

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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KSF ACQUISITION CORPORATION d/b/a SLIM :
  
FAST, :
  
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Plaintiff, :
  
:
  
v. :
  
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GEHL FOODS, LLC, f/k/a Gehl Foods, Inc., :
  
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Defendant. :
  
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Index No. \_\_\_\_\_  
Date Purchased:

**SUMMONS**

**TO THE ABOVE NAMED DEFENDANT:**

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or if the complaint is not served with this summons, to serve a notice of appearance on the plaintiff’s attorney within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is completed if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates New York County as the place of trial pursuant to CPLR §§ 501 and 509.

Dated: September 21, 2017  
New York, New York

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*Attorneys for Plaintiff KSF Acquisition  
Corporation d/b/a Slim Fast*

TO: Gehl Foods, LLC  
N116 W15970 Main Street  
Germantown, WI 53022



also did not have an alternative source of supply that could immediately satisfy its production requirements. For a variety of factors, including an exacting flavor profile and onerous regulatory hurdles to Slim Fast's sensitive aseptic manufacturing process, any potentially new manufacturer would need substantial ramp up time in order to be able to produce Slim Fast's RTD products. Thus the contractual one-year time period permitted any alternative supplier to get up to speed before Slim Fast's supply source would be cut off.

2. Because of these limitations, and as Slim Fast's longtime exclusive supplier, Gehl knew that Slim Fast depended upon Gehl to perform its post-termination contract obligations and otherwise act in good faith under the parties' contract. Nevertheless, Gehl did just the opposite. It took advantage of its Slim Fast's reliance on it and retaliated against Slim Fast for exercising its contractual termination right by extracting extortionate fee increases and other concessions from Slim Fast under duress through a series of egregious, bad faith acts, including:

- Gehl effectively stopped communicating with Slim Fast, including by, among other things, refusing to meaningfully participate in what had previously been longstanding weekly conference calls between the Slim Fast and Gehl teams and failing to timely respond to Slim Fast's requests for information;
- Gehl suddenly claimed to encounter a variety of production problems, denied product to Slim Fast based on these purported production issues at the same time Gehl was actually providing competing product to other customers, and then denied Slim Fast contractually required access to Gehl's facility to inspect the supposed production problems;
- Based on these purported production problems, and contrary to prior performance by Gehl, Gehl forced Slim Fast to choose between receiving a fraction of the bottles that Slim Fast needed in the bundled, ready-to-sell form in which they had been produced under the parties agreement for years or receiving a larger number of bottles in unbundled form, which would inflict significant additional costs and difficulties on Slim Fast;
- In the culmination of its series of bad faith acts and on the eve of diet season—Slim Fast's busiest period of the year—on November 30, 2016, Gehl informed Slim Fast that it was going to refuse to supply Slim Fast with any of its product requirements in 2017, and demanded increased fees of more than twice that called for by the

parties' contract from \$0.178 to \$0.39 a bottle, as a condition to providing any product; and

- Knowing that Slim Fast had no alternative, Gehl presented Slim Fast with this “take it or leave it” offer and gave Slim Fast *two days* to accept or reject it.

3. Unable to secure sufficient product elsewhere and recognizing that its legal remedies under the contract were inadequate if product stopped flowing and its business was destroyed, Slim Fast had no choice in the face of Gehl's threatened breach of the parties' contract but to agree to its coercive demands. Because Slim Fast had no alternative source of supply and was unable to transition all of its product lines to another supplier at that time, Slim Fast was deprived of its free will and forced to pay the extortionate price sought by Gehl in the amendment under economic duress. As a result, Slim Fast entered into an amendment to the parties' contract on December 6, 2016 at twice the price set forth in the parties' existing contract.

4. Slim Fast seeks recovery of damages resulting from Gehl's breaches of contract, economic duress, and breach of the duty of good faith and fair dealing. Slim Fast will establish the exact amount of damages caused by Defendant's misconduct at trial.

### **JURISDICTION AND VENUE**

5. This Court has personal jurisdiction over Gehl by virtue of the Restated Manufacturing Agreement (discussed below). In that Agreement, Gehl consented to the jurisdiction of the “United States District Court for the Southern District of New York<sup>1</sup>, or if such court does not have jurisdiction, in the courts of the State of New York located in New York County.” First Restated Manufacturing Agreement § 9.14 (“Each party . . . hereby irrevocably

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<sup>1</sup> Slim Fast originally filed this action in the United States District Court for the Southern District of New York on August 11, 2017, relying on diversity jurisdiction under 28 U.S.C. § 1332. Slim Fast is a Delaware corporation and Gehl is a Wisconsin limited liability company. Gehl then represented to Slim Fast that one of its members is a citizen of Delaware, such that diversity jurisdiction does not exist. Slim Fast has accordingly re-filed its Complaint in this Court.

accepts and submits to the exclusive jurisdiction of the aforesaid courts *in personam*, with respect to any such action, suit or proceeding.”) (“Restated Manufacturing Agreement”).

6. In the Restated Manufacturing Agreement, Gehl also expressly consented to venue in the “United States District Court for the Southern District of New York, or if such court does not have jurisdiction, in the courts of the State of New York located in New York County.” Restated Manufacturing Agreement § 9.14. Gehl also agreed in the Restated Manufacturing Agreement that New York State law applies. Restated Manufacturing Agreement § 9.13; *see also* Amendment Number 2 to the First Restated Manufacturing Agreement § 4.1 (“Second Amendment”) (“This Amendment shall be construed, interpreted and enforced in accordance with the laws of the State of New York . . .”).

### **PARTIES**

7. Plaintiff KSF Acquisition Corporation d/b/a Slim Fast is a corporation organized and existing under the laws of Delaware, with its principal place of business at 11780 U.S. Highway One, Suite 400N, Palm Beach Gardens, Florida, 33408.

8. Defendant Gehl, formerly known as Gehl Foods, Inc. is a limited liability company organized and existing under the laws of Wisconsin with its principal place of business at N116 W15970 Main Street, Germantown, Wisconsin 53022.

9. Gehl may be served through its chief financial officer and registered agent, Timothy Preuninger, at N116 W15970 Main Street, PO Box 1004, Germantown, Wisconsin 53022.

### **ALLEGATIONS**

#### **I. Slim Fast is a Successful Weight Loss Brand that Has Recently Invested Substantial Time, Effort and Money to Revamp its Brand**

10. Founded over forty (40) years ago, Slim Fast is an independently owned company comprised of fewer than seventy-five (75) employees that markets and sells a variety of popular

weight loss products, including shakes, shake mixes, smoothies, bars, snacks, and other products sold in the United States and throughout the world. Slim Fast's popular line of RTD products account for the overwhelming majority of its business, making up approximately 70% of the business.

