

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Jon Takasugi

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Attorneys for Plaintiff Sway Fitness LLC

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

11 SWAY FITNESS LLC, a California limited
12 liability company,

13 Plaintiff,

14 vs.

15 BLAKE GRAY, an individual; NOAH BECK,
an individual; NOAH BECK, INC., a
16 California corporation; BRYCE HALL, an
individual; BRYCEHALLBIZ LLC, a Florida
17 limited liability company; GRIFFIN
JOHNSON, an individual; GRIFFIN
18 JOHNSON, LLC, a Florida limited liability
company; JOSHUA RICHARDS, an
19 individual; BUDDY'S HARD, LLC, a
Delaware limited liability company; and
20 DOES 1 through 20, inclusive,

21 Defendants.

CASE NO. 23STCV05393

COMPLAINT FOR:

- 1. BREACH OF CONTRACT; AND
- 2. CONTRACTUAL INDEMNITY

Discovery Cutoff: None Set
Trial Date: None Set

1 Plaintiff Sway Fitness LLC ("Plaintiff" or "Sway"), by and through its counsel, hereby
2 complains and claims against Defendants Blake Gray, Noah Beck, Noah Beck, Inc., Bryce Hall,
3 brycehallbiz LLC, Griffin Johnson, Griffin Johnson, LLC, Joshua Richards, and Buddy's Hard, LLC
4 ("Defendants") as follows:

5 **PARTIES**

6 1. Plaintiff Sway Fitness LLC is now, and was at all times mentioned herein, a limited
7 liability company, duly formed and existing under the laws of the State of California with its
8 principal place of business in the City of Westlake Village, County of Ventura, State of California.

9 2. Plaintiff is informed and believes and based thereon alleges that Defendant Blake
10 Gray ("Gray") is now, and has been at all times herein mentioned, an individual who resides in the
11 County of Los Angeles, State of California.

12 3. Plaintiff is informed and believes and based thereon alleges that Defendant Noah
13 Beck ("Beck") is now, and has been at all times herein mentioned, an individual who resides in the
14 County of Los Angeles, State of California.

15 4. Defendant Noah Beck, Inc. ("Beck, Inc.") is now, and was at all times mentioned
16 herein, a corporation, duly formed and existing under the laws of the State of California with its
17 principal place of business in the City of Los Angeles, County of Los Angeles, State of California.
18 Plaintiff is informed and believes and based thereon alleges that Beck is now, and has been at times
19 mentioned herein, the Chief Executive Officer, Secretary, and/or Chief Financial Officer of Beck,
20 Inc.

21 5. Plaintiff is informed and believes and based thereon alleges that Defendant Bryce
22 Hall ("Hall") is now, and has been at all times herein mentioned, an individual who resides in the
23 County of Los Angeles, State of California.

24 6. Defendant Brycehallbiz LLC ("Brycehallbiz") is now, and was at all times
25 mentioned herein, a limited liability company, duly formed and existing under the laws of the State
26 of Florida and qualified to do business in the State of California with its principal place of business
27 in City of Sherman Oaks, County of Los Angeles, State of California. Plaintiff is informed and
28 believes and based thereon alleges that Hall is now, and has been at times mentioned herein, a

1 member and/or managing member of Brycehallbiz.

2 7. Plaintiff is informed and believes and based thereon alleges that Defendant Griffin
3 Johnson (“Johnson”) is now, and has been at all times herein mentioned, an individual who resides
4 in the County of Los Angeles, State of California.

5 8. Plaintiff is informed and believes and based thereon alleges that Defendant Griffin
6 Johnson, LLC (“Johnson, LLC”) is now, and was at all times mentioned herein, a limited liability
7 company, duly formed and existing under the laws of the State of Florida that is doing business in
8 the County of Los Angeles, State of California. Plaintiff is further informed and believes and based
9 thereon alleges that Johnson is now, and has been at times mentioned herein, the managing member
10 and/or sole officer of Johnson, LLC.

11 9. Defendant Joshua Richards (“Richards”) is now, and has been at all times herein
12 mentioned, an individual who resides in the County of Los Angeles, State of California.

