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Attorneys for Plaintiffs  
DONNA BARNHART, et al.

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF CONTRA COSTA

DONNA BARNHART and MIKE  
BARNHART, individually and as wife and  
husband, and WOMEN'S HEALTH  
DEVELOPERS, INC., an Arkansas  
corporation; CHICFIT, INC., a Missouri  
company, MARY BAUER and JAMES  
BAUER JR., individually and as wife and  
husband; FITNESS CENTERS NW, INC., a  
Washington corporation, NW FITNESS  
CENTER NO. 1 Inc., DARWIN CHEVALIER  
and KEN UPTAIN, individually; TERRY  
CICHOCKI, an individual, and LIVIBETH,  
INC., a North Carolina corporation; KELLY  
DAVIDSON and ALI DAVIDSON,  
individually and as husband and wife, and  
KHRYSA LIS ENTERPRISES, INC., an  
Oregon corporation, and BFL,  
INCORPORATED, an Oregon corporation;  
THE DRISCOLL COMPANY, a North  
Carolina company, KAREN DRISCOLL and  
KEVIN DRISCOLL, individually and as wife  
and husband; JANEENE FITZGERALD, an  
individual, and the MONARCH GROUP, LLC,  
a Colorado limited liability company; SETH  
GOODMAN, an individual, and FIRST  
FITNESS ONE, LLC, a limited liability  
company; LEE HARRELL, an individual;  
DEBBIE HARRELL, an individual; TODD  
HARRELL, an individual; SCOTT HARRELL,  
an individual, and EMERALD COAST  
WOMEN'S FITNESS, LLC, a Florida limited

FILED

DEC 21 2009

K. TORRE, CLERK OF THE COURT  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF CONTRA COSTA

By D. WAGNER  
Deputy Clerk

CASE NO. C 09-00120

**THIRD AMENDED COMPLAINT**

Complaint filed: January 22, 2009

1 liability company; HENDERSON  
2 CONSULTING, LLC, a Colorado limited  
3 liability company, SUSIE HENDERSON and  
4 GEOFF HENDERSON, individually and as  
5 wife and husband; HAESOOK KIM, an  
6 individual, and LIVING SOLUTIONS, INC., a  
7 California corporation; CHERYL  
8 MERSCHEN, an individual; MARION  
9 NAPURANO and JOHN NAPURANO,  
10 individually and as wife and husband, and  
11 NAPURANO HEALTHY SOLUTIONS, INC.,  
12 a Texas corporation; HUBERT  
13 WASHINGTON and ROBIN WASHINGTON,  
14 individually and as husband and wife, and  
15 STRETCH FORTH, L.P, a Florida limited  
16 partnership,

17  
18 Plaintiffs,

19 v.

20 THOMAS GERGLEY and LISA BELLINI,  
21 individually and as husband and wife; MARK  
22 GOLOB and SUSAN ZAGER, individually and  
23 as husband and wife; MARK MASTROV and  
24 MINDEE MASTROV, individually and as  
25 husband and wife; TAYLOR GOLOB and  
26 JANE DOE GOLOB, individually and as  
27 husband and wife; FLORA AUBE and JOHN  
28 DOE AUBE, individually and as husband and  
wife; JANET LOSSICK and JOHN DOE  
LOSSICK, individually and as wife and  
husband; RON RANELONE and JANE DOE  
RANELONE, individually and as husband  
and wife; CHERYL HOKE and JOHN DOE  
HOKE, individually and as wife and husband;  
YOLANDA FAGEN and JOHN DOE FAGEN,  
individually and as husband and wife; PENNY  
CROOK and JOHN DOE CROOK,  
individually and as husband and wife; CATHY  
GALLI and JOHN DOE GALLI, individually  
and as wife and husband; CALLIE MILLER  
and JOHN DOE MILLER, individually and as  
wife and husband; DENNY MARSICO and  
JOHN DOE MARSICO, individually and as  
husband and wife; CARLY GOLOB and JOHN  
DOE GOLOB, individually and as husband and  
wife, and DOES 1 through 50.

Defendants.

Come now Plaintiffs, Donna Barnhart, *et al.*, by and through their undersigned counsel,  
and for causes of action against Defendants, Thomas Gergley, *et al.*, allege as follows:

1 **I. PLAINTIFFS**

2 1.1. Donna Barnhart and Mike Barnhart are wife and husband are purchasers of club  
3 and Area Representative franchises for parts of Arkansas and Oklahoma from Defendants  
4 Thomas Gergley and Mark Golob as Butterfly Fitness, Inc. (hereinafter BFL). Women's Health  
5 Developers, Inc. is an Arkansas corporation formed by Donna Barnhart for the purpose of  
6 operating the BFL franchises. (Donna Barnhart, Mike Barnhart and Women's Health  
7 Developers, Inc. collectively are hereinafter referred to as Barnhart).

8 1.2. Chicfit, Inc. is a Missouri corporation owned and operated by Mary Bauer and  
9 James Bauer Jr., wife and husband. Chicfit is a purchaser of an Area Representative franchise  
10 for parts of Missouri from Defendants Thomas Gergley and Mark Golob as BFL. Mary Bauer is  
11 the provider of a personal guaranty to BFL, and James Bauer is an intended third party  
12 beneficiary to the BFL agreements. (Chicfit, Inc., Mary Bauer and James Bauer collectively are  
13 hereinafter referred to as Bauer).

14 1.3. Fitness Centers NW, Inc. and NW Fitness Center No. 1, Inc. are Washington  
15 corporations owned and operated by Darwin Chevalier and Ken Uptain. Fitness Centers NW,  
16 Inc. is the purchaser of a BFL Area Representative franchise and NW Fitness Center No. 1, Inc.  
17 is a purchaser of a BFL club franchise from Defendants Thomas Gergley and Mark Golob as  
18 BFL. Darwin Chevalier and Ken Uptain are personal guarantors to the franchise agreements  
19 with BFL. (Fitness Centers NW, Inc., NW Fitness Center No. 1, Inc., Darwin Chevalier and Ken  
20 Uptain collectively are hereinafter referred to as Chevalier).

