How much money can I make?” Dave Thomas & Michael Seid, *Franchising For Dummies* 90 (2000).

Because this question is so important, the way in which a franchisor can lawfully answer the question is the most heavily regulated part of the franchise sales process. “Financial performance representation” is broadly defined by the 2008 NASAA Guidelines and Amended FTC Franchise Rule as:

‘Financial performance representation’ means any representation, including any oral, written, or visual representation, to a prospective franchisee, including a representation in the general media, that states, expressly or by implication, a specific level or range of actual or potential sales, income, gross profits, or net profits. The term includes a chart, table, or mathematical calculation that shows possible results based on a combination of variables.

Uniform Franchise Disclosure Document, Definitions (e), Bus. Franchise Guide (CCH) ¶ 13,604; 16 C.F.R. 436.1(e).

135. Financial performance representations include both “formal” representations of revenues or profits in dollar figures, such as proformas, and indirect representations, such as a hotel’s occupancy rate, and informal statements, such as “You’ll make enough to buy a Porsche.” *Commercial Prop. Invs. v. Quality Inns Int’l, Inc.*, 938 F.2d 870, 872 (8th Cir. 1991); Promulgation of Final Interpretive Guidelines, 44 Fed. Reg. 49,982 (August 24, 1979).

If Franchisors Make a “Financial Performance Representation,” They Must Do So Only in Compliance with the 2008 NASAA Guidelines for Item 19 and 16 C.F.R. § 436.5(s)

136. As an initial matter, a franchisor is under no obligation to make a “financial performance representation” for purposes of its FDD. 16 C.F.R. § 436.5(s)(1); Item 19 of the 2008 NASAA Guidelines. If Sixt elected to make a financial performance representation, it was obligated to prepare the Item 19 financial performance representation according to the precise requirements of the 2008 NASAA Guidelines and 16 C.F.R. § 436.5(s).

Any Financial Performance Representation Must Have a “Reasonable Basis”

137. The 2008 NASAA Guidelines for Item 19 and Amended FTC Franchise Rule require that: “If the franchisor makes any financial performance representation to prospective franchisees, the franchisor must have a reasonable basis and written substantiation for the representation at the time the representation is made and must state the representation in the Item 19 disclosure.” Bus. Franchise Guide (CCH) ¶ 13,604 Contents, Item 19 (3); 16 C.F.R. § 436.5(s)(3). As reflected in the FTC’s “Interpretive Guides” for Item 19, in order to conclude that a franchisor has a “reasonable basis” for its earnings claim:

The data must reasonably support the claim as it is likely to be understood by a reasonable prospective franchisee. For example, a representation that franchisees earn a net profit of \$30,000 per year implies that such figure is representative of the usual experience of the system’s franchisees. The claim would not have a reasonable basis if, in fact, only a small minority of the franchisees earn such amount or if profits were due to nonrecurring conditions or if the franchisees used inconsistent systems for reporting profit. Moreover, the franchisor would not have a reasonable basis for the claim if the only facts to support it were the income statements of a disproportionately small percentage of the system’s franchisees.

See Bus. Franchise Guide (CCH) ¶ 6255 (emphasis added).

Any Financial Performance Representation Must Include Certain Basic Disclosures

138. The 2008 NASAA Guidelines and Amended FTC Franchise Rule provide that, if a franchisor makes a financial performance representation, it must make certain disclosures. The representation must state whether historical performance data or projections are utilized for the representation and differing disclosure must be made depending on this basis. Bus. Franchise Guide (CCH) ¶ 13,604 Contents, Item 19 (3)(i); 16 C.F.R. § 436.5(s)(3).

139. If historical performance data is the basis, the representation must include: (1) whether all existing outlets or a subset of outlets are utilized for the representation; (2) if a subset is used, information on these outlets (*i.e.*, type of location, length of operation, franchise or

company store, etc.); (3) the reporting dates of the achieved levels; (4) total number of outlets and the number of outlets with the described characteristics; (5) the number of outlets used for representation; (6) the number and percent of reported outlets that achieved or surpassed the represented results; and (7) characteristics of the included outlets that may differ from the outlet that may be offered to the prospective franchisee. If the representation is a forecast, the representation must include the material bases and assumptions underlying the projection upon which the forecast is expected to depend, including, but not limited to, economic and market conditions basic to the franchisee's operation and matters affecting the franchisee's sales, cost of goods or services sold, and operating expenses. All representations must include a "clear and conspicuous" admonition that the franchisee's results may differ and that written substantiation of the representation is available upon reasonable request. *Id.*

140. Item 8 in the original Rule required the franchisor to list the franchisee's required expenditures and any sourcing requirements, as well as revenue the franchisor may derive from such purchases. *Disclosure Requirements and Prohibitions Concerning Franchising*, 72 FR 15444-01. The amended Rule, however, made the presale franchise disclosures required under Item 8 much broader, so that the franchisor is now required to disclose, among other things, whether the franchisor negotiates purchasing arrangements with suppliers for the benefit of franchisees.