13 10. Defendant Buddy’s Hard, LLC (“Buddy’s, LLC”) is now, and was at all times
14 mentioned herein, a limited liability company, duly formed and existing under the laws of the State
15 of Delaware and qualified to do business in the State of California with its principal place of business
16 in City of Santa Monica, County of Los Angeles, State of California. Plaintiff is informed and
17 believes and based thereon alleges that at all relevant times herein Richards is now, and has been at
18 times mentioned herein, a member and/or managing member of Buddy’s, LLC.

19 11. Plaintiff is informed and believes and thereon allege that Beck and Beck, Inc.
20 (sometimes referred to as the "Beck Defendants") are controlled and operated as a single enterprise.
21 Plaintiff is informed and believes, and on that basis alleges, that at all times relevant herein, each
22 one of the Beck Defendants were the alter ego of one another and each of them, and that such a
23 unity of interest and ownership existed between them that separate personalities have not in reality
24 existed; and there would be an inequitable result if the acts and omissions at issue in this case were
25 treated as those of any of the Beck Defendants alone. Plaintiff is further informed and believes that
26 the Beck Defendants commingled funds and assets among themselves, and that the Beck Defendants
27 use one another as a mere shell or conduit for the affairs of one another. In addition, Plaintiff is
28 informed and believes that the Beck Defendants disregard corporate formalities, share employees

1 and transfer assets or properties away and/or create or shift liabilities so that each may be left with
2 insufficient capital to meet the needs of each entity's business and its liabilities and without
3 consideration to the detriment of the entity's creditors.

4 12. Plaintiff is informed and believes and thereon allege that Hall and Brycehallbiz
5 (sometimes referred to as the "Hall Defendants") are controlled and operated as a single enterprise.
6 Plaintiff is informed and believes, and on that basis alleges, that at all times relevant herein, each
7 one of the Hall Defendants were the alter ego of one another and each of them, and that such a unity
8 of interest and ownership existed between them that separate personalities have not in reality
9 existed; and there would be an inequitable result if the acts and omissions at issue in this case were
10 treated as those of any of the Hall Defendants alone. Plaintiff is further informed and believes that
11 the Hall Defendants commingled funds and assets among themselves, and that the Hall Defendants
12 use one another as a mere shell or conduit for the affairs of one another. In addition, Plaintiff is
13 informed and believes that the Hall Defendants disregard corporate formalities, share employees
14 and transfer assets or properties away and/or create or shift liabilities so that each may be left with
15 insufficient capital to meet the needs of each entity's business and its liabilities and without
16 consideration to the detriment of the entity's creditors.

17 13. Plaintiff is informed and believes and thereon allege that Johnson and Johnson, LLC
18 (sometimes referred to as the "Johnson Defendants") are controlled and operated as a single
19 enterprise. Plaintiff is informed and believes, and on that basis alleges, that at all times relevant
20 herein, each one of the Johnson Defendants were the alter ego of one another and each of them, and
21 that such a unity of interest and ownership existed between them that separate personalities have not
22 in reality existed; and there would be an inequitable result if the acts and omissions at issue in this
23 case were treated as those of any of the Johnson Defendants alone. Plaintiff is further informed and
24 believes that the Johnson Defendants commingled funds and assets among themselves, and that the
25 Johnson Defendants use one another as a mere shell or conduit for the affairs of one another. In
26 addition, Plaintiff is informed and believes that the Johnson Defendants disregard corporate
27 formalities, share employees and transfer assets or properties away and/or create or shift liabilities
28 so that each may be left with insufficient capital to meet the needs of each entity's business and its

1 liabilities and without consideration to the detriment of the entity's creditors.

