IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Greenbelt)

SPORT SQUAD, INC.	)	
	)	
Plaintiff,	)	Case No. 8:24-cv-01712-PX
	)	
v.	)	
	)	
USA PICKLEBALL ASSOCIATION	)	
	)	
Defendant.	)	

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Plaintiff SPORT SQUAD, INC. ("**Plaintiff**"), by and through undersigned counsel, Shulman Rogers, P.A., submits this Opposition to Defendant USA PICKLEBALL ASSOCIATION's ("**Defendant**") Motion to Dismiss [ECF 17] ("**Motion**"). For the reasons advanced in detail in the accompanying Memorandum, which is adopted and incorporated herein, Defendant's Motion should be denied.

Respectfully submitted,

SHULMAN ROGERS, P.A.

By: *___/s/ Glenn C. Etelson___*

Glenn C. Etelson, Esq., Bar No. 06760
getelson@shulmanrogers.com
John Troost, Esq., Bar No. 20698
jtroost@shulmanrogers.com
12505 Park Potomac Avenue
Sixth Floor
Potomac, MD 20854
(301) 230-5200
(301) 230-2891 (facsimile)
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of August 2024, a copy of the foregoing was served via the Court's electronic filing system on All Counsel of Record.

/s/ Glenn C. Etelson
Glenn C. Etelson

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PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

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Plaintiff SPORT SQUAD, INC. ("**Plaintiff**"), by and through undersigned counsel, Shulman Rogers, P.A., submits this Opposition to Defendant USA PICKLEBALL ASSOCIATION's ("**Defendant**") Motion to Dismiss [ECF 17] ("**Motion**"), and, in support thereof, states as follows:

I. INTRODUCTION

Joola is a premier manufacturer of pickleball paddles in the United States. In late 2023, Joola submitted paddles with an innovative new design to the USAPA for testing and approval.[1] After purporting to conduct rigorous testing on the paddles, USAPA approved all of them by the end of 2023, and it informed Joola that it could stamp the paddles as "USA Pickleball Approved" when selling them to the general public. In reliance on that approval, Joola manufactured over one hundred thousand paddles for sale to the public.

Shortly after the paddles went on sale, however, USAPA decertified Joola's new paddles without justification and without notice, forcing Joola to recall the paddles it had already sold and leaving the company stuck with a massive inventory of paddles. USAPA then informed Joola that it would refuse to approve any new paddle submissions from Joola, no matter how similar they were to paddles that had already been approved. In response to this bait-and-switch, Joola filed suit against USAPA, asserting causes of action for breach of implied contract (Count 1), tortious interference with contract (Count 2), tortious interference with prospective business relations (Count 3), promissory estoppel (Count 4), negligent misrepresentation (Count 5), and fraud (Count 6).

USAPA filed a motion to dismiss on July 22, 2024. Instead of addressing Joola's

[1] USAPA holds itself out as the governing body for pickleball in the United States, *see* Motion at 1, but it has never actually been granted that authority under applicable federal law. *See* 36 U.S. Code § 220501 *et seq.*

allegations, however, which were set forth in detail in the Complaint, USAPA imagines its own set of facts and argues that Joola's Complaint should be dismissed on the basis of those alternative facts. For example, USAPA argues that paddles can only be stamped as "USA Pickleball Approved" after they have gone through a two-step process that involves review of a prototype paddle and then review of an updated model that will be sold to the public. *See* Motion at 1. However, that is not what is alleged in Joola's Complaint (and it is not what occurs in reality). Instead, USAPA reviews a particular paddle once, and, as soon as that paddle is approved, it informs the manufacturer that the paddle may be marked as "USA Pickleball Approved." *See* Complaint, ¶ 26. Joola, like other manufacturers, then relies on that approval to manufacture additional, materially identical paddles for sale to the public. The two-step approval process described by USAPA in its Motion was invented out of whole cloth. Once Joola's paddles were approved by USAPA, they needed no further approval before being sold as "USA Pickleball Approved."

The Court must reject USAPA's bid to re-write Joola's Complaint to its own liking. A motion to dismiss is not the proper venue for a party to make a public relations pitch by asserting new facts that it believes bolster its case. Rather, the motion must accept Joola's allegations as true. And, when doing so here, the Court should conclude that Joola has stated a claim on each of its causes of action.

II. FACTUAL BACKGROUND

Joola manufactures premium pickleball paddles sold under the "Joola" brand. *See* Complaint (ECF 1), ¶ 16. USAPA holds itself out as the national governing body for the sport of pickleball in the United States (although it is not—it is merely a private entity creating its own rules that people can choose to adhere to or not). *See* Motion at 1. USAPA's approval of pickleball

equipment is required for use in USAPA-sanctioned events, and most customers will not buy pickleball paddles if they are not marked as "USA Pickleball Approved." *See* Complaint, ¶ 21.

In September 2023, Joola submitted two newly-designed paddles to USAPA for testing and approval (the "**September 2023 Paddles**"). *See* Complaint, ¶ 23. Joola paid $3,000 for this testing. *See* Complaint, ¶ 24. Joola's new paddle design contained a foam insert along the edge of the paddle that allowed a player to create more speed and spin on a ball while still maintaining control of the shot. *See* Complaint, ¶ 22. On September 16, 2024, after carefully examining the two new paddles, USAPA notified Joola that the newly-designed paddles had been certified as compliant with USAPA's equipment standards. *See* Complaint, ¶ 25. USAPA specifically informed Joola that its new paddles could be stamped as "USA Pickleball Approved."[2] *See* Complaint, ¶ 26.

