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SOUTHERN DISTRICT OF CALIFORNIA

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10
11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

13
14 PHILIP MICKELSON, an individual, and
MICKELSON, INC., an Arizona corporation,

15 Plaintiffs,

16 v.

17 BEARINGPOINT, INC., a Delaware
18 Corporation,

19 Defendant.

Case No. **07 CV 2402** (L) AJB

COMPLAINT FOR:

- (1) BREACH OF CONTRACT;
- (2) PROMISSORY ESTOPPEL;
- (3) INTENTIONAL MISREPRESENTATION;
- (4) NEGLIGENT MISREPRESENTATION; and
- (5) DECLARATORY RELIEF

JURY TRIAL DEMANDED

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PARTIES

1. Plaintiff Philip Mickelson (“Mr. Mickelson”) is a resident of San Diego County, California.
2. Plaintiff Mickelson, Inc. is a corporation organized and existing under the laws of Arizona, with its headquarters in San Diego, California.
3. Defendant BearingPoint, Inc. (“Defendant” or “BearingPoint”) is a corporation organized and existing under the laws of Delaware, with its headquarters in McLean, Virginia.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, as there is complete diversity between the Plaintiffs and Defendant and the amount in controversy exceeds the sum of \$75,000.
5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a) in that a substantial part of the events and omissions giving rise to Plaintiffs’ claims occurred within this district.

BACKGROUND FACTS

6. Mr. Mickelson is a professional golfer of world renown. Mr. Mickelson is ranked second in the world according to the ranking recognized by the Professional Golfers’ Association (“PGA”). Mr. Mickelson is the second leading money winner on the United States PGA tour for calendar year 2007, with earnings in excess of \$5.8 million. With 32 career victories since making his professional debut at the 1992 U.S. Open, Mr. Mickelson ranks second among active players and is tied for 13th all-time. He has finished second or third on the money list seven times including six of the last eight seasons. He has finished in the top 10 at eight of the last nine Masters Tournaments, including wins in 2004 and 2006. He also won the 2005 PGA Championship. A member of the last six Ryder Cup teams, he is the only U.S. Player to appear in all seven Presidents Cups. Mr. Mickelson is one of the most famous, most popular, and most widely-recognized golfers in the world. He is commonly referred to and considered a superstar in the world of professional golf.
7. As a result of his worldwide reputation and superstar stature, Mr. Mickelson has been sought out by numerous companies to endorse their products and services, including Defendant,

1 Callaway Golf Company, ExxonMobil Corporation and Rolex.

2 8. Defendant, formerly known as KPMG Consulting, provides business consulting and
3 systems integration to Global 2000 Companies and government organizations. It employs more than
4 17,000 employees in 60 countries around the world. It is a publicly traded company that trades on the
5 New York Stock Exchange. According to its website, Defendant serves:

- 6 • More than 2,100 clients worldwide
- 7 • The 15 U.S. federal level-cabinet departments
- 8 • The top 15 global technology hardware manufacturers
- 9 • The top 10 global diversified financial institutions
- 10 • The top 10 global pharmaceutical and biotech companies
- 11 • The top 10 global telecommunications companies

12 9. To help promote its business throughout the world, Defendant contracted with Mr.
13 Mickelson to endorse its business by wearing the BearingPoint logo on his hat while making
14 professional appearances and playing in professional golf tournaments around the world, and to assist
15 Defendant with strategic alliances through corporate outings and Defendant-sponsored personal
16 appearances. Mr. Mickelson's endorsement has helped Defendant grow its business worldwide, with
17 revenue of over \$2.6 billion for the first nine months of 2007.

18 10. The first endorsement agreement between Mr. Mickelson and Defendant was a
19 December 14, 2000 Endorsement Agreement (the "2000 Endorsement Agreement"), which provided
20 that Mr. Mickelson would wear the KPMG Consulting logo on his visor during all of his professional
21 appearances and tournaments. When Mr. Mickelson is in contention in a major tournament in the
22 final rounds, his image – and the KPMG Consulting/BearingPoint logo – is seen literally thousands of
23 times. Similarly, Mr. Mickelson's photographs in such publications as *Sports Illustrated* and *Golf*
24 *Digest* are seen by millions of people – including the types of high-level business executives who are
25 in a position to hire Defendant.

