IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION
Civil Action No. 1:18-CV-00398-WO-JEP

CARPER SUPER MART, INC., a North Carolina corporation, ARTHUR C. JORDAN, JR., and JOYCE J. MOBLEY, Plaintiffs, vs. BENCHMARK INTERNATIONAL COMPANY SALES SPECIALIST, LLC, a Florida limited liability company, DARA SHAREEF, an individual, and BRIAN LOCKLEY, Defendants.	**PLAINTIFFS' FIRST AMENDED COMPLAINT**

COME NOW the Plaintiffs, Carpet Super Mart, Inc., a North Carolina corporation ("CSM"), Arthur C. Jordan, Jr., an individual residing in Guilford County, North Carolina ("Arthur"), and Joyce J. Mobley, an individual residing in Guilford County, North Carolina ("Joyce"), and for their complaint against the Defendants state as follows:

1. The Plaintiff CSM is a corporation organized and existing under the laws of the State of North Carolina with its principal office located in Guilford County, North Carolina.
2. The Plaintiff Jordan is an individual residing in Guilford County, North Carolina.
3. The Plaintiff Mobley is an individual residing in Guilford County, North Carolina.

4. The Defendant Benchmark International Company Sales Specialist, LLC ("Benchmark") is a limited liability company organized and existing under the laws of the State of Florida with its principal place of business in Tampa, Florida. Upon information and belief, the Defendant Benchmark's principal place of business is located at 4488 West Boy Scout Blvd., Suite 400, Tampa, Florida 33607.

5. The Defendant Benchmark holds itself out as a business broker with "offices throughout the United States and the world" and is "in touch with all the major acquirers and consolidators who are constantly seeking both on and off market opportunities across all sectors."

6. At all times material hereto Benchmark has transacted business within the State of North Carolina. Among other things Benchmark solicited businesses within the State of North Carolina for whom Benchmark could act as a business broker for the sale of the businesses located in North Carolina.

7. According to Benchmark's website, Benchmark, through its "unique and dynamic international offering ensures that our clients will receive privileged access to unparalleled global coverage through [its] exclusive business intelligence databases."

8. Pursuant to N.C.G.S. § 1-75.4 the Defendant Benchmark is subject to the jurisdiction of this Court.

9. The Defendant Benchmark holds out the Defendant Shareef as a "Managing Director" on its website.

10. The Defendant Benchmark holds out the Defendant Lockley as an "Associate" on its website.

11. Upon information and belief the Defendant Dara Shareef ("Shareef") is an individual residing in the State of Florida. The Defendant Shareef may be served with process and a copy of this complaint at 4488 West Boy Scout Blvd., Suite 400, Tampa, Florida 33607.

12. Pursuant to N.C.G.S. § 1-75.4 the Defendant Shareef is subject to the jurisdiction of this Court.

13. Upon information and belief the Defendant Brian Lockley ("Lockley") is an individual residing in the State of Florida. The Defendant Lockley may be served with process and a copy of this complaint at 4488 West Boy Scout Blvd., Suite 400, Tampa, Florida 33607.

14. Pursuant to N.C.G.S. § 1-75.4 the Defendant Lockley is subject to the jurisdiction of this Court.

15. Upon information and belief none of the individual Defendants are incompetent or operating under a disability that would prevent them from receiving notice of this proceeding.

16. Venue herein is proper.

ALLEGATIONS COMMON TO ALL COUNTS

17. Carpet Super Mart, Inc. ("CSM") is a North Carolina corporation which until February 28, 2018 was engaged in the business of commercial and residential sales and installation of carpet and flooring products.

18. CSM was a family business owned by Arthur C. Jordan, Jr. ("Arthur") and his sister, Joyce J. Mobley ("Joyce") in existence for over forty (40) years.

19. Upon information and belief some of the Defendant Benchmark's officers, directors, managers, and employees made numerous cold calls, both in person and by telephone, to businesses and business owners located in North Carolina for the purposes of soliciting listing agreements for the sale of such businesses as well for the purpose of locating potential buyers for businesses for which the Defendant Benchmark had a listing agreement.

20. In 2014 Neil Boyles, who at the time was vice president of the Defendant Benchmark, made a cold call solicitation at CSM's office in Greensboro, North Carolina. Prior to Neil's cold call, Arthur and Joyce had no contact with Benchmark and did not even know who Benchmark was or what Benchmark did.

21. Neil told Arthur he could get seven to seven and a half million dollars for the sale of CSM. One of Arthur's first questions to Neil was how is Benchmark compensated? Neil told Arthur and Joyce that Benchmark would receive a commission of five percent of the sales price. Using the estimated value of seven million dollars that Neil told Arthur, Arthur said, "So if we sell the business for seven million, then you get $350,000.00" Neil agreed.

22. As a result of these discussions and the representations and assurances made by Neil, Arthur and Joyce decided to enter into a listing agreement with Benchmark.

23. Arthur, Joyce, and Neil agreed to meet at CSM's office on May 27, 2014 to sign the listing agreement. Prior to the meeting Arthur asked Neil to send him a copy of the proposed listing agreement so he could review it before signing it.

24. In response to Arthur's request, Neil emailed Arthur an unexecuted copy of the one page agreement attached as Exhibit A.