In November 2023, Joola submitted nine additional paddles to USAPA—market versions of the two base paddles that had already been approved, but with different shapes and new graphics—for "similarity testing." *See* Complaint, ¶¶ 3, 28. Joola specifically identified those nine paddles by name in its submission (the "**November 2023 Paddles**"):

- Ben Johns Hyperion Gen3 16mm
- Ben Johns Hyperion Gen3 14mm
- Tyson McGuffin Magnus Gen3 16mm
- Tyson McGuffin Magnus Gen3 14mm
- Collin Johns Scorpeus Gen3 16mm
- Anna Bright Scorpeus Gen3 14mm
- Simone Jardim Hyperion Gen3 16mm
- Ben Johns Perseus 3 16mm
- Ben Johns Perseus 3 14mm.

[2] USAPA incorrectly claims in its Motion that pickleball paddles must pass two rounds of testing before they can be marketed as "USA Pickleball Approved." *See* Motion at 1. But that is not the case. USAPA authorized Joola to use the "USA Pickleball Approved" phrase immediately after the two base model paddles described above had been approved in September 2023. *See* Complaint, ¶ 26.

See Complaint, ¶¶ 29-30.

The purpose of this "similarity testing" was for USAPA to confirm that these market versions of the paddles were structurally and functionally identical to the base model paddles that had already been approved. *See* Complaint, ¶ 3. USAPA approved all of the November 2023 Paddles by the end of 2023, and it informed Joola that those paddles could also be stamped as "USA Pickleball Approved." *See* Complaint, ¶ 32.

Relying on these certifications, Joola manufactured over one hundred thousand of its next generation pickleball paddles, which were scheduled to go on sale to the general public on April 16, 2024. *See* Complaint, ¶¶ 35, 40. Joola had no reason to believe that it could not rely on USAPA's approvals. *See, e.g.,* Complaint, ¶ 33. Yet, on April 10, 2024, four months after all of the paddles had been approved and only days before the paddles were set to go on sale, USAPA threatened to "sunset" its approval of Joola's new paddles because they somehow now purportedly violated USAPA's design requirements. *See* Complaint, ¶¶ 42-43. Before that date, USAPA had never mentioned having any concerns about Joola's paddle design, despite having had possession of the paddles for over five months and having approved all of them at least four months earlier. *See* Complaint, ¶ 42. But, all of sudden, USAPA conjured and fabricated concerns that Joola's paddles were "too springy." *See* Complaint, ¶¶ 43, 52. Nonetheless, USAPA did not revoke its approval of the paddles at the time, and Joola's new paddles went on sale as scheduled. *See* Complaint, ¶ 58.

A few weeks later, in May 2024, Joola discovered that, due to an administrative error back in November 2023, it had accidently sent paddles to USAPA for "similarity testing" (the November 2023 Paddles) that contained an impermissibly high manufacturing variance for the thickness of the foam insert (the paddles sold on the market were correct, Joola had just forwarded

incorrect samples for testing). *See* Complaint, ¶¶ 61-62. Joola promptly self-reported this error to the USAPA. *See* Complaint, ¶ 62. USAPA—which had already approved the actual November 2023 Paddles submitted to it even though those paddles containing a higher variance in foam thickness—immediately seized upon Joola's self-reporting of a mix-up to justify revoking its approval of the November 2023 Paddles. *See* Complaint, ¶ 63. According to USAPA, its approval for the paddles was revoked because the market versions of the paddles had not been approved by USAPA through "similarity testing," as the November 2023 Paddles were different from the market version paddles. *See* Complaint, ¶ 64. However, the only difference between the November 2023 Paddles and the paddles being sold to the public was that the November 2023 Paddles contained a **higher** manufacturing variance for foam thickness than the paddles on the market (the paddles sold to the public met the "similarity testing" requirements). *See* Complaint, ¶ 61. The paddles on the market did not contain **more** foam than the already-approved November 2023 Paddles. *Id.* In fact, they contained the same amount of foam as the base model September 2023 Paddles, which had also been approved by USAPA. *See* Complaint, ¶ 64. In effect, USAPA's justification for revoking approval of the paddles on the market was that they were made according to tighter manufacturing specifications than the November 2023 Paddles. But USAPA has not identified any rule that prohibits a manufacturer from making paddles according to tighter specifications than are required.