141. The expanded disclosures under Item 8 have been described as important information for franchisees prior to entering a franchise agreement: "[t]hese highly material disclosures inform prospective franchisees about critical restrictions on how they will have to operate the franchise, which comprise a vitally important aspect of the franchise relationship." *Id.*

CAUSES OF ACTION

FOR A FIRST CAUSE OF ACTION

Violation of the Federal Trade Commission Franchise Rule (16 CFR Parts 436 and 437)

142. The plaintiffs reallege and reiterate the allegations set forth within paragraphs 1 –
141 above as if repeated verbatim herein.

143. Sixt violated state and federal law failing to comply with the expressly adopted Amended FTC Franchise Rule. The FDD provided by Sixt to the plaintiffs did not comply with the Amended FTC Franchise Rule as set forth in 16 C.F.R. 436 in the following ways:

Item 1:

Sixt failed to make a key disclosure as required in Item 1, which provides: “(a) *Item 1: The Franchisor, and any Parents, Predecessors, and Affiliates.* Disclose: (1) The name and principal business address of the franchisor; any parents; and any affiliates that offer franchises in any line of business or provide products or services to the franchisees of the franchisor.” See 16 C.F.R. § 436.5(a)(1). Sixt failed to identify the fact that it is affiliated with United Rental Group, LLC, f/k/a United Rental Group Ltd. (“URG”), a franchise system supplier of leased vehicles. Sixt is affiliated with URG, as openly confirmed on URG’s website (<http://www.unitedrentalsystemusa.com/about-us/our-history/>), which states: “Our ultimate parent company Sixt SE was founded in 1912 and is the largest car rental and leasing company in the world.” Sixt purposefully failed to identify its affiliation with URG in order to hide the parent company’s profits generated on leasing transactions by system supplier URG with franchisees, like Welch and Burch.

Furthermore, Sixt stated in Item 1 of the FDDs, “You can expect to compete in your market with major car rental companies and with local independent operators.” This

statement was misleading and false, as the plaintiffs' franchises never competed with major car rental companies.

Item 8:

Sixt made several prejudicial non-disclosures in Item 8:

1. The FDDs Sixt provided to Welch and Burch made no disclosure, one way or another, as to “[w]hether the franchisor negotiates purchase arrangements with suppliers, including price terms, for the benefit of franchisees.” This is a violation of 16 C.F.R. § 436.5(h)(10).
2. Upon information and belief, Sixt, Sixt’s affiliates, and suppliers to the franchise system have not, in fact, provided Welch or Burch with pricing on the same terms as the franchisor’s corporate store operations. This is also a violation of 16 C.F.R. § 436.5(h)(8).
3. Sixt failed to make the disclosure required under 16 C.F.R. § 436.5(h)(6)(iv) by failing to disclose the amount of revenue generated by the franchisor’s affiliated suppliers.
4. 16 C.F.R. § 436.5(h)(4)(i) requires that a franchisor make a disclosure detailing: “How the franchisor grants and revokes approval of alternative suppliers, including: ... Whether the franchisor’s criteria for approving suppliers are available to franchisees.” Sixt made no disclosure as to either: (a) how Sixt grants approval of alternative suppliers, or (b) whether Sixt’s criteria for approving suppliers are available to franchisees.
5. Sixt failed to disclose in accordance with 16 C.F.R. § 436.5(h)(6), “[w]hether the franchisor or its affiliates will or may derive ... material

consideration from required purchases or leases by franchisees.”

Defendants’ failure to disclose this statement is a violation of 16 C.F.R. § 436.5(h)(6).

6. A franchisor’s failure to make proper Item 8 disclosures prejudices prospective franchisees greatly. *See Disclosure Requirements and Prohibitions Concerning Franchising*, 72 FR 15444-01 (“[Item 8’s] highly material disclosures inform prospective franchisees about critical restrictions on how they will have to operate the franchise, which comprise a vitally important aspect of the franchise relationship”).
7. Sixt’s failure to make proper, pre-sale disclosure in regard to Item 8 badly prejudiced Plaintiffs. Plaintiffs have been unable to utilize Sixt’s unworkable software/hardware system (originally designed to be used as part of a single, conglomerated enterprise as opposed to being used by different franchisees operating different franchise offices across the United States). Plaintiffs requested that Sixt allow them to utilize an alternatively-sourced software system, yet Sixt unreasonably disapproved such request without providing any bona fide explanation as to why. Upon information and belief, Defendants declined to make such Item 8 disclosures in order to mask the details behind pricing on goods and services to be purchased by the plaintiffs.