26 11. On September 1, 2004, the parties entered into a new Endorsement Agreement.
27 Following Mr. Mickelson's victory at the 2004 Masters, his first major championship victory, Mr.
28 Mickelson's endorsement value rose considerably. Defendant recognized that fact and negotiated yet

1 another Endorsement Agreement with Mr. Mickelson that would commence in 2005 and run through
2 December 31, 2007 (the "2005 Endorsement Agreement").

3 12. The parties were aware that Mr. Mickelson's 2005 Endorsement Agreement with
4 Defendant would terminate on December 31, 2007. In recognition of that fact, Defendant's Chief
5 Executive Officer, Harry You, initiated direct contractual negotiations with Mr. Mickelson's agent,
6 Steve Loy, beginning in April of 2007. In the following weeks, Mr. You and Mr. Loy negotiated a
7 new Endorsement Agreement to begin in January 2008 (the "2008 Endorsement Agreement").

8 13. Prior to September 2007, Mr. You and Mr. Loy agreed on a term sheet for the new
9 2008 Endorsement Agreement that set forth the responsibilities and obligations of both parties. By
10 October 2007, draft copies of the various agreements were exchanged between the parties; only minor
11 changes were contemplated, and no material portion of any agreement was modified.

12 14. By November of 2007, the agreements were in their final form and had already been
13 ratified and accepted by Mr. You on behalf of Defendant. Mr. You requested a mid-December 2007
14 signing date which Plaintiffs agreed.

15 15. Prior to the formal signing of the agreements, Mr. You was terminated as CEO of
16 Defendant, and the contracts remained unsigned.

17 16. Subsequent to Mr. You's termination, Defendant has asserted that Mr. You did not
18 have the authority to agree to the 2008 Endorsement Agreement, and has taken the position that there
19 is no agreement between Mr. Mickelson and Defendant after December 31, 2007.

20 17. At all times material hereto, Mr. You acted in his capacity as CEO of Defendant in his
21 negotiations with Mr. Mickelson's representatives. At no time did Mr. You advise that he was not
22 able to bind Defendant to the negotiations of Mr. Mickelson's 2008 Endorsement Agreement. In fact,
23 Mr. You specifically advised Mr. Loy he did not need Defendant's Board of Directors to approve the
24 2008 Endorsement Agreement.

25 18. Throughout calendar year 2007, Mr. You represented to Mr. Mickelson and his
26 representatives that the 2008 Endorsement Agreement would be extended at least two years and that
27 Mr. Mickelson should refrain and forebear from any efforts to replace his Endorsement Agreement
28 with Defendant with another company. In reliance on those representations, Mr. Mickelson

1 reasonably assumed that the 2008 Endorsement Agreement with Defendant would be executed and
2 therefore did not make any efforts to replace his Endorsement Agreement with Defendant with any
3 other endorsement agreement.

4 19. Believing that an agreement had been reached for a new 2008 Endorsement
5 Agreement, Mr. Mickelson agreed to appear, and did appear, for Defendant in China in 2007 for
6 appearances that were to be required in 2008 under the new Endorsement Agreement. This was
7 arranged through Connie Weaver, Defendant's Executive Vice President, Chief Marketing Officer and
8 a member of Defendant's executive leadership team.

9 20. At all times Mr. Mickelson, through his agent Mr. Loy, relied on the statements and
10 representations of Mr. You in believing that a new 2008 Endorsement Agreement was in place. Now,
11 following Defendant's position that it will not fulfill its contractual obligations, Mr. Mickelson is left
12 without any alternatives.