21 1.4. Terry Cichocki is an individual and purchaser of Area Representative franchises  
22 for parts of North Carolina from Defendants Thomas Gergley and Mark Golob as BFL.  
23 Livibeth, Inc. is a North Carolina corporation formed by Cichocki for the purpose of operating  
24 her franchises. (Terry Cichocki and Livibeth, Inc. collectively are hereinafter referred to as  
25 Cichocki).

26 1.5. Kelly Davidson and Ali Davidson are husband and wife, and together are  
27 purchasers of an Area Representative franchise and a club franchise in Oregon and Washington  
28 from Defendants Thomas Gergley and Mark Golob as BFL. Khrysalis Enterprises, Inc. and BFL

1 Incorporated are Oregon corporations formed by Davidson for the purpose of operating their  
2 BFL franchises. (Kelly and Ali Davidson, and Khrysalis Enterprises Inc. and BFL Incorporated  
3 collectively are hereinafter referred to as Davidson).

4 1.6. The Driscoll Company is a North Carolina company owned and operated by  
5 Karen Driscoll and Kevin Driscoll, wife and husband. The Driscoll Company is a purchaser of  
6 an Area Representative franchise for parts of North Carolina from Defendants Thomas Gergley  
7 and Mark Golob as BFL, and Karen Driscoll and Kevin Driscoll are personal guarantors to BFL  
8 on behalf of the Driscoll Company. (The Driscoll Company, Karen Driscoll and Kevin Driscoll  
9 collectively are hereinafter referred to as Driscoll).

10 1.7. Janeene Fitzgerald is an individual and purchaser of an Area Representative  
11 franchise for parts of Colorado from Defendants Thomas Gergley and Mark Golob as BFL. The  
12 Monarch Group, LLC is a Colorado limited liability company formed by Fitzgerald for the  
13 purpose of operating her BFL franchise. (Janeene Fitzgerald and the Monarch Group, LLC  
14 collectively hereinafter are referred to as Fitzgerald).

15 1.8. Seth Goodman is an individual and purchaser of an Area Representative franchise  
16 for parts of South Carolina from Defendants Thomas Gergley and Mark Golob as BFL. First  
17 Fitness One, LLC is a South Carolina limited liability company formed by Goodman for the  
18 purpose of operating the BFL franchise. (Seth Goodman and First Fitness One, LLC collectively  
19 are hereinafter referred to as Goodman).

20 1.9. Lee Harrell, Debbie Harrell, Todd Harrell and Scott Harrell are individuals and  
21 purchasers of Area Representative franchises for parts of Florida from Defendants Thomas  
22 Gergley and Mark Golob as BFL. Emerald Coast Women's Fitness, LLC is a Florida limited  
23 liability company formed by Harrell for the purpose of operating the BFL franchise. (Lee  
24 Harrell, Debbie Harrell, Todd Harrell and Scott Harrell, and Emerald Coast Women's Fitness,  
25 LLC collectively are hereinafter referred to as Harrell).

26 1.10. Henderson Consulting, LLC is a Colorado limited liability company owned and  
27 operated by Susie Henderson and Geoff Henderson, wife and husband. Henderson Consulting,  
28 LLC is a purchaser of an Area Representative franchise for parts of Colorado from Defendants

1 Thomas Gergley and Mark Golob as BFL, and Susie Henderson and Geoff Henderson are  
2 personal guarantors to BFL on behalf of Henderson Consulting, LLC. (Henderson Consulting,  
3 LLC, Susie Henderson and Geoff Henderson collectively are hereinafter referred to as  
4 Henderson).

5 1.11. Haesook Kim is an individual and purchaser of Area Representative franchises for  
6 parts of California from Defendants Thomas Gergley and Mark Golob as BFL. Living Solutions,  
7 Inc. is a California corporation formed by Kim for the purpose of operating the BFL franchises.  
8 (Haesook Kim and Living Solutions, Inc. collectively are hereinafter referred to as Kim).

9 1.12. Cheryl Merschen (hereinafter referred to as Merschen) is an individual and  
10 purchaser of an Area Representative franchise for parts of Florida and Georgia from Defendants  
11 Thomas Gergley and Mark Golob as BFL.

12 1.13. Marion Napurano and John Napurano are wife and husband and purchasers of an  
13 Area Representative franchise for parts of Texas from Defendants Thomas Gergley and Mark  
14 Golob as BFL. Napurano Healthy Solutions, Inc. is a Texas corporation formed by Napurano for  
15 the purpose of operating the BFL franchise. (Marion and John Napurano and Napurano Healthy  
16 Solutions, Inc. collectively are hereinafter referred to as Napurano).

17 1.14. Hubert Washington and Robin Washington are husband and wife and purchasers  
18 of an Area Representative franchise for parts of Florida from Defendants Thomas Gergley and  
19 Mark Golob as BFL.

20 1.15. Stretch Forth, LP is a Florida limited partnership formed by Washington for the  
21 purpose of operating their BFL franchise. (Hubert and Robin Washington and Stretch Forth, LP  
22 collectively are hereinafter referred to as Washington).

## 23 **II. DEFENDANTS**

24 2.1. Thomas Gergley and Lisa Bellini are husband and wife, constituting a marital  
25 community under the laws of the State of California, and residents of San Ramon, Contra Costa  
26 County, California. Thomas Gergley is a founding shareholder of BFL, doing business as BFL  
27 in San Ramon, Contra Costa County, California, and at all times material hereto served as an  
28 officer and/or Chairman and promoter. At all times material hereto, Lisa Bellini was Executive

1 Director of Nutritional Services for BFL. All acts and omissions of Thomas Gergley and/or Lisa  
2 Bellini alleged herein were performed both individually and on behalf of their marital  
3 community.

4 2.2. Mark Golob and Susan Zager are husband and wife, constituting a marital  
5 community under the laws of the State of California, and residents of San Ramon, Contra Costa  
6 County, California. Mark Golob is a founding shareholder of BFL, doing business as BFL in  
7 San Ramon, Contra Costa County, California, and at all times material hereto served as its  
8 President and/or CEO and promoter. At all material times hereto, Susan Zager was Director of  
9 Marketing for BFL. All acts and omissions of Mark Golob and Susan Zager alleged herein were  
10 performed both individually and on behalf of their marital community.