Item 11:

Sixt made several false statements in Item 11 of the FDDs regarding its assistance, advertising, computer systems, and training as required by 16 C.F.R. § 436.5(k), including

but not limited to: (1) that Sixt would provide training to the plaintiffs as described; (2) that Sixt would provide continuing consultation and advisory assistance to the plaintiffs concerning the operation of the franchise businesses; (3) that it would permit the plaintiffs to participate in the Sixt Reservations System; and (4) that it would advertise and promote the Sixt system. The description of the Sixt training as set forth in Item 11 of the FDDs was misleading because it implied the training program was extensive and adequate, but in reality it was basic and insufficient.

Item 19:

Sixt made illegal financial performance representations that failed to comply with the precise requirements of the 2008 NASAA Guidelines and 16 C.F.R. § 436.5(s). A franchisor is under no obligation to make a “financial performance representation” for purposes of its FDD. 16 C.F.R. § 436.5(s)(1); Item 19 of the 2008 NASAA Guidelines. If Sixt elected to make a financial performance representation, it was obligated to prepare the Item 19 financial performance representation according to the precise requirements of the 2008 NASAA Guidelines and 16 C.F.R. § 436.5(s).

Sixt declined to provide any financial performance representations in Item 19, but provided financial performance representations to the plaintiffs on or around the time that the plaintiffs executed their franchise agreements. Defendants represented that Sixt accounted for 70% of the European car rental market; Sixt’s earnings before taxes were 10.2% in 2012 and 12.2% in 2011; and Sixt’s consolidated revenue had increased by 17% in the previous six years. Sixt intended for the plaintiffs to rely on these financial performance representations in determining whether to buy a franchise.

Sixt made representations about its financial performance but did not provide written substantiation in Item 19 for its representations in the FDDs because Sixt intended for Plaintiffs to rely on these financial performance representations when deciding whether to go forward with the franchise opportunity.

FOR A SECOND CAUSE OF ACTION

Violation of the Lanham Act (15 U.S.C. § 1051, *et seq.*)

144. The plaintiffs reallege and reiterate the allegations set forth within paragraphs 1 – 143 above as if repeated verbatim herein.

145. Defendants made numerous misrepresentations of material facts, intending that the plaintiffs would rely on such misrepresentations and in order to induce the plaintiffs to execute the Franchise Agreements. Among other things and as described above, the defendants intentionally misrepresented the franchise opportunity, including its alleged affiliation with BMW and Mercedes-Benz. By promoting its alleged affiliation with BMW and Mercedes-Benz and representing that the defendants were able to provide luxury vehicles at cheaper costs to the plaintiffs because of the defendants' relationship with the manufacturer, the defendants' statements and representations were likely to cause confusion and mistake or to deceive as to the defendants' connections, affiliations, goods, services, and commercial activities.

146. The above described false or misleading descriptions of fact, or false or misleading representations of fact, were "likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person," as set forth in 15 U.S.C. § 1125(a)(1)(A).

147. Furthermore, the above described false or misleading descriptions of fact, or false or misleading representations of fact, were in commercial advertising or promotion and misrepresented “the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,” as set forth in 15 U.S.C. § 1125(a)(1)(B).

148. By representing that the plaintiffs would experience ten times more reservations with a Sixt franchise than with any other brand and that the plaintiffs’ franchises would compete with Hertz and Avis, among other things and as described above, the defendants’ statements and representations were likely to cause confusion and mistake or to deceive as to the defendants’ goods, services, and commercial activities.

149. By representing that Sixt hardware and software was industry-leading and “state of the art,” the defendants’ statements and representations were likely to cause confusion and mistake or to deceive as to the defendants’ goods, services, and commercial activities.

150. As a direct and proximate cause of the defendants’ violation of the Lanham Act, 15 U.S.C. § 1051, *et seq.*, the plaintiffs are entitled to damages and reasonable attorneys’ fees to be determined by a trier of fact.

FOR A THIRD CAUSE OF ACTION

Violation of the South Carolina Business Opportunity Sales Act (S.C. Code § 39-57-10, *et seq.*), North Carolina Business Opportunity Sales Act (N.C. Gen. Stat. § 66-94, *et seq.*), and Florida Sale of Business Opportunities Act (§ 559.80 – 559.815, Fla. Stat. (1998))

151. The plaintiffs reallege and reiterate the allegations set forth within paragraphs 1 – 150 above as if repeated verbatim herein.

152. The South Carolina Business Opportunity Sales Act, S.C. Code Ann. § 39-57-10, *et seq.*, North Carolina Business Opportunity Sales Act, N.C. Gen. Stat. § 66-94, *et seq.*, and Florida Sale of Business Opportunities Act, § 559.80 – 559.815, Fla. Stat. (1998) (hereinafter

collectively referred to as “Business Opportunity Acts”) apply to this transaction because the sales of the Sixt franchises in Myrtle Beach, Greer, Charleston, Charlotte, and Tampa were accompanied by certain representations made by the defendants.