2 14. Plaintiff is informed and believes and thereon allege that Richards and Buddy's, LLC
3 (sometimes referred to as the "Richards Defendants") are controlled and operated as a single
4 enterprise. Plaintiff is informed and believes, and on that basis alleges, that at all times relevant
5 herein, each one of the Richards Defendants were the alter ego of one another and each of them, and
6 that such a unity of interest and ownership existed between them that separate personalities have not
7 in reality existed; and there would be an inequitable result if the acts and omissions at issue in this
8 case were treated as those of any of the Richards Defendants alone. Plaintiff is further informed
9 and believes that the Richards Defendants commingled funds and assets among themselves, and that
10 the Richards Defendants use one another as a mere shell or conduit for the affairs of one another.
11 In addition, Plaintiff is informed and believes that the Richards Defendants disregard corporate
12 formalities, share employees and transfer assets or properties away and/or create or shift liabilities
13 so that each may be left with insufficient capital to meet the needs of each entity's business and its
14 liabilities and without consideration to the detriment of the entity's creditors.

15 15. Plaintiff is ignorant of the true names and capacities of each of the Defendants named
16 herein as Does 1 through 20, and therefore sues these Defendants under such fictitious names.
17 Plaintiff will amend this Complaint to allege the true names and capacities of such Defendants when
18 they have been ascertained. Plaintiff is informed and believes and based thereon alleges that each
19 of the fictitiously named Defendants are responsible in some manner for the occurrences herein
20 alleged, and that Plaintiff's damages as herein alleged were proximately caused by those fictitious
21 Defendants' conduct.

22 16. At all times herein mentioned, each of the Defendants was the owner, partner,
23 associate, representative, agent and/or employee of each of the remaining Defendants and, in doing
24 the things herein alleged, was acting within the course and scope of such relationship, agency and/or
25 employment with the advance knowledge, acquiescence or subsequent ratification of each and every
26 remaining defendant when engaged in the conduct herein alleged

27 **JURISDICTION AND VENUE**

28 17. This Court has jurisdiction over this matter pursuant to California Code of Civil

1 Procedure § 410.10 because this matter concerns (1) a contract entered into and performed within
2 the County of Los Angeles, Plaintiff is located in the County of Ventura and one or more defendants
3 resides and/or has business offices in the County of Los Angeles, State of California and (2) the
4 parties agreed to submit to the Court’s jurisdiction pursuant to Section 11.6 of the Operating
5 Agreement and Section 13 of the Talent Services Agreement (the “TSA”).

6 18. Venue in this Court is proper pursuant to California of Civil Procedure § 395 and
7 pursuant to Section 11.6 of the Operating Agreement and Section 13 of the TSA.

8 **ALLEGATIONS IN SUPPORT OF ALL CAUSES OF ACTION**

9 19. Plaintiff operates in the fitness industry, including, but not limited to, development,
10 manufacturing, and sale of supplements, equipment, and apparel. Its products are sold in nationwide
11 retailers such as GNC.

12 20. Gray, Beck, Hall, Johnson, and Richards (collectively, the “Individual Defendants”)
13 are now, and have been at all times herein mentioned, well-known social media influencers boasting
14 millions of followers each on their TikTok, Instagram and/or YouTube accounts. The Individual
15 Defendants were also members of the “Sway House” where they lived together in a home in Bel
16 Air, California creating social media content to post on their accounts.

17 21. Pursuant to the Operating Agreement of March 23, 2021, Plaintiff was formed to
18 establish a fitness brand based on the Sway House and the activities and social media personalities
19 of the Individual Defendants and sell Plaintiff’s fitness-related products, including, but not limited
20 to, supplements, equipment and fitness apparel. Its members include, but are not limited to, Gray,
21 Beck, Inc., Johnson, LLC, Brycehallbiz, and Buddy’s, LLC. A true and correct copy of the
22 Operating Agreement is attached hereto as Exhibit 1.

23 22. On or about March 23, 2021, Plaintiff entered into a TSA with Gray to perform
24 services to develop and promote Sway’s products in the fitness industry (“TSA-Gray”). A true and
25 correct copy of the TSA-Gray is attached hereto as Exhibit 2.

26 23. On or about March 23, 2021, Plaintiff entered into a TSA with the Beck Defendants
27 for Beck to perform services to develop and promote Sway’s products in the fitness industry (“TSA-
28 Beck”). A true and correct copy of the TSA-Beck is attached hereto as Exhibit 3.

1 24. On or about March 23, 2021, Plaintiff entered into a TSA with the Hall Defendants
2 for Hall to perform services to develop and promote Sway’s products in the fitness industry (“TSA-
3 Hall”). A true and correct copy of the TSA-Hall is attached hereto as Exhibit 4.

