**IN THE UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF OHIO**
**EASTERN DIVISION**

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| GRANGE HOLDINGS, INC.,<br><br>Plaintiff,<br><br>v.<br><br>KANSAS CITY LIFE INSURANCE COMPANY, et al.,<br><br>Defendants. | ) | Case No. 2:23-cv-3970<br><br>Judge James L. Graham<br>Magistrate Judge Kimberly Jolson |

**MOTION TO DISMISS OF DEFENDANTS KANSAS CITY LIFE INSURANCE COMPANY AND GRANGE LIFE INSURANCE COMPANY**

This case should be dismissed pursuant to Rule 12(b)(6) because the parties' relationship is governed by an agreement containing a forum selection clause requiring this case to be brought in state or federal court in Delaware. At the very least, the Delaware choice of law provision in the same document requires dismissal of the Ohio Unfair Trade Practices claim.

The dispute arises out of a transaction that closed in 2018, pursuant to which Defendant Kansas City Life Insurance Company purchased Defendant Grange Life Insurance Company from Plaintiff's predecessor in interest, Grange Mutual Casualty Company. A Stock Purchase Agreement governed the terms of that purchase, along with additional, related agreements referred to in the Stock Purchase Agreement as "Transaction Agreements." Plaintiff relies on one of those Transaction Agreements – the Trademark License Agreement – in arguing that the Defendants must cease to call Grange Life Insurance Company by that name. The Defendants disagree, and ultimately intend to rely on specific language in that same Trademark License Agreement and other authority to support their view. The case must be heard in Delaware, however, not in Ohio – as the Stock Purchase Agreement requires:

> Each of the parties hereto hereby irrevocably and unconditionally submits to the exclusive jurisdiction of any court of the United States or any state court, which in either case, is located in the State of Delaware (each, a "Delaware Court") for purposes of enforcing this Agreement **or determining any claim arising from or related to the transactions contemplated by this Agreement.**

Stock Purchase Agreement, SECTION 10.7(a) (emphasis added) (Exhibit 1 hereto). The Trademark License Agreement, one of the Transaction Agreements, contains no venue clause of its own. It clearly is one of "the transactions contemplated by this Agreement," and therefore subject to the exclusive venue clause. This case must be dismissed, and if Plaintiff chooses to pursue it, refiled in Delaware in any court with subject matter jurisdiction.

Even if this Court retains jurisdiction, the parties' choice of Delaware law provided for Stock Purchase Agreement SECTION 10.5 requires dismissal of Plaintiff's claim under Ohio Rev. Code § 4165.02.

Defendants rely on the facts and authority set forth in the Memorandum of Law filed simultaneously with this Motion.

DATED: January 16, 2024

Respectfully submitted,

**KANSAS CITY LIFE INSURANCE COMPANY**
**GRANGE LIFE INSURANCE COMPANY**

By: */s/ Traci L. Martinez*
Traci L. Martinez (0083989), Trial Attorney
**Squire Patton Boggs**
2000 Huntington Center
41 South High Street
Columbus, OH 43215
T: 614.365.2807
traci.martinez@squirepb.com

Ann G. Fort (*admitted pro hac vice*)
**Eversheds Sutherland**
999 Peachtree Street, NE Suite 2300
Atlanta, Georgia 30309
Telephone: (404) 853-8000
annfort@eversheds-sutherland.com

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing was filed electronically on January 16, 2024 using the CM/ECF system, which will send notification to all counsel of record.

This 16th day of January, 2024.

*/s/ Traci L. Martinez*
Traci L. Martinez (0083989)

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS OF DEFENDANTS KANSAS CITY LIFE INSURANCE COMPANY AND GRANGE LIFE INSURANCE COMPANY**

This case should be dismissed pursuant to Rule 12(b)(6) because the parties' relationship is governed by an agreement containing a forum selection clause requiring this case to be brought in state or federal court in Delaware. At the very least, the Delaware choice of law provision in the same document requires dismissal of the Ohio Unfair Trade Practices claim.