USAPA's published equipment standards did not change from September 2023 to May 2024. *See* Complaint, ¶47. If Joola's paddles complied with USAPA's standards when they were tested and approved in 2023, then they still complied with those standards when they went on the market in 2024.[3]

[3] To the extent USAPA purports to show otherwise—that the market versions of the paddles contain more foam than the 2023 models—it is only because USAPA cut into the market-version paddles with a taper,

USAPA tries to confound the Court by asserting that there are three sets of paddles at issue in this case: (i) the September 2023 Paddles; (ii) the November 2023 Paddles; and (iii) the paddles that Joola manufactured and sold to the public. *See* Motion at 1. But that is not the case. Joola has only manufactured two versions of the paddles, first the September 2023 Paddles and then the November 2023 Paddles (which contained minor changes in shape from the September 2023 Paddles). *See* Complaint, ¶¶ 2-4. The paddles put on the market by Joola are structurally and functionally identical to the September 2023 Paddles, and they are completely identical to the November 2023 Paddles except that they were made according to tighter specifications (some of the November 2023 Paddles contained an impermissibly thick foam insert, but the market version paddles do not). *See* Complaint, ¶¶ 6-7, 60-61. And, as noted above, both the September 2023 Paddles and the November 2023 Paddles were both approved by USAPA (in the latter case, even though some of the paddles contained more foam than intended).

USAPA falsely asserts in its Motion that Joola made a "production error" and that it had sought to "capitalize" on this error by "flood[ing] the market" with paddles that contained an illegal "catapult effect." *See* Motion at 2-3. Aside from these allegations being irresponsible and flatly wrong, these alleged facts are not contained anywhere in Joola's Complaint, and the Court thus cannot consider them here. To correct the record, Joola did not make a "production error" in its market version paddles, as those paddles were manufactured with acceptable variances in foam thickness, which was lower than the variances in the already-approved November 2023 Paddles. *See* Complaint, ¶¶ 60-61. Joola did not intentionally—or unintentionally—"flood the market" with illegal paddles. The paddles sold to market were compliant, only the samples submitted for testing were different. USAPA cannot make up new facts and then ask the Court to rule in its

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making them appear as if they had longer foam sections. But that anomaly was simply a product of how the paddles were cut. It has nothing to do with the actual structure of the paddles. *See* Complaint, ¶ 88.

favor on that basis.

USAPA also asserts that Joola's paddles were met with "public resistance." *See* Motion at 8. While this is the opposite of what Joola has alleged, which is that the paddles were a "smashing success," *see* Complaint, ¶ 38, USAPA claims that these public complaints led it to "conduct[] a teardown of the paddles" to examine the foam inserts, which revealed an alleged violation of the rule against compressible materials. *See* Motion at 8. However, USAPA neglects to mention that, in December 2023, it had already approved those very paddles that it used for the "teardown." *See* Complaint, ¶ 44. And Rule 2.F.1 of USAPA's Equipment Standards Manual prevents USAPA from revoking approval for a paddle without giving 18 months' notice:

> Approval and authorization of a specified piece, model, brand, version, design, or type of equipment may be revoked by the Board of Directors upon 18 months' notice on the USA Pickleball home page, official national newsletter publications, or other acceptable means of communication, if the specified equipment is found to have been materially changed by the manufacturer or if the equipment materially degrades or changes under ordinary use so as to significantly alter the nature of the sport.

See Complaint, ¶ 53.

Around May 15, 2024, Joola—not yet realizing the number of contortions USAPA would be willing to make to prevent Joola from selling its new paddles—sought, in good faith, to correct its recently-discovered administrative error by re-submitting its nine paddle models (the correct paddles being sold on the market) for "similarity testing." *See* Complaint, ¶ 66. In fact, USAPA had recommended that Joola take this step, and Joola paid thousands of dollars for expedited "similarity testing." *See* Complaint, ¶ 67. These re-submitted paddles should have passed the "similarity tests" with flying colors, as they were structurally and functionally identical to the base model September 2023 Paddles that USAPA had already tested and approved, and they contained

a lower manufacturing variance for foam thickness than the nine November 2023 Paddles, which had also been approved. *See* Complaint, ¶¶ 3, 7, 61.

However, USAPA was determined, possibly for reasons unrelated to compliance and testing, to fail Joola's new paddles at any cost. *See* Complaint, ¶ 69. USAPA ultimately found reasons to fail all nine of Joola's re-submitted paddles, going so far as implementing a new, unpublished rule[4] for surface roughness to ensure that none of the paddles passed.[5] *See* Complaint, ¶¶ 76-77. USAPA also cited two non-standard tests for exit velocity and deflection to justify its claim that Joola's paddles produced an impermissible trampoline effect, even though USAPA had publicly stated that it would not be using those tests in 2024 because they were not reliable. *See* Complaint, ¶¶ 104-107. USAPA further asserted that Joola's paddles only passed USAPA's standard testing protocol because they could not be properly tested for a "trampoline effect," and USAPA decided to instead to rely on its subjective opinion regarding the supposed "trampoline effect" of the paddles. *See* Complaint, ¶¶ 101-102. In fact, USAPA's Chief Operating Officer, Justin Maloof, candidly admitted to Joola that USAPA would never certify any of Joola's paddles no matter how similar they were to the base model paddles that had already been approved. *See* Complaint, ¶¶ 113-114. As Mr. Maloof's statement indicates, USAPA did not want Joola's new paddles to be approved, it regretted approving the paddles in 2023, and it stacked the similarity

[4] USAPA's Motion references a new surface roughness standard that was not mentioned in Joola's Complaint. *See* Motion at 5. Thus, the Court cannot consider it at the motion to dismiss stage. Moreover, that new rule was never added to the USAPA's official rulebook or posted on its website, so it is not applicable here even if it had been referenced in the Complaint.