4 25. On or about March 23, 2021, Plaintiff entered into a TSA with the Johnson
5 Defendants for Johnson to perform services to develop and promote Sway’s products in the fitness
6 industry (“TSA-Johnson”). A true and correct copy of the TSA-Johnson is attached hereto as
7 Exhibit 5.

8 26. On or about March 23, 2021, Plaintiff entered into a TSA with the Richards
9 Defendants for Richards to perform services to develop and promote Sway’s products in the fitness
10 industry (“TSA-Richards”). A true and correct copy of the TSA-Richards is attached hereto as
11 Exhibit 6.

12 27. On or about November 4, 2021, Sway entered into a sales agreement with GNC
13 whereby GNC agreed to sell Sway’s products online and in its stores nationwide (the “GNC
14 Agreement”).

15 28. Pursuant to the GNC Agreement and in reliance on the promises and covenants
16 contained in the TSA’s (TSA-Gray, TSA-Beck, TSA-Hall, TSA-Johnson and TSA Richards),
17 including, but not limited to the promises to promote Plaintiff’s products on the social media
18 accounts of Sway House and the Individual Defendants, Plaintiff produced an initial run of products
19 intended for sale and distribution through GNC.

20 29. GNC subsequently issued purchase orders and rendered payment to Plaintiff in the
21 approximate amount of \$606,065.76. This initial payment from GNC was used to cover Plaintiff’s
22 production costs for the initial run of products.

23 30. The initial run of Sway products was launched in GNC stores in January of 2022.
24 The products launch was supposed to coincide with and be supported by promotion from the
25 Individual Defendants via stories, pictures and videos posted on their social media accounts as well
26 as in-person promotional events.

27 31. The Johnson Defendants, The Hall Defendants, The Beck Defendants, the Richards
28 Defendants and the Gray Defendants breach their obligations to Plaintiff by failing to support and

1 promote the Sway products via stories, pictures and videos posted on their social media accounts as
2 well as in-person promotional events in the manner and to the extent required by their respective
3 TSA's.

4 32. As a result of Defendants' failure to perform their contractual obligations to promote
5 Plaintiff's products in violation of each TSA, GNC was unable to sell the volume of Plaintiff's
6 products that both Plaintiff and GNC reasonably anticipated. Due to the poor sales, GNC has
7 exercised its contractual right to return all unsold products to Plaintiff and Plaintiff must repay
8 approximately \$390,000.00 (the "GNC Claim").

9 **FIRST CAUSE OF ACTION**

10 **BREACH OF WRITEN CONTRACT – TALENT SERVICES AGREEMENT**

11 **(Against Defendant Blake Gray and Does 1 through 20)**

12 33. Plaintiff incorporates by reference and realleges herein each and every allegation
13 contained in Paragraphs 1 through 32, inclusive, of this Complaint.

14 34. Plaintiff has fully performed all of the terms, conditions and covenants under the
15 TSA-Gray required on its part to be performed, except those, the performance of which were
16 excused by the material breaches of Gray and Does 1-20.

17 35. From in or about March 2021 to the present, Gray has breached the TSA-Gray in
18 violation of the obligations described in Exhibit A of the TSA-Gray including by:

19 a. Failing to make Gray available for a reasonable amount of promotional
20 videos/materials, but no more than one video/commercial shoot per quarter, not to exceed one half
21 workday (4 hours);

22 b. Failing to make Gray available for a reasonable amount of press interviews
23 subject to professional availability for no more than one 4-hour junket per quarter;

24 c. Failing to use reasonable best efforts to naturally mention Plaintiff's products
25 in other press related interviews;

26 d. Failing to include one (1) shout out in a YouTube Video highlighting
27 Plaintiff's brand and products per quarter and to use reasonable best efforts to include link in
28 description of each video;

- 1 e. Failing to make Gray available to participate in fitness content creation on
2 Plaintiff's YouTube channel, but for no more than two (2) videos per quarter;
- 3 f. Failing to post at least one (1) TikToks per quarter;
- 4 g. Failing to post two (2) stories on Gray's Instagram account per quarter;
- 5 h. Failing to cause the Sway House social media account (the "Sway House
6 Account") to post three (3) stories per year;
- 7 i. Failing to cause the Sway House Account to post one (1) Plaintiff brand photo
8 per quarter; and
- 9 j. Failing to cause the Sway House Account to post one (1) video per quarter
10 regarding Plaintiff's products and/or brand as may be reasonably determined by Plaintiff.

