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CENTRAL DIVISION

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CLERK SUPERIOR COURT
SAN DIEGO COUNTY CA

5 Attorneys for Plaintiffs
6 Steven Meheen and Misfits Racing, LLC

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF SAN DIEGO**

10 **CENTRAL DIVISION**

11 STEVEN MEHEEN, an individual, MISFITS
12 RACING, LLC, a Hawaiian limited liability
13 company,

13 Plaintiffs,

14 v.

14 GAVIN BRADY and DOES 1 through 10
15 Inclusive,

16 Defendants.

Case No. **37-2019-00006231-CU-FR-CTL**

**COMPLAINT FOR FRAUD AND
NEGLIGENT MISREPRESENTATION**

JURY TRIAL DEMAND

17
18 **INTRODUCTION**

19 Plaintiffs Steven Meheen and Misfits Racing, LLC bring this action against defendant Gavin
20 Brady ("BRADY") for concealment and fraudulent misrepresentations in the \$1.3 million sale to
21 Plaintiffs of an 80 foot Grand Prix racing yacht. The yacht, described as a "Botin 80", was designed
22 at the direction of defendant BRADY solely to be used in the sport of Grand Prix yacht racing, and
23 sold to Plaintiffs after being raced by defendant BRADY in the southern hemisphere.

24 In 2017 Plaintiffs began considering either designing and building a new grand prix yacht, or
25 buying an existing yacht, with a racing history, to replace the yacht they had been racing on the
26 circuit. Plaintiffs learned of the Botin 80, and spent several months evaluating its racing potential
27 based on Plaintiffs' goals. In the course of this process, defendant BRADY provided Plaintiffs with
28 written certifications and time corrected "ratings" from a world-recognized yacht rating authority as

1 to the Botin 80's specific weights, measurements and predicted comparative sailing speeds to enable
2 Plaintiffs to conduct their own evaluation. Plaintiffs used the third-party rating certifications to
3 perform their evaluation, and based on that evaluation, agreed to and did buy the Botin 80 in early
4 2018.

5 After bringing the Botin 80 to San Diego, California, which Plaintiffs intended to be the hub
6 of their racing program, Plaintiffs learned the Botin 80 was not at all what was reflected in the
7 written third-party certifications. The data and information in the certificates was false, and
8 produced an artificially low "rating", and thus a completely misleading picture of the racing
9 potential of the Botin 80.

10 Plaintiffs' discovery of the discrepancies between the certificate data and ratings, and the
11 Botin 80's actual characteristics, triggered additional post-purchase investigation which revealed
12 potentially even greater problems with the Botin 80. Specifically, Plaintiffs learned BRADY had
13 added lead into the keel bulb, which is a key structural component of the yacht, in excess of the
14 design engineer's maximum recommended bulb weight. Sailing the Botin 80 with more weight in
15 the bulb than the yacht had been designed to carry, places excessive loads and engineering stress on
16 the yacht, leaving the yacht Plaintiffs bought at serious risk of suffering a catastrophic disaster, and
17 unsuitable for high level racing.

18 Plaintiffs sought unsuccessfully to rescind the sale and now bring this action for
19 compensatory and exemplary damages against BRADY whose false representations and
20 concealment of facts deceived Plaintiffs into buying the yacht.

21 **FIRST CAUSE OF ACTION**

22 **(Fraud—Against All Defendants)**

23 **THE PARTIES**

24 1. Plaintiff Steven Meheen is an individual who maintains a residence in San Diego
25 County, California. Mr. Meheen is the managing member of co-plaintiff Misfits Racing, LLC.

26 2. Plaintiff Misfits Racing, LLC is a limited liability company organized under the laws
27 of Hawaii. Misfits is in good standing under the laws of Hawaii.
28

1 3. Defendant Gavin Brady is an individual and a citizen of New Zealand. Defendant
2 BRADY is the manager of a sailboat racing enterprise named Race Champion, Ltd, whose principal
3 is Karl Kwok, a citizen of Hong Kong. Defendant BRADY made all of the misrepresentations that
4 are the subject of this action, and was personally responsible for concealing the true facts about the
5 Botin 80 which induced Plaintiffs to enter the contract to purchase it, and then to purchase it.