11 2.3. Mark Mastrov and Mindee Mastrov are husband and wife, constituting a marital  
12 community under the laws of the State of California. Mark Mastrov is a founding shareholder  
13 and at material times a Chairman and/or Director of BFL, doing business as BFL in San Ramon,  
14 Contra Costa County, California. All acts and omissions of Mark Mastrov alleged herein were  
15 performed both individually and on behalf of and benefit to his marital community.

16 2.4. Taylor Golob and Jane Doe Golob, if she exists, are husband and wife,  
17 constituting a marital community under the laws of the State of California, and residents of San  
18 Ramon, Contra Costa County, California. At all times material hereto Taylor Golob was a  
19 Franchise Sales Executive and/or Vice President of Business Development and Interactions for  
20 BFL, doing business as BFL in Contra Costa County, California. All acts and omissions of  
21 Taylor Golob alleged herein were performed both individually and on behalf of his marital  
22 community.

23 2.5. Flora Aube and John Doe Aube, if he exists, are wife and husband, constituting a  
24 marital community under the laws of the State of California. At all times material hereto Flora  
25 Aube was a Franchise Sales Executive for BFL, doing business as BFL in Contra Costa County,  
26 California. All acts and omissions of Flora Aube alleged herein were performed both  
27 individually and on behalf of her marital community.

28 2.6. Janet Lossick and John Doe Lossick, if he exists, are wife and husband,

1 constituting a marital community under the laws of the State of California. At all times material  
2 hereto Janet Lossick was a Franchise Service/Sales Executive for BFL, doing business as BFL in  
3 Contra Costa County, California. All acts and omissions of Janet Lossick alleged herein were  
4 performed both individually and on behalf of her marital community.

5 2.7. Ron Ranellone and Jane Doe Ranellone, if she exists, are husband and wife,  
6 constituting a marital community under the laws of the State of California. At all times material  
7 hereto Ron Ranellone was a Franchise Sales Executive for BFL, doing business as BFL in  
8 Contra Costa County, California. All acts and omissions of Ron Ranellone alleged herein were  
9 performed both individually and on behalf of his marital community.

10 2.8. Cheryl Hoke and John Doe Hoke, if he exists, are wife and husband, constituting  
11 a marital community under the laws of the State of California. At all times material hereto  
12 Cheryl Hoke was a Franchise Sales Counselor for BFL, doing business as BFL in Contra Costa  
13 County, California. All acts and omissions of Cheryl Hoke alleged herein were performed both  
14 individually and on behalf of her marital community.

15 2.9. Yolanda Fagen and John Doe Fagen, if he exists, are wife and husband,  
16 constituting a marital community under the laws of the State of California. At all times material  
17 hereto Yolanda Fagen was a Franchise Sales Executive for BFL, doing business as BFL in  
18 Contra Costa, California. All acts and omissions of Yolanda Fagen alleged herein were  
19 performed both individually and on behalf of her marital community.

20 2.10. Penny Crook and John Doe Crook, if he exists, are wife and husband, constituting  
21 a marital community under the laws of the state of California. At all times material hereto Penny  
22 Crook was a Franchise Sales Executive for BFL, doing business as BFL in Contra Costa County,  
23 California. All acts and omissions of Penny Crook alleged herein were performed both  
24 individually and on behalf her marital community.

25 2.11. Cathy Galli and John Doe Galli, if he exists, are wife and husband, constituting a  
26 marital community under the laws of the State of California. At all times material hereto Cathy  
27 Galli was a Franchise Sales Executive for BFL, doing business as BFL in Contra Costa County,  
28 California. All acts and omissions of Cathy Galli alleged herein were performed both

1 individually and on behalf of her marital community.

2 2.12. Callie Miller and John Doe Miller, if he exists, are wife and husband, constituting  
3 a marital community under the laws of the State of California. At all times material hereto Callie  
4 Miller was a Franchise Sales Executive for BFL, doing business as BFL in Contra Costa County,  
5 California. All acts and omissions of Callie Miller alleged herein were performed both  
6 individually and on behalf of her marital community.

7 2.13. Denny Marsico and John Doe Marsico, if he exists, are wife and husband,  
8 constituting a marital community under the laws of the State of California. At all times material  
9 hereto Denny Marsico was Director of Fitness Education for BFL, doing business as BFL in  
10 Contra Costa County, California. All acts and omissions of Denny Marsico alleged herein were  
11 performed both individually and on behalf of her marital community.

12 2.14. Carly Golob and John Doe Golob, if he exists, are wife and husband, constituting  
13 a marital community under the laws of the State of California, and residents of San Ramon,  
14 California. At all times material hereto Carly Golob was Director of Corporate Marketing for  
15 BFL, doing business as BFL in Contra Costa County, California. All acts and omissions of  
16 Carly Golob alleged herein were performed both individually and on behalf of her marital  
17 community.

18 2.15. Plaintiffs are ignorant of the true names and capacities of the Defendants sued  
19 herein as Does 1 through 50, inclusive, and therefore sue these Doe Defendants by such fictitious  
20 names. Plaintiffs will amend this Complaint to allege their true names and capacities when  
21 ascertained. Plaintiffs are informed and believe and thereupon allege that each Defendant  
22 designated as a Doe is responsible in some manner for the acts and omissions alleged herein and  
23 is liable therefore. Plaintiffs are informed and believe, and thereon allege, that at all times herein  
24 Defendants, and each of them, were the agents, servants, and employees of each of the remaining  
25 Defendants and acted within the scope and course of such agency and employment.

26 **III. VENUE AND JURISDICTION**

27 3.1. Jurisdiction and Venue is appropriate in the Superior Court of Contra Costa  
28 County where Defendants' reside and/or did business as BFL.



1 **IV. COMMON FACTS**

2 4.1. Plaintiffs Barnhart *et al.* repeat and incorporate by reference the allegations set  
3 forth in paragraphs 1.1 through 3.1 above.