11 36. Pursuant to Section 14 of the TSA-Gray, Gray agreed that he "will not develop,
12 advertise, promote or endorse any Competitive Products, other than [Sway's] Products".

13 37. Plaintiff is informed and believes and thereon alleges that from in or about April,
14 2022 to the present, Gray has also breached Section 14 of the TSA-Gray by using his social media
15 to actively promote the brand and products of Plaintiff's direct competitor, Xeela Fitness.

16 38. As an actual and proximate result of Gray's breach of the TSA-Gray, Plaintiff has
17 been damaged in the amount of not less than \$500,000.00 according to proof at trial.

18 39. As an actual and proximate result of Gray's wrongful conduct to promote the brand
19 and products of Plaintiff's competitor in violation of Section 14 of the TSA-Gray, Plaintiff seeks
20 disgorgement of any profits wrongfully obtained therefrom by Gray.

21 **SECOND CAUSE OF ACTION**

22 **BREACH OF WRITTEN CONTRACT – OPERATING AGREEMENT**

23 **(Against Defendant Blake Gray And Does 1 through 20)**

24 40. Plaintiff incorporates by reference and realleges herein each and every allegation
25 contained in Paragraphs 1 through 39, inclusive, of this Complaint.

26 41. Section 4.5(b) of the Operating Agreement provides that "[Blake] shall not, other
27 than for the Company and its products, use or authorize the use of [Blake]'s Identification or other
28 forms of identification or furnish such [Blake]'s services for the development, advertisement,

1 promotion, endorsement and/or sale of any Competitive Products."

2 42. Plaintiff is informed and believes and thereon alleges that from in or about April,
3 2022 to the present, Gray has also breached Section 4.5(b) of the Operating Agreement by using his
4 social media to actively promote the brand and products of Plaintiff's direct competitor, Xeela
5 Fitness.

6 43. As a direct, proximate and foreseeable of Gray's breach of the Operating Agreement,
7 Plaintiff has been damaged in the amount to be proven at trial plus attorneys' fees, costs and interest,
8 according to proof at trial.

9 44. As a direct, proximate and foreseeable of Gray's wrongful conduct to promote the
10 brand and products of Plaintiff's competitor in violation of Section 4.5(b) of the Operating
11 Agreement, Plaintiff seeks disgorgement of any profits wrongfully obtained therefrom by Gray.

12 **THIRD CAUSE OF ACTION**

13 **BREACH OF WRITEN CONTRACT – TALENT SERVICES AGREEMENT**

14 **(Against Defendants Noah Beck and Noah Beck, Inc. and Does 1 through 20)**

15 45. Plaintiff incorporates by reference and realleges herein each and every allegation
16 contained in Paragraphs 1 through 32, inclusive, of this Complaint.

17 46. Plaintiff has fully performed all of the terms, conditions and covenants under the
18 TSA-Beck required on its part to be performed, except those, the performance of which were
19 excused by the material breaches of the Beck Defendants and Does 1-20.

20 47. From in or about March 2021 to the present, the Beck Defendants have breached the
21 TSA-Beck in violation of the obligations described in Exhibit A of the TSA-Beck including by:

22 a. Failing to make Beck available for a reasonable amount of promotional
23 videos/materials, but no more than one video/commercial shoot per quarter, not to exceed one half
24 workday (4 hours);

25 b. Failing to make Beck available for a reasonable amount of press interviews
26 subject to professional availability for no more than one 4-hour junket per quarter;

27 c. Failing to use reasonable best efforts to naturally mention Plaintiff's products
28 in other press related interviews;

1 d. Failing to include one (1) shout out in a YouTube Video highlighting
2 Plaintiff's brand and products per quarter and to use reasonable best efforts to include link in
3 description of each video;