[5] Joola had carefully tested each of its paddles for surface roughness before shipping them to USAPA on May 16, 2024. *See* Complaint, ¶ 80. While USAPA claims that six of the nine paddles failed the surface roughness test actually on the books, there is no reason to believe, based on USAPA's conduct toward Joola in this matter, that USAPA conducted those tests properly and impartially.

testing process against Joola to ensure that the company would not be able to bring the new paddles to market.

As a result of USAPA's bad faith conduct, Joola has been left with one hundred thousand uncertified pickleball paddles, which it will not be able to sell. *See* Complaint, ¶ 10. Joola never would have manufactured these paddles had it known that USAPA would pull a bait-and-switch by (i) approving the new paddle designs in 2023 and (ii) then revoking that approval in 2024 and refusing to approve any similarity submissions based on that already-approved design. *Id.* Joola is not asking "the federal judiciary to become the new arbiter of pickleball's rules and standards." *See* Motion at 2. Rather, Joola is asking the Court to make USAPA honor its obligations to Joola (and the public) to approve paddles based on the applicable rules and to not arbitrarily revoke already-issued approvals without following the governing notice requirements.

USAPA professes to be concerned about its credibility as an institution, *see* Motion at 1, but its credibility would be better served if it followed its own rules regarding testing procedures and approval revocations, as Joola requests.

III. LEGAL STANDARD

"A motion to dismiss pursuant to Rule 12(b)(6) tests the sufficiency of the claims pled in a complaint." *ACA Fin. Guar. Corp. v. City of Buena Vista*, 917 F.3d 206, 211-12 (4th Cir. 2019). Thus, to "survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Id.* And, to "contain sufficient factual matter to make a claim plausible, the factual content must allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "This pleading standard does not require detailed factual allegations." *Id.* Moreover, generally, "when a defendant moves to dismiss a complaint under Rule 12(b)(6), courts are limited to considering the sufficiency of

allegations set forth in the complaint and the documents attached or incorporated into the complaint." *Zak v. Chelsea Therapeutics Int'l, Ltd.*, 780 F.3d 597, 606-07 (4th Cir. 2015). "Courts therefore should focus their inquiry on the sufficiency of the facts relied upon by the plaintiffs in the complaint." *Id.*

IV. ARGUMENT

A. Joola States a Claim for Breach of Implied Contract (Count 1).

"An implied contract is an agreement which legitimately can be inferred from intention of the parties as evidenced by the circumstances and the ordinary course of dealing and the common understanding of men." *Cty. Comm'rs of Caroline Cty. v. J. Roland Dashiell & Sons, Inc.*, 358 Md. 83, 94 (2000).

USAPA argues that Joola has not pled a claim for breach of implied contract because Joola has supposedly not alleged that the parties reached any definite agreement or understanding. *See* Motion at 10-12.

However, Joola's Complaint concisely alleges that it entered into an implied contract with USAPA that required USAPA (i) to not revoke approval of previously-certified paddles without providing 18-months' notice and (ii) to follow the applicable rules when evaluating paddles submitted by Joola for "similarity testing." *See* Complaint, ¶¶ 141, 143. Joola further alleges that USAPA then breached that implied contract first by revoking its approval of Joola's paddles without warning and second by refusing to approve paddles in "similarity testing" even though the submitted paddles passed all of the applicable tests and were structurally and functionally identically to previously-approved base model paddles. *See* Complaint, ¶ 144. In other words, Joola has alleged a definite contract and a clear breach of that contract, and these allegations must be accepted as true at the motion to dismiss stage.

1. <u>USAPA Breached Its Obligation to Give 18-Months' Notice Before Revoking Its Approvals.</u>

USAPA's rules require it to provide 18 months' notice before revoking approval for a paddle, and USAPA breached its implied contract with Joola by not following that rule. *See* Complaint, ¶ 53, 143.

USAPA incorrectly argues that it did not violate the 18-month notice rule and breach the implied contract because it never approved—and thus did not revoke—its approval of the market versions of the paddles sold by Joola. *See* Motion at 12. Thus, according to USAPA, the 18-month notice rule does not apply. *Id.* But that is not what is alleged in the Complaint—USAPA is trying to replace the facts alleged by Joola with its own preferred facts. According to the facts alleged in Joola's Complaint, which must be accepted as true for purposes of a motion to dismiss, Joola submitted nine specific paddles types for similarity testing in November 2023, *see* Complaint, ¶¶ 29-30, and those nine specific paddle types were approved by USAPA in December 2023. *See* Complaint, ¶ 32. Joola then began selling those nine specific paddle types to the public starting in April 2024, before USAPA revoked its approval for those nine specific paddle types in May 2024. *See* Complaint, ¶¶ 59, 63, 65. In fact, in May 2024, USAPA posted a statement on its website proclaiming that Joola's nine paddle models were no longer "USA Pickleball Approved."[6] *See* Complaint, ¶ 65. But, for a paddle to "no longer be approved," it must have at one point been approved. USAPA's argument to the contrary is meritless.