4 4.2. On or about April 18, 2003, Thomas Gergley, Mark Golob and Mark Mastrov  
5 incorporated Butterfly Fitness Inc. doing business as BFL in San Ramon, Contra Costa County,  
6 California, to own and develop the franchise business of fitness clubs for women only.

7 4.3. At its formation, BFL was insufficiently capitalized in such a way that the  
8 corporation was likely to have no sufficient assets to meet its liabilities for the acts and omissions  
9 of Thomas Gergley and Mark Golob in the operation of BFL's business.

10 4.4. At all material times, Thomas Gergley, Mark Golob, and Mark Mastrov served as  
11 principal executive officers and/or directors of BFL. All services of Thomas Gergley, Mark  
12 Golob and Mark Mastrov were performed individually and for the benefit of their marital  
13 communities.

14 4.5. At all material times, Thomas Gergley, Mark Golob, Flora Aube, Janet Lossick,  
15 Ron Rannelone, Taylor Golob, Yolanda Fagen, and Cathy Galli offered and sold BFL Area  
16 Representative franchises and BFL Center (or club) franchises to plaintiffs.

17 4.6. Pursuant to the offer and sale of BFL Area Representative and/or Center  
18 franchises to Plaintiffs, Defendants Thomas Gergley and Mark Golob materially participated in  
19 the creation of BFL Uniform Franchise Offering Circulars (UFOC) and the filing of those  
20 circulars with the Corporations Commissioner of the State of California. These circulars,  
21 provided to plaintiffs by Thomas Gergley and Mark Golob, contain numerous statements of  
22 material fact that are untrue, including but not limited to the following:

23 a. That Butterfly does not have any predecessors, when many of the  
24 products, services, and employees of BFL were regurgitated from WWLWC;

25 b. That "Linda Evans Fitness Centers" (LEFC) is a d/b/a of Women's  
26 Workout and Weight-Loss Centers, Inc. (WWLWC), when LEFC was a separate corporation;

27 c. That all WWLWC centers were sold or converted into BFL Centers, when  
28 some WWLWC centers were closed;

1 d. That BFL grants franchises to operate BFL Centers to qualified persons to  
2 own and operate fitness centers, when BFL did not investigate franchise purchasers or ask them  
3 to demonstrate their financial strength to make a BFL franchise successful;

4 e. That BFL Centers will offer nutritional and weight loss supplements.  
5 when BFL did not;

6 f. That BFL sales are not seasonal, when the sales of BFL memberships  
7 were consistent with the historically seasonal fitness industry;

8 g. That franchise BFL Centers may have to compete with other company-  
9 owned BFL Centers, when BFL rejected company-owned centers;

10 h. That BFL will use monthly franchise advertising fees to coordinate  
11 national advertising, when BFL did not conduct national advertising;

12 i. That BFL does not derive revenue or material consideration from the sale  
13 to franchisees of inventory or other required purchases, when BFL received "kick backs" on at  
14 least equipment;

15 j. That the typical length of time between signing a franchise agreement and  
16 opening has been 4 months, when most clubs took longer;

17 k. That typical time to open a BFL Center after negotiations for the site have  
18 been finalized is three to six months, when most clubs took longer;

19 l. That an investment of \$100,000, \$110,240 or \$138,658 would get a club to  
20 opening, when most clubs were spending more;

21 m. That BFL will spend at least 75% of franchisee advertising fee payments  
22 on national or local advertising or other market programs designed to promote the services of the  
23 franchises to the public, when BFL was not;

24 n. That none of the franchisee advertising payments is used for advertising  
25 that is principally a solicitation for the sale of franchises, when BFL was spending franchisee  
26 advertising fees principally to promote the sale of franchises;

27 o. That BFL would provide Area Representatives with two weeks of training  
28 in the operation of the area representative business, when BFL did not;

1 p. That BFL would conduct local and national promotions of BFL services.  
2 when BFL did not.

3 4.7. Pursuant to the offer and sale of BFL Area Representative and/or Center  
4 franchises to Plaintiffs, the BFL Uniform Franchise Offering Circulars (UFOC) created and filed  
5 with the Corporations Commissioner of the State of California, and provided to Plaintiffs by  
6 Defendants Thomas Gergley and Mark Golob, omit material facts required to be disclosed or  
7 required to make the statements made, in the light of the circumstances under which they were  
8 made, not misleading, including but not limited to the following:

9 a. That WWLFC is a predecessor, the length of time it conducted business,  
10 and its principal business address;

11 b. That Linda Evans Fitness Centers, Inc. is a predecessor, the length of time  
12 it conducted business, and its principal business address;

13 c. That Butterfly Life Enterprises, Inc. is an affiliate, the length of time it  
14 conducted business, and its principal business address;

15 d. That Thomas Gergley and Mark Golob owned, operated and were officers  
16 of LEFC;

17 e. That many of BFL's employees worked for LEFC;

18 f. That Lisa Bellini is Thomas Gergley's wife;

19 g. That WWLFC and LEFC failed, ceased business and were dissolved;

20 h. That original BFL President Bruce Fabel no longer was with BFL and  
21 why;

22 i. That original BFL Chief Financial Officer William Brock Salmons no  
23 longer was with BFL and why;

24 j. That most if not all of the work product of Susan Zager, Lisa Bellini, and  
25 Denny Marsico for which BFL paid and would continue to pay was previously created and/or  
26 produced for WWLFC, LEFC, and/or 24 Hour Fitness.