11. Slim Fast has achieved its success, in part, due to Slim Fast's well-known and finely calibrated weight loss plan, which has been shown to be effective by dozens of clinical studies—eat one sensible meal, replace two meals a day with a Slim Fast shake or smoothie, and indulge in three Slim Fast snacks to satisfy hunger between meals. Slim Fast's products are specifically tailored to contain precise nutritional and caloric content to meet this specific weight loss plan. Additionally, Slim Fast's RTD products are packaged in specific sizes in order to meet those precise requirements. Slim Fast used to offer its RTD products in cans but, beginning in 2011, began selling them in 11-ounce bottles. The bottles are typically bundled (or packaged) into multiples of four and sold in cartons made of chipboard product, a type of paper board product similar to cardboard.

12. Slim Fast sells its products to a variety of retailers, with the overwhelming majority of Slim Fast's RTD products being sold through high profile retailers such as Walmart, Sam's Club, Kroger, Meijer, and H-E-B, among others. Slim Fast enjoys extraordinary goodwill with its retail customers, as well as with the end consumers who purchase Slim Fast from its retail customers. Critical to that goodwill and Slim Fast's strong customer relationships is ensuring that Slim Fast products are well-stocked on a regular basis. Slim Fast undergoes a twice yearly sales process whereby Slim Fast makes recommendations to its retail customers as to which Slim Fast SKUs to carry and how best to maximize profit, and those customers subsequently place orders based on Slim Fast's recommendation. Slim Fast must fulfill those orders by a date certain or be

subject to financial penalties. Additionally, the inability to keep product supplied as promised jeopardizes Slim Fast's product placement within a store, which has the potential to result in a loss of shelf space. This type of loss of shelf space leads to the purchase of fewer products by end consumers and overall denigration of consumer goodwill. In short, the inability to supply its customers with product as promised subjects Slim Fast to fines, loss of space on retailer shelves, damage to the Slim Fast goodwill and customer relationships generally, and ultimately, threatens the entire Slim Fast business.

13. Slim Fast's busiest time of year is "diet season" and, thus, its ability to supply its customers is of utmost importance during this season. The greatest consumption of diet product by consumers takes place from January through April of each year. In order to ensure that retailers have sufficient inventory of product in the warehouses such that they can stock their shelves accordingly, Slim Fast's busy diet supply season begins in December of each year and continues through approximately March of each year.

14. Slim Fast has recently invested substantial time, effort and money to revamp its brand in what is a highly competitive industry. For example, in May 2015, Slim Fast undertook an aggressive plan to rebrand and market Slim Fast, including by investing substantial money to debut new product packaging, significantly increasing its marketing and advertising efforts, and introducing new flavors, snacks and a new advanced nutrition line. Slim Fast invested tens of millions of dollars in television, trade, and retail advertising alone to reinvent and promote the Slim Fast brand. Slim Fast's investment paid off. By just over a year later in 2016, Slim Fast was having a great year and experiencing great momentum toward continued success. Slim Fast was well positioned to carry its momentum into 2017. Indeed, in light of Slim Fast's substantial re-investment into the Slim Fast brand, Slim Fast depended on the continued success of its RTD

products going into the year 2017—not only to avoid the loss of its substantial investment the company poured into its rebranding efforts, but also for the continued success of the brand and company’s enterprise value.

**II. Slim Fast Has Long Depended on its Exclusive Supplier of RTD Products, Gehl, which is Contractually Obligated to Manufacture Slim Fast’s Supply Requirements and to Treat Slim Fast on a “Most Favored” Basis**

15. Slim Fast is dependent on outside manufacturing companies to manufacture and bottle its products, which it then in turn markets and sells to its retailers. For over eight (8) years, Slim Fast’s exclusive supplier was Gehl. Gehl purports to be a leader in aseptic manufacturing, and is a producer of ready-to-serve dairy products, including puddings, cheese sauces, iced coffee drinks, and nutritional shakes. Gehl produces and supplies food products, dispensing technology, and packaging solutions for concession operators, convenience stores, restaurants, hotels, theaters, stadiums, and other foodservice markets in the United States. In addition to manufacturing Slim Fast’s RTD product, Gehl also manufactures competing private label products for other well-known brands, including for two of Slim Fast’s largest customers.

16. Gehl supplied RTD products to Slim Fast pursuant to a manufacturing agreement. The manufacturing agreement, which was first entered into by Slim Fast’s predecessor, Conopco, Inc. d/b/a Unilever (“Unilever”) on or around November 2009, was amended and eventually replaced on June 1, 2013 with the Restated Manufacturing Agreement. *See* Restated Manufacturing Agreement. In July 2014, the Restated Manufacturing Agreement was assigned to Slim Fast when Unilever sold the business to KSF Acquisition Corp. and has since been amended several times.<sup>2</sup> The Restated Manufacturing Agreement and its amendments will be collectively

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<sup>2</sup> KSF assumed all rights and liabilities under the agreement. As discussed further below, the parties amended the Restated Manufacturing Agreement through Amendment Number 1 to the First Restated Manufacturing Agreement (“First Amendment”), dated December 3, 2014, and again through the Second Amendment on December 6, 2016, which Slim Fast entered into as a result of Gehl’s economic duress.

referred to throughout as the “Manufacturing Agreement” or the “Agreement.”<sup>3</sup>

#### A. Gehl’s Obligation to Satisfy Slim Fast’s Supply Requirements

17. Under the Restated Manufacturing Agreement, “Gehl [wa]s obligated to manufacture and sell to Slim Fast 100% of its RTD product requirements.” Restated Manufacturing Agreement § 1.1; Disclosure Schedule to Restated Manufacturing agreement § 1.1. Gehl’s obligation was subject to an annual Maximum Capacity Commitment (“MCC”), which required Gehl to set aside a certain agreed-upon production capacity specifically for Slim Fast in order to meet Slim Fast’s yearly product requirements. Restated Manufacturing Agreement § 1.12(a). In 2016, and at the time of Gehl’s misconduct discussed herein, the MCC was set at 75 million bottles per year. Additionally, pursuant to the agreement, the parties could agree to increase the annual MCC “by up to five percent (5%) once in a twelve (12) month period, upon request,” subject to several requirements, including four months’ advance written notice. Restated Manufacturing Agreement, Ex. G § 2. Pursuant to the Agreement, Slim Fast provided Gehl with monthly binding and estimated forecasts, which provided notice to Gehl of Slim Fast’s estimated supply requirements on a going forward basis.

18. In return for Gehl’s pledge to reserve capacity for Slim Fast, Gehl was Slim Fast’s exclusive provider of RTD products, subject to certain limitations. For example, if Gehl declined to produce additional products for Slim Fast above the MCC at the then-current price, Slim Fast was free to secure that additional product from other suppliers. Restated Manufacturing Agreement § 1.2.

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<sup>3</sup> The Agreement is not attached hereto due to confidentiality considerations. The Agreement can be made available for the Court’s inspection *in camera*.