153. The Business Opportunity Acts provide that a business opportunity means the sale or lease of any products, equipment, supplies, or services which are sold to the purchaser for the purpose of enabling the purchaser to start a business and in which the seller represents that he guarantees the purchaser will derive income from the business opportunity, or the seller will provide a sales or marketing program which will enable the purchaser to derive income from the business opportunity. S.C. Code Ann. § 39-57-20(3) and (4); N.C. Gen. Stat. § 66-94(3) and (4); § 559.801(1)(a)(3) and (4), Fla. Stat. (1998).

154. By the representations as described above, the defendants guaranteed that the purchaser plaintiffs would derive income from the business opportunity. S.C. Code Ann. § 39-57-20(3); N.C. Gen. Stat. § 66-94(3); § 559.801(1)(a)(3), Fla. Stat. (1998)

155. By representing that Sixt would provide marketing and advertising that would benefit the franchises, the defendants represented that they would provide a sales program or marketing program which will enable the purchaser to derive income from the business opportunity. S.C. Code Ann. § 39-57-20(4); N.C. Gen. Stat. § 66-94(4); § 559.801(1)(a)(4), Fla. Stat. (1998).

156. The Business Opportunity Acts provide that if the business opportunity seller makes any of the representations described above, the seller must either have obtained a surety bond issued by a surety company authorized to do business in the State or have established a trust account with a licensed and insured bank or savings institution located in the State. S.C. Code Ann. § 39-57-40; N.C. Gen. Stat. § 66-96; § 559.807, Fla. Stat. (1998).

157. Upon information and belief, Sixt did not obtain a surety bond issued by a surety company authorized to do business in South Carolina, North Carolina, or Florida, or establish a trust account with a licensed and insured bank or savings institute located in South Carolina, North Carolina, or Florida.

158. S.C. Code Ann. § 39-57-30, N.C. Gen. Stat. § 66-95, and § 559.803, Fla. Stat. (1998) set forth a defined time period prior to the time the purchaser signs a business opportunity contract or prior to the receipt of any consideration by the seller when the seller shall provide the prospective purchaser a disclosure document with specific requirements for its content and cover sheet.

159. Sixt did not provide the plaintiffs with the state-specific disclosure document as required by S.C. Code Ann. § 39-57-30, N.C. Gen. Stat. § 66-95, and § 559.803, Fla. Stat. (1998).

160. Pursuant to S.C. Code Ann. § 39-57-50 and N.C. Gen. Stat. § 66-97, the seller of every business opportunity shall file with the Secretary of State a copy of the disclosure statement before placing an advertisement or making other representations to prospective purchasers. If the seller is required to provide a bond or establish a trust account, the seller contemporaneously shall file a copy of the bond or a copy of the formal notification by the depository that the trust account is established with the Secretary of State.

161. Upon information and belief, Sixt did not file a copy of the disclosure statement or a copy of the bond or a copy of the formal notification by the depository with the Secretary of State in South Carolina or North Carolina as required by S.C. Code Ann. § 39-57-50 and N.C. Gen. Stat. § 66-97.

162. S.C. Code Ann. § 39-57-60 and N.C. Gen. Stat. § 66-98 provide that business opportunity sellers are prohibited from (1) representing that the business opportunity provides

income or earning potential of any kind unless the seller has documented data to substantiate the claims of income or earning potential and discloses this data to the prospective purchaser at the time such representations are made; (2) using the trademark, service mark, trade names, logotype, advertising or other commercial symbol of any business which does not either control the ownership interest in the seller or accept responsibility for all representations made by the seller in regard to the business opportunity, unless it is clear from the circumstances that the owner of the commercial symbol is not involved in the sale of the business opportunity; and (3) making or authorizing the making of any reference to its compliance with this article in any advertisement or other contact with prospective purchasers.

163. By making the representations as described above and thus representing that the business opportunity provides income or earning potential, the defendants did not provide or disclose documented data to substantiate these claims of income or earning potential as required by S.C. Code Ann. § 39-57-60(1) and N.C. Gen. Stat. § 66-98(1).

164. As discussed above, the defendants often told the plaintiffs that the other United States franchises were doing well. The defendants did not provide the plaintiffs with a current address, description of the circumstances, and disclosure of any interest of the franchise(s) or franchisee(s) that were allegedly profiting from the business opportunity as required by S.C. Code Ann. § 39-57-60(4).

165. The defendants promoted their alleged affiliation with BMW and Mercedes-Benz and represented that the defendants were able to provide luxury vehicles at cheaper costs to the plaintiffs because of the defendants' relationship with the manufacturer without complying with the criteria of the Business Opportunity Sales Acts.