13 21. Defendant has formally advised Mr. Mickelson that it will not honor the new 2008
14 Endorsement Agreement as negotiated by Mr. You under any circumstances.

15 **FIRST CLAIM FOR RELIEF**

16 **(Breach of Contract)**

17 22. Plaintiffs incorporate Paragraphs 1 through 21 of this Complaint as though fully set
18 forth herein.

19 23. Defendant, by and through its agent Mr. You, entered into the 2008 Endorsement
20 Agreement with Plaintiffs in or about November 2007. Under the terms of the 2008 Endorsement
21 Agreement, Plaintiffs agreed to perform a variety of endorsement services on behalf of Defendant,
22 including the following:

- 23 • Wear headwear bearing the BearingPoint logo during all PGA tournaments
24 in which Mr. Mickelson appears.
- 25 • Attend and participate in BearingPoint hosted golf outings.
- 26 • Wear headwear bearing the BearingPoint logo at BearingPoint hosted
27 golf outings at which Mr. Mickelson appears.
- 28 • Publicly advertise BearingPoint's name.
- Represent, promote and publicize BearingPoint throughout the world.

- 1 • Appear in advertising media for BearingPoint.
- 2 • Serve as a corporate spokesman for BearingPoint.

3 24. For its part, Defendant agreed to compensate Plaintiffs a base retainer for each year of
4 the contract term. Defendant further agreed to compensate Plaintiffs additional amounts for Mr.
5 Mickelson's appearance at and participation in golf outings hosted by BearingPoint. Defendant
6 further agreed to pay Plaintiffs bonuses depending upon Mr. Mickelson's performance at professional
7 golf tournaments, in amounts correlating to his level of success. All told, Plaintiffs stood to receive
8 millions of dollars from Defendant over the contract term.

9 25. Plaintiffs were at all times relevant ready, willing and able to perform all conditions,
10 covenants and promises required on their part to be performed in accordance with the terms and
11 conditions of the 2008 Endorsement Agreement with Defendant. Plaintiffs did in fact commence
12 performance of the 2008 Endorsement Agreement when Mr. Mickelson made appearances for
13 Defendant in China in 2007 that were to be required in 2008 under the new 2008 Endorsement
14 Agreement.

15 26. Defendant breached the 2008 Endorsement Agreement in December 2007 by failing to
16 honor any of its terms and failing to perform any of its obligations thereunder. Defendant has asserted
17 that Mr. You, its CEO, lacked the authority to enter into to the 2008 Endorsement Agreement on
18 behalf of the company, and has taken the position that there is no agreement between Mr. Mickelson
19 and Defendant after December 31, 2007.

20 27. As a direct and proximate result of Defendant's breach of the 2008 Endorsement
21 Agreement, Plaintiffs have suffered damages in the form of lost revenue for endorsement services that
22 would have otherwise been provided to Defendant under the Endorsement Agreement and lost
23 endorsement opportunities with other companies, all in amount to be proven at trial.

24 28. Under the terms of the 2008 Endorsement Agreement, Plaintiffs are entitled to their
25 attorneys' fees and costs incurred in pursuing this action in an amount to be proven at the time of trial.

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1 **SECOND CLAIM FOR RELIEF**

2 **(Promissory Estoppel)**

3 29. Plaintiffs incorporate Paragraphs 1 through 28 of this Complaint as though fully set
4 forth herein.

5 30. Beginning in April 2007, Defendant, by and through its agent Mr. You, represented to
6 Plaintiffs that Defendant would enter into a new 2008 Endorsement Agreement. By November 2007,
7 the terms of the 2008 Endorsement Agreement had been finalized, memorialized and accepted by
8 Plaintiffs and by Defendant. Under the terms of the 2008 Endorsement Agreement, Plaintiffs agreed
9 to provide a variety of endorsement services to Defendant, including the following:

- 10 • Wear headwear bearing the BearingPoint logo during all PGA tournaments
11 in which Mr. Mickelson appears.
- 12 • Attend and participate in BearingPoint hosted golf outings.
- 13 • Wear headwear bearing the BearingPoint logo at BearingPoint hosted
14 golf outings at which Mr. Mickelson appears.
- 15 • Publicly advertise BearingPoint's name.
- 16 • Represent, promote and publicize BearingPoint throughout the world.
- 17 • Appear in advertising media for BearingPoint.
- 18 • Serve as a corporate spokesman for BearingPoint.