6 4. Plaintiffs are informed and believe, and thereon allege, that defendant BRADY is a
7 professional sailor who is thoroughly familiar with the rules relating to Grand Prix yachts, including
8 the factors that are pertinent to a yacht's rating, and the general effect of systems such as keel
9 structure, bulb weights, sail sizes and ballast systems.

10 5. Plaintiffs are ignorant of the true names and capacities of defendant DOES 1 through
11 10 and therefore sue these defendants by fictitious names. Plaintiffs will seek leave of court to
12 amend this complaint and insert their true names and capacities when they are ascertained.

13 **CHRONOLOGY and GRAND PRIX YACHT RACING**

14 6. In mid-2017 Plaintiffs began considering buying a larger and potentially "faster"
15 Grand Prix racing yacht than the one they were currently racing. Plaintiffs considered the possibility
16 of either having a new boat designed and built, or purchasing an existing boat. As part of this
17 process, Plaintiffs began collecting information about existing yachts, with their racing histories, to
18 compare them.

19 7. The Botin 80 was among the handful of existing yachts available. It was managed by
20 defendant BRADY for its owner. As the "boat captain" of the Botin 80, defendant BRADY was
21 responsible for overall management of the yacht for purposes of racing. The boat captain would
22 typically select for the owner, the skipper, crew and others necessary to compete in selected races, as
23 well as manage the physical maintenance and upkeep of the yacht. The boat captain is often the
24 most knowledgeable person about the yacht. In the case of the Botin 80, Plaintiffs are informed and
25 believe, and thereon alleges, that defendant BRADY exercised exclusive control of all aspects of its
26 maintenance and equipment.

27 8. Plaintiffs are informed and believe, and thereon alleges, that in the case of the Botin
28 80, defendant BRADY was deeply familiar with it, even more so than a typical boat captain would

1 have been. This unusual familiarity arose because some of the Botin 80's key components came
2 from a boat previously managed by BRADY, a "Farr 80". The Farr 80 was being managed by
3 defendant BRADY, when it suffered a catastrophic failure. It broke in half due to some structural
4 over-stress or failure of materials. The "rig" from the destroyed Farr 80 (mast and rigging) and
5 certain other components were salvaged. Defendant BRADY provided these salvaged components,
6 including the mast, to a highly regarded naval architect, Botin, and asked it to design another 80 foot
7 yacht. The new design produced the Botin 80 that is the subject of this case.

8 9. Between August and December 2017, Plaintiffs collected information about the
9 various available yachts, including the Botin 80. Plaintiffs were interested in the "rating" of each
10 yacht because this would enable Plaintiffs to simulate by computer races between the known,
11 existing yachts to see how they compared in overall speed and corrected time.

12 10. A yacht's "rating" is a numerical value assigned by the rating authority to allow
13 yachts of different designs, different sizes and different sized sails (among other differences) to race
14 against another. To determine finishes, a yacht's elapsed time to complete a race is multiplied by its
15 numerical rating, and the product is the yacht's "corrected time". The exact formula, or algorithm,
16 used by a rating authority to predict a yacht's speed, and thus its rating, is proprietary, and not public
17 knowledge. Nonetheless, experienced sailors are generally aware that certain features will increase a
18 yacht's rating (making it slower on "corrected time") while others will decrease the rating. As a
19 simple example, using a spinnaker sail increases a yacht's downwind speed, so it increases its rating.