25. On or about May 27, 2014 Arthur, Joyce, and Neil met at CSM's office in Greensboro, North Carolina to sign the listing agreement attached as Exhibit A. The only agreement presented to Arthur and Joyce was the same one page agreement that Neil had previously emailed Arthur to review.

26. The commission is defined in the listing agreement as the "a Transaction Fee of 5% of the Transaction Value." The terms "Transaction Fee" and "Transaction Value" are not defined anywhere in the listing agreement that Neil emailed Arthur for review. The terms "Transaction Fee" and "Transaction Value" are not defined anywhere in the listing agreement Neil presented to Arthur and Joyce for signature.

27. While reviewing the listing agreement prior to signing it, Arthur specifically questioned Neil about the amount and calculation of the commission as expressed in the listing agreement. Again Neil stated it would be five percent of the sales price. Once again, to be clear, Arthur said to Neil, "so if the sales price were six million dollars, the commission would be $300,000," to which Neil responded "correct."

28. As a vice president of Benchmark, Neil had actual and apparent authority to negotiate on behalf of and bind Benchmark.

29. Prior to and contemporaneous with the execution of the listing agreement by Arthur and Joyce, Benchmark, through its vice president Neil Boyles, knew the meaning that Arthur and Joyce ascribed to the phrase "Transaction Fee of 5% of the Transaction Value" as used in the listing agreement was five percent of the sales price of CSM.

30. Prior to and contemporaneous with the execution of the listing agreement Benchmark, through its vice president Neil Boyles, agreed that the phrase "Transaction Fee of 5% of the Transaction Value" as used in the listing agreement meant five percent of the sales price of CSM.

31. The listing agreement was signed in CSM's office in Greensboro, North Carolina. Neil signed the listing agreement first, then presented it to Arthur and Joyce to sign, with Arthur signing twice, once individually, and once on behalf of CSM.

32. At the time the listing agreement was signed, the Defendant Benchmark, through its vice president Neil Boyles, was fully aware of the meaning Arthur and Joyce ascribed to the phrase "Transaction Fee of 5% of the Transaction Value" as the phrase "Transaction Fee of 5% of the Transaction Value" is used in the listing agreement.

33. With full knowledge of the meaning Arthur and Joyce ascribed to the phrase "Transaction Fee of 5% of the Transaction Value" and full knowledge of the understanding Arthur and Joyce had regarding the amount, method, and manner of the calculation of Benchmark's commission, Benchmark entered into the listing agreement.

34. At the time Benchmark signed the listing agreement, the Defendant Benchmark knew or should have known that it had no

intention whatsoever of abiding by the meaning Arthur and Joyce ascribed to the meaning of the phrase "Transaction Fee of 5% of the Transaction Value" and as agreed to by its vice president, Neil Boyles.

35. At the time Benchmark signed the listing agreement, the Defendant Benchmark knew or should have known it had no intention whatsoever of honoring the parties' understanding and agreement regarding the amount, manner, and method of the calculation of Benchmark's commission.

36. The Plaintiffs reasonably relied to their detriment on Benchmark's silence in not controverting their stated construction and understanding of the phrase "Transaction Fee of 5% of the Transaction Value" at the time the listing agreement was signed by signing the listing agreement.

37. The Plaintiffs further reasonably relied to their detriment on Benchmark's statement that the Plaintiffs' understanding and construction of the phrase "Transaction Fee of 5% of the Transaction Value" was correct by signing the listing agreement.

38. As seen on the attached Exhibit A, the listing agreement was a one page agreement. Neither Arthur nor Joyce were ever presented with, much less given an opportunity to review, the purported terms and conditions that Benchmark now contends are part of the listing agreement.

39. The purported terms and conditions are materially different from the statements, representations, and agreements Benchmark's vice president, Neil Boyles, made prior to and contemporaneously with the execution of the listing agreement regarding the amount, manner, and method of calculating Benchmark's commission expressed in the listing agreement as a "Transaction Fee of 5% of the Transaction Value."

40. A true and correct copy of the purported terms and conditions is attached hereto as Exhibit B.

41. Pursuant to the terms of the listing agreement, Plaintiffs agreed to pay the Defendant Benchmark a commission of five percent upon the closing of a sale of the business to a buyer produced by the Defendant Benchmark.

42. At no time prior to the execution of the listing agreement did the Defendant Benchmark tell Arthur or Joyce that Benchmark disagreed with Arthur's and Joyce's understanding of the amount, manner, and method of calculating Benchmark's commission.

43. Had Benchmark told Arthur and Joyce that Benchmark did not agree with Arthur's and Joyce's understanding of the amount, manner, and method of calculating Benchmark's commission, Arthur and Joyce would not have signed the listing agreement.

44. Upon information and belief, Neil Boyles left Benchmark in or around August, 2015.

45. Once the listing agreement was signed, the Plaintiffs' contact and communications with the Defendant Benchmark was to and through the Defendants Shareef and Lockley, predominantly with the Defendant Lockley.

46. In stark contrast to the value of the business described by Neil ***prior*** to the execution of the listing agreement, once the listing agreement was signed Benchmark's "potential buyers" were only interested in paying one to one and a half million dollars, which obviously was ***substantially less*** than the figures espoused by Benchmark's vice president to induce Arthur and Joyce to sign the listing agreement.