27 k. That the Orange County District Attorney investigated LEFC operated by  
28 Thomas Gergley and Mark Golob, and LEFC paid a substantial penalty;

1 l. That Linda Evans sued WWLWC, LEFC, Thomas Gergley and Lisa  
2 (Bellini) Gergley, and Mark Golob and Susan (Zager) Golob, resulting in a settlement;

3 m. That Daniel J. Popovich sued WWLWC, Thomas Gergley and Mark  
4 Golob;

5 n. That Simon Levi sued WWLWC, LEFC, and Mark Golob;

6 o. That Chairman and/or Director Mark Mastrov no longer was with BFL  
7 and subject to a non-compete agreement prohibiting his participation with BFL for some  
8 undisclosed period of time;

9 p. That franchisee Sharon Simon is Mark Mastrov's sister and, upon BFL's  
10 termination of her franchise, BFL refunded some or all of her investment;

11 q. A list of terminated or closed franchises (Exhibit H);

12 r. Any explanation or reasons for BFL terminating franchises;

13 s. That very few or no persons who purchased multiple franchises were ever  
14 able to take a second franchise to opening;

15 t. That some Area Representative franchises were sold at different prices.

16 4.8. In sales seminars to prospective franchisees on behalf of plaintiffs throughout  
17 2007 and into 2008, and in UFOCs through June 2008, Defendants Thomas Gergley, Mark  
18 Golob, Flora Aube, Janet Lossick, Taylor Golob, Yolanda Fagen, Penny Crook and Cathy Galli  
19 repeated and reinforced the untrue material facts and omissions alleged in paragraphs 4.6 and 4.7  
20 above.

21 4.9. Prior to purchasing and beyond, Plaintiffs did not have access to the true  
22 information of BFL's advertising, sales, financial analyses, WWLWC and LEFC products and  
23 services re-packaged as BFL, franchise development timelines, franchise performance figures,  
24 litigation, or officer turnover, and plaintiffs reasonably could not have discovered the true  
25 information through investigation.

26 4.10. At all material times, Defendants Thomas Gergley, Mark Golob, Flora Aube,  
27 Janet Lossick, Taylor Golob, Yolanda Fagen, Penny Crook and Cathy Galli withheld and  
28 continue to withhold from plaintiffs the true information regarding BFL clubs and their

1 performance.

2 4.11. At all material times, Thomas Gergley, Lisa Bellini, Mark Golob, Susan Zager,  
3 withheld and continue to withhold from plaintiffs the true facts regarding WWLC and LEFC.

4 4.12. Only in February or March 2008 when Thomas Gergley and Mark Golob  
5 approached some plaintiffs with an Amendment to their Area Representative agreements did  
6 plaintiffs have reason to suspect that the representations of Defendants Thomas Gergley, Mark  
7 Golob, Flora Aube, Janet Lossick, Taylor Golob, Yolanda Fagen, Penny Crook and Cathy Galli  
8 alleged herein may not have been true and that Defendants Thomas Gergley, Mark Golob, Flora  
9 Aube, Janet Lossick, Taylor Golob, Yolanda Fagen, Penny Crook and Cathy Galli concealed  
10 material information about BFL from plaintiffs.

11 4.13. In June 2008, when BFL refused to update Financial Disclosure Documents  
12 required for plaintiffs to perform under their Area Representative agreements, plaintiffs  
13 discovered that the financial support of BFL represented by Defendants Thomas Gergley and  
14 Mark Golob was not true and that money was a problem.

15 4.14. In July 2008, plaintiffs' investigation of BFL and Defendants revealed for the first  
16 time that the representations of Defendants Thomas Gergley, Mark Golob, Flora Aube, Janet  
17 Lossick, Taylor Golob, Yolanda Fagen, Penny Crook and Cathy Galli alleged herein were false  
18 and that Defendants Thomas Gergley, Mark Golob, Flora Aube, Janet Lossick, Taylor Golob,  
19 Yolanda Fagen, and Penny Crook Cathy Galli had concealed from plaintiffs the material facts  
20 about BFL and themselves alleged herein.

21 4.15. The untrue or misleading statements and/or omissions of BFL UFOCs detailed  
22 above were oppressive, fraudulent and malicious to plaintiffs.

23 4.16. Defendants Thomas Gergley and Mark Golob engaged in self-dealing loans to  
24 themselves using BFL funds obtained from plaintiffs' and other franchisees' fees.

25 4.17. At all material times Thomas Gergley, Lisa Bellini (Gergley), Mark Golob, Susan  
26 Zager (Golob), Taylor Golob, Denny Marsico and Carly Golob were employed by and received  
27 compensation from BFL.

28 4.18. Defendants Thomas Gergley, Lisa Bellini (Gergley), Mark Golob, Susan Zager

(Golob), and Denny Marsico and each of them used plaintiffs' and other franchisees' funds to take unreasonable salaries and expenses for regurgitating for BFL work product previously produced for WWLFC, LEFC and/or 24 Hour Fitness.

4.19. Defendants Thomas Gergley, Mark Golob and Mark Mastrov, as officers of BFL, used the plaintiffs' and other franchisees' funds to pay unreasonable salaries to Golob's children. Defendants Taylor Golob and Carly Golob, for positions and work for which they were not appropriately qualified.

4.20. The payment of plaintiffs' and other franchisees' fees to individual Defendants Thomas Gergley, Lisa Bellini (Gergley), Mark Golob, Susan Zager (Golob), Denny Marsico, Taylor Golob and Carly Golob through unreasonable salaries and expenses was oppressive, fraudulent and malicious.

4.21. Thomas Gergley and Mark Golob personally conducted and participated in the improper operations and undercapitalization of BFL and should be held "alter egos" of BFL in order to prevent injustice to Plaintiffs.

4.22. Following the unlawful conduct alleged in this 3rd Amended Complaint, Defendants Thomas Gergley and Lisa Bellini (Gergley) transferred substantial individual assets into a trust.

4.23. Defendants Thomas Gergley's and Lisa Bellini's transfer of substantial individual assets into a trust was an oppressive, fraudulent and malicious attempt to deny plaintiffs' recovery for Defendants' unlawful conduct alleged herein.

4.24. Following the unlawful conduct alleged in this 3rd Amended Complaint, Defendants Mark Golob and Susan Zager (Golob) transferred substantial individual assets into a trust.

4.25. Defendants Mark Golob's and Susan Zager's transfer of substantial individual assets into a trust was an oppressive, fraudulent and malicious attempt to deny plaintiffs' recovery for Defendants' unlawful conduct alleged herein.

## **V. BARNHART**

5.1. Plaintiffs Barnhart repeat and incorporate by reference the allegations set forth in

1 paragraphs 1.1 through 4.25 above.