### B. The “Tolling Charge” (Price)

19. Slim Fast paid Gehl a “tolling charge” for its Slim Fast RTD products per bottle, which essentially was the cost of the actual product being manufactured. The tolling charge in effect at the time the agreement was terminated in June 2016 was \$0.178 per bottle. Importantly, and contrary to Gehl’s bad faith conduct discussed herein, the tolling charge could not be unilaterally increased under the agreement. *See* Restated Manufacturing Agreement § 1.3(a). Instead, the Restated Manufacturing Agreement set forth a specific process and formula for any price changes. *Id.* (“The Tolling Charge for the Maximum Commitment Capacity shall not increase during the Term except pursuant to the adjustment mechanism set forth in Section 1.3(d) [] or as agreed to by the parties pursuant to Section 5 . . . .”).

### C. Gehl’s Most Favored Customer Obligation to Slim Fast

20. Significantly, Gehl also agreed to a broad Most Favored Customer (“MFC” or “MFN”) provision, which required Gehl to provide Slim Fast with the same price, if lower, as any other customer purchasing similar products from Gehl in equal or lesser volumes:

Most Favored Customer. If Gehl or its Affiliates sell similar products to the Products in a similar industry in equal or lesser quantities to another customer at a tolling charge, after all allowances, rebates, and discounts provided to such other customer, equal to or lower than the Tolling Charge then in effect for [KSF] after all allowances, rebates, and discounts provided to [KSF], the Tolling Charge to [KSF] hereunder shall be adjusted lower than the tolling charge offered to the other customer effective as of the first date of commercial production for the other customer at that price.

....

At [KSF]’s request, Gehl shall deliver within thirty (30) days after each Contract Year a certificate signed by an officer of Gehl certifying to Gehl’s full compliance with this most favored customer tolling charge provision.

Restated Manufacturing Agreement § 1.3(f). Moreover, pursuant to the Agreement, Slim Fast has the right to inspect records relating to the Agreement in order to audit Gehl’s compliance with its

terms “[f]rom time to time during the Term and for six months following the expiration or earlier termination of the Agreement . . . .” Restated Manufacturing Agreement § 3.6 (Slim Fast “upon prior written notice to Gehl and during regular business hours at Gehl’s offices, may inspect all records relating to this Agreement maintained by or under the control of Gehl . . . in order to audit Gehl’s compliance with this Agreement”).

21. In the First Amendment, Gehl further agreed to treat Slim Fast “on the most favorable basis compared to its other purchasers.” First Amendment, Ex. K § 2.3.4. Additionally, Gehl agreed to “deliver all Gehl Bottles manufactured by Gehl to [Slim Fast] and to no other person until such time as [Slim Fast]’s requirements for Gehl Bottles have been met.” First Amendment, Ex. K § 2.3.4.

#### **D. Shipping and “Bundling” of Products**

22. Slim Fast RTD products manufactured by Gehl were to be prepared for shipment “in accordance with procedures mutually agreed to by Gehl and [Slim Fast].” Restated Manufacturing Agreement § 1.9. The parties agreed that Gehl would prepare products for shipment “in commercial quantities ready for resale to [Slim Fast’s] customers.” *See* Restated Manufacturing Agreement § 1.12(b). As discussed above, Slim Fast RTD products are sold to customers in bundled packages of bottles, typically in multiples of four. Thus, until Gehl’s bad faith conduct in 2016, and at least since KSF Acquisition Corp. acquired Slim Fast in 2014, Gehl and Slim Fast operated by agreement and a course of dealing in which Gehl would “bundle” or carton the products in the packaging that would be sold to Slim Fast’s customers, inclusive of all secondary packaging, bottle sleeves, sellable retail unit packaging, corrugate master cases and pallet.

### **E. Termination Rights Upon One Year Notice**

23. Finally, the parties' First Amendment gave both parties the right to terminate the Manufacturing Agreement upon twelve months' written notice, provided that such termination shall not be effective before June 15, 2017. *See* First Amendment § 3(h). Nothing in the Agreement relieved the parties of the obligation to perform their ongoing contractual obligations after rightful exercise of termination and during the twelve-month notice period.

24. Gehl and Slim Fast enjoyed a long relationship under this Agreement, with Gehl satisfying all of Slim Fast's forecasted supply requirements for many years. As discussed further below, however, Gehl was unable to remain competitive with other manufacturers and, thus, Slim Fast exercised its termination right on June 13, 2016 and made the effective date of termination June 15, 2017.

### **III. As Slim Fast's Longtime Exclusive Supplier, Gehl Knows that Slim Fast Depends on it to Timely Supply Slim Fast's RTD Products**

25. Because of several factors, including factors unique to Slim Fast RTD products in particular, it is impossible for Slim Fast to completely switch to a new manufacturer within a short period of time for any of its supply requirements and, thus, any new manufacturer needs lead time before it can produce products for Slim Fast. Slim Fast depends on an outside manufacturing company or companies to do all of the following: (1) locate supply of raw materials sufficient and necessary to make Slim Fast product, (2) design and manufacture the bottle and packaging that Slim Fast products are sold in, (3) prepare and formulate the Slim Fast RTD product to meet Slim Fast's proprietary recipe and flavor profile, which can be challenging to do as different manufacturing equipment can sometimes result in flavor and texture variability, (4) perform all regulatory tests to ensure both the bottle and the recipe as manufactured meet all shelf stability and

regulatory requirements, (5) efficiently produce the bottled products in mass quantities, and (6) bundle the bottled product into finished cartons or other packaging for sale.

26. With respect to preparing the Slim Fast RTD product, a new manufacturer must not only locate and obtain the right raw materials sufficient and necessary to make Slim Fast product, but also it must perfect the Slim Fast flavor profile. This is difficult to do and takes time. Slim Fast is successful, in large part, because its product tastes great—it has an industry preferred flavor. Ensuring that the product is manufactured to satisfactorily meet the exacting requirements of the Slim Fast flavor thus goes to the core of Slim Fast’s brand. As such, Slim Fast has specific hurdles a manufacturer must meet before it can begin producing Slim Fast product, including vetting and approval of the flavor profile by Slim Fast. These requirements result in substantial back and forth between Slim Fast and its manufacturer to perfect each formula in order to reach the precise ingredient mix and flavor profile of sufficient quality to be sold. Further, because Slim Fast’s RTD products can potentially be manufactured with different kinds of machinery, it is extremely important to adjust the product formula in order to ensure the same taste, consistency, and viscosity across manufacturers.

27. Slim Fast sells fourteen (14) different flavors of RTD product that a manufacturer must perfect through this complex process. The formulas must then undergo an optimization process to improve cost, stability, and shelf life. Once finalized, research and development trials are conducted on the formulas in order to gather the necessary data for various filings that must be provided to the Food and Drug Administration (“FDA”). All of the necessary regulatory approvals must be obtained before a new manufacturer can even begin to produce Slim Fast’s RTD formulas for commercial sale.

28. Slim Fast's RTD products are also bottled using an aseptic manufacturing process. Aseptic processing means food and beverages achieve sterility through a rapid process of heating and cooling, producing a commercially sterile (aseptic) product that will not spoil. Packaging materials are pre-sterilized, then filled with sterile ingredients and sealed, all in an airtight sterile environment and allow a 12 to 18 month shelf life without compromising taste. The aseptic manufacturing process is highly sensitive. For health and safety reasons, the process is also highly regulated. Therefore, it takes time for a manufacturer to meet regulatory requirements and receive heavily scrutinized bottle and product regulatory approvals before that manufacturer can produce Slim Fast product.