19 31. For its part, Defendant agreed to compensate Plaintiffs a base retainer for each year of
20 the contract term. Defendant further agreed to compensate Plaintiffs additional amounts for Mr.
21 Mickelson's appearance at and participation in golf outings hosted by BearingPoint. Defendant
22 further agreed to pay Plaintiffs bonuses depending upon Mr. Mickelson's performance at professional
23 golf tournaments, in amounts correlating to his level of success. All told, Plaintiffs stood to receive
24 millions of dollars from Defendant over the contract term.

25 32. In making the representations set forth above, Defendant knew or should have known
26 that Plaintiffs would be reasonably induced to rely on Defendant's assurances, promises and
27 representations by forgoing endorsement opportunities with other companies.

28 33. Plaintiffs reasonably relied on Defendant's assurances, promises and representations
and were induced to forego and did in fact forego endorsement opportunities with other companies.

1 other endorsement opportunities. Plaintiffs were unaware of the falsity of the representations made by
2 Defendants.

3 50. In reasonable reliance on Defendant's false and misleading representations, Plaintiffs
4 were induced to forego and did in fact forego endorsement opportunities with other companies.

5 51. Plaintiffs discovered the fraudulent representations described herein in December 2007
6 when Defendant informed Plaintiffs that it would not honor the 2008 Endorsement Agreement.

7 52. As a proximate result of the fraudulent conduct referenced herein, Plaintiffs have
8 suffered damages in the form of lost revenue for endorsement services that would have otherwise been
9 provided to Defendant under the Endorsement Agreement and lost endorsement opportunities with
10 other companies, all in amount to be proven at trial.

11 **FIFTH CLAIM FOR RELIEF**

12 **(Declaratory Judgment)**

13 53. Plaintiffs incorporate Paragraphs 1 through 52 of this Complaint as though fully set
14 forth herein.

15 54. An actual controversy has arisen and now exists between Plaintiffs and Defendant, with
16 Plaintiffs contending and Defendant denying that a new 2008 Endorsement Agreement exists between
17 the parties. A judicial declaration is necessary and appropriate at this time in order that Plaintiffs may
18 ascertain their rights, duties and obligations under the 2008 Endorsement Agreement, and to prevent
19 any disruption of or damage to Plaintiffs' endorsement services.

20 55. Plaintiffs therefore seek a judicial declaration that the 2008 Endorsement Agreement
21 referenced herein is valid, enforceable and binding upon the parties.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs pray for relief as follows:

- 24 1. For damages in an amount to be proven at trial;
- 25 2. For attorneys' fees and costs;
- 26 3. For exemplary damages;
- 27 4. That this Court order, adjudge, declare and decree that the 2008 Endorsement
- 28 Agreement is valid, enforceable and binding upon the parties.

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- 5. For prejudgment interest;
- 6. For costs of suit incurred herein; and
- 7. For such other and further relief as the Court may deem just and proper.

DATED: December 21, 2007 LUCE, FORWARD, HAMILTON & SCRIPPS LLP

By: Edward P. Swan, Jr.
Edward Patrick Swan, Jr.
Attorneys for Plaintiffs Philip Mickelson
and Mickelson, Inc.

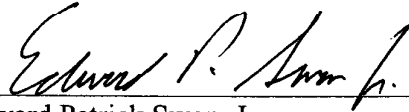
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DEMAND FOR JURY

Plaintiffs hereby demand a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

DATED: December 21, 2007

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

By: 
Edward Patrick Swan, Jr.
Attorneys for Plaintiffs Philip Mickelson
and Mickelson, Inc.