47. During the last year of the listing agreement the Defendants Shareef and Lockley made numerous telephone calls to Arthur in North Carolina and sent numerous emails to Arthur in North Carolina regarding the subject matter of the listing agreement.

48. In the fall of 2017, more than three years after the parties entered into the listing agreement, the Defendant Benchmark finally produced a potential buyer who entered into a letter of intent to purchase the assets of CSM.

49. Despite repeated requests to Benchmark for assistance in drafting a letter of intent, and despite Benchmark's promise

in the listing agreement to provide “ongoing pro-active management of all Prospects from lead development through execution of a letter of intent,” Benchmark failed and refused to provide even a sample letter of intent. Upon information and belief, the LOI was drafted by the buyer's counsel, Richard Gabriel.

50. Prior to signing the LOI with Mark Watson the Arthur had a conference call with Brian Lockley and the Dara Shareef. Arthur asked the Defendants Lockley and Shareef exactly what the Plaintiffs would be paying in sales commission. The Defendant Shareef responded 5%. Arthur then said "5% of the sales price so if the sales price was $4,000,000 then I would owe $200,000." The Defendant Shareef told Arthur that was correct.

51. Plaintiffs promptly sent a copy of the LOI to Benchmark.

52. From the date of the LOI through early January 2018 the Plaintiffs continued to negotiate with the buyer regarding the sale of the assets of CSM. At no time did any of the Defendants provide any assistance with the negotiations.

53. At no time prior to the execution of the LOI did any of the Defendants inform any of the Plaintiffs that Arthur and Joyce’s manner and method of calculating the sales commission was incorrect.

54. Once a final agreement was reached between the Plaintiff CSM and the buyer Arthur got a call from John Deeks asking for CSM's current financial statement. This request seemed odd so Arthur called the Defendant Lockley and asked who John Deeks was and why did he need current financial statements. The Defendant Lockley said John Deeks was a facilitator with Benchmark but that he, the Defendant Lockley, had no idea why John Deeks would need that information and that he would check with John Deeks and find out. The Defendant Lockley never let Arthur know why John Deeks needed CSM's current financial statements.

55. The Defendants had every opportunity to inform Plaintiffs they disagreed with the Plaintiffs' calculation of the commission but remained silent until a few days before the initially scheduled closing.

56. After over three and a half years of silence Defendants now contend the Plaintiffs' manner and method of calculation of the commission is incorrect.

57. Defendants now contend that the commission applied not only to the sales prices, but also to the value of assets ***retained*** by the Plaintiffs.

58. Defendants also now contend that their commission should be calculated on the value of the lease the buyer entered into

with Jordan Plaza, LLC, a completely separate and unrelated entity.

59. Jordan Plaza, LLC ("Jordan Plaza") is a North Carolina limited liability company engaged in the business of owning and leasing commercial property in Greensboro, North Carolina. CSM was one of Jordan Plaza's tenants.

60. Nowhere in the listing agreement Neil sent to Arthur for review, and nowhere in the listing agreement Neil signed and presented to Arthur and Joyce for signature, is there any mention of either retained assets or a lease with a separate entity being part of the base upon which the commission is calculated.

61. At no time prior to the parties' execution of the listing agreement did anyone at Benchmark inform Arthur or Joyce that retained assets or a lease with a separate legal entity would be part of the base upon which the commission would be calculated.

62. At the time the parties signed the listing agreement, even when Arthur specifically asked Neil Boyles, Benchmark's vice president, in a face to face meeting about the amount, manner, and method of the commission calculation, and Benchmark's vice president knew how Arthur and Joyce construed the phrase "Transaction Fee of 5% of the Transaction Value," he, Neil Boyles, Benchmark's vice

president, said nothing other than Arthur's and Joyce's understanding was correct.

FIRST CLAIM FOR RELIEF
Declaratory Judgment; N.C.G.S, § 1-253 et seq.

63. The Plaintiffs incorporate herein by reference the allegations contained in Paragraphs 1 through 62 and reallege the same as though fully set forth herein.

64. The following are for issues for judicial determination by the Court:

a. Whether there was a meeting of the minds regarding all material terms of the listing agreement;

b. If so, what are the material terms of the listing agreement;

c. How is the commission calculated;

d. What is the amount of the commission;

e. If the listing agreement is unenforceable because there was no meeting of the minds on all material terms, what is the reasonable value of services provided by the Defendant Benchmark;

f. Have the Plaintiffs tendered the full amount of commission that is due and payable to the Defendant;

65. An actionable, justiciable controversy exists as to the issues recited in Paragraph 64.

66. Until resolved, these claims disturb the title, peace, and freedom of the Plaintiffs and cast doubt, insecurity, and uncertainty upon the Plaintiffs' rights and status, and damages the Plaintiffs' pecuniary and interests in the contract, if there is a contract, at issue.