29. The 11-ounce bottle in which Slim Fast's RTD product is sold is designed specifically to meet Slim Fast's requirements. The bottle development process is particularly complex. Slim Fast's supplier must work with the bottle manufacturer to take Slim Fast's design requirements and come up with a bottle concept, which is used to create a physical model or models for testing with the supplier's manufacturing environment. Packaging materials are then designed and specified using the prototype bottles, and both the packaging materials and bottles undergo a series of tests and modifications before being submitted for approval to various state and federal regulatory bodies, including the FDA. Artwork for the packaging itself is also subject to a lengthy review process by multiple departments, including for statements related to nutritional content and ingredient information.

30. Moreover, the 11-ounce requirement is important, because the finely calibrated diet plan that is the core of Slim Fast's brand is tied to the precise amount of RTD product contained an 11-ounce bottle. Any adjustment to the amount of product in a bottle is unviable as it would either require adjustments to the entire Slim Fast program or undermine its clinically-proven

results. Slim Fast's 11-ounce bottle is uncommon, making it extremely difficult for Slim Fast to change suppliers with short notice. In fact, at the time Gehl threatened to breach its agreement with Slim Fast in the fall of 2016, as discussed in further detail below, no supplier could provide Slim Fast with an 11-ounce bottle.<sup>4</sup> Any new manufacturer must create a bottle that is the correct size and is satisfactory to Slim Fast and applicable regulatory requirements.

31. Finally, manufacturing capacity to meet Slim Fast's voluminous supply requirements is another issue that makes it impossible to switch to an entirely new manufacturer in a short time period. In order to transition to a new supplier, Slim Fast would have to identify a manufacturer with sufficient capacity to accommodate its significant production needs. Production lines are expensive and manufacturers lack substantial unused capacity at their disposal. Indeed, as discussed further below, when Slim Fast ultimately made its decision in 2016 to replace Gehl, only five potential bidders—including Gehl—participated in Slim Fast's request for proposal process and several bidders were quickly eliminated based, in part, on their inability to meet Slim Fast's requirements. Slim Fast's unique 11-ounce bottle size compounds the capacity issue because manufacturers in the industry are not equipped to produce that size. Indeed, all of these manufacturers who made bids during Slim Fast's RFP process provided Slim Fast with a twelve-month timeline for being able to meet Slim Fast's supply needs. Accordingly, Slim Fast's options for transitioning suppliers are extremely limited.

32. For all of the above reasons, the lead time for a new manufacturer to produce Slim Fast's supply requirements is approximately one year, making it exceedingly difficult for Slim Fast to quickly obtain alternative supply if it is unable to secure product from its existing supplier. Given its knowledge of the industry and as a seasoned supplier of Slim Fast, Gehl is well aware of

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<sup>4</sup> Only one other supplier in the marketplace had even a remotely comparable 12-ounce bottle option available. For a variety of reasons, a 12-ounce bottle was not a viable long-term solution.

the challenges associated with producing Slim Fast's RTD products, as well as the time period needed to bring a new manufacturer on board to produce them.

**IV. Slim Fast Seeks Better Contractual Terms From Gehl and Subsequently Conducts a Robust Request for Proposal Process, Leading to Termination of its Agreement with Gehl**

33. Optimistic that Gehl would work in good faith with Slim Fast given the parties' longstanding supply relationship, Slim Fast sought to renegotiate its contract with Gehl in December 2015 with the hope of improving existing contractual terms, including pricing and processing improvements. Gehl, however, refused to make pricing concessions. Accordingly, Slim Fast issued a request for proposal ("RFP") to try to secure a more competitive bottling contract for its RTD products. Slim Fast engaged PricewaterhouseCoopers LLP to assist in the RFP process, which was very competitive among five suppliers that put forth bids for the business. Gehl was unhappy with Slim Fast's decision to conduct an RFP process, and repeatedly asked Slim Fast not to engage in the process and simply negotiate directly with Gehl.

34. The RFP process was lengthy. It lasted more than six months and included an extra round of bidding that allowed Gehl multiple opportunities to submit a competitive bid. Not only did Gehl have several opportunities to submit a competitive bid, but also Slim Fast provided guidance to Gehl during the process, giving Gehl every opportunity to win renewal of the contract with Slim Fast. After all, Gehl had been Slim Fast's long-term, exclusive supplier and Slim Fast preferred to continue to use Gehl if it was the most competitive bidder. And Slim Fast knew that if Gehl was not selected it would take time to get a new manufacturer in place for Slim Fast's supply requirements, which certainly was not ideal. Upon information and belief, Gehl knew these facts as well, and it counted on them during the bidding process.

35. A winner emerged from the RFP process. Although Gehl improved upon the terms set forth in the Manufacturing Agreement, a competing supplier put forth the most competitive

proposal. Under the winning proposal, Slim Fast would gain significantly better terms and pricing guarantees—including terms that Gehl had been unwilling to meet. As a result, Slim Fast executed a contract with its new supplier (“New Supplier”). Given the necessary ramp up time for the transition (including bottle qualification timing and other issues set forth above), production under the agreement with Slim Fast’s New Supplier could not begin until the summer of the following year.

36. On June 13, 2016, a Slim Fast officer notified Gehl’s Chief Executive Officer by telephone that, as a result of the RFP process, Slim Fast was going to have to go in another direction and had signed an agreement with its New Supplier. Slim Fast explained that despite Slim Fast’s guidance to Gehl, Gehl had failed to get there on the economics, and the agreement with the New Supplier was going to result in a significant annual savings to Slim Fast. In response, Gehl’s CEO asked Slim Fast whether it would consider reopening the bidding process if the Gehl board would agree to match the economics of Slim Fast’s agreement with its New Supplier. Slim Fast reminded Gehl that as its incumbent supplier, Gehl had already been given an extra round of bidding, which Slim Fast permitted voluntarily and during which Slim Fast provided Gehl with meaningful guidance. Nevertheless, Slim Fast thanked Gehl’s team for its effort and professionalism.

37. On this same phone call, Gehl’s CEO immediately shifted focus to discussing all of the new business Gehl was on-boarding. In an apparent effort to shortcut its contractual obligations to supply product to Slim Fast, Gehl asked if Slim Fast could compress its schedule and transition to its new supplier early, which would mean Gehl would not have to supply Slim Fast’s 2017 requirements through the contractually-mandated June 2017 date. Given the complications with transitioning suppliers and the lengthy timeline for bottle qualification, Slim Fast advised Gehl that it expected Gehl to live out the full terms of the parties’ Agreement,

including supplying Slim Fast with its RTD product requirements.<sup>5</sup> Gehl's CEO assured Slim Fast that it could "count on us to ensure we will have a very smooth transition."