The dispute arises out of a transaction that closed in 2018, pursuant to which Defendant Kansas City Life Insurance Company purchased Defendant Grange Life Insurance Company from Plaintiff's predecessor in interest, Grange Mutual Casualty Company. A Stock Purchase Agreement governed the terms of that purchase, along with additional, related agreements referred to in the Stock Purchase Agreement as "Transaction Agreements." Plaintiff relies on one of those Transaction Agreements – the Trademark License Agreement – in arguing that the Defendants must cease to call Grange Life Insurance Company by that name. The Defendants disagree, and ultimately intend to rely on specific language in that same Trademark License

Agreement and other authority to support their view. The case must be heard in Delaware, however, not in Ohio – as the Stock Purchase Agreement requires:

> Each of the parties hereto hereby irrevocably and unconditionally submits to the exclusive jurisdiction of any court of the United States or any state court, which in either case, is located in the State of Delaware (each, a "Delaware Court") for purposes of enforcing this Agreement **or determining any claim arising from or related to the transactions contemplated by this Agreement.**

Stock Purchase Agreement, SECTION 10.7(a) (emphasis added) (Exhibit 1 hereto). The Trademark License Agreement, one of the Transaction Agreements, contains no venue clause of its own. It clearly is one of "the transactions contemplated by this Agreement," and therefore subject to the exclusive venue clause. This case must be dismissed, and if Plaintiff chooses to pursue it, refiled in Delaware in any court with subject matter jurisdiction.

Even if this Court retains jurisdiction, the parties' choice of Delaware law provided for Stock Purchase Agreement SECTION 10.5 requires dismissal of Plaintiff's claim under Ohio Rev. Code § 4165.02.

## STATEMENT OF FACTS

1. Plaintiff is an Ohio corporation formed for the purpose of owning one hundred percent of the voting stock in Grange Insurance Company fka Grange Mutual Casualty Company ("GMCC"). (Complaint ¶ 12, ECF No. 1 at PageID 3.)

2. GMCC has assigned its rights, including all goodwill and rights to sue, in the above marks to Plaintiff. (*Id.* ¶ 16.)

3. Until October 1, 2018, GMCC owned and operated Defendant Grange Life Insurance Company ("Grange Life") to market and sell life insurance policies. (*Id.* ¶ 19.)

4. Defendant Kansas City Life Insurance Company ("Kansas City") entered into a stock purchase agreement with GMCC to purchase 100% of the issued and outstanding shares of

Grange Life on June 4, 2018 ("Stock Purchase Agreement") with an effective date of October 1, 2018. (*Id.* ¶ 20.)

5. The Stock Purchase Agreement also anticipated that the parties would enter into other agreements as part of the transaction, called the "Transaction Agreements." Those agreements are "the Marketing Support and Agency Agreement, the Transition Services Agreement, the Lease Agreement and the Trademark License Agreement." (Exhibit 1 at 10.)

6. The Stock Purchase Agreement provides that it shall be governed by Delaware law:

> SECTION 10.5 Governing Law. This Agreement and any dispute arising hereunder shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof, govern this Agreement, the other Transaction Agreements and any disputes arising hereunder or thereunder. The parties agree that (a) in the event any court in the United States or any state court, which in either case is, located in the State of Delaware determines it does not have jurisdiction over the parties and the dispute, then this Agreement and any dispute arising hereunder shall be governed by, and construed in accordance with, the laws of the State of Missouri, regardless of the laws that might otherwise govern under applicable principles of conflict of laws thereof, govern this Agreement, the other Transaction Agreements and any dispute arising hereunder or thereunder, . . . .

(*Id.* at 71.)