67. Litigation is inevitable over the issues for controversy set forth in Paragraph 64.

68. Plaintiffs ask the Court to enter an order and judgment declaring:

a. That the amount, manner, and method of the calculation and computation of the commission payable to the Defendant Benchmark was a material term of the listing agreement;

b. There was no meeting of the minds regarding the amount, manner, and method of the calculation and computation of the commission;

c. That the parties did not have a meeting of the minds on all material terms of the listing agreement;

d. There is no enforceable agreement between the Plaintiffs and the Defendant Benchmark because there was no meeting of the minds regarding all material terms of the alleged agreement;

e. If there was no enforceable agreement between the parties, the reasonable value of the services provided by the Defendant Benchmark is $188,600.00;

f. In the alternative, if there was a meeting of with on all material terms of the listing agreement, the "Transaction Fee of 5% of the Transaction Value" means five percent of the sales price;

g. If an agreement does exist, the agreement is the is the one page document attached hereto as Exhibit A and does not include any extraneous documents, terms or conditions;

h. If the listing agreement is a valid and enforceable agreement, the value of the assets retained by CSM is not included in the base amount upon which the commission is calculated;

i. If the listing agreement is a valid and enforceable agreement, the value of any lease agreement entered into between a separate entity and the buyer is not included in the base amount upon which the commission is calculated;

SECOND CLAIM FOR RELIEF (IN THE ALTERNATIVE)
Fraud and Misrepresentation

69. Plaintiffs incorporate herein by reference the allegations set forth in Paragraph Nos. 1 through 62 of this Complaint and reallege the same as though fully set forth herein.

70. Prior to entering into the Agreement Arthur and Joyce specifically asked the Defendant Benchmark's representative, Neil Boyles, how much the commission would be and how it would be calculated.

71. Prior to and subsequent to the date the LOI was signed the Plaintiff Jordan specifically asked how the Defendant Benchmark's commission would be calculated.

72. Each time the Defendants told the Plaintiff Jordan it would be five percent of the purchase price.

73. To be sure there was no misunderstanding each time the Plaintiff Jordan gave an example of a hypothetical sales price and a commission calculation of five percent of that sales price.

74. Each time the Defendants confirmed the Plaintiff Jordan's calculation of the commission amount in the example based on the hypothetical price.

75. At no time did the any of the Defendants inform any of the Plaintiffs that a different commission would be owed or that

the Plaintiff Jordan's manner and method of calculating the commission was incorrect.

76. Only after the Plaintiffs had reached a final agreement with the buyer regarding all material terms of the sale did any of the Defendants first inform any of the Plaintiffs that the Defendants calculated the commission differently than the Plaintiffs had calculated the commission.

77. During the course of the negotiations the Defendants knew they had no intention of accepting the amount or manner of calculation of the commission as communicated to the Defendants by the Plaintiff Jordan.

78. Prior to and at the time the listing agreement was signed through late January 2018, the Defendants knew and understood the Plaintiffs were relying upon the amount, manner, and method of calculating the commission as the Plaintiffs expressed to representatives of the Defendant Benchmark.

79. The Defendants had a duty to inform the Plaintiffs in response to the Plaintiff Jordan's direct questions that they calculated the commission differently than did the Plaintiffs.

80. The Defendants had a duty to inform the Plaintiffs that the Defendants disagreed with the Plaintiffs' understanding of the amount, manner, and method of the calculation of the

commission that would be payable to the Defendant Benchmark upon the closing of the sale of the business and the construction and meaning the Plaintiffs ascribed to the phrase "Transaction Fee of 5% of the Transaction Value."

81. The Plaintiffs reasonably relied on the Defendants' silence in response to direct questions and inquiries regarding the amount and manner of calculation of the commission.

82. The amount and manner of the calculation of the commission was and is a material fact for which the Defendants had a duty to speak up or be bound by their silence.

83. Had the Defendants spoken up and informed the Plaintiffs that the Defendants disagreed with the amount and manner of the calculation of the commission, the Plaintiffs would have never entered into the listing agreement or would have terminated the listing agreement.

84. In reliance on the Defendants' continued silence, the Plaintiffs proceeded to negotiate a final agreement with the buyer.

85. The Defendants concealed from the Plaintiffs the fact that the Defendants had no intention of abiding by the construction and meaning the Plaintiffs ascribed to phrase "Transaction Fee of 5% of the Transactional Value."

86. The misrepresentations were of past and presently existing material facts and were made for the purpose of inducing the Plaintiffs to enter into the listing agreement then not to terminate the listing agreement under which the Defendants now contend entitles them to a substantially greater commission than that calculated and communicated to the Defendants by the Plaintiffs and agreed to by the Defendant Benchmark's vice president, Neil Boyles.

87. The Plaintiffs reasonably relied upon the Defendants' silence and representations by entering into the listing agreement and paying the Defendant Benchmark substantial sums of money.

88. As a direct and proximate result of the Plaintiffs' reasonable reliance on the Defendants' fraud and misrepresentations, the Plaintiffs have been injured and damaged in an amount in excess of Ten Thousand Dollars ($10,000.00).

89. As a result of the Defendants fraud and misrepresentations, the Plaintiffs are entitled to recover from the Defendants an amount in excess of Ten Thousand Dollars ($10,000.00) as punitive damages.

THIRD CLAIM FOR RELIEF (IN THE ALTERNATIVE)
Unfair and Deceptive Trade Practices

90. The Plaintiffs incorporate herein by reference the allegations contained in Paragraph Nos. 1 through 62 and 70 through 89 of this complaint and reallege the same as though fully set forth herein.

