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4 Attorney for Plaintiff, MARK GOLOB

5 **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
6 **IN AND FOR THE COUNTY OF MENDOCINO**

7
8 MARK GOLOB

9 Plaintiff,

10 and

11 SEAN KELLY, DOES 1 to 10,

12 Defendants.

Case No.: SUUK CV PO-1463543

DECLARATION OF MARK GOLOB IN
SUPPORT OF OPPOSITION TO
DEFENDANT'S SPECIAL MOTION TO
STRIKE.

Hon. Richard Henderson

Dept: E

Date: April 11, 2014

Time: 9:30 a.m.

1 I, MARK GOLOB, hereby declare:

2 1. Defendant Sean Kelly operates a website unhappyfranchisee.com on which he
3 posts various comments including the statements which are the subject on this lawsuit and
4 further operates franchisepublicity.com.

5 2. I have not sold a franchise in at least seven years and am in no way active in the
6 franchise industry. I haven't applied for any renewal to sell franchises from any state in over
7 seven years.

8 3. In 2008 Mr. Kelly first published the statement that I had a "checkered past." The
9 statement was in an interview with Jeff Marks. The interview was embedded in Mr. Kelly's
10 website in the body of his blog, and not as a headline.

11 4. In February 2011 I had my attorney write a demand letter to Mr. Sean Kelly. The
12 letter requested that he take down the defamatory statements and all information pertaining to
13 myself and my son.

14 5. On February 16, 2011 Mr. Kelly wrote my attorney back stating that he would
15 take down the statement and related materials. Attached hereto as EXHIBIT 1 is a true and
16 correct copy of Mr. Kelly's letter agreeing to take down the statement.

17 6. After that letter, Sean Kelly did in fact take down the content related to me from
18 his websites including the statements that I had a "checkered past."

19 7. I have monitored the content related to me on the internet subsequently.

20 8. In about January, 2014 Mr. Kelly posted that I had a "checkered past and history
21 of litigation in the healthclub industry" on his website. This time he took the statements that I
22 had a checkered past and a history of litigation out of the body of the article and made it a
23 headline. I was in my home in Mendocino County California when I discovered this new
24 posting.

1 9. I have been personally approached by friends, family and business indicating that
2 that they have become aware of the statements by Defendant and that they were concerned about
3 what the statements suggest.

4 10. According to the dictionary "checkered" means "marked by dubious episodes;
5 suspect in character or quality."

6 11. I have never been found liable in any civil lawsuit in my entire life.

7 12. I have never been convicted of any crime.

8 13. I have never been found guilty of any violation of law by any state agency.

9 14. Mr. Kelly's moving papers reference various civil lawsuits as support for his
10 statement that I have a checkered past with a history of litigation. These only serve to support
11 my claim that Mr. Kelly has made negligent misrepresentations about me. The truth is:

12 a. *Wulf v. Women's Workout World*

13 This case must have been filed after I left the company. I know nothing about the
14 case.

15 b. *Linda Evans Fitness v. Women's Workout*

16 This case never went to court. It was dismissed.

17 c. Desist and Refrain Order dated March 24, 2009

18 This was found quickly by the State of California to have been a mistake and the
19 Order was withdrawn shortly after. Attached hereto as EXHIBIT 2 is a true and
20 correct copy of the withdrawal.

21 d. *Rosner v. Gergley*, Case No.1 :09-cv-03730-NLH-AMD.

22 This case was dismissed with no settlement nor finding of liability.

23 e. Barntary v. Gergley, Case No. C 09-00120

24 This case was dismissed.


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f. United States Bankruptcy Court Petition, Butterfly Life, Inc., Case 11-70462

I note that I am not Butterfly Life. I am Mark Golob. This was not my
bankruptcy, and, in any event, that bankruptcy petition was dropped and no
bankruptcy ever declared by the court. A true and correct copy of the dismissal of
the petition is attached hereto as EXHIBIT 3.

I declare under penalty of perjury under that laws of the State of California that the
foregoing is true and correct.

Executed this 24 of March, 2014 at Mendocino
California.



Mark Golob

EXHIBIT 1

From: Sean Kelly [<mailto:seankelly@ideafarm.net>]

Sent: Wednesday, February 16, 2011 12:39 PM

To: shammel@astound.net

Subject: Re:

Thanks for your recent letter regarding your client Top Doc America.

However, I can find no reference on FranchisePublicity.com alleging a link between Mark Golob and your client, even at the url you provided.

Comments alleging such a link left on a franchise related post at UnhappyFranchisee.com were left by an unknown third party, and were not made by nor endorsed by the website, its writers or publisher. If you feel that defamatory statements were made, please take it up with the author of those comments. We are not responsible for the opinions of our readers.