4 e. Failing to make Beck available to participate in fitness content creation on
5 Plaintiff's YouTube channel, but for no more than two (2) videos per quarter;

6 f. Failing to post at least one (1) TikToks per quarter;

7 g. Failing to post two (2) stores on Beck's Instagram account per quarter;

8 h. Failing to cause the Sway House Account to post three (3) stories per year;

9 i. Failing to cause the Sway House Account to post one (1) Plaintiff brand photo
10 per quarter; and

11 j. Failing to cause the Sway House Account to post one (1) video per quarter
12 regarding Plaintiff's products and/or brand as may be reasonably determined by Plaintiff.

13 48. As a direct, proximate and foreseeable of the Beck Defendants' breach of the TSA-
14 Beck, Plaintiff has been damaged in the amount of not less than \$500,000.00 according to proof at
15 trial.

16 **FOURTH CAUSE OF ACTION**

17 **BREACH OF WRITEN CONTRACT – TALENT SERVICES AGREEMENT**
18 **(Against Defendants Bryce Hall and Brycehallbiz LLC and Does 1 through 20)**

19 49. Plaintiff incorporates by reference and realleges herein each and every allegation
20 contained in Paragraphs 1 through 32, inclusive, of this Complaint.

21 50. Plaintiff has fully performed all of the terms, conditions and covenants under the
22 TSA-Hall required on its part to be performed, except those, the performance of which were excused
23 by the material breaches of the Hall Defendants and Does 1-20.

24 51. From in or about March 2021 to the present, the Hall Defendants have breached the
25 TSA-Hall in violation of the obligations described in Exhibit A of the TSA-Hall including by:

26 a. Failing to make Hall available for a reasonable amount of promotional
27 videos/materials, but no more than one video/commercial shoot per quarter, not to exceed one half
28 workday (4 hours);

1 the TSA-Johnson in violation of the obligations described in Exhibit A of the TSA-Johnson
2 including by:

3 a. Failing to make Johnson available for a reasonable amount of promotional
4 videos/materials, but no more than one video/commercial shoot per quarter, not to exceed one half
5 workday (4 hours);

6 b. Failing to make Johnson available for a reasonable amount of press
7 interviews subject to professional availability for no more than one 4-hour junket per quarter;

8 c. Failing to use reasonable best efforts to naturally mention Plaintiff's products
9 in other press related interviews;

10 d. Failing to include one (1) shout out in a YouTube Video highlighting
11 Plaintiff's brand and products per quarter and to use reasonable best efforts to include link in
12 description of each video;

13 e. Failing to make Johnson available to participate in fitness content creation on
14 Plaintiff's YouTube channel, but for no more than two (2) videos per quarter;

15 f. Failing to post at least one (1) TikToks per quarter;

16 g. Failing to post two (2) stores on Johnson's Instagram account per quarter;

17 h. Failing to cause the Sway House Account to post three (3) stories per year;

18 i. Failing to cause the Sway House Account to post one (1) Plaintiff brand photo
19 per quarter; and

20 j. Failing to cause the Sway House Account to post one (1) video per quarter
21 regarding Plaintiff's products and/or brand as may be reasonably determined by Plaintiff.

22 56. As a direct, proximate and foreseeable of the Johnson Defendants' breach of the
23 TSA-Johnson, Plaintiff has been damaged in the amount of not less than \$500,000.00 according to
24 proof at trial.

25 **SIXTH CAUSE OF ACTION**

26 **BREACH OF WRITTEN CONTRACT – TALENT SERVICES AGREEMENT**

27 **(Against Defendants Joshua Richards and Buddy's Hard, LLC and Does 1 through 20)**

28 57. Plaintiff incorporates by reference and realleges herein each and every allegation

1 contained in Paragraphs 1 through 32, inclusive, of this Complaint.

2 58. Plaintiff has fully performed all of the terms, conditions and covenants under the
3 TSA-Richards required on its part to be performed, except those, the performance of which were
4 excused by the material breaches of the Richards Defendants and Does 1-20.