7. The parties to the Stock Purchase Agreement also agreed to personal jurisdiction in the state and federal courts in Delaware:

> (b) no party shall assert a lack of, or otherwise object to, the jurisdiction of any court in the United States or any state court, in either case located in the State of Delaware, over disputes arising under this Agreement or any other Transaction Agreement.
>
> (*Id.*)

8. The Stock Purchase Agreement also contains a forum selection clause specifying the State of Delaware, as follows:

> SECTION 10.7 Jurisdiction; Enforcement. (a) Each of the parties hereto hereby irrevocably and unconditionally submits to the exclusive jurisdiction of any court

> of the United States or any state court, which in either case, is located in the State of Delaware (each, a "Delaware Court") for purposes of enforcing this Agreement or determining any claim arising from or related to the transactions contemplated by this Agreement. In any such action, suit or other proceeding, each of the parties irrevocably and unconditionally waives and agrees not to assert by way of motion, as a defense or otherwise any claim that it is not subject to the jurisdiction of any such Delaware Court, that such action, suit or other proceeding is not subject to the jurisdiction of any such Delaware Court, that such action, suit or other proceeding is brought in an inconvenient forum or that the venue of such action, suit or other proceeding is improper; provided, that nothing set forth in this sentence shall prohibit any of the parties hereto from removing any matter from one Delaware Court to another Delaware Court. Any final and unappealable judgment against a party in connection with any action, suit or other proceeding will be conclusive and binding on such party and that such award or judgment may be enforced in any court of competent jurisdiction, either within or outside of the United States. A certified or exemplified copy of such award or judgment will be conclusive evidence of the fact and amount of such award or judgment. Any process or other paper to be served in connection with any action or proceeding under this Agreement shall, if delivered or sent in accordance with Section 10.2, constitute good, proper and sufficient service thereof.

(*Id.* at 71-72.)

9. Plaintiff asserts that it was "formed for the purpose of owning one hundred percent of the voting stock in Grange Insurance Company fka Grange Mutual Casualty Company ("GMCC")." (Complaint ¶ 12, ECF No. 1 at PageID 3.)

10. As the owner of one hundred percent of the voting stock of Seller GMCC, Plaintiff is bound by the Stock Purchase Agreement.

11. On October 1, 2018, KCL, GLIC, and GMCC entered into a Trademark License Agreement ("Trademark License Agreement"). (*Id.* ¶ 21; Trademark License Agreement, Ex. A to Complaint, ECF No. 1-1.) This Trademark License Agreement is identified as an Exhibit to the Stock Purchase Agreement, as follows: "EXHIBIT C – Form of Trademark License Agreement (Use of "Grange" name by Buyer)." (Ex. 1 at iii.)

12. The Trademark License Agreement provides, among other things,

> "For the avoidance of doubt, nothing herein restricts the Licensees or their Affiliates from utilizing the Licensed Marks for purposes of administering life insurance products sold by Grange Life in accordance with the terms of this Agreement."

(Trademark License Agreement § 1, Ex. A to Complaint, ECF No. 1-1 at PageID 13.)

13. The Trademark License Agreement has no forum selection clause.

14. The Trademark License Agreement terminated on October 1, 2023. (Complaint ¶ 31, ECF No. 1 at PageID 5; *see also* Trademark License Agreement, Ex. A to Complaint, ECF No. 1-1.)

15. In response to demands that it cease use of the trademarks licensed under the Trademark License Agreement, Kansas City and Grange Life have stated that they intend to continue use of those trademarks to administer all Grange Life policies until all of that business concludes (i.e., all life insurance policies are no longer in-force, due to the death of the insureds, surrender of the insurance policy, expiration of any applicable term or otherwise canceled). (*See* Complaint ¶ 36, ECF No. 1 at PageID 6.)