91. The Defendants' misrepresentations were made with knowledge of the falsity thereof or in reckless disregard of the truth thereof.

92. The Defendants made the misrepresentations for the purpose first of inducing the Plaintiffs to enter into the listing agreement, then later, to induce the Plaintiffs to refrain from terminating the listing agreement as part of their artifice and scheme to extract a higher commission from the Plaintiffs than that to which the Defendant Benchmark was entitled under the parties' agreement. Had Arthur and Joyce known the Defendant Benchmark had no intention of honoring the parties' agreement and the meaning and construction ascribed to the phrase " Transaction Fee of 5% of the Transactional Value" by Arthur and Joyce, Arthur and Joyce would never entered into the listing agreement or would have terminated the listing agreement.

93. The acts and conduct on the part of the Defendants as alleged herein occurred in commerce, are, and constitute unfair and deceptive trade practices within the meaning and intent of N.C.G.S. § 75-1.1 *et seq.* entitling Plaintiffs to punitive or treble their actual damages as well as their reasonable attorneys' fees in accordance with the provisions of N.C.G.S. § 75-16.1 *et seq.*

JURY DEMAND

Pursuant to Rule 38(f) of the Federal Rules of Civil Procedure, the Plaintiffs hereby demand that all issues so triable be tried to a jury of their peers.

WHEREFORE, the Plaintiffs Carpet Super Mart, Inc., Arthur C. Jordan, Jr., and Joyce J. Mobley respectfully pray as follows:

A. That the Court to enter an order and judgment declaring:

(i) That the amount, manner, and method of the calculation and computation of the commission payable to the Defendant Benchmark was a material term of the listing agreement;

(ii) There was no meeting of the minds regarding the amount, manner, and method of the calculation and computation of the commission;

(iii) That the parties did not have a meeting of the minds on all material terms of the listing agreement;

(iv) There is no enforceable agreement between the Plaintiffs and the Defendant Benchmark because there was no meeting of the minds regarding all material terms of the alleged agreement;

(v) If there was no enforceable agreement between the parties, the reasonable value of the services provided by the Defendant Benchmark is $188,600.00;

(vi) In the alternative, if there was a meeting of with on all material terms of the listing agreement, the "Transaction Fee of 5% of the Transaction Value" means five percent of the sales price;

(vii) If an agreement does exist, the agreement is the one page document attached hereto as Exhibit A and does not include any extraneous documents, terms or conditions;

(viii) If the listing agreement is a valid and enforceable agreement, the value of the assets retained by CSM is not included in the

base amount upon which the commission is calculated;

(ix) If the listing agreement is a valid and enforceable agreement, the value of any lease agreement entered into between a separate entity and the buyer is not included in the base amount upon which the commission is calculated;

B. In the alternative, that the Court enter judgment against the Defendants jointly and severally:

(i) For an amount to be determined by the enlightened conscience of a jury pursuant to the allegations contained in the Second Claim for relief;

(ii) For an amount to be determined by the enlightened conscience of a jury and that such damages be trebled pursuant to the allegations contained in the Third Claim for relief;

(iii) Reasonable attorneys' fees pursuant to the allegations contained in the Third Claim for Relief;

(v) That all costs of this action be cast against the Defendants;

(iv) For such other and appropriate relief as the Court deems equitable, just, and proper.

Respectfully submitted this the 4th day of March, 2019.

/s/ Scott K. Tippett

Scott K. Tippett
NC State Bar No. 22488
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Email: stippett@haganbarrett.com

Counsel for the Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Plaintiff's First Amended Complaint was electronically filed with the Clerk of Court using the CF/ECF system, and was served on counsel for the Defendants via United States Mail by placing the same in a first-class postage prepaid envelope, addressed as follows:

M. Cabell Clay
MOORE & VAN ALLEN, PLLC
100 North Tryon Street, Floor 47
Charlotte, NC 28202-4003
Counsel for the Defendants

This the 4th day of March, 2019.

/s/ Scott K. Tippett
Scott K. Tippett

STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

VERIFICATION

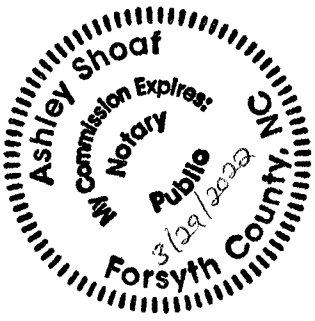
Personally appeared before me, the undersigned officer, duly authorized to administer oaths, Joyce J. Mobley, who, after being duly sworn according to law, deposes and says that she has read the foregoing Complaint and the same is true and correct to the best of her knowledge, information, and belief, except as to those matters that are stated upon information and belief, which matters she believe to be true.

Joyce J. Mobley

Sworn to and subscribed before me
this 4th day of March, 2019.

Notary Public
Notary Printed Name: Ashley Shoaf

My Commission Expires: March 29, 2022



STATE OF NORTH CAROLINA

COUNTY OF GUILFORD

VERIFICATION

Personally appeared before me, the undersigned officer, duly authorized to administer oaths, Arthur C. Jordan, Jr., who, after being duly sworn according to law, deposes and says that he has read the foregoing Complaint and the same is true and correct to the best of his knowledge, information, and belief, except as to those matters that are stated upon information and belief, which matters he believe to be true.