2 5.2. Plaintiffs Donna Barnhart and Mike Barnhart purchased from Defendants three  
3 BFL club franchises for \$19,500 each (\$58,500 total) in August 2005. These club franchises  
4 later were converted into the purchase to a BFL Area Representative franchise for the states of  
5 Arkansas and Oklahoma from Defendants for an additional \$191,500 on or about December 27,  
6 2005. Donna Barnhart executed a personal guaranty to the Area Representative agreement with  
7 BFL and Mike Barnhart executed a spousal consent.

8 5.3. Prior to purchasing the BFL franchises, Barnhart received from Defendants  
9 Thomas Gergley and Mark Golob a BFL UFOC containing many or all of the untrue or  
10 misleading statements or omissions detailed in paragraphs 4.6 and 4.7 above.

11 5.4. Defendants Thomas Gergley and Taylor Golob also made the following untrue or  
12 misleading representations of existing fact:

13 a. On or about August, 2005 in San Ramon, California, Thomas Gergley and  
14 Taylor Golob represented to Barnhart that Mark Golob ran several successful health clubs in the  
15 past where he had helped countless women realize their weight loss goals. Actually, WWLWC  
16 and LEFC run by Mark Golob were not successful.

17 b. On or about August, 2005 in San Ramon, California, Thomas Gergley and  
18 Taylor Golob represented to Barnhart that Thomas Gergley helped to design the state-of-the-art  
19 equipment exclusive to BFL using 200 plus women, including his own mother to fit a woman's  
20 body. Actually, BFL equipment was a standard design by the manufacturer.

21 c. On or about August, 2005 in San Ramon, California, Thomas Gergley and  
22 Taylor Golob represented to Barnhart that Susan Zagar put together a comprehensive marketing  
23 plan exclusively for BFL up to a year in advance. Actually, BFL never produced a  
24 comprehensive marketing plan.

25 d. On or about August, 2005 in San Ramon, California, Thomas Gergley and  
26 Taylor Golob represented to Barnhart that the entire BFL staff was there to educate and support  
27 franchisees every step of the way with their centers. Actually, BFL staff provided only  
28 platitudes and little support.

1 e. On or about August, 2005 in San Ramon, California, Thomas Gergley and  
2 Taylor Golob represented that the clubs owners would have access to a medical advisor, Regina  
3 Weidman, who could talk about women's issues. Actually, Dr. Weidman never provided  
4 medical advice and was not associated with BFL.

5 f. On or about August, 2005 in San Ramon, California, Thomas Gergley and  
6 Taylor Golob represented to Barnhart that registered dietician and nutritionist Lisa Bellini was a  
7 key contributor to BFL's exclusive signature Weight Loss Express Program. Actually, the diet  
8 and nutrition information contributed by Lisa Bellini was not exclusive to BFL, but regurgitated  
9 WWL.C product.

10 g. On or about August, 2005 in San Ramon, California, Thomas Gergley and  
11 Taylor Golob represented to Barnhart that over 50 different fitness classes and lectures on DVD  
12 format were exclusive to BFL. Actually, BFL did not have that many classes and lectures on  
13 DVD.

14 h. On or about August, 2005 in San Ramon, California, Thomas Gergley and  
15 Taylor Golob represented to Barnhart that BFL provided quarterly updates at no extra cost to the  
16 club owners for classes. Actually, BFL did not update its materials quarterly.

17 i. On or about August, 2005 in San Ramon, California, Thomas Gergley and  
18 Taylor Golob represented to Barnhart that BFL would be branded by national advertising  
19 targeting Ellen, Martha Stewart Living, The Today Show, Live with Regis and Kelly and Oprah.  
20 Actually, BFL never had national advertising connected to these programs.

21 j. On or about August, 2005 in San Ramon, California, Thomas Gergley and  
22 Taylor Golob represented to Barnhart that the ½ hour television show "Take It Off America"  
23 would air on NBC, CBS, ABC, Lifetime or Oxygen. Actually, the show never aired.

24 k. On or about August, 2005 in San Ramon, California, Thomas Gergley and  
25 Taylor Golob represented to Barnhart that BFL would have public relations and marketing  
26 through magazines, newspaper and features in multiple print mediums, and would negotiate low  
27 rates for Barnhart. BFL would also use radio, external and internal promotions, press releases,  
28 direct mail, a website, and DVD's. Actually, BFL's public relations and marketing didn't



1 promote the clubs, but the franchises, rarely appeared on radio, in magazines, newspapers or  
2 other print mediums, and Barnhart had to pay for her own local advertising at standard rates.

3 l. On or about August, 2005 in San Ramon, California, Thomas Gergley and  
4 Taylor Golob represented to Barnhart that BFL would provide an 800 telephone number in  
5 advertising that would connect directly to each club. No 800 number ever directly connected to  
6 any club.

7 m. On or about August, 2005 in San Ramon, California, Thomas Gergley and  
8 Taylor Golob represented to Barnhart that BFL had sold locations internationally, including over  
9 1,000 sold to Japan, in addition to more coming. Actually, there were few clubs in Japan.

10 n. On or about September, 2005 via telephone, Mark Golob represented to  
11 Barnhart that Barnhart had the best Area Representative deal with two states, Arkansas and  
12 Oklahoma, and that after Barnhart the price would be \$250,000 for 50 zip codes. Actually,  
13 Barnhart's "deal" was not substantially different that other Area Representatives.

14 5.5. Defendants Thomas Gergley, Mark Golob and Taylor Golob knew that their  
15 statements, omissions and/or representations to Barnhart in paragraphs 5.3 and 5.4(a) through (n)  
16 above were false, misleading, or recklessly disregarded the truth.

17 5.6. Defendants Thomas Gergley, Mark Golob and Taylor Golob intended that  
18 Barnhart to rely upon their untrue or misleading statements, omissions and/or representations in  
19 paragraphs 5.3 and 5.4(a) through (n) above to induce Barnhart to purchase BFL franchises.