20 11. From its 2013 launch through the 2018 sale to Plaintiffs, the Botin 80 was raced
21 exclusively in the southern hemisphere, where yachts are rated by the IRC Rating Authority. There
22 are different types of IRC Certificates. A yacht owner can self-report his or her yacht's dimensions,
23 weight, sail sizes and other physical characteristics requested by the Rating Authority in order to
24 determine its rating, or handicap. Alternatively, higher level racing which the Botin 80 was designed
25 for and participated in, required an "Endorsed IRC Certificate." To obtain this type of certificate an
26 owner must obtain independent measurements from an approved measurer registered with the IRC
27 Rating Authority. Only with a verified, independently measured and weighed yacht, does the IRC
28 issue an "Endorsed IRC Certificate".

1 12. Because of the third-party's independent verification of the yacht's characteristics and
2 equipment, an Endorsed IRC Certificate is accepted in the yachting world as proof of the data
3 reported on the face of the certificate. Exhibit A to this complaint is a true and correct copy of one
4 of the Endorsed IRC Certificates for the Botin 80 provided by defendant BRADY to Plaintiffs to
5 enable them to evaluate the yacht's racing potential. (The Botin 80 was named "Beau Geste" when
6 managed by defendant BRADY.)

7 13. The data reported on Exhibit A is the information required by the rating authority to
8 issue an endorsed certificate. The information is all material to a yacht's potential performance,
9 which is why rating authorities require that it be disclosed and the yacht can then legally race using
10 only the declared systems and equipment. The endorsed certificate includes hull measurements,
11 overhangs, rig and mainsail measurements, headsail size, and the whether the Botin 80 would be
12 raced with a Spinnaker or other equipment that impacts a yacht's overall speed. The other data
13 reflected, while technical in nature, is generally understood in the yachting community as significant
14 to a yacht's predicted speed through the water. For example, whether a keel is "canting" or has a
15 "wing" can affect a yacht's righting moment, and thus stability and speed, as well as other aspects of
16 performance. The "TCC" of 1.788 was the Botin 80's rating in 2015. A rating will change if
17 different equipment is added, or sail sizes or types are changed, but the changes must be declared to
18 the rating authority, and an amended rating issued based the new data. It would be violate the rules
19 to change the equipment shown on the rating, or substitute equipment, or use undeclared systems,
20 when racing.

21 14. Using this information provided by the owner, and certified by an independent
22 source, and its proprietary program, the rating authority estimates how fast a particular yacht will
23 move through the water (absolute speed, or speed through the water). Based on this predicted speed,
24 the rating authority issues the rating number, to effectively create a "handicap" measured in seconds
25 per mile of a race to equalize the yachts racing performances. Faster yachts "give time" to slower
26 yachts.

27 ///

1 **MISREPRESENTATIONS AND CONCEALMENT LEADING PLAINTIFFS TO**
2 **PURCHASE THE BOTIN 80**

3 15. In December 2018 Plaintiffs entered into a written agreement to purchase the Botin
4 80 for \$1.3 million. Plaintiffs' decision to enter the purchase contract was based on the following
5 representations by defendant BRADY:

- 6 a. All of the Botin 80's physical characteristics, measurements, weight and
7 equipment were accurately reflected on the two Endorsed IRC certificates
8 provided by BRADY to Plaintiffs in the fall of 2017 before the purchase was
9 completed.
- 10 b. The Botin 80 had received IRC ratings from the rating agency based on true
11 and accurate reports by defendant BRADY to the rating authority of the sail
12 sizes and other on-board equipment the Botin 80 would use in racing, its keel
13 and bulb weights and characteristics. BRADY represented the IRC ratings
14 were honestly and genuinely obtained and valid, and the rating was based on
15 the equipment and sail sizes the Botin 80 was actually using while racing.
- 16 c. While the Botin 80 was equipped with a trim ballast tank, it was not necessary
17 to use it during racing. (Using trim ballast tanks would increase the yacht's
18 rating, making it less competitive on corrected time.)
- 19 d. The Botin 80 had competed in 9 races, and its corrected time and finishes
20 were valid race results, achieved in full compliance with the racing rules.