Joola is not trying to create a "loophole" to "disrupt the market on 18-month intervals," as claimed by USAPA. *See* Motion at 13. Joola submitted its paddles to USAPA prior to manufacturing them because it wanted to confirm that they were compliant with USAPA's rules. If USAPA had raised an issue about them at the time, Joola would have been able to modify the

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[6] Interestingly, USAPA has since scrubbed that statement from its website.

paddle. However, because USAPA approved Joola's paddles in 2023 and then tried—after waiting four months while Joola manufactured over one hundred thousand copies of the paddles—to revoke that approval, the notice protections of Rule 2.F.1 apply.

USAPA further argues that the 18-month rule does not apply in this instance because it only addresses situations where "the specified equipment is . . . materially changed by the manufacturer." *See* Motion at 12. But that is precisely what USAPA claims happened here—the market versions of the paddles allegedly contain more foam than the approved base model paddles, supposedly creating a "trampoline effect," which would be a material change. *See* Motion at 8-9, 13-14. Thus, no matter how the Court looks at it, the 18-month rule applies to the revocation of USAPA's approval, and USAPA breached that rule—and its implied contractual obligations—by failing to give Joola 18-months' notice before rescinding its approval of Joola's paddles.

2. <u>USAPA Breached Its Obligation to Conduct "Similarity Testing" in Accordance with the Applicable Rules.</u>

USAPA also violated its rules regarding "similarity testing," and it thus violated its implied contractual obligations to Joola in that way as well.

USAPA was required under its rules to approve paddles through "similarity testing" if submitted paddles were structurally and functionally identical to already-approved base model paddles. *See* Complaint, ¶¶ 69-70. In its Complaint, Joola alleges that its market version paddles, which were submitted by Joola for "similarity testing" in May 2024, were structurally and functionally identical to its base model September 2023 Paddles. *See* Complaint, ¶ 87. As Joola explained in its Complaint (and to USAPA before filing its Complaint), Joola's market version paddles do not contain any more foam than the already-approved September 2023 or November 2023 Paddles, and they do not contain any other features not contained in those paddles either. *See* Complaint, ¶¶ 61, 87, 89, 94.

Moreover, to the extent USAPA argues that the market versions of Joola's paddles are not structurally and functionally identical to the already-approved paddles because they contain some manufacturing variances, *see* Motion at 9, that raises a factual dispute, as it is the fact-finder who must decide whether, in the pickleball paddle industry, minor variances are sufficient to prevent paddles from being considered functionally and structurally identical to already-approved base model paddles. Obviously, if examined closely enough, no two items are perfectly identical, but how much variance prevents paddles from being considered identical in industry parlance is not a question that can be resolved at the motion to dismiss stage. Thus, accepting these allegation as true, USAPA was required under its rules to approve Joola's market version paddles in "similarity testing."

Joola acknowledges that, due to an administrative error, the November 2023 Paddles contained a larger than acceptable variance in foam thickness, as the September 2023 Paddles contained less foam. *See* Complaint, ¶ 61. But, even with the higher foam thickness variance, USAPA still approved the November 2023 Paddles, and the market version paddles submitted by Joola in May 2024 were manufactured according to a tighter tolerance for foam thickness than the November 2023 Paddles. *See* Complaint, ¶¶ 32, 61. USAPA's rules do not allow a paddle to be rejected in "similarity testing" because it was manufactured to a more exacting standard than the base model paddles.[7] Yet, USAPA has apparently done so here, and by acting in this manner, it breached its implied contractual agreement to follow its rules when conducting the "similarity testing" of Joola's paddle submissions.

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[7] Joola has not "conceded" that its market version paddles are not structurally and functionally identical to its base model paddles, *see* Motion at 14, but Joola does acknowledge that the November 2023 Paddles contained larger variances for foam thickness than they should have. *See* Complaint, ¶ 61.

3. <u>USAPA Further Breached Its Obligations to Joola By Conducting Invalid Surface Roughness Testing.</u>

USAPA also argues, as a fallback, that it does not matter if the paddles submitted by Joola in May 2024 were structurally and functionally identical to already-approved paddles because those May 2024 paddles independently failed USAPA's surface roughness testing. *See* Motion at 14. However, this argument does not excuse USAPA's violation of the 18-months' notice requirement, which is an independent breach, as USAPA removed the paddles in question from its "approved list" **before** it had conducted any surface roughness testing. *See* Complaint, ¶¶ 65, 71-72. Moreover, Joola disputes that its paddles actually failed the surface roughness testing as claimed by USAPA. *See* Complaint, ¶¶ 79-80. Indeed, accepting Joola's allegations as true, as the Court must, the surface roughness testing is further evidence of USAPA's breach because USAPA improperly performed that testing. *See* Complaint, ¶ 79. Furthermore, USAPA—in breach of its implied contract with Joola—applied a surface roughness test to Joola's May 2024 paddle submission that was not contained in its official rulebook. *See* Complaint, ¶ 77. As a result, Joola's paddles failed the surface roughness testing when they should have passed that test under the applicable rules. *Id.*

Thus, USAPA's arguments regarding surface roughness testing do not excuse it breaches of the implied contract with Joola.

4. <u>Joola Incurred Damages As a Result of USAPA's Breach of its Obligation to, Among Other Things, Conduct "Similarity Testing" on an Expedited Basis.</u>

Finally, USAPA alleges that Joola's breach of implied contract claim fails in part because Joola did not incur any damages as a result of USAPA's failure to conduct testing on an expedited basis. *See* Motion at 15, n. 8. However, Joola paid thousands of dollars to USAPA for expedited

testing, which USAPA did not perform. *See* Complaint, ¶ 67. Thus, at a minimum, Joola is entitled to a refund of those fees, and Joola has been damaged by USAPA's wrongful retention of them.