166. Section 559.809, Fla. Stat. (1998) provides:

Business opportunity sellers shall not:

- (1) Misrepresent, by failure to disclose or otherwise, the known required total investment for such business opportunity.
- (2) Misrepresent or fail to disclose efforts to sell or establish more franchises or distributorships than it is reasonable to expect the market or market area for the particular business opportunity to sustain.
- (3) Misrepresent the quantity or the quality of the products to be sold or distributed through the business opportunity.
- (4) Misrepresent the training and management assistance available to the business opportunity purchaser.
- (5) Misrepresent the amount of profits, net or gross, which the franchisee can expect from the operation of the business opportunity.
- (6) Misrepresent, by failure to disclose or otherwise, the termination, transfer, or renewal provision of a business opportunity agreement.
- (7) Falsely claim or imply that a primary marketer or trademark of products or services sponsors or participates directly or indirectly in the business opportunity.
- (8) Assign a so-called "exclusive territory" encompassing the same area to more than one business opportunity purchaser.
- (9) Provide vending locations for which written authorizations have not been granted by the property owners or lessees.
- (10) Provide machines or displays of a brand or kind substantially different from and inferior to those promised by the business opportunity seller.
- (11) Fail to provide the purchaser a written contract as provided in section 559.811.
- (12) Misrepresent their ability or the ability of a person or entity providing services as defined in s. 559.801(1)(a) to provide locations or assist the purchaser in finding locations expected to have a positive impact on the success of the business opportunity.
- (13) Misrepresent a material fact or create a false or misleading impression in the sale of a business opportunity.
- (14) Fail to provide or deliver the products, equipment, supplies, or services as specified in the written contract required under section 559.811.

167. As detailed above, the defendants made numerous misrepresentations to the plaintiffs about the business opportunity, including misrepresenting the investment for the business opportunity, the quality and quantity of the vehicles to be used, the training and management assistance available, the amount of expected profits, and other material facts and false impressions in the sale of the business opportunity as set forth in § 559.809, Fla. Stat. (1998).

168. As purchasers injured by a violation of the Business Opportunity Acts, the plaintiffs are entitled to recovery of damages, including reasonable attorneys' fees, as set forth in S.C. Code Ann. § 39-57-80(b), N.C. Gen. Stat. § 66-100(b), and § 559.813(2), Fla. Stat. (1998).

169. Pursuant to S.C. Code Ann. § 39-57-80(e) and N.C. Gen. Stat. § 66-100(e), the defendants' violations of the Business Opportunity Acts constitute unfair practices.

FOR A FOURTH CAUSE OF ACTION

Violation of the S.C. Unfair Trade Practices Act (S.C. Code Ann. § 39-5-10, *et seq.*), Florida Deceptive and Unfair Trade Practices Act (§ 501.201 – 501.213, Fla. Stat. (1998)), and North Carolina Unfair and Deceptive Trade Practices Act (N.C. Gen. Stat. § 75-1.1, *et seq.*)

170. The plaintiffs reallege and reiterate the allegations set forth within paragraphs 1 – 169 above as if repeated verbatim herein.

171. As discussed above, pursuant to S.C. Code Ann. § 39-57-80(e) and N.C. Gen. Stat. § 66-100(e), the defendants' violations of the Business Opportunity Acts constitute unfair practices.

172. The plaintiffs are informed and believe the defendants engaged and continue to engage in unfair, deceptive, and unconscionable commercial acts, practices, or conduct as fully set forth above and which are disallowed under S.C. Code Ann. § 39-5-10, *et seq.*, otherwise known as the South Carolina Unfair Trade Practices Act, § 501.201 – 501.213, Fla. Stat. (1998), otherwise known as the Florida Deceptive and Unfair Trade Practices Act, and N.C. Gen. Stat. § 75-1.1, *et seq.*, otherwise known as the North Carolina Unfair and Deceptive Trade Practices Act (hereinafter collectively referred to as the "Unfair Trade Practices Acts").

173. Pursuant to the Unfair Trade Practices Acts, unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

Specifically, Defendants engaged and still engage in deceptive business practices in the following respects, including but not limited to:

- a. Misrepresenting the capabilities of Sixt's hardware and software system by stating that it was "state of the art," industry-leading, and would be an asset to the plaintiffs' franchises when in fact it was outdated and seriously flawed;
- b. Misrepresenting its relationship with premium-brand vehicle manufacturers, including Mercedes Benz and BMW, and falsely stating that Plaintiffs would receive discount pricing when purchasing its fleet by taking advantage of Sixt's buying power;
- c. Misrepresenting the financial merits of making an investment with a Sixt franchise and the future success of such franchise;
- d. Implementing mandatory programs such as the one-way program to benefit the corporate locations to the detriment of the plaintiffs;
- e. Withholding funds due to the franchises from prepaid reservations and cancellations;
- f. Manipulating rates, prices, and fees to benefit Sixt at the expense of the franchises;
- g. Promising marketing and advertising to benefit the franchises, which was never available and never benefitted the franchises;
- h. Failing to provide adequate support and training;
- i. Failing to share expenses with the franchises for the one-way program;
- j. Creating the influx of reservations and one-way rentals to generate bills;
- k. Failing to provide the promised luxury vehicles;
- l. Delaying Interface payments;
- m. Inaccurate reporting;
- n. Co-mingling funds between Sixt Franchise USA and Sixt Rent A Car, LLC;
- o. And in other ways to be discovered.