21 16. Each of these representations was material to Plaintiffs because these representations
22 each influenced the evaluation of the Botin 80's racing potential. If the Botin 80 was using
23 undeclared or "illegal" equipment or systems, it would have produced different, significantly less
24 favorable ratings, and thus race outcomes, both in the actual races sailed, and in the hypothetical
25 computer simulated races Plaintiffs constructed to evaluate the yacht's racing potential.

26 17. Each of these representations was false or misleading because of the failure of
27 defendant BRADY to disclose the actual conditions under which he had been racing
28

1 the yacht, and true sail measurements and on-board systems being used. The true
2 facts were that:

3 a. Many of the Botin 80's key physical characteristics listed on the Endorsed
4 IRC Certificates were inaccurately reported to the rating agency, contributing
5 to a fraudulent and artificially low rating. Many of the yacht weights,
6 dimensions, sail sizes and other factors affecting its performance and rating
7 were falsely reported to create an artificially lower rating than could be
8 achieved using the true dimensions and measurements.

9 b. The design of the Botin 80 required use of the trim ballast tanks to prevent
10 potentially catastrophic downwind sailing events caused by the bow riding too
11 low. The tanks had not been sealed, and thus could be used.

12 18. Defendant BRADY made the above false representations to Plaintiffs in writing by
13 providing Plaintiffs with the written Endorsed IRC Certificates (Exhibit A this complaint one of the
14 certificates provided). Defendant BRADY knew the representations in the Certificates were false,
15 and he provided them to Plaintiffs specifically to present the Botin 80 in a false light, as having
16 greater racing potential than it did if the true facts were reported.

17 19. Plaintiffs relied on the representations set forth in the Endorsed IRC Certificates and
18 used the ratings as a material factor in simulating hypothetical races to compare the Botin 80's
19 racing performance and potential with other available yachts. As a result of the artificially "low"
20 ratings, the Botin 80 over-performed on the hypothetical races from what its true "hypothetical"
21 performance would have been if the rating was accurate and valid.

22 20. Plaintiffs' reliance on the representations was reasonable because the very purpose of
23 an "Endorsed" certificate is to obtain independent verification of the owner's reported data, and
24 avoid the potential bias that is likely in self-reported data.

25 21. Plaintiffs were damaged by the false representations in that they were a material
26 factor inducing Plaintiffs to purchase the Botin 80. Plaintiffs were deprived of their opportunity to
27 make a fair evaluation of the available yachts by being provided a false, artificially low rating, which
28 contributed to their decision purchase a yacht that was not what had been represented.

1 22. In addition to the affirmative fraudulent misrepresentations described above,
2 defendant BRADY concealed from Plaintiffs material adverse facts about the Botin 80 which, if
3 known by Plaintiffs, would have caused them to select a different yacht to purchase. Specifically, in
4 the four to six months Plaintiffs were evaluating yachts, including the Botin 80, defendant BRADY
5 knew, and concealed from Plaintiffs the following adverse facts about the yacht:

- 6 a. The Botin 80 had been sailed beyond its maximum design conditions.
7 Specifically, while a naval architectural firm (Botin) had designed the yacht,
8 the keel bulb weight had been increased under the direction of BRADY. At
9 defendant BRADY's direction, lead had been added to the keel bulb, which
10 had "pockets" built into it. This added weight increased the yacht's "righting
11 moment", a measure of a yacht's ability to return to a generally upright
12 position (and avoid capsizing) when wind or waves cause heeling. But sailing
13 a yacht beyond its maximum safe design weight is potentially dangerous and
14 unsafe. Sailing the Botin 80 over its maximum design weight in the keel bulb
15 places the structure under stress and renders it at risk of catastrophic yacht
16 failures, with risk to life.
- 17 b. Defendant BRADY had built into the interior lines of the Botin 80 a
18 temporary ballast system consisting of canvas bags which could be moved.
19 While ballast systems may be legal if declared, the Botin 80 did not declare
20 these, and concealed them from Plaintiffs.