Arthur C. Jordan, Jr.

Sworn to and subscribed before me
this 4th day of March, 2019.

Notary Public
Notary Printed Name: Ashley Shoaf

My Commission Expires: March 29, 2022

TERMS OF ENGAGEMENT

benchmark

This Agreement is made as of May 27, 2014 between

The Client

Carpet Super Mart, Inc., a Corporation incorporated and existing under the laws of North Carolina; Arthur C Jordan Jr and Joyce J Mobley (collectively, the Client) and

The Service Provider

Benchmark International Company Sales Specialist, LLC a limited liability company organized and existing under the laws of the State of Florida and licensed as a broker by the Florida Department of Business and Professional Regulation pursuant to license number CQ1041763 (Benchmark)

This Agreement does not obligate Client to enter into a Transaction with any Prospect. Client has the choice to reject any offer presented pursuant to this Agreement for any reason or no reason whatsoever. Client hereby grants Benchmark the exclusive right to offer the Business for sale during the term of this Agreement. This Agreement is made subject to Benchmark's Standard Terms and Conditions which are incorporated herein by reference.

The Business

All or any ownership interests in Carpet Super Mart, Inc., and all or part of the assets (whether real or personal, tangible or intangible) owned by such entity(ies) or used by such entity(ies) in selling, advertising, marketing and installing flooring and flooring related products (the Business).

The Services

Benchmark will act as a facilitator to market Client's Business, identify and introduce Prospects to Client and, if applicable, produce letters of intent for presentation to Client's and Prospect's respective legal and financial advisory teams. Benchmark's proven service delivery model includes the following deliverables.

- A welcome package detailing Benchmark's business sales process and introducing the Benchmark specialists who will handle each stage of the sale.
- A company sale brief which, when completed by Client, will be used by the assigned business analysts to prepare marketing materials and begin developing a customized go-to-market strategy.
- A one-page teaser to be provided to Prospects identified by Benchmark. The teaser is intended to be free of confidential information and is designed to obtain an initial expression of interest on the part of Prospects.*
- Benchmark's standard non-disclosure agreement to be used as a basis for non-disclosure agreements to be executed by Benchmark and each Prospect interested in receiving information about the Business beyond that provided in the teaser.
- A detailed information memorandum which will contain confidential information about the Business and will only be shared with Prospects who have (i) executed a non-disclosure agreement and (ii) been approved by Client.*
- A business intelligence report outlining Benchmark's initial list of Prospects and describing the strategy developed for taking the Business to market.
- Listing on third party and Benchmark portals and platforms which are best suited, in Benchmark's discretion, for the Business.
- Ongoing pro-active management of all Prospects from lead development through execution of a letter of intent. A letter of intent is a (typically) non-binding expression of interest signed by both parties that lays out the principal agreed-upon points of a Transaction. Letters of intent are also at times referred to as "LOIs", "term sheets", or "heads of terms."
- From engagement to closing of the Transaction, continuous live and email access to the dedicated Deal Team to allow complete, up-to-the-minute visibility into the progress and roadmap, to answer questions, and to ensure that the process is meeting Client's expectations.

**Client shall have the opportunity to approve the teaser and information memorandum, and any changes thereto, before such documents are circulated to Prospects by Benchmark.*

The Term

The term of this Agreement shall commence on the date first written above and continue until either (i) Client notifies Benchmark of its intent to terminate this Agreement on sixty days written notice to Benchmark so long as all fees then due have been paid prior to the date of such termination or (ii) the closing of a Transaction.

The Fee

In exchange for the Services, Client will pay to Benchmark $15,000 pursuant to accomplishment of the following milestone:

Commitment Fee	Due upon execution of this Agreement	$15,000
	Total	$15,000

and, In addition to the foregoing, upon the closing of a Transaction, Client will pay Benchmark a Transaction Fee equal to 5% of the Transaction Value subject to a minimum Transaction Fee of $100,000.

Signature

Name	Arthur C Jordan Jr	Signature		Title/Capacity	President, Carpet Super Mart, Inc.
Name	Arthur C Jordan Jr	Signature		Title/Capacity	As Shareholder of Carpet Super Mart, Inc.
Name	Joyce J Mobley	Signature		Title/Capacity	As Shareholder of Carpet Super Mart, Inc.
Name	Neil Boyles	Signature		Title/Capacity	V.P Benchmark International Company Sales Specialist LLC