174. Plaintiffs relied on Defendants' written and oral pre-sale representations prior to signing their respective Franchise Agreements.

175. Defendants' unfair competition, unconscionable and deceptive acts and practices inflicted injury and harm upon the plaintiffs and, after Defendants realized that they could not sustain the franchise business model in the U.S., their actions were designed to push the plaintiffs out of business and into selling their franchises back to Sixt to be run as corporate stores.

176. As a result of the defendants' failure to deliver on its obligations, Welch incurred out of pocket losses exceeding \$1.6 million and Burch incurred out of pocket losses exceeding \$2.5 million.

177. Defendants' above actions were deceptive, have caused money damage, and are the proximate cause of such damage to these plaintiffs and similarly situated companies, thereby affecting the public interests and sound public policy in the protection of trade and commerce. Pursuant to S.C. Code Ann. § 39-5-140, N.C. Gen. Stat. § 75-16.1, and § 501.2105, Fla. Stat. (1998), the plaintiffs are entitled to recover actual damages and attorneys' fees and costs.

178. Pursuant to S.C. Code Ann. § 39-5-140 and N.C. Gen. Stat. § 75-16, the plaintiffs are entitled to recover treble damages.

FOR A FIFTH CAUSE OF ACTION

Breach of Contract

179. The plaintiffs reallege and reiterate the allegations set forth within paragraphs 1 – 178 above as if repeated verbatim herein.

180. The defendants entered into a binding contract with the plaintiffs through the sale and purchase of the Sixt franchises and the execution of the Franchise Agreements.

181. Under the Franchise Agreement, the defendants breached specific duties laid out in the Franchise Agreement. For example, the section entitled "Our Duties" in the Franchise Agreement defines the following duties of Sixt, among others:

B. Consultation and Advice. We will provide continuing consultation and advisory assistance to you, in the manner and at such times as we deem appropriate, concerning the operation of the Franchised Business....

E. Marketing. We will advertise and promote the System using the Marketing Fees described in Section 5.C. in such a manner and in such amounts as we, in our sole discretion, deem appropriate and desirable....

F. Reservation System, Website. We will permit you to participate in the Sixt Reservation System, provided that you are in full compliance with the terms of this Agreement and the Manual.

Sixt U.S. Franchise Agreements, “Our Duties,” p. 7.

182. The defendants breached and failed to perform the duties and obligations under the contract as detailed above, or failed to perform or performed these duties without good faith, by not providing adequate advisory assistance, by not using the marketing fees to benefit the franchises, and by not allowing franchises to participate in the reservation system, among other things.

183. As a direct and proximate cause of the defendants’ breach of contract, the plaintiffs are entitled to damages to be determined by a trier of fact.

FOR A SIXTH CAUSE OF ACTION

Breach of Contract Accompanied by a Fraudulent Act

184. The plaintiffs reallege and reiterate the allegations set forth within paragraphs 1 – 183 above as if repeated verbatim herein.

185. The defendants breached their contracts with the plaintiffs as detailed above.

186. The defendants exhibited fraudulent intent relating to the breach as evidenced by the circumstances surrounding the breach, including the numerous misrepresentations and false

and misleading statements made by Sixt to the plaintiffs regarding the financial merits of purchasing a Sixt franchise, as detailed above. For example, by promoting its alleged affiliation with BMW and Mercedes-Benz and representing that the defendants were able to provide luxury vehicles at cheaper costs to the plaintiffs because of the defendants' relationship with the manufacturer, by representing that the plaintiffs would experience ten times more reservations with a Sixt franchise than with any other brand and that the plaintiffs' franchises would compete with Hertz and Avis, by representing that Sixt hardware and software was industry-leading and "state of the art," and by implementing the mandatory one-way program, among other things and as described above, the defendants exhibited fraudulent intent relating to the breach.

187. The above described unfair dealings, misrepresentations, and dishonesty in fact surrounding the Sixt franchises constitute one or more fraudulent acts accompanying the breach.

188. As a direct and proximate cause of the defendants' breach of contract accompanied by a fraudulent act, the plaintiffs are entitled to actual and punitive damages to be determined by a trier of fact.

FOR A SEVENTH CAUSE OF ACTION

Breach of Fiduciary Duty

189. The plaintiffs reallege and reiterate the allegations set forth within paragraphs 1 – 188 above as if repeated verbatim herein.

190. The franchisor-franchisee relationship between the plaintiffs and the defendants was a fiduciary relationship because the defendants, in equity and good conscience, were bound to act in good faith and with due regard to the interests of the plaintiffs. The defendants undertook to advise the plaintiffs, and the confidential relationship charged the defendants with a duty to disclose material facts that affected the plaintiffs' interests. In addition, the paragraphs regarding

confidentiality and nondisclosure of confidential information in the Confidentiality and Non-Compete Agreement portion of the Franchise Agreement evidence the special and confidential relationship between the parties. Furthermore, the FDDs given to the plaintiffs outline Sixt's duties in the franchisor-franchisee relationship and also state, "Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind." The defendants were aware of the special relationship and the special trust placed in them by the plaintiffs.