B. Joola States a Claim for Promissory Estoppel (Count 4).

To state a claim for promissory estoppel, a plaintiff must allege "[i] a clear and definite promise; [ii] [that] the promisor has a reasonable expectation that the offer will induce action or forbearance on the part of the promisee; [iii] which does induce actual and reasonable action or forbearance by the promisee; and [iv] causes a detriment which can only be avoided by the enforcement of the promise." *Whiting-Turner Contracting Co. v. Liberty Mut. Ins. Co.*, 912 F. Supp. 2d 321, 343 (D. Md. 2012). In Maryland, "promissory estoppel is, in essence, an alternative means of obtaining contractual relief." *Id.*

Joola has pled each of the four elements of promissory estoppel. First, Joola alleges in its Complaint that USAPA (i) promised that Joola could manufacture paddles in reliance on USAPA's approval of the September 2023 Paddles and the November 2023 Paddles; (ii) promised that it would further approve any paddles in "similarity testing" that were functionally and structurally identical to already-approved base model paddles; and (iii) further promised that it would not revoke any paddle approval without providing 18-months' notice. *See* Complaint, ¶¶ 165-167. Second, Joola alleges that USAPA knew that Joola would act in reliance on those promises. *See* Complaint, ¶¶ 21, 26. Third, Joola also alleges that it manufactured over one hundred thousand paddles in reliance on USAPA's promises and that those paddles were structurally and functionally identical to the already-approved base model paddles. *See* Complaint, ¶ 169. Fourth, Joola has incurred significant losses as a result of USAPA breaking its promises to Joola, and Joola's losses can only be rectified by USAPA (i) reinstating its prior approval of Joola's paddles and (ii)

approving Joola's paddle submissions in "similarity testing" to the extent they warrant such approval, which Joola's May 2024 submission does. *See* Complaint, ¶¶ 65, 70

USAPA argues that Joola fails to state a claim for promissory estoppel because Joola supposedly fails to plead that it "reasonably relied" on USAPA's prior approval of its paddles. *See* Motion at 16-17. According to USAPA, it was not reasonable for Joola to manufacture one hundred thousand paddles in reliance on USAPA's prior approvals of the September 2023 Paddles and the November 2023 Paddles given that it would later be determined that the November 2023 Paddles, which were approved by USAPA, had an impermissibly large manufacturing variance for foam thickness. *Id.* However, given that the November 2023 Paddles were approved, it was beyond reasonable for Joola to assume that it could manufacture and sell paddles made according to a tighter tolerance than the November 2023 Paddles (*i.e.*, paddles that were even closer to the base model September 2023 Paddles in terms of foam thickness). USAPA's argument that Joola was only permitted to manufacture paddles with a larger manufacturing variance (because the approved November 2023 Paddles had a larger variance) does not make sense. A manufacturer can always choose to manufacture products according to tighter specifications than are required. And Joola was also entitled to rely on USAPA's representation that it would follow its own rules when conducting "similarity testing" of Joola's new paddle submissions. It is, frankly, preposterous to suggest that a paddle approval issued by an agency that self-purports to be a governing body, whose approval is relied upon for such things as tournament play, cannot be relied upon by a manufacturer, who pays for and submits paddles for testing and approval, to manufacture additional paddles for market.

Moreover, at the time the one hundred thousand paddles were manufactured, the November 2023 Paddles were on the USAPA's approved list, and Joola had no reason to believe that approval

would be revoked on short notice. *See* Complaint, ¶ 33 ("On January 19, 2024, [Joola] met with [USAPA] regarding [USAPA's] equipment standards, and USAPA did not even hint in that meeting that it had any concerns about [Joola's] new paddle design"). Joola had no obligation to confirm that USAPA meant what it said when it told Joola that the September 2023 Paddles and November 2023 Paddles could be marked as "USA Pickleball Approved." Thus, Joola had "clean hands" and is entitled to pursue a claim for promissory estoppel. *See Wells Fargo Home Mortg., Inc. v. Neal*, 398 Md. 705, 730 (2007) ("clean hands" doctrine prohibits a "litigant [who] seeks equitable relief [from being] marred by any fraudulent, illegal, or inequitable conduct").

C. <u>Joola States Claims for Negligent Misrepresentation (Count 5) and Fraud (Count 6).</u>

In Maryland, an "action for negligent misrepresentation will [] lie where the following five criteria are met: (1) the defendant, owing a duty of care to the plaintiff, negligently asserts a false statement; (2) the defendant intends that his/her statement will be acted upon by the plaintiff; (3) the defendant has knowledge that the plaintiff will probably rely on the statement, which, if erroneous, will cause loss or injury; (4) the plaintiff, justifiably, takes action in reliance on the statement; and (5) the plaintiff suffers damage proximately caused by the defendant's negligence." *Miller v. Fairchild Indus.*, 97 Md. App. 324, 345-46 (1993). Thus, a defendant "whose conduct in uttering the statement was culpably careless, but not intentionally fraudulent, may be guilty of the tort of negligent misrepresentation." *Id.*

Similarly, to state a claim for fraud, a plaintiff must allege that "[i] the defendant made a false representation to the plaintiff; [ii] its falsity was either known to the defendant or that the representation was made with reckless indifference as to its truth; [iii] the misrepresentation was made for the purpose of defrauding the plaintiff; [iv] the plaintiff relied on the misrepresentation and had the right to rely on it; and [v] the plaintiff suffered compensable injury resulting from the

misrepresentation." *Crystal v. Midatlantic Cardiovascular Assocs., P.A.*, 227 Md. App. 213, 224 (2016).