21 23. If Plaintiffs had known the yacht had ben sailed with its bulb over the maximum
22 design bulb weight, Plaintiffs would not have purchased the Botin 80.

23 **PLAINTIFFS' EFFORT TO RESCIND THE SALE**

24 24. After the purchase in January 2018, Plaintiffs sailed the Botin 80 to San Diego, to
25 obtain a rating used in the northern hemisphere (similar to the IRC Certificate). US Sailing is the
26 rating agency that issues ratings for races in the United States, among other places. Plaintiffs
27 initially submitted to US Sailing the dimensions, weights and other physical data represented in the
28 Endorsed IRC Certificates provided by defendant BRADY. The US Sailing rating program (also a

1 proprietary program), rejected the weights and measurements, and reported these details did not
2 produce a yacht that could be evaluated by its rating system.

3 25. In response to this computer rejection, Plaintiffs began to re-measure, re-weigh and
4 evaluate the Botin 80. This process led to the discoveries that are alleged in this complaint. After
5 these discoveries, in late 2018 Plaintiffs sought unsuccessfully to rescind the sale.

6 PLAINTIFFS' DAMAGES

7 26. Defendant BRADY's fraudulent misrepresentations and concealment were a
8 substantial factor in causing Plaintiffs to purchase a yacht that has been unusable for racing.
9 Plaintiffs have been damaged by the amount paid for the Botin 80 (\$1.3 million), the costs of
10 investigation and attempts to mitigate the differing conditions. The costs of attempting to mitigate
11 Plaintiffs' damages include the costs of maintaining the Botin 80 (now named Cabron). Plaintiffs
12 estimate the current costs of maintenance and mitigation are in excess of \$1 million and are
13 continuing.

14 27. Defendant BRADY's actions in procuring Endorsed IRC Certificates under false
15 pretenses, and through concealment and false representations to the rating agency, and his use of this
16 inaccurate and supposedly third-party verified attestations of the Botin 80's characteristics and
17 sailing potential was oppressive, fraudulent and malicious, and Plaintiffs should be awarded
18 exemplary damages in addition to other relief.

19 **SECOND CAUSE OF ACTION**

20 **(Negligent Misrepresentation—against all defendants.)**

21 28. Plaintiffs repeat and replead and incorporate by reference paragraphs 1 through 17
22 and 19 through 27.

23 29. In making the false representations, and concealing the information as set forth above,
24 defendant BRADY made the representations negligently, and without a reasonable basis to believe
25 them to be true; and negligently failed to reveal the modifications to the keel bulb and other
26 modifications such as the temporary ballast.

27 WHEREFORE Plaintiffs pray for damages as follows:
28

1 1. For compensatory damages caused by defendant BRADY's misrepresentations, fraud
2 and concealment in an amount currently estimate to be \$2.3 million, which amount is expected to
3 increase due to the costs to maintain the yacht while Plaintiffs continue to try to mitigate their
4 damages.

5 2. For exemplary damages in an amount sufficient to make an example of, and to punish
6 defendant BRADY for the misconduct shown.

7 3. For prejudgment interest.

8 4. For such other and further relief as the Court deems proper.

9 Dated: February 1, 2019

**SANDLER, LASRY, LAUBE, BYER
& VALDEZ LLP**

11 By: Thomas R. Laube
12 Thomas R. Laube
13 Attorneys for Plaintiffs
14 Steven Meheen and Misfits Racing, LLC

15
16 **DEMAND FOR JURY TRIAL**

17 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, and state law providing for trial
18 by jury, Plaintiffs hereby demand a trial by jury as to all claims