191. The fiduciary relationship was not unilateral, but rather the defendants induced and accepted the confidence placed in them by the plaintiffs through their business relationships and execution of the above-described contracts.

192. The defendants breached their contractual and fiduciary duties as described above.

193. As a direct and proximate cause of the defendants' breach of fiduciary duty, the plaintiffs are entitled to actual and punitive damages to be determined by a trier of fact.

FOR AN EIGHTH CAUSE OF ACTION

Fraud and Negligent Misrepresentation

194. The plaintiffs reallege and reiterate the allegations set forth within paragraphs 1 – 193 above as if repeated verbatim herein.

195. Defendants made numerous misrepresentations of material facts, intending that the plaintiffs would rely on such misrepresentations and in order to induce the plaintiffs to execute the Franchise Agreements or to remain in business as franchises. Among other things and as described above, the defendants intentionally misrepresented Plaintiffs' chances for success, as well as leading Plaintiffs to believe Sixt had a "state of the art" software system for the operation of a franchise, which was simply not true. Defendants also touted their relationship with premium-

brand vehicle manufacturers, and falsely stated that the plaintiffs would receive discount pricing when purchasing their rental car fleets by taking advantage of Sixt's buying power. Sixt's written disclosures in the FDD also contained untrue statements of material fact—*e.g.*, in Item 8, Sixt stated that the pricing terms for franchisees would be the same prices that were available to company or affiliate owned Sixt car rental businesses in the United States. Sixt also misrepresented or omitted material information about its other United States franchise locations, on the operation of its one-way program, and in generating CCFs to defraud the plaintiffs and enrich Sixt.

196. The defendants knew of the falsity of the material representations above and/or had a reckless or negligent disregard of the truth or falsity of the representations, and intended that the representations be acted upon.

197. As innocent prospective buyers of the Sixt franchises, the plaintiffs were ignorant of the falsity of the representations.

198. As innocent prospective buyers of the Sixt franchises, the plaintiffs had the right to rely on the defendants' representations.

199. As a result of, and in reasonable reliance upon, Sixt's misrepresentations, plaintiffs entered into contracts with Sixt which they would not have otherwise entered, and expended substantial funds they would not otherwise have expended.

200. As a direct and proximate cause of the defendants' fraud and negligent misrepresentations, the plaintiffs are entitled to actual and punitive damages to be determined by a trier of fact.

FOR A NINTH CAUSE OF ACTION

Constructive Fraud

201. The plaintiffs reallege and reiterate the allegations set forth within paragraphs 1 – 200 above as if repeated verbatim herein.

202. Defendants made numerous misrepresentations of material facts, intending that the plaintiffs would rely on such misrepresentations and in order to induce the plaintiffs to execute the Franchise Agreements or to remain in business as franchises. Among other things and as described above, the defendants intentionally misrepresented Plaintiffs’ chances for success, as well as leading Plaintiffs to believe Sixt had a “state of the art” software system for the operation of a franchise, which was simply not true. Defendants also touted their relationship with premium-brand vehicle manufacturers, and falsely stated that the plaintiffs would receive discount pricing when purchasing their rental car fleets by taking advantage of Sixt’s buying power. Sixt’s written disclosures in the FDD also contained untrue statements of material fact—*e.g.*, in Item 8, Sixt stated that the pricing terms for franchisees would be the same prices that were available to company or affiliate owned Sixt car rental businesses in the United States. Sixt also misrepresented or omitted material information about its other United States franchise locations, on the operation of its one-way program, and in generating CCFs to defraud the plaintiffs and enrich Sixt.

203. The defendants ought to have known of the falsity of the material representations above, and intended that the representations be acted upon.

204. As innocent prospective buyers of the Sixt franchises, the plaintiffs were ignorant of the falsity of the representations.

205. As innocent prospective buyers of the Sixt franchises, the plaintiffs had the right to rely on the defendants' representations.

206. As a result of, and in reasonable reliance upon, Sixt's misrepresentations, plaintiffs entered into contracts with Sixt which they would not have otherwise entered, and expended substantial funds they would not otherwise have expended.

207. As a direct and proximate cause of the defendants' constructive fraud, the plaintiffs are entitled to actual and punitive damages to be determined by a trier of fact.

FOR A TENTH CAUSE OF ACTION

Conversion

208. The plaintiffs reallege and reiterate the allegations set forth within paragraphs 1 – 207 above as if repeated verbatim herein.

209. The plaintiffs, as franchisees of the Sixt franchises at issue, had an interest in specific monies converted by the defendants.