5 59. From in or about March 2021 to the present, the Richards Defendants have breached
6 the TSA-Richards in violation of the obligations described in Exhibit A of the TSA-Richards
7 including by:

8 a. Failing to make Richards available for a reasonable amount of promotional
9 videos/materials, but no more than one video/commercial shoot per quarter, not to exceed one half
10 workday (4 hours);

11 b. Failing to make Richards available for a reasonable amount of press
12 interviews subject to professional availability for no more than one 4-hour junket per quarter;

13 c. Failing to use reasonable best efforts to naturally mention Plaintiff's products
14 in other press related interviews;

15 d. Failing to include one (1) shout out in a YouTube Video highlighting
16 Plaintiff's brand and products per quarter and to use reasonable best efforts to include link in
17 description of each video;

18 e. Failing to make Richards available to participate in fitness content creation
19 on Plaintiff's YouTube channel, but for no more than two (2) videos per quarter;

20 f. Failing to post at least one (1) TikToks per quarter;

21 g. Failing to post two (2) stores on Richards' Instagram account per quarter;

22 h. Failing to cause the Sway House Account to post three (3) stories per year;

23 i. Failing to cause the Sway House Account to post one (1) Plaintiff brand photo
24 per quarter; and

25 j. Failing to cause the Sway House Account to post one (1) video per quarter
26 regarding Plaintiff's products and/or brand as may be reasonably determined by Plaintiff.

27 60. As a direct, proximate and foreseeable of the Richards Defendants' breach of the
28 TSA-Richards, Plaintiff has been damaged in the amount of not less than \$500,000.00 according to

1 proof at trial.

2 **SEVENTH CAUSE OF ACTION**

3 **CONTRACTUAL INDEMNITY**

4 **(Against All Defendants and Does 1 through 20)**

5 61. Plaintiff incorporates by reference and realleges herein each and every allegation
6 contained in Paragraphs 1 through 60, inclusive, of this Complaint.

7 62. Plaintiff and Defendants are parties to a contractual relationship based on the TSA,
8 as set forth in Paragraphs 22 through 26 above and Exhibits 2 through 6.

9 63. Section 6.3 of each TSA provides:

10 "Each Party will at all times defend, indemnify, and hold harmless the other
11 Party, from and against any and all claims, damages, liabilities, costs and
12 expenses, (including reasonable outside attorneys' fees and associated
13 costs) arising out [of] any action or proceeding based upon a Party's breach
14 of any warranty, representation or covenant made in this Agreement."

15 64. As alleged above in Paragraphs 27 and 28, Plaintiff has sustained damages in
16 connection from the GNC Claim resulting from Defendants' failure to comply with their obligations
17 under the TSA.

18 65. The GNC Claim against Plaintiff is subject to indemnification by Defendants under
19 Section 6.3 of each TSA.

20 66. Plaintiff has requested that Defendants indemnify Plaintiff for the GNC Claim, but
21 Defendants have refused to do so inconsistent with Section 6.3 of each TSA, which constitutes a
22 breach of each TSA.

23 67. Any damages suffered by GNC was caused by Defendants' actions or omissions.

24 68. Consequently, Plaintiff is entitled to be fully indemnified and held harmless by
25 Defendants, jointly and severally, from any liabilities, losses, damages, claims, costs or expenses
26 incurred by GNC.

27 69. Plaintiff is also entitled to attorneys' fees, costs, and expenses associated with
28 defending or otherwise resolving the GNC Claim and bringing this Complaint against Defendants

1 pursuant to the terms of each TSA.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff prays for judgment against Defendants and each of them as
4 follows:

- 5 1. For compensatory damages in an amount not less than \$500,000.00;
- 6 2. For disgorgement of profits according to proof at trial;
- 7 3. For contractual indemnity according to proof at trial;
- 8 4. For pre-judgment and post-judgment interest at the legal rate;
- 9 5. For attorneys' fees and costs pursuant to contract; and
- 10 6. For any such other and further relief as the Court may deem just and proper.

11 DATED: March 10, 2023

Nevers, Palazzo, Packard,
Wildermuth & Wynner, PC

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By: /s/ John R. Bamford
Michael S. Wildermuth
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