20 5.7. When Barnhart purchased the franchises, BFL had exclusive control of the true  
21 information and Barnhart did not know and reasonably could not have discovered with  
22 investigation that the statements, omissions and/or representations of Defendants Thomas  
23 Gergley, Mark Golob and Taylor Golob in paragraphs 5.3 and 5.4(a) through (n) above were  
24 untrue or misleading.

25 5.8. When Barnhart purchased the franchises, Barnhart justifiably relied upon the  
26 untrue or misleading statements, omissions and/or representations of Defendants Thomas  
27 Gergley, Mark Golob and Taylor Golob in paragraphs 5.3 and 5.4(a) through (n) above.

28 5.9. Soon after purchasing their BFL franchises, Donna and Mike Barnhart formed

1 Women's Health Developers, Inc. to operate their BFL franchises. Defendants knew or had  
2 reason to know that the Barnharts would form a corporation to operate their franchises and that  
3 said corporation also would suffer the consequences of Defendants' wrongful acts.

4 5.10. As a direct and proximate result of the untrue or misleading statements, omissions  
5 and/or representations of Defendants Thomas Gergley, Mark Golob and Taylor Golob in  
6 paragraphs 5.3 and 5.4(a) through (n) above, Barnhart and Women's Health Developers, Inc.  
7 suffered damages and continue to suffer damages.

8 **VI. BAUER**

9 6.1. Plaintiffs Bauer repeat and incorporate by reference the allegations set forth in  
10 paragraphs 1.1 through 4.25 above.

11 6.2. Chicfit, Inc., by and through Mary Bauer, purchased a BFL single club franchise  
12 from Defendants for \$29,500 on or about October 8, 2006. Chicfit, Inc., by and through Mary  
13 Bauer, subsequently purchased a BFL Area Representative franchise from Defendants on or  
14 about November 6, 2006 for \$295,500 (\$325,000 less \$29,500 paid in October 2006). Pursuant  
15 to the franchise agreements, Mary Bauer executed a personal guarantee to BFL. James Bauer  
16 was an intended third party beneficiary of the BFL franchise agreements and BFL required  
17 James Bauer to execute personally disclaimers and acknowledgements of the agreements.

18 6.3. Prior to purchasing the BFL franchises, Bauer received from Defendants Thomas  
19 Gergley and Mark Golob a BFL UFOC containing many or all of the untrue or misleading  
20 statements or omissions detailed in paragraphs 4.6 and 4.7 above.

21 6.4. Defendants Thomas Gergley and Yolanda Fagen also made the following untrue  
22 or misleading representations of existing fact:

23 a. On or about February 24, 2006 in San Ramon, California, Yolanda Fagen  
24 represented to Bauer that Mark Mastrov had sold 24 Hour Fitness for \$1.6 Billion, was one of  
25 BFL's founders, and would continue to fund BFL behind the scenes. Actually, Mastrov did not  
26 continue to fund BFL.

27 b. On or about February 24, 2006 in San Ramon, California, Yolanda Fagen  
28 showed Bauer the ½ hour "Take It Off" television program and represented that it would soon be

1 shown on a national television network under the name "The BFL Show." Actually, the show  
2 never aired.

3 c. On or about February 24, 2006 in San Ramon, California, Thomas  
4 Gergley represented to Bauer that four doctors from Japan were purchasing the rights to the  
5 whole country after researching BFL versus other gyms. Actually, there were few clubs in  
6 Japan.

7 d. On or about February 24, 2006 in San Ramon, California, Thomas  
8 Gergley and Yolanda Fagen represented to Bauer that BFL was would soon be in England,  
9 Ireland, the Bahamas and Australia. Actually, BFL was never in some of these places.

10 e. On or about February 24, 2006 in San Ramon, California, Thomas  
11 Gergley and Yolanda Fagen represented to Bauer that BFL advertised on TV shows such as  
12 Oprah, Today, Good Morning America and shows that target women. Actually, BFL never had  
13 national advertising related to these shows.

14 f. On or about February 24, 2006 in San Ramon, California, Thomas  
15 Gergley and Yolanda Fagen represented to Bauer that BFL Centers were "plug and play," and  
16 could be run by one person, thereby keeping over head down. Actually, Bauer never knew of  
17 any club that was run by only one person.

18 g. On or about February 24, 2006 in San Ramon, California, Yolanda Fagen  
19 represented to Bauer that there were BFL clubs with over 500 members. Actually, Bauer never  
20 learned of any BFL clubs with more than 500 members.

21 h. On or about February 24, 2006 in San Ramon, California, Yolanda Fagen  
22 represented to Bauer that Thomas Gergley had a degree in exercise physiology and he had  
23 personally designed exclusively for BFL the equipment used in the clubs. Fagen represented to  
24 Bauer that Thomas Gergley actually took over 200 women into a room to test the equipment to  
25 make sure it worked for all shapes and sizes. Actually, BFL equipment was a standard design by  
26 the manufacturer.

27 i. On February 24, 2006 in San Ramon, California, Yolanda Fagen  
28 represented to Bauer that a celebrity spokesperson was in the works, namely Joan London.

1 Actually, Joan London never was involved with BFL.

2 j. On February 24, 2006 in San Ramon, California, Yolanda Fagen and  
3 Thomas Gergley represented to Bauer that BFL spends more marketing dollars when it opens a  
4 state, so the best time for an Area Representative to buy in is when a state is opening; by opening  
5 the state, an Area Representative would get the added advantage of BFL's focus on the area.  
6 Actually, BFL didn't give Bauer any greater marketing dollars or focus than other Area  
7 Representatives.

8 k. On February 24, 2006 in San Ramon, California, Yolanda Fagen and  
9 Thomas Gergley represented to Bauer that BFL Center franchises soon will be selling for  
10 \$39,500. BFL didn't sell franchises for this price.