38. Following Slim Fast's conversation with Gehl's CEO, Slim Fast formally exercised its right to terminate the Agreement upon twelve months' notice by sending written notice to Gehl on June 13, 2016 via overnight mail, terminating the Agreement effective June 15, 2017.

39. Recognizing its indisputable obligation to continue to perform for a year following termination, on Friday, June 17, 2016, Gehl's Director of Operations ensured Slim Fast that "we will do our best to keep the relationship solid for the next year." Similarly, Gehl's Contract Manufacturing Director stated "it happens, it is business, we have had a good relationship, and will continue to do so for the next year." But that did not happen. Indeed, just the opposite—Gehl engaged in a series of bad faith and retaliatory acts in blatant disregard for its contract and relationship with Slim Fast.

#### **V. Following the Termination of its Contract, Gehl Engages in a Series of Bad Faith and Retaliatory Acts**

40. Soon after Slim Fast notified Gehl of the termination, and in stark contrast to how Gehl had treated Slim Fast for years prior to the termination, it became clear that Gehl's senior management had no regard for Gehl's relationship with Slim Fast or its continuing obligations under the Agreement. As a result, Gehl began to engage in a pattern of bad faith and retaliatory conduct toward Slim Fast, ultimately resulting in Gehl's breach and further threatened breach of the Agreement and coercion of Slim Fast to enter into an amendment to the Agreement against its free will.

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<sup>5</sup> Gehl also asked whether executives of Slim Fast would be willing to talk to individual members of Gehl's board of directors, or the team at Gehl's private equity affiliate. Slim Fast reminded Gehl that individuals from its management team had offered to speak to members of Gehl's board or affiliates several times during the RFP process, but Gehl had refused to take Slim Fast up on the offer. Nevertheless, in a show of good faith toward its long-time supplier, Slim Fast informed Gehl it would still be willing to participate in such a call.

### **A. Gehl Ceases Regular and Meaningful Communications with Slim Fast**

41. For example, Gehl ceased regular and meaningful communications with Slim Fast, including on standing weekly calls between the parties. Gehl and Slim Fast had traditionally held standing weekly calls to discuss, among other things, sales updates, raw material pricing, invoicing, product forecasts, production issues, and product development. Prior to termination of the Agreement, high ranking officers and other members of Gehl's executive team participated in these calls with a larger team. Following termination of the Agreement, however, Gehl's executives declined to participate in the calls and the team from Gehl decreased to only one or two people, making it abundantly clear that Slim Fast was no longer a priority. Moreover, on the calls, Gehl's representatives were unprepared and often unwilling to respond to Slim Fast's questions, and would not timely confirm requested production volumes owed to Slim Fast. Upset with Slim Fast's decision to transition to a new supplier, Gehl effectively stopped communicating with the Slim Fast team, leaving it unable to get answers from anyone.

### **B. Gehl Suddenly Claims to Experience Unsubstantiated Production Problems and Refuses Slim Fast's Contractually Permitted Inspection**

42. Additionally, immediately following Slim Fast's termination of the Agreement, Gehl suddenly began to complain of a myriad of alleged problems with its equipment and other production issues, which ultimately led to substantial production delays and significant product shortages of Slim Fast product throughout the rest of the summer and fall of 2016. On information and belief, Gehl fabricated these problems (1) in retaliation of Slim Fast's exercise of its lawful right to terminate the Agreement and (2) in order to reduce the quantity of product it was providing to Slim Fast and so that it could divert it to other Gehl customers. Indeed, Slim Fast would later observe that no other Gehl customer appeared to be experiencing supply constraints and Gehl was in fact providing voluminous amounts of RTD product to other customers at the same time—

including Slim Fast's two biggest customers that also sold product competitive to Slim Fast's RTD product.

43. First, beginning in June 2016—the very month Slim Fast exercised its termination right under the Agreement—Gehl represented to Slim Fast that its bottling plant was having performance problems. That month Gehl was slated to install a new cartoner that would help to accommodate the volume of product that Slim Fast required. A cartoner (also referred to as a cartoning machine) is a packaging machine that forms cartons by erecting, folding, seaming and sealing cartons for product. Gehl's production line went off-line in June 2016 to install the new equipment, which was to be completed on or before July 4, 2016, such that there would be negligible, if any, impact on Gehl's production of Slim Fast products. But following the installation, production of Slim Fast RTD products never reached 100% of Slim Fast's forecasted capacity, as Gehl shorted product based on the so-called production problems, which persisted throughout the remainder of the summer and fall of 2016.

44. Over this time period, Gehl cited numerous other issues such as electrical problems, blown mother boards, and downtime to assess and fix various issues across multiple shifts. In response, Slim Fast made several requests to Gehl by email and voicemail for calls with the executive management team to speak with Gehl's executives and other team members about these claimed problems. But Gehl ignored or delayed responses to Slim Fast's requests. Although Gehl purported to be working to fix the problems, Gehl kept Slim Fast in the dark about what was really going on, and was not forthcoming about what specific corrective actions it was taking or the expected timeline for the production issues to resolve.

45. Gehl also unexpectedly began to cite other unforeseen reasons as to why it was having production issues, including, for example, quality issues on film from a bottle wrapper

supplier that had been providing the same materials for over four years. Slim Fast subsequently conducted a full quality audit of the bottle wrapper supplier and no issues were found that would cause any significant disruption of production.

46. As of September 2016, diet season was fast approaching and Slim Fast's investment into rebranding, advertising and marketing was succeeding. Slim Fast was well positioned for another successful diet season. But Gehl was continuing to claim various production issues that were causing Gehl to fail to meet Slim Fast's requested product capacity.

47. On Friday, September 16, 2016, Slim Fast's Director of Quality Assurance visited Gehl's production facility, as is permitted under the Agreement. Tellingly, Gehl refused to allow him to enter the premises. Slim Fast also later formally requested an inspection pursuant to Section 3.6 of the Restated Manufacturing Agreement through a letter request on October 28, 2016. Gehl failed to respond to this request and permit the requested inspection. Upon information and belief, Gehl intentionally refused to permit Slim Fast's inspection because (1) it knew Slim Fast would uncover that, in fact, there were no problems with equipment and production as Gehl had claimed and/or (2) it feared Slim Fast would uncover production relating to other customers which Gehl was prioritizing over Slim Fast in direct violation of the MFN provision of the Agreement.

**C. Gehl Blames Continued Production Issues for Failure to Satisfy Slim Fast's Product Requirements, Causing Erosion to Slim Fast's Goodwill**

48. After numerous unsuccessful attempts by Slim Fast to get updates on production and commitment to Slim Fast's forecast from Gehl, Slim Fast was finally able to get Gehl to participate in a call on September 27, 2016. Without reasonable notice, and for the first time over its several-year relationship, Gehl informed Slim Fast on this call that it could not meet Slim Fast's supply requests for 24 million bottles in the fourth quarter of 2016 ("Q4 2016") on account of its purported technical problems. Slim Fast had communicated to Gehl its Q4 forecast, which called

for product in excess of the MCC, back in July 2016. Gehl gave Slim Fast only two options for Q4 2016: (a) Gehl could produce approximately 13 million bundled bottles, *i.e.*, the product in the form that Gehl had been providing the product for the prior five years, or (b) Gehl could produce approximately 24 million *unbundled* bottles, leaving Slim Fast to find another company that Slim Fast would have to pay to bundle the bottles for it. Importantly, Gehl made it clear that the price that Slim Fast would pay Gehl for the bottles would be the same whether they were bundled or unbundled. Given that diet season was imminent (a fact Gehl knew full well), and given Slim Fast's lack of alternative source of supply, Slim Fast was sent scrambling.