That being said, we have taken the comments you objected to offline, and posted your statement that Mark Golob is in no way affiliated with Top Doc America.

All the best,

Sean

EXHIBIT 2

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STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF CORPORATIONS

TO: Butterfly Fitness, Inc.
Mark Golob
2405 San Ramon Valley Boulevard, Suite 200
San Ramon, California 94583

WITHDRAWAL OF DESIST AND REFRAIN ORDER
(For violations of sections 31203 and 31200 of the Corporations Code)

It is hereby ordered that the Desist and Refrain Order issued on March 24, 2009 against Butterfly Fitness, Inc and Mark Golob for violations of sections 31200 and 31203 of the Corporations Code is withdrawn. This Order shall take immediate effect.

Dated: June 11, 2009
Sacramento, California

PRESTON DuFAUCHARD
California Corporations Commissioner


By: 
ALAN S. WEINGER
Deputy Commissioner
Enforcement Division

EXHIBIT 3



The following constitutes
the order of the court. Signed December 6, 2011



Roger L. Efremsky
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re: Case Number: 11-70462-RLE
Butterfly Fitness, Inc., Chapter: 7
Debtor(s).

ORDER OF DISMISSAL

Debtor(s) having failed to comply with this Court's order dated, **October 27, 2011**, and no objections having been filed,
THIS CASE IS HEREBY DISMISSED.

****END OF ORDER****

COURT SERVICE LIST

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All Recipients

United States Bankruptcy Court
Northern District of California

In re:
Butterfly Fitness, Inc
Debtor

Case No. 11-70462-RLE
Chapter 7

CERTIFICATE OF NOTICE

District/off: 0971-4

User: cglosenge
Form ID: pdfeoc

Page 1 of 2
Total Noticed: 14

Date Rcvd: Dec 07, 2011

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Dec 09, 2011.

db +Butterfly Fitness, Inc, Litigation Advocates Group, 1990 North California Blvd. Suite 830,
Walnut Creek, CA 94596-7284
12192528 +Ali and Kelly Davidson, Khrysalis Enterprises, LLC, and BFL Incorporated,
2115 NE Highway 20, Ste. 107, Bend, OR 97701-7044
12266431 +Chic Fit, Inc, Mary Bauer, 325 North Woodlawn Avenue, Kirkwood, MO 63122-4409
12192529 Dorsey Whitney Law Firm, Seattle Washington, Seattle Washington, WA 12345
12266545 +Fitness Centers NorthWest, Darwin Chevalier, 22833 Bothell Evert Hwy, Ste 220,
Bothell, WA 98021-9369
12192530 +Henderson Consulting, LLC, 3909 E. Phillips Circle, Littleton, CO 80122-3647
12266490 +Janeene & Randy Fitzgerald, 1367 Kihei Road, #3106, Kihei, HI 96753-5802
12266491 +Khrysalis Enterprises, Inc., Kelly & Ali Davidson, P.O. Box 5308, Bend, OR 97708-5308
12192531 +Lee, Debbie, Scott and Todd Harrell, Emerald Coast Women s Fitness, LLC,
7009 North Lagoon Drive , Unit #113, Panama City, FL 32408-5907
12266425 +Seth Goodman, 108 Bakers end, Lexington, SC 29072-7136
12192532 +Superior Court of CA-Contra Costa, Martinez Civil Division, 725 Court Street,
Martinez, CA 94553-1201
12266435 The Driscoll Company, Kevin Driscoll, 473 Maritime Place, Atlantic Beach, NC 28512-6008
12192533 +Wells Fargo, Attn: Collection Servicing, 1st Floor, M, 1 Home Campus,
Des Moines, IA 50328-0001
12266436 +Women's Health Developers, Inc., Donna Barnhart, 4662 Sandhill Rd, Cabot, AK 72023-8550

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
NONE. TOTAL: 0

***** BYPASSED RECIPIENTS *****

NONE.

TOTAL: 0

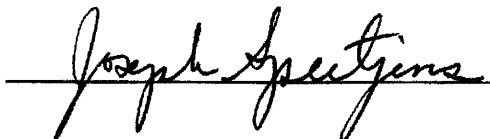
Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Dec 09, 2011

Signature:



District/off: 0971-4

User: cglosenge
Form ID: pdfec

Page 2 of 2
Total Noticed: 14

Date Rcvd: Dec 07, 2011

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on December 7, 2011 at the address(es) listed below:

Lois I. Brady loisbrady@sbcglobal.net, lbrady@ecf.epiqsystems.com
Office of the U.S. Trustee/Oak USTPRegion17.OA.ECF@usdoj.gov, ltroxas@hotmail.com
Scott D. Schwartz on behalf of Debtor Butterfly Fitness, Inc mail@rustarmenis.com

TOTAL: 3