## ARGUMENT

### I. This Court Should Enforce the Forum Selection Clause and Dismiss the Case.

#### A. Federal Law Governs the Question of Enforceability of a Forum Selection Clause.

Plaintiff seeks a declaratory judgment in its favor under the federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, "that Defendants have no rights in Plaintiff's' trademarks GRANGE LIFE INSURANCE and GRANGE LIFE INSURANCE and design as of November 1, 2023 and that Defendants' continued use of GRANGE LIFE INSURANCE infringes Plaintiff's trademarks, constitutes unfair competition under the Lanham Act, 15 U.S.C. §1051 et. seq., and violates Ohio trademark law." (Complaint ¶ 1, ECF No. 1 at PageID 1.) Accordingly, the complaint asserts claims under federal law, as well as under state law in apparent reliance on supplemental

jurisdiction. (The case lacks complete diversity between Plaintiff Grange Holdings, Inc., and Defendant Grange Life Insurance Company, where both are Ohio corporations.) (*Id.* ¶ 7.)

The Sixth Circuit holds that federal law governs the enforceability of a forum selection clause when a federal court is deciding a question of federal law, or one of state law that is within its subject matter jurisdiction. *See Wong v. PartyGaming, Ltd.*, 589 F.3d 821, 826–28 (6th Cir. 2009) (forum selection clause assessed under federal law where state law is being applied by a court sitting in diversity).

**B. Plaintiff Cannot Show That the Clause Is Unenforceable.**

"A forum selection clause should be upheld absent a strong showing that it should be set aside." *Wong*, 589 F.3d at 828. "When evaluating the enforceability of a forum selection clause, this court looks to the following factors: (1) whether the clause was obtained by fraud, duress, or other unconscionable means; (2) whether the designated forum would ineffectively or unfairly handle the suit; and (3) whether the designated forum would be so seriously inconvenient such that requiring the plaintiff to bring suit there would be unjust." *Id.* The party opposing the forum selection clause bears the burden of showing that the clause should not be enforced. *Id.* (citing *Shell v. R.W. Sturge*, Ltd., 55 F.3d 1227, 1229 (6th Cir. 1995)).

The facts here demonstrate that this forum selection clause was included in an arm's length business transaction, between parties of equal sophistication and bargaining power. There is no evidence of fraud. *See id.* (finding no fraud in obtaining the forum selection clause, even when it was included in an on-line contract of adhesion, governing virtual gambling). Nor is there any basis to conclude that the forum chosen by both sides, the state or federal courts located in the State of Delaware, would not handle the suit fairly or effectively. *See id.* at 829 (enforcing a forum selection clause specifying Gibraltar, and citing prior rulings enforcing forum selection clauses specifying the United Kingdom, Germany and Brazil.) Finally, inconvenience sufficient to evade

a forum selection clause is a very high bar that Plaintiff cannot clear; if consumers are not unduly inconvenienced by litigating in Gibraltar, an insurance holding company located in Ohio will not be unduly inconvenienced by litigating in Delaware. *Id.* at 830.

## II. Rule 12(b)(6) Empowers this Court to Dismiss this Case per the Stock Purchase Agreement.

"On a motion pursuant to Rule 12(b)(6), 'the court only needs to determine whether the forum selection clause is enforceable and applicable; if it is, then the suit should be dismissed.'" *Bracken v. Dasco Home Med. Equip., Inc*., 954 F. Supp. 2d 686, 694 (S.D. Ohio 2013). Furthermore, while the Plaintiff decided not to attach the Stock Purchase Agreement as an exhibit to the Complaint, the Stock Purchase Agreement should not be treated as "matters outside the pleadings" under Rule 12(d). Plaintiff did cite the document in the Complaint. (*See* Complaint ¶ 20, ECF No. 1 at PageID 4.) In addition, the Trademark License Agreement refers to the Stock Purchase Agreement in its preamble paragraph, stating "[t]erms not otherwise defined in this Agreement will have the meaning ascribed to them in the Stock Purchase Agreement . . . ." (Trademark License Agreement, Ex. A to Complaint, ECF No. 1-1 at PageID 13.)