49. In a desperate effort to secure additional bundled supply, Slim Fast raised with Gehl the possibility of mitigating the supply shortage of RTDs in bottles by supplementing the supply with cans instead of bottles. Slim Fast hoped this could provide a temporary solution to Gehl's claimed cartoner capacity problems. Gehl refused, stating that it did not have the capacity to produce RTD products in cans as an alternative. As discussed below, however, and unbeknown to Slim Fast at the time, Gehl was in the process of converting its private label products for a customer of Gehl that sells a directly competing product to Slim Fast (the "Other Customer") from cans to bottles, both of which were sold in finished cartons. Thus, Gehl simply was refusing to accommodate Slim Fast's product requirements.

50. Needing product, and given the representations from Gehl regarding its capacity issues and problems with the bundling machine, Slim Fast's only option was to accept Gehl's production of the unbundled bottles and incur additional costs to package them through another manufacturer so that they could be made available for sale. Accordingly, Slim Fast responded that it needed the bottles and, on October 28, 2016, sent Gehl a letter formally confirming that it was choosing Gehl's proposed option whereby Gehl would produce approximately 24 million

unbundled bottles. In the letter, Slim Fast made clear that, given Gehl's refusal to produce bundled products in excess of the MCC, Gehl had waived its exclusivity under Section 1.2(a)(i) of the Restated Manufacturing Agreement for product in excess of the MCC, with the agreement otherwise remaining in full force and effect.

51. In the letter Slim Fast also put Gehl on notice of the substantial product volume Slim Fast was forecasting it would need for the first two quarters of 2017. Slim Fast informed Gehl it was increasing the MCC by 5% pursuant to the Manufacturing Agreement, and included in the letter its calculations of the forecasts of product requirements for the first and second quarters of 2017.

**D. Slim Fast Later Learns That Gehl's Production Problems are a Sham, as Gehl is Blatantly Providing RTD Product to Other Customers**

52. Although Slim Fast initially suspected that Gehl's claims regarding the alleged production problems were disingenuous, it later learned that Gehl was in fact misrepresenting its capacity problems and providing bottled product to other customers. Indeed, on information and belief, during this same time period, Gehl produced substantial amounts of similar products for other customers—none of whom were presented with the supply challenges Gehl claimed to Slim Fast.

53. One of Gehl's other customer's ("Other Customer") private label product is extremely similar to the Slim Fast RTD products, but historically was produced by Gehl in a steel can. As of November 2016, however, and after Gehl's claimed production problems, the Other Customer began to offer and sell product using the exact same bottle and chipboard box that Gehl had been using to produce Slim Fast's RTD product. To add insult to injury, the Other Customer also used similar graphics to Slim Fast's product on its packaging in an attempt to look similar to

Slim Fast, even stating “Compare to Slim Fast” on the package.<sup>6</sup> Thus, Gehl severely shorted Slim Fast on product throughout the summer and fall, claiming numerous production problems, including with the cartoning equipment on existing packaging lines. But at the same time, all of the products that were shorted were in chipboard “cartons” of finished goods, which was the exact same packaging that Gehl’s Other Customer debuted in fall of 2016. Upon information and belief, Gehl knew that it did not have the capacity to produce both Slim Fast’s RTD products and significant production for the Other Customer in the same format of the bottle and chipboard finished cases at the same time. Gehl thus diverted capacity from Slim Fast to the Other Customer.

54. Furthermore, not only was Gehl’s claimed inability to produce bottles for Slim Fast a farce, but because it was transitioning the Other Customer to bottled product instead of cans, that transition to bottles would free up capacity to produce product in cans. Thus, upon information and belief, Gehl’s representation to Slim Fast that it would have no capacity to produce product in cans was false—Gehl simply did not want to supply Slim Fast in good faith under the parties’ Agreement.

#### **VI. Slim Fast Negotiates With Its New Supplier to Speed Up Onboarding and Mitigate Gehl’s Fall 2016 Production Shortages**

55. Slim Fast knew based on the prior RFP process that no other suppliers existed in the marketplace that could immediately meet its production needs. Indeed, no supplier was equipped to provide Slim Fast’s 11-ounce bottles. Nor was it possible for an alternative supplier to develop and perfect Slim Fast’s complicated flavor profile mere weeks from the height of Slim Fast’s busiest season. But in light of Gehl’s persistent production problems and resulting product shortages, and to mitigate the disruption and harm to Slim Fast’s business caused by Gehl, Slim Fast began discussions with its New Supplier in November to try to begin production in advance

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<sup>6</sup> Although Gehl produced the Other Customer’s product, it did not design the packaging.

of June 2017. As Gehl was well-aware, and as discussed above, there was no “quick fix” to cover its shortage. Rather, going to any alternative source of supply would entail at least up to a year-long lead time before the supplier could be producing Slim Fast product at its needed volumes.

56. Slim Fast was extraordinarily fortunate, because under Slim Fast’s agreement with its New Supplier, the New Supplier had started to formulate Slim Fast’s RTD products using its equipment in anticipation of taking over the Slim Fast production in the summer of 2017. Because of its early efforts, it was in a position to start limited production of four of Slim Fast’s RTD products, the chocolate and vanilla flavors for its regular and advanced nutrition line. It was also the *only* supplier in the marketplace that was able to supply a closely equivalent bottle for the Slim Fast product, as it had 12-ounce bottles in stock at the time. Accordingly, Slim Fast began discussions with the New Supplier to see what products it might be able to supply Slim Fast to make up for Gehl’s shortfall starting as soon as possible.

57. Receiving supply from the New Supplier was not a perfect solution, but Slim Fast had to explore it to avoid further supply shortages and harm to its goodwill. First, the flavors were not completely mastered to Slim Fast’s typical and exacting flavor profile, but it was as close as the New Supplier could get the product in order to supply it on a satisfactory, temporary basis until the flavor could be perfected to what it is today. Second, as mentioned above, the New Supplier could only supply four product flavors, leaving ten flavors needing to be supplied for Slim Fast. In fact, Slim Fast specifically asked its New Supplier if it could begin production of even one to two additional flavors, but its New Supplier was unable to do so on such short notice. And third, although Slim Fast was willing to receive some product in the 12-ounce bottle in the short term in order to avoid a complete supply shortage, for a variety of reasons, the 12-ounce bottles from its New Supplier were only a temporary solution and not a viable long-term option for Slim Fast.