EXHIBIT A

v13.2.1

STANDARD TERMS & CONDITIONS FOR BENCHMARK INTERNATIONAL COMPANY SALES SPECIALIST LLC TERMS OF ENGAGEMENT

1. **Incorporation.** These Standard Terms & Conditions apply to all Benchmark Terms of Engagement and are incorporated by reference into such agreements. Except with regard to Section 8(a) below, any reference to such Terms of Engagement or "this Agreement" shall be a reference to such agreement as augmented by these Standard Terms & Conditions.
2. **Definitions.**
(a) **"Client Signatories"** shall mean each of the signatories to this Agreement other than Benchmark.
(b) **"Prospect"** shall mean any person or entity identified during the term of this Agreement by Benchmark or Client as a potential counterparty to a Transaction with Client.
(c) **"Transaction"** shall mean the alienation by one or more of the Client Signatories of any shares, the goodwill, or substantially all of the assets of the Business or any division thereof of including, without limitation: (i) a sale, transfer, merger, or disposal, in whole or in part, of the Business; (ii) the entering into, transfer or surrender of any lease, license, option, joint venture, partnership, franchise; and/or (iii) any financial arrangement relating to the Business.
(d) **"Transaction Value"** shall mean the total value in a Transaction whether occurring on closing of a Transaction or otherwise as more fully explained in Section 5 below.
3. **Services.**
(a) Benchmark shall provide the Services with reasonable skill and care in accordance with its customary practices.
(b) Benchmark shall not be responsible for giving or obtaining any professional or otherwise specialized advice regarding any matter including, without limitation, legal, accounting, financial, or investment advice. Nor shall Benchmark be responsible for giving or obtaining any advice regarding matters for which the Client has engaged an advisor. Client is encouraged to seek accounting and legal guidance from duly-licensed professionals prior to executing any binding agreement with a Prospect.
(c) Benchmark disclaims any and all warranties regarding the Services which are not expressly stated in this Agreement, whether express or implied, to the fullest extent permissible by law.
(d) Benchmark's failure to identify a Prospect for the Business shall not constitute a breach of this Agreement.
(e) Client authorizes Benchmark to communicate with any Prospect and to have discussions with that party pursuant to this Agreement. Client may limit this authority by written notice to Benchmark, and Client shall be solely responsible for providing any such notice where required by law or Client's pre-existing contractual obligation.
4. **Fees.**
(a) All fees payable to Benchmark are non-refundable.
(b) Each Client Signatory is joint and severally liable to Benchmark for the payment of the fees set forth in this Agreement.
(c) The Transaction Fee is due in addition to any other fees set forth in this Agreement.
(d) In the event that a Transaction does not occur during the term of this Agreement, Benchmark's right to receive a Transaction Fee shall survive the termination of this Agreement for a period of 24 months, provided that a Transaction takes place within that 24-month period with a Prospect or other third party supplied information by Benchmark, identified or introduced by Benchmark, or with which Client otherwise entered negotiations prior to the termination of this Agreement.
(e) Client may withdraw from the offering process for any reason and shall have no liability to Benchmark for any Transaction Fee (provided that this Section 4(e) shall not prejudice any right arising pursuant to Section 4(d) above). In the event of such withdrawal, all fees previously paid to Benchmark shall be retained by Benchmark and all fees earned by Benchmark but not yet paid to Benchmark shall remain due and payable.
(f) Client shall pay all sums to which Benchmark becomes entitled under this Agreement on the date Benchmark becomes so entitled. For example, the Transaction Fee is due in full on the Transaction closing date. Benchmark may charge Client a compound monthly interest rate of 1.5%, from the date any sums become due to the date payment of such sums is made in full. Client shall additionally be liable for any costs or expenses incurred by Benchmark for the recovery of past due sums under this Agreement, including but not limited to collection agent fees, court costs, and attorneys' fees.
5. **Transaction Value.**
(a) The Transaction Value is intended to incorporate the benefit received by Client as a result of Benchmark's efforts. It is important that Client reserve as much flexibility as possible in structuring its Transaction as such flexibility will typically expand the range of potential suitors and maximize the Transaction's benefit to Client. Benchmark believes it should not preclude its clients from any deal structure or bias them toward or away from any structure as a result of the definition of the Transaction Value. Accordingly, defining herein the precise components of Transaction consideration upon which the Transaction Value is determined would be counterproductive to the purposes of this Agreement. The parties therefore agree that such magnitude shall be based on the total benefit received by Client and any related parties pursuant to the Transaction regardless of the form of such consideration, and that, for the avoidance of doubt, such consideration may consist of any or all of the of the following:
   (i) all cash paid to Client or any related party at the time of, or as a result of, a Transaction;
   (ii) any non-cash asset issued to, transferred to, or retained by Client or any related party at the time of, or as a result of, a Transaction;
   (iii) any liability of the Business which is included in the Transaction, or which is assumed, paid, assigned, guaranteed or forgiven by the Prospect at the time of, or as a result of, a Transaction;
   (iv) the maximum payment which may be made by the Prospect within five years of the closing of a Transaction, if any part of the Transaction is deferred, contingent, or derived as a royalty, license, franchise fee, salary, bonus, earn out, retention payment, incentive compensation, or the like;
   (v) any asset of the Business which is not purchased by a Prospect and the benefit of which is retained or transferred to any Client or any related party prior to, at, or subsequent to the date of the Transaction; and
   (vi) the total consideration payable by a Prospect, including any consideration that is or would be payable under any option to acquire more of the Business than is acquired during the Transaction.
(b) The Transaction Value shall be computed before deducting interest, expenses, and taxes.