In such a case, the Stock Purchase Agreement is not "material outside the pleadings." Defendants are entitled to rely on the full agreement without converting their motion to dismiss into a motion for summary judgment, as Rule 12(d) might otherwise require for truly new matter introduced in a motion to dismiss. Documents integral to the complaint may be relied upon, even if they are not attached or incorporated by reference. Otherwise, a plaintiff with a legally deficient claim could survive a motion to dismiss simply by failing to attach a dispositive document. *Weiner v. Klais & Co*., 108 F.3d 86, 89 (6th Cir. 1997). Furthermore, "if the authenticity, validity, or enforceability of a document is not in dispute, the court may consider it on a motion to dismiss; however, a genuine dispute as to the legal sufficiency of said document requires the court to

consider the issue under a motion for summary judgment standard." *Sollenberger v. Sollenberger*, 173 F. Supp. 3d 608, 618–19 (S.D. Ohio 2016). The Stock Purchase Agreement attached to the Defendants' motion ought not ignite any dispute as to its authenticity.

If, however, the Court should conclude that the Stock Purchase Agreement constitutes "matters outside the pleadings" under Rule 12(d), then Defendants respectfully request that this motion to dismiss be converted into a motion for summary judgment under Rule 56, with all parties "given a reasonable opportunity to present all the material that is pertinent to the motion." Fed. R. Civ. P. 12(d).

## III. Because Delaware Law Governs this Dispute, Plaintiff's Ohio Unfair Trade Practices Claim Must be Dismissed.

Consistent with the Delaware forum selection clause, the Stock Purchase Agreement contains a choice of law provision establishing that "[t]his Agreement **and any dispute arising hereunder** shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof, govern this Agreement, the other Transaction Agreements and any disputes arising hereunder or thereunder." (Stock Purchase Agreement SECTION 10.5, Ex. 1 at 69 (emphasis added).) Indeed, this provision overcomes the purported Ohio choice of law provision in the Trademark License Agreement. (*See* Trademark License Agreement § 9.1.5., Ex. A to Complaint, ECF No. 1-1 at PageID 16.)

Plaintiff contends that continuing use of Grange Life Insurance Company's own name after December 30, 2023, "constitutes a deceptive trade practice under R. C. 4165.02," and that "Plaintiff is entitled to injunctive relief against Defendants for their violations of R.C. 4165.02(A) after December 30, 2023." (Complaint ¶¶ 58, 61, ECF No. 1 at PageID 9.) Because Delaware law should apply, this claim should be dismissed for failure to state a claim.

This dispute arises under the Stock Purchase Agreement, as well as under the Trademark License Agreement. As noted above, the Trademark License Agreement incorporates the Stock Purchase Agreement definitions in its preamble paragraph, and is referred to in the Stock Purchase Agreement as a "Transaction Agreement." (Ex. 1 at 10.) Furthermore, Plaintiff itself notes that the five-year noncompetition provision of the Stock Purchase Agreement (SECTION 5.11, Ex. 1 at 51) is at least one part of the Stock Purchase Agreement that is relevant to the interpretation of the Trademark License Agreement. (*See* Complaint ¶ 21, ECF No. 1 at PageID 4.) Other provisions of the Stock Purchase Agreement that appear relevant to the interpretation of the Trademark License Agreement include SECTION 3.13(a)(xiv), requiring disclosure of "any material agreement concerning Intellectual Property," (Ex. 1 at 30) and SECTION 3.19, entitled "Intellectual Property; Information Technology," (Ex. 1 at 34).

Since at least 1991, in the Sixth Circuit a broad choice of law provision has been held to apply to torts and statutory causes of action related to the contract, pursuant to *Moses v. Business Card Express, Inc.*, 929 F.2d 1131, 1139–40 (6th Cir. 1991) (attached hereto as Exhibit 2). Ohio federal courts have repeatedly applied choice of law provisions when state law provides the law of decision on a tort or statutory cause of action.