USAPA argues that Joola fails to state claims for negligent misrepresentation and fraud because, according to USAPA, Joola did not allege reliance. *See* Motion at 17-18. However, as mentioned above, Joola alleges that it manufactured over one hundred thousand paddles in reliance on USAPA's prior approval of those paddles. *See* Complaint, ¶ 177 (Joola spent millions manufacturing and marketing its pickleball paddles in reliance on USAPA's "stamp of approval"); ¶ 184 (Joola "would not have manufactured these paddles had it known that Defendant would revoke its certification of the paddles on false pretenses or wrongfully refuse to pass market versions of the paddles in similarity testing"). That is, by any count, alleging reliance. And such reliance was reasonable for the reasons set forth above in § IV. B.

USAPA further argues that Joola has not stated a claim for negligent misrepresentation because USAPA's duties to Joola arise in contract. *See* Motion at 18. However, USAPA disputes that it has entered into a contractual arrangement with Joola, *see* Motion at 15, and Joola is permitted to allege this cause of action in the alternative. *See Radiological Ventures, LLC v. Marine Elec. Sys.*, No. L-08-1943, 2008 U.S. Dist. LEXIS 132764, at *4 (D. Md. Dec. 30, 2008) ("The federal rules govern the pleadings in this case, and they expressly allow pleading in the alternative"). Moreover, Joola has alleged that USAPA, given its status as the self-professed governing body for pickleball equipment, owed a duty to Joola to conduct its testing of Joola's paddles using reasonable care (and in accordance with its rules) and to communicate those test results to Joola using reasonable care. *See* Complaint, ¶ 174; *see also Jacques v. First Nat'l Bank*, 307 Md. 527, 535 (1986) ("Tort obligations of conduct are imposed by reason of the relation in

which the parties stand toward one another"). Thus, Joola has stated a claim for negligent misrepresentation in the alternative to its contractual claim.

USAPA also argues that Joola has not stated a claim for fraud because it has not identified a false statement made by USAPA. *See* Motion at 18-19. However, Joola alleges that USAPA told Joola that it would conduct "rigorous testing" of its paddles and informed Joola that it could mark the September 2023 Paddles and the November 2023 Paddles as "USA Pickleball Approved." *See* Complaint, ¶¶ 26, 32, 183. However, these statements proved to be false, as USAPA apparently did not conduct any substantive testing of the November 2023 Paddles and it ultimately revoked its approval of the November 2023 Paddles on short notice. *See* Complaint, ¶¶ 45, 63. Based on the above-mentioned statements, Joola reasonably assumed that, once USAPA had approved its paddle submissions, Joola could rely on those approvals to manufacture more paddles, as the approvals could not be revoked on short notice. *See* Complaint, ¶¶ 26, 169. But, because USAPA's representations proved to be false, Joola incurred substantial damages by manufacturing paddles that lost their approval quickly after they went on the market.

In its Motion, USAPA observes that some of the statements made by USAPA that are quoted by Joola in the Complaint were made after Joola had already manufactured the one hundred thousand paddles. *See* Motion at 19. These statements, however, were not offered to show that Joola had relied on them before making the paddles, but rather were offered to show USAPA's earlier state of mind—that is, the statements show that USAPA never intended to allow Joola to sell its paddles to the public, no matter how similar they were to the already-approved paddles, at the time it told Joola that the new paddles had been approved. *See* Complaint, ¶ 114 (USAPA's CFO declares that "we do not consider the [September 2023 approved base models] viable as a

basis for similarity"). These quotes help show that USAPA's prior statements regarding Joola's paddles being "USA Pickleball Approved" were made with false intent.

Furthermore, USAPA's fraudulent purpose in making the false statements was to assist Joola's competitors in catching up with Joola in the paddle manufacturing space. *See* Complaint, ¶¶ 51, 152.

Thus, for the reasons stated above, Joola has stated claims for negligent misrepresentation and fraud.

D. Joola States Claims for Tortious Interference with Contractual Relations (Count 2) and Tortious Interference with Business Expectancy (Count 3).

"Under Maryland law, to state a claim for tortious interference with contractual relations, a plaintiff must plead: (1) the existence of a contract between the plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) the defendant's intentional interference with that contract; (4) hindrance to the performance of the contract; and (5) resulting damages to the plaintiff." *Total Recon Auto Ctr., LLC v. Allstate Ins. Co.*, No. DLB-23-672, 2023 U.S. Dist. LEXIS 219620, at *6 (D. Md. Dec. 11, 2023). Crucially, Maryland law does not require that a contract be breached, only that it be interfered with. *See id.* at *7 ("Maryland courts have held that it is enough for a tortious interference plaintiff to allege intentional interference with a party's rights under a contract or inducing a termination without breach.").