(c) In the event any portion of the Transaction Value is payable in a form other than cash, the magnitude of the Transaction Value attributable to such consideration shall be based on the value stated or to be stated on Client's tax filings. If no such statement is legally required, then the value used by the parties to the Transaction in the definitive documents shall be used. If, in such case, the definitive documents do not state such value, the parties shall work in good faith to establish the present market value of such consideration. In the event Client agrees to any holding period for such non-cash assets, or a holding period is imposed by law, such holding period shall have no bearing on the date payment of the Transaction Fee shall become due and payable.
6. **Information Provided.**
(a) Each Client Signatory jointly and severally warrants to Benchmark that (i) all information provided pursuant to this Agreement is, to the best of Client's knowledge, full, complete, accurate, and is not in any way false or misleading. (ii) Client shall promptly, and in any event prior to its approval of such document, inform Benchmark of any error or material omission in or related to any statement in a teaser, information memorandum, or other document provided by Benchmark for Client's review, (iii) it shall promptly inform Benchmark of any material changes to the information provided under this Agreement or otherwise contained in any document approved by Client. Each Client Signatory shall jointly and severally indemnify Benchmark against any claim arising as a result of Client's breach of this Section 6(a).
(b) Client shall promptly notify Benchmark in reasonable detail of all expressions of interest concerning a Transaction which Client receives through any source other than Benchmark during the term of this Agreement. Client shall ensure that Benchmark is promptly informed of all negotiations with any Prospect (regardless of whether the Prospect was initially approached by, or initially approached, Benchmark or otherwise) and shall promptly provide copies of all draft and final agreements (binding and nonbinding) exchanged between Client and any such Prospect.
(c) Benchmark is authorized to communicate with any accountant or other advisor retained by Client for the purpose of obtaining any information necessary to provide the Services.
(d) Benchmark may, in its discretion, pass any information provided under this Agreement that Benchmark reasonably believes is necessary or proper for the provision of Services except where specifically notified in writing by Client. Prior to disclosing any identifying or sensitive information about Client other than any such information that was contained in a Client-approved teaser or similar document, Benchmark shall obtain a signed non-disclosure agreement from the intended recipient of the information.
7. **Damages.** Benchmark's liability with respect to any damages which may arise out of this Agreement and which is not the result of any fraudulent or otherwise intentionally tortious act, shall be limited to and not exceed the total fees which have been paid to Benchmark by Client pursuant to this Agreement.
8. **Miscellaneous.**
(a) In the event of a conflict between any provision of the Terms of Engagement and these Standard Terms & Conditions, the provision of the Terms of Engagement shall supersede the conflicting provision in these Standard Terms & Conditions. Capitalized terms used in these Standard Terms & Conditions but not defined herein are used as defined in the Terms of Engagement. Any capitalized terms used in Terms of Engagement but not defined therein are used as defined herein.
(b) Each Client Signatory represents and warranties that it has all requisite power to enter into this agreement and execute any other documents and instruments contemplated herein.
(c) Notice provided to any one Client Signatory shall constitute notice to each Client Signatory. Approval by any one Client Signatory shall constitute approval by all Client Signatories.
(d) This Agreement shall not be assignable by any party.
(e) All provisions of this Agreement that may reasonably be construed as surviving the expiration, termination, or cancellation of this Agreement, including without limitation any payment obligation, shall survive such event and continue to bind the applicable party(ies) and its/their successors and assigns.
(f) This Agreement may be signed in two or more counterparts each of which together shall be deemed to be an original and all of which together shall constitute one and the same instrument. Signing of this Agreement and transmission by facsimile document transfer shall be acceptable and binding upon the parties hereto.
(g) Any provision may be amended and the observance thereof may be amended or waived (either generally or in a particular instance and either retroactively or prospectively), only by the written consent of Benchmark and each Client Signatory. Failure by any party to enforce another party's strict performance of any provision of this Agreement shall not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.
(h) If a court of competent jurisdiction determines that provisions of this Agreement are illegal or excessively broad then such provisions shall be construed so that the remaining provisions of this Agreement shall not be affected, but shall remain in full force and effect, and any such illegal or overly broad provisions shall be deemed, without further action on the part of any person or entity, to be modified, amended and/or limited, but only to the extent necessary to render the same valid and enforceable in the applicable jurisdiction.
(i) This Agreement shall be governed by and all disputes arising out of or relating to this Agreement or the transactions contemplated herein shall be governed by and construed in accordance with the laws of Florida applicable to contracts to be fully performed therein, without giving effect to any choice of law rule therein that would require the application of the law of any other jurisdiction. Any action or proceeding relating in any way to this Agreement may be brought and enforced in the courts of the United States for the Middle District of Florida, or, if such courts do not accept and exercise jurisdiction over such action or proceeding, of the State of Florida located in Hillsborough County, Florida, and each party hereto irrevocably consents to the jurisdiction of each such court in respect of any such action or proceeding.
(j) In the event that either party to this Agreement brings suit to enforce this Agreement, or for damages relating to a breach of this Agreement, the prevailing party shall be entitled to recover from the other, in addition to its damages or other remedy, all costs and reasonable attorney's fees, both at trial and at the appellate level.
(k) This Agreement constitutes the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes any prior discussions, correspondence, understandings, agreements, or communication of any nature relating to the subject matter of this Agreement, including without limitation any non-disclosure or confidentiality agreements or undertakings.

v13.2.1

EXHIBIT B