Nevertheless, Slim Fast was grateful for its New Supplier's willingness to assist with Slim Fast's supply needs, and Slim Fast and its New Supplier promptly agreed to an amendment to their supply agreement so that the New Supplier could begin limited production of the chocolate and vanilla flavors of Slim Fast's product in November 2016.

58. Gehl's shortage of Slim Fast product throughout the summer and fall of 2016 had a significant impact on Slim Fast's business and consumer goodwill, even with the product the New Supplier was able to provide. In particular, these shortages caused a number of flavors of Slim Fast product to be out of stock, which in turn caused problems with Slim Fast's relationships with both its retail customers and the general consuming public, causing harm to Slim Fast's goodwill. As just one example, one Slim Fast retail customer raised with Slim Fast the intermittent out-of-stocks it was experiencing with Slim Fast product in the fall. The customer explained that it was expecting a big lift in sales in the upcoming first quarter of 2017 and was concerned about the level of service it was receiving from Slim Fast compared to the supply of its private label product (product that was apparently being manufactured successfully and without capacity issues by Gehl at the time).

59. At that time, Slim Fast also considered other options to mitigate the supply shortage caused by Gehl. For instance, Slim Fast explored sourcing RTD product from Slim Fast's UK operations/supplier. But Slim Fast determined such options were not feasible due, for example, to regulatory import requirements and the fact that Slim Fast's UK formula and bottle were different from those used in the U.S. Slim Fast also looked to several other sources to try to identify a viable alternate supplier with available capacity, including revisiting its list of participants in the earlier RFP process and seeking recommendations for aseptic manufacturers from its former owner,

Unilever. But Slim Fast came up empty handed, as there was no available supply on such short notice and under emergency circumstances.

60. Although Gehl had agreed to supply Slim Fast with the 24 million unbundled bottles, Slim Fast's forecasts had continued to increase from the July 2016 levels. Ultimately, over the six month time-period from Slim Fast's termination until year end, Gehl shorted Slim Fast's forecasted supply requirements by 30,000,000 bottles of product, blaming feigned production issues and capacity shortages.

**VII. In Breach of the Agreement, Gehl Threatens to Withhold Product from Slim Fast Unless it Agrees to a Take it or Leave it Offer of Double the Contractual Price**

61. On November 14, 2016, Slim Fast officers met with Gehl's CEO in person at a trade show. The Slim Fast executives stressed the need for better communication from Gehl. They also discussed the supply issues with Gehl and asked for confirmation that Gehl would meet its future supply needs, making every attempt to eliminate the risk of Gehl again waiting until the last minute to tell Slim Fast that Gehl could satisfy its production obligation for the first or second quarter of 2017, as it had done in fall 2016. Gehl assured Slim Fast that it was doing its best to meet Slim Fast's supply needs, but refused to commit to meeting any particular production numbers for Slim Fast for the remainder of 2016 or 2017.

62. Approximately a week later, Slim Fast spoke to Gehl again about its production and product shortages. Gehl indicated at that time that its CEO was in Asia, but he was working on production options to present to Slim Fast when he returned. Gehl told Slim Fast that it was planning on providing an update on progress in the next 24-48 hours after working with the Gehl Operations and the sales team to understand demand and capacity.

63. After weeks of evading Slim Fast's request for a definitive commitment for 2017, on November 30, 2016, and without any justification, Gehl threatened to breach the parties'

Agreement and informed Slim Fast that it was refusing to provide any product at all to Slim Fast in 2017. Gehl offered no adequate explanation of its unlawful position, claiming that it had no obligation to meet Slim Fast's 2017 supply requirements. Simultaneously, however, Gehl also represented to Slim Fast that its cartoner machine was now working better, so it could provide Slim Fast with 37 million bottles in finished packaging for the first and second quarter of 2017—but only if Slim Fast agreed to a “take it or leave it” offer of paying 39 cents per bottle—more than twice the amount then called for by the parties' then existing Agreement.

64. Although Gehl was contractually obligated to supply Slim Fast with its product in calendar year 2017 under the Agreement, Gehl claimed that it would only have this available capacity because it would push off trials it was planning to run for two of its new customers. Using those trials as a pretext, and the fact that Gehl felt it had no obligation to supply product to Slim Fast in 2017, Gehl demanded an answer from Slim Fast by that Friday—a mere two days later—so that Gehl could allegedly communicate to Gehl's other two customers. Thus, under its threat of contractual breach, not only did Gehl present its offer as non-negotiable, it only gave Slim Fast two days to respond.

65. Gehl had Slim Fast over a barrel—it knew it and took advantage of it. Indeed, Gehl's position that it did not have to provide any product in calendar year 2017 was in direct conflict with the Agreement.

### **VIII. Unable to Secure Product Elsewhere, and Lacking any Alternative, Slim Fast Capitulates to Gehl's Demands, Entering Into an Amendment to the Parties' Agreement**

66. Faced with Gehl's threatened breach and extortionate demand, Slim Fast was in a precarious position. Other than the temporary supply of some of its product requirements by its New Supplier mentioned above, Slim Fast knew that an alternative source of supply was not available and that it needed Gehl to satisfy its obligations to its retail customers and ultimately, the

end consumers, of its products. It was not possible for Slim Fast's New Supplier to take over complete production because it was only in a position to supply Slim Fast's chocolate and vanilla flavors. Meanwhile, the fourth quarter is when Slim Fast prepares the most product in order to prepare for its busy diet season—a fact that Gehl undoubtedly knew when it presented its take-it-or-leave-it offer. If Slim Fast was unable to supply its customers, Slim Fast would incur fines and would begin to immediately lose its space on retail shelves, which it may never get back. And Slim Fast would undoubtedly lose consumers all over the country who had become loyal purchasers of the Slim Fast products. As a result, Slim Fast's failure to get its RTD products into stores would have disastrous consequences for its goodwill, customer and consumer relationships, and the Slim Fast brand. And such an inability to supply its customers would undoubtedly put at risk Slim Fast's substantial investment into revamping the company, not to mention cause substantial harm to Slim Fast's business.

67. At the same time, Slim Fast knew that its legal remedies under the parties' Agreement for Slim Fast's threatened breach were inadequate. Indeed, Slim Fast believed that if it immediately sued for breach of the Agreement, Gehl would cease delivery entirely, leaving Slim Fast with no product at all.

68. Based on Slim Fast's business necessity for 2017 supply, and the fact that alternative supply was not available, Slim Fast was deprived of its free will and had no choice but to proceed with obtaining product from Gehl pursuant to its extortionate demand.

69. On Friday, December 2, 2016 (the deadline Gehl had previously attached to its demand), a Slim Fast executive contacted Gehl's CEO by phone to capitulate to Gehl's ultimatum and tell Gehl that it needed the bottles. Gehl told Slim Fast it would send over "a one page

addendum” regarding the volume it would provide Slim Fast from January through June 2017 and the new pricing that was agreed to on the call.