Similarly, "the tort of . . . interference with economic relations . . . has four elements: (l) there were intentional and willful acts; (2) the acts were calculated to cause damage to a plaintiff in the plaintiff's lawful business; (3) the acts were done with the unlawful purpose to cause such damage and loss, without right or justifiable cause on the part of a defendant, thus constituting malice; and (4) actual damage and loss resulted from the acts of interference." *Gorby v. Weiner*, Civil Action No. TOC-13-3276, 2014 U.S. Dist. LEXIS 133796, at *23-24 (D. Md. Sep. 23, 2014).

USAPA argues that Joola's claims fail because they purportedly do not plead conduct by USAPA that was "independently wrongful." *See* Motion at 21. However, as explained above, Joola has pled that USAPA breached a duty to Joola to conduct its testing of Joola's paddles using reasonable care and to communicate those test results to Joola using reasonable care. *See* Complaint, ¶ 174. In addition, Joola alleges that USAPA publicly advertised that Joola's paddles were not "USAPA Pickleball Approved" without acknowledging that Joola's paddles had met all of USAPA's certification requirements or that the paddles had previously been approved for over four months. *See* Complaint, ¶¶ 65, 117. USAPA's conduct in disparaging Joola's paddles was independently wrongful, as it gave the public a false impression about the nature and status of Joola's products. *See K & K Mgmt., Inc. v. Lee*, 316 Md. 137, 166 (1989) (wrongful conduct includes "injurious falsehood"). Moreover, if USAPA revoked its approval of Joola's paddles in order to protect other manufacturers from competition, as is alleged in the Complaint, and not for any legitimate reason, then that revocation would also constitute independently wrongful conduct. *See* Complaint, ¶¶ 51, 152; *Paccar Inc. v. Elliot Wilson Capitol Trucks LLC*, 905 F. Supp. 2d 675, 694 (D. Md. 2012) ("if an action is taken with the indirect purpose of injuring the plaintiff . . . it is a wrongful act, and therefore actionable"). Thus, Joola has met the "wrongful conduct" element for these breach of business relationship torts.

USAPA also argues that its conduct was justified because the market versions of Joola's paddles contained a lower manufacturing variance for foam thickness than the November 2023 Paddles. *See* Motion at 21. However, USAPA has offered no justification for why Joola would not have been allowed to manufacture paddles with tighter variances than required. Further, USAPA cannot refute, at the motion to dismiss stage, that the market versions of Joola's paddles are structurally and functionally identical to the already-approved September 2023 Paddles. *See*

Complaint, ¶ 64. The paddles Joola submitted in May 2024 only failed testing because USAPA, in order to make sure that the paddles failed, created new, non-standard tests and failed to properly carry out its testing. *See* Complaint, ¶¶ 79-80, 104-107. Thus, accepting the allegations as true, USAPA was not justified in failing those paddles in "similarity testing."

In addition, USAPA argues that Joola has not identified with specificity which of its contracts were breached or which of its business relationships were interfered with. *See* Motion at 21-22. However, as alleged in Joola's Complaint, many of Joola's contractual and business relationships have been curtailed because of USAPA's conduct, including (i) Joola's relationships with fitness clubs who are now breaching their agreements with Joola to supply Joola's paddles in their facilities and (ii) Joola's relationships with its existing customers, who are also potential future purchasers of Joola's next paddles. *See* Complaint, ¶¶ 126, 128, 131, 134. Moreover, as referenced above, to state a viable claim, Joola need not allege that its contractual relationships have been breached, only that they have been interfered with by USAPA. Before USAPA revoked its approval for Joola's paddles, Joola specifically warned USAPA that such a rash act would irreparably harm Joola's contractual and business relationships with numerous third parties, including suppliers, distributors, and professional and amateur players, because those third parties would become resistant to purchasing or using Joola's paddles. *See* Complaint, ¶ 122. USAPA was on notice that its conduct would wrongfully injure many of Joola's business relationships. Yet, even knowing this, it proceeded to injure them anyway to keep Joola from getting too far ahead of the competition. Thus, Joola has alleged sufficient facts to state a claim for relief as to both torts.

Joola has left the specific identities of these third parties out of the Complaint so as to not unnecessarily involve them in this lawsuit. However, to the extent the Court determines that more

specificity is required, Joola requests leave to amend its Complaint to identify specific third parties and contracts that support these claims.

V. CONCLUSION

Therefore, for the reasons stated above, Joola requests that the Court deny USAPA's Motion to Dismiss. In the alternative, to the extent the Court determines that Joola has not adequately pled any of its causes of action, Joola requests leave to amend its Complaint.

Respectfully submitted,

SHULMAN ROGERS, P.A.

By: * /s/ Glenn C. Etelson *

Glenn C. Etelson, Esq., Bar No. 06760
getelson@shulmanrogers.com
John Troost, Esq., Bar No. 20698
jtroost@shulmanrogers.com
12505 Park Potomac Avenue
Sixth Floor
Potomac, MD 20854
(301) 230-5200
(301) 230-2891 (facsimile)
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of August 2024, a copy of the foregoing was served via the Court's electronic filing system on All Counsel of Record.

/s/ Glenn C. Etelson
Glenn C. Etelson