19 Dated: February 1, 2019

**SANDLER, LASRY, LAUBE, BYER
& VALDEZ LLP**

21 By: Thomas R. Laube
22 Thomas R. Laube
23 Attorneys for Plaintiffs
24 Steven Meheen and Misfits Racing, LLC

EXHIBIT A



4 Fred Thomas Drive, Takapuna, Auckland 0622, PO Box 33-1487, Takapuna, Auckland 0740, New Zealand tel +64 (9) 361 1471 mail@yachtingnz.org.nz www.yachtingnz.org.nz

| | | | |
|------------------|-------------------|-------------------|------------------------------|
| Boat: | | Stability | |
| Name: | BEAU GESTE | SSS Base Value: | 64 |
| Sail Number: | HKG1997 | STIX: | N/A |
| Cert No | 41753 | AVS: | N/A |
| TCC: | 1.788 | 2015 | ISO/IRC Design Category: N/A |
| Crew No.: | 24 | ISAF Plan Review: | |

| | | | |
|------------------------|--|-------------------|-------------------|
| General Details | | Series Date: 2013 | Hull Factor: 14.8 |
| Design: | BOTIN 80 Custom | Age Date: 2013 | Rig Factor: 1.042 |
| Type: | Bermudian Sloop | | |
| Issue: | Revalidation | | |
| Notes: | Weighed 12/13 & measured (M.Hannon NZL) | | |
| Notes: | Lateral daggerboards; c/l fore-aft trim ballast tank (1000kg); Main 10/14; hsail 12/13 | | |

| Hull | Overhangs | Rig & Mainsail | Headsail | Mizzen | Spinnaker |
|--------------------|-----------|----------------|--------------|-----------|-----------|
| LH: 24.38 | BO: 0.47 | P: 33.26 | HSA: 533.18 | PY: 0.00 | SPA: 0.00 |
| LWP: 23.91 | x: 0.46 | E: 10.62 | LLmax: 38.45 | EY: 0.00 | STL: 0.00 |
| Hull Beam: 6.13 | h: 0.05 | J: 10.65 | LL*: 38.45 | LLY: 0.00 | SLU*: - |
| Boat Weight: 16529 | SO: 0.00 | FL: 34.35 | LP*: 23.44 | LPY: 0.00 | SLE*: - |
| DLR: 37 | y: 0.00 | MUW: 3.44 | HHW*: 15.78 | | SF*: - |
| Draft: 5.5 | | MTW: 4.90 | HTW*: 8.30 | | SHW*: - |
| | | MHW: 7.15 | HUW*: 4.22 | | |

* For information only

| | |
|--|---|
| Detail | No Spinnaker TCC: 1.788 |
| Low CG solid steel+fairings keel | Multiple headsails permitted |
| No wing keel | Maximum number of spinnakers carried: 0 |
| Inboard engine : Weight 400kg | No spinnaker poles/sprit |
| Retractable propeller | 4 Spreader (sets) 0 Jumper (sets) |
| Internal ballast 0 kg | 0 Runners (sets) 3 Checkstays (sets) |
| Weight includes batteries, excludes cushions | Carbon Mast Composite standing rigging |
| ISAF OSR compliant lifelines fitted | HSA=0.0625*LL*(4*LP+6*HHW+3*HTW+2*HUW+0.09) |
| Stored power used for running rigging | SPA=((SLU+SLE)/2)*((SF+(4*SHW))/5)*0.83 |
| Cantering keel static heel angle 12.3 degs | |
| Mast foot/forestay not adjusted while racing | |

Certificate issued by the IRC Rating Authority and VALID from 27 May 2015 15:36:29
 Expires 31 May 2016 unless superseded or invalidated by IRC Rules and Regulations
 I accept the dimensions shown on this certificate and agree to report all subsequent changes and any errors found at a later date to the issuing Authority

KWOK, Karl
 30TH FLOOR, WING ON HOUSE
 71 DES VOEUS ROAD

HONG KONG



Your free subscription to Seahorse is at: www.seahorse.co.uk/digital.
 Your passcode is: 52026



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