70. Importantly, on this call, Gehl’s real motivation for its behavior became clear—Gehl admitted that members of Gehl’s board were upset at Slim Fast choosing another supplier over Gehl through the RFP process.

71. Absent the dire circumstances imposed on it by Gehl’s conduct, Slim Fast never would have agreed to Gehl’s extortionate demand if it had other options. It did not, and Gehl knew it.

72. On or around December 6, 2016, the parties executed an Amendment to the Agreement, in which Gehl agreed to produce a specific bottle volume for Slim Fast from December 2016 through June 2017 at a price of \$0.39 per bottle. All other terms of the Manufacturing Agreement were to “remain in full force and effect.” Second Amendment § 2.

73. On July 13, 2017, Gehl made its last shipment of product to Slim Fast under the Agreement.

### **CLAIMS FOR RELIEF**

#### **FIRST CLAIM FOR RELIEF (ECONOMIC DURESS)**

74. Slim Fast repeats and incorporates the allegations in Paragraphs 1 through 73 as if set forth fully herein.

75. The actions of Defendant as described herein created such pressure of circumstances on Slim Fast, such that Slim Fast involuntarily and against its will was forced to execute the Second Amendment to the Restated Manufacturing Agreement presented to Slim Fast on December 6, 2016.

76. In November 2016, Gehl informed Slim Fast it was refusing to deliver any product to Slim Fast in 2017 unless it agreed to a take-it-or-leave it offer of nearly double the then existing contract price. Gehl thus withheld necessary supply, including by threatening to breach its Agreement with Slim Fast. The immediate possession of needed goods was thus threatened.

77. Gehl's threat was unlawfully made.

78. Gehl knew that its unlawful withholding of supply would put Slim Fast in the position of defaulting on supply promised to customers, causing substantial damage to its customer relationships, good will and overall success of Slim Fast's business.

79. Slim Fast had no alternative supply source by which to obtain the product requested of Gehl.

80. It was Slim Fast's considered opinion by December 2016 that it was impracticable or futile in the circumstances for it to resort to legal remedies available to it. If it declared Gehl in material breach of contract because of its refusal to continue shipping bottles and exercised its right to cover and purchase such materials elsewhere, it would have taken no less than a year to secure delivery of same. Any legal remedy that Slim Fast possessed regarding the threatened breach of the Restated Manufacturing Agreement, as amended, was entirely inadequate given the inability to secure alternative supply by Slim Fast at the time and known to Defendant. In particular, Slim Fast believed that if it immediately sued for breach of the Agreement, Gehl would cease delivery entirely, leaving Slim Fast with no product at all. Thus, after Gehl made its last shipment under the Agreement and Slim Fast knew that Gehl could no longer prejudice it by cutting off its contractually obligated supply, Slim Fast brought this suit. Slim Fast feared (based on Gehl's conduct to date) that bringing suit sooner would put it in an untenable position.

81. Defendant's threat of illegal conduct was sufficient to compel Slim Fast to act against its will and against its economic interest. As a result, Slim Fast was forced to accept Gehl's increased price in order to receive the product for which Gehl was already contractually obligated to produce under the Agreement. Slim Fast would not have agreed to the increased price in the absence of Gehl's economic duress, as Gehl was still contractually obligated to supply it bottles in 2017 at the original contractually agreed upon price.

82. As a direct and proximate result of the economic duress applied by Defendant, in obtaining Slim Fast's consent to the Second Amendment, Slim Fast has sustained damages in an amount to be determined at trial.

**SECOND CLAIM FOR RELIEF  
(BREACH OF CONTRACT)**

83. Slim Fast repeats and incorporates the allegations in Paragraphs 1 through 82 as if set forth fully herein.

84. The parties entered into the Agreement.

85. The Agreement is valid and enforceable.

86. Slim Fast has fully performed all of its duties and obligations under the Agreement.

All conditions precedent to Slim Fast's right to bring this action and to recover the requested relief herein have been performed, have occurred or have been waived.

87. On information and belief, Gehl failed to provide RTD product to Slim Fast at the most favorable price.

88. On information and belief, Gehl breached the Agreement by failing to treat Slim Fast "on the most favorable basis compared to other purchasers."

89. Gehl breached its obligation under the Agreement to "deliver all Gehl Bottles manufactured by Gehl to Slim Fast and to no other person until such time as Slim Fast's

requirements for Gehl Bottles have been met.”

90. Gehl breached the Agreement by failing to permit access to its facilities pursuant to the Agreement, which permits Slim Fast to “designate a representative to visit each Facility, from time to time, in connection with the administration of this Agreement.”

91. Gehl breached its obligation under the Agreement to allow Slim Fast “upon prior written notice to Gehl and during regular business hours at Gehl’s offices, [to] inspect all records relating to this Agreement maintained by or under the control of Gehl . . . in order to audit Gehl’s compliance with this Agreement.”

92. As a direct and proximate result of Gehl’s breaches, Slim Fast was injured and sustained damages in an amount to be determined at trial.

**THIRD CLAIM FOR RELIEF  
(BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING)**

93. Slim Fast repeats and incorporates the allegations in Paragraphs 1 through 92 as if set forth fully herein.

94. A covenant of good faith and fair dealing in the course of contract performance is implicit in all contracts under New York law.

95. The purpose of the implied covenant of good faith and fair dealing is to further an agreement by protecting the promisee against a breach of the reasonable expectations and inferences otherwise derived from the agreement.

96. The covenant of good faith and fair dealing protects the bargained-for terms of the agreement.

97. Under the covenant of good faith and fair dealing, Gehl was obligated to act in good faith in dealing with Slim Fast so as not to deprive Slim Fast of its benefits under the Agreement.

98. As set forth above, Slim Fast entered into the Manufacturing Agreement, as amended, with Gehl and pursuant to which Gehl committed to manufacture 100% of Slim Fast's product requirements in the United States and Canada.

99. Gehl breached its duty of good faith and fair dealing by all of the bad acts alleged in this Complaint, including but not limited to making misrepresentations regarding its production problems and capacity limitations; effectively cutting off regular communications with Slim Fast; not making efforts to exceed the MCC or to otherwise provide Slim Fast product to the full extent of Gehl's good faith ability; failing to provide bundled product to Slim Fast pursuant to the Agreement, which requires product to be "prepared for shipment in accordance with procedures mutually agreed to by Gehl and Unilever," and as had been the parties' ordinary course of dealing; and refusing to supply product unless Slim Fast agreed to Gehl's extortionate demand for increased tolling.

100. As a direct and proximate result of Gehl's breach, Slim Fast was injured and sustained damages in an amount to be determined at trial.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Slim Fast prays for relief and respectfully requests that the Court enter judgment in its favor as follows:

- (a) Award Slim Fast all damages to which it is entitled, including, but not limited to, actual damages;
- (b) Render judgment against Defendant for pre-judgment and post-judgment interest, reasonable attorneys' fees and expenses, and costs of suit; and
- (c) Such other and further relief as the Court deems just and proper.

Dated: New York, New York  
September 21, 2017

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