210. The defendants converted the monies, capable of being identified, to their own use by: (1) co-mingling monies between Sixt Franchise USA and Sixt Rent A Car, LLC; (2) withholding funds due to the franchises that were gained from prepaid reservations and cancellations; (3) taking fees out of franchise interface and not providing an opportunity for the franchises to pay the fees; and (4) withholding funds from the plaintiffs' sales of the Sixt franchises back to Sixt because of the presence and influx of corporate cars at the franchise locations and the accompanying bills and fees which generated as a result.

211. The conversion of the above monies was without the plaintiffs' permission.

212. As a direct and proximate cause of the defendants' conversion, the plaintiffs are entitled to actual and punitive damages to be determined by a trier of fact.

FOR AN ELEVENTH CAUSE OF ACTION

Money Had and Received

213. The plaintiffs reallege and reiterate the allegations set forth within paragraphs 1 – 212 above as if repeated verbatim herein.

214. The defendants hold money that, in equity and good conscience, belong to the plaintiffs in the following ways, including but not limited to: (1) co-mingling money between Sixt Franchise USA and Sixt Rent A Car, LLC; (2) by withholding funds due to the franchises which were gained from prepaid reservations and cancellations; (3) by taking fees out of franchise interface and not providing an opportunity for the franchises to pay the fees; and (4) by holding funds from the sale of the Sixt franchises back to Sixt because of the presence and influx of corporate cars at the franchise locations and the accompanying bills and fees.

215. As a direct and proximate cause of the defendants' holding of the plaintiffs' money, the plaintiffs are entitled to return of the money at issue and interest.

FOR A TWELFTH CAUSE OF ACTION

Defamation

216. The plaintiffs reallege and reiterate the allegations set forth within paragraphs 1 – 215 above as if repeated verbatim herein.

217. Welch created an advisory committee made up of other franchisees in the United States. The defendants and Olson demanded that the advisory committee be disbanded immediately. The defendants organized a meeting held in Fort Lauderdale and told the franchisees present at the meeting that they did not support an advisory committee and that the other franchises should likewise not support an advisory committee. The defendants stated that franchisees should be aware about how Mr. Sixt felt about such committees.

218. The above statements had a defamatory meaning, were false, concerned the plaintiffs, and were published by the defendant with actual or implied malice.

219. The statements resulted in damages to the plaintiffs by interfering with their relationships with the other franchisees and by damaging their reputations among the Sixt franchisee community.

220. As a direct and proximate cause of the defendants' defamation, the plaintiffs are entitled to actual and punitive damages to be determined by a trier of fact.

FOR A THIRTEENTH CAUSE OF ACTION

Civil Conspiracy

221. The plaintiffs reallege and reiterate the allegations set forth within paragraphs 1 – 220 above as if repeated verbatim herein.

222. Upon information and belief, the defendants conspired to take control of the plaintiffs' franchise locations. By, among other things, manipulating and misrepresenting the adequacy of the Sixt software, rates, pricing, lease program, marketing program, training, IT support, financial merits, relationship with premium-brand luxury vehicle manufacturers, the one-way program, and CCFs, as described above, in an effort to make the franchises into corporate locations, one or more of the defendants combined for the purpose of injuring the plaintiffs. The nature of the acts, the relationship of the parties, and the interests of the defendants evidence the joint assent of the minds of the defendants and their actual malice.

223. As a result of the conspiracy to make the franchises into corporate locations, the plaintiffs endured special damages including the conversion of their franchises into corporate locations.

224. As a direct and proximate cause of the defendants' civil conspiracy, the plaintiffs are entitled to special and punitive damages to be determined by a trier of fact.

WHEREFORE, Plaintiffs Ken Welch, East Coast Car Rental, LLC, William Burch, Merit Rental Services, Inc., Merit Rental Services MYR, Inc., and Merit Rental Services CHS, LLC, prays for judgment in their favor against Defendants Sixt Franchise USA, LLC, Sixt Rent A Car, LLC, Sixt Financial Services, LLC, Mr. Erich Sixt, Mr. Johannes Boeighoff, and Mr. Florian Dern in the following respects:

1. Direct, actual, consequential, and incidental damages;
2. Attorneys' fees pursuant to 15 U.S.C. § 1051, et seq., S.C. Code Ann. § 39-57-80(b), N.C. Gen. Stat. § 66-100(b), § 559.813(2), Fla. Stat. (1998), S.C. Code Ann. § 39-5-140, N.C. Gen. Stat. § 75-16.1, and § 501.2105, Fla. Stat. (1998);
3. Treble damages pursuant to S.C. Code Ann. § 39-5-140 and N.C. Gen. Stat. § 75-16;
4. Punitive damages;
5. Special damages in the amount of lost revenue and profit from the conversion of the plaintiffs' locations to corporate stores;
6. Costs; and
7. Such other and further relief as determined.

[Signature on following page.]

Respectfully submitted,

/s/Adam C. Bach

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Attorneys for the plaintiffs

May 13, 2016
Greenville, SC

The plaintiffs demand a trial by jury as to all issues so triable:

/s/ Adam C. Bach