> "Under Ohio law, contractual choice-of-law provisions are valid and enforceable." *Miami Valley Mobile Health Servs., Inc. v. ExamOne Worldwide, Inc.*, 852 F. Supp. 2d 925, 932 (S.D. Ohio 2012) (citing *Schulke Radio Prod. Ltd. v. Midwestern Broad. Co.*, 6 Ohio St.3d 436, 438-39, 6 Ohio B. 480, 453 N.E.2d 683, 686 (Ohio 1983)). The Sixth Circuit has held repeatedly that contractual choice of law provisions apply to tort claims that are closely related to the contractual relationship, as opposed to those that are only tangentially related. *See Adelman's Truck Parts Corp. v. Jones Transp.*, 797 F. App'x 997, 1000 (6th Cir. 2020) (applying contractual choice of law to claim under North Carolina Unfair and Deceptive Trade Practices Act because the tort claim was sufficiently related to the contract); *Banek Inc. v. Yogurt Ventures U.S.A., Inc.*, 6 F.3d 357, 363 (6th Cir. 1993) (applying contractual choice of law to fraud and misrepresentation claims because they were sufficiently related to the contract); *Moses v. Bus. Card Express, Inc.*, 929 F.2d 1131, 1139-40 (6th Cir. 1991) (concluding that

contractual choice-of-law provision applied to tort claims of fraud and misrepresentation).

*CajunLand Pizza, LLC v. Marco's Franchising, LLC*, 513 F. Supp. 3d 801, 805 (N.D. Ohio 2021) (dismissing claim under Louisiana unfair trade practices law in view of Ohio choice of law provision) (attached hereto as Exhibit 3).

Furthermore, federal courts sitting in Ohio regularly enforce choice of law provisions applying the law of a state other than Ohio in similar circumstances. *See Baumgardner v. Bimbo Food Bakeries Distribution, Inc.*, 697 F. Supp. 2d 801 (N.D. Ohio 2010) (enforcing contractual choice of law provision applying New York law because allegations that bakery tortiously interfered with distributer's sale of his distribution route and was unjustly enriched by interference were closely related to distribution agreement); *Banek Inc. v. Yogurt Ventures U.S.A., Inc.*, 6 F.3d 357, 363 (6th Cir. 1993) (concluding that a choice of law provision that read "[t]his Agreement was made and entered into in the State [of] Georgia and all rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of Georgia" was sufficiently broad so as to cover the plaintiff's fraud and misrepresentation claims); *Jewell Coke Co., L.P. v. ArcelorMittal USA, Inc.*, No. 1:10-cv-01946, 2010 U.S. Dist. LEXIS 118455, 2010 WL 4628756, at *7 (concluding that a choice of law provision that read "[t]his guaranty and the rights and obligations of Haverhill, Jewell and Guarantor shall be governed by and construed in accordance with the law of the State of New York" was sufficiently broad so as to cover the plaintiff's negligent misrepresentation claim).

Accordingly, if this Court should choose to retain jurisdiction over this case, it should nonetheless dismiss any claim based on the Ohio Unfair Trade Practices law, as outside the law of the State of Delaware provided for in the governing contract.

## CONCLUSION

The parties chose Delaware as the forum for resolution of this dispute, and Delaware law as the governing state law for any such claims arising under state law. This Court should dismiss the case in full, or at the very least, dismiss the claim that expressly relies on Ohio law.

DATED: January 16, 2024

Respectfully submitted,

**KANSAS CITY LIFE INSURANCE COMPANY**
**GRANGE LIFE INSURANCE COMPANY**

By: */s/ Traci L. Martinez*

Traci L. Martinez (0083989), Trial Attorney
**Squire Patton Boggs**
2000 Huntington Center
41 South High Street
Columbus, OH 43215
T: 614.365.2807
traci.martinez@squirepb.com

Ann G. Fort (*admitted pro hac vice*)
**Eversheds Sutherland**
999 Peachtree Street, NE Suite 2300
Atlanta, Georgia 30309
Telephone: (404) 853-8000
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The undersigned hereby certifies that a true and accurate copy of the foregoing was filed electronically on January 16, 2024 using the CM/ECF system, which will send notification to all counsel of record.

This 16th day of January, 2024.

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