11 l. On or about September, 2006 by telephone, Yolanda Fagen represented to  
12 Bauer that the ½ hour BFL television show was being picked up – they are just deciding on  
13 which networks and which host – and the price of both the franchise and the area representative  
14 territory will be increasing. Ms. Fagen told Bauer she was in a meeting with Thomas Gergley  
15 and Mark Golob where this was being discussed. She said that she wanted to make Bauer aware  
16 because once the price changes were in the UFOC that is the price, and it didn't matter that she  
17 had been talking with Bauer about earlier terms. Fagen said that “until we have a signed  
18 agreement, any change applies to everyone across the board.” Actually, the show never aired.

19 m. On or about October, 2006 in a telephone conversation, Thomas Gergley  
20 represented to Bauer that her territory should be sold out in the first 3 to 5 year period. Actually,  
21 few if any territories had franchise sales suggesting they would be sold out in 3 to 5 years.

22 n. On or about late October, 2006 in a telephone conversation, Yolanda  
23 Fagen represented to Bauer that the new UFOC with price increases had already been sent to  
24 states and, upon approval, Bauer would have to pay the increased price for an Area  
25 Representative. She represented to Bauer that she had obtained approval from Thomas Gergley  
26 for Bauer to pay a down payment on the Area Representative territory to lock in the lower price.  
27 Actually, the price never changed.

28 o. On February 24, 2006 in San Ramon, California, Yolanda Fagen

1 represented to Bauer that Mark Golob ran several successful health clubs in the past where he  
2 has helped countless women realize their weight loss goals. Actually, WWWLC and LEFC run  
3 by Mark Golob were not successful.

4 p. On February 24, 2006 in San Ramon, California, Yolanda Fagen  
5 represented to Bauer that BFL would update their LifeVision DVDs quarterly at no extra cost to  
6 the club owners. This was one way to keep BFL clubs competitive as they will always have the  
7 newest trend in the fitness industry. Actually, BFL did not update its services quarterly.

8 q. On February 24, 2006 in San Ramon, California, Thomas Gergley  
9 represented to Bauer that an Area Representative must open a showcase club before selling to  
10 other investors. Actually, BFL did not require Area Representatives to open a showcase club.

11 r. On February 24, 2006 in San Ramon, California, Thomas Gergley and  
12 Yolanda Fagen represented to Bauer that Lisa Bellini is an expert nutritionist who designed the  
13 BFL diet program specifically for BFL. Actually, the diet and nutrition information contributed  
14 by Lisa Bellini was not exclusive to BFL, but regurgitated WWWLC product.

15 s. On February 24, 2006 in San Ramon, California, Thomas Gergley  
16 represented to Bauer that the numbers for clubs listed in the UFOC as sold, but not opened, were  
17 basically "a book keeping issue" and that "it did not accurately reflect the success of the clubs."  
18 Thomas Gergley explained that it had everything to do with how tight the California market was  
19 and that clubs were not able to find proper lease space within the timeframe required. Actually,  
20 the club numbers simply were false.

21 t. On February 24, 2006 in San Ramon, California, Thomas Gergley and  
22 Yolanda Fagen represented to Bauer that they only sold franchises to qualified people to help  
23 assure the success of the franchise. Actually, BFL did not investigate franchise purchasers or ask  
24 them to demonstrate their financial strength to make a BFL franchise successful

25 6.5. Defendants Thomas Gergley, Mark Golob and Yolanda Fagen knew that their  
26 statements, omissions and/or representations to Bauer in paragraphs 6.3 and 6.4(a) through (t)  
27 above were false, misleading, or recklessly disregarded the truth.

28 6.6. Defendants Thomas Gergley and Yolanda Fagen intended that Bauer rely upon

1 their untrue or misleading statements, omissions and/or representations in paragraphs 6.3 and  
2 6.4(a) through (t) above to induce Bauer to purchase BFL franchises.

3 6.7. When Bauer purchased the franchises, BFL had exclusive control of the true  
4 information and Bauer did not know and reasonably could not have discovered with  
5 investigation that the statements, omissions and/or representations of Defendants Thomas  
6 Gergley, Mark Golob and Yolanda Fagen in paragraphs 6.3 and 6.4(a) through (t) above were  
7 untrue or misleading.

8 6.8. When Bauer purchased the franchises, Bauer justifiably relied upon the untrue or  
9 misleading statements, omissions and/or representations of Defendants Thomas Gergley, Mark  
10 Golob and Yolanda Fagen in paragraphs 6.3 and 6.4(a) through (t) above.

11 6.9. As a direct and proximate result of the untrue or misleading statements, omissions  
12 and/or representations of Defendants Thomas Gergley, Mark Golob and Yolanda Fagen in  
13 paragraphs 6.3 and 6.4(a) through (t) above, Chicfit, Inc. and Bauer suffered and continue to  
14 suffer damages.

## 15 VII. CHEVALIER

16 7.1. Plaintiffs Chevalier repeat and incorporate by this reference the allegations set  
17 forth in paragraphs 1.1 through 4.25 above.

18 7.2. Plaintiff Fitness Centers NW, Inc., by and through Darwin Chevalier and Ken  
19 Uptain purchased an Area Representative franchise from Defendants for \$250,000 on or about  
20 April 14, 2006 and a second Area Representative franchise on July 14, 2006 for an additional  
21 \$250,000. Plaintiff NW Fitness Center No. 1, Inc., by and through Darwin Chevalier and Ken  
22 Uptain purchased a club franchise from Defendants. Pursuant to the BFL franchise agreements,  
23 Darwin Chevalier and Ken Uptain each provided personal guarantees to BFL.

24 7.3. Prior to purchasing, Chevalier received from Thomas Gergley and Mark Golob a  
25 BFL UFOC containing many or all of the untrue or misleading statements or omissions detailed  
26 in paragraphs 4.6 and 4.7 above.

27 7.4. Defendants Thomas Gergley, Mark Golob, Flora Aube, and Janet Lossick also  
28 made the following untrue or misleading representations of existing fact:

1 a. On or about November 20, 2005 in San Ramon, California, Mark Golob  
2 represented to Chevalier that the BFL clubs were selling "like hot cakes." Actually, BFL sales  
3 were not robust.

4 b. On or about November 20, 2005 in San Ramon, California, Mark Golob  
5 represented to Chevalier that Chevalier needed to make an immediate decision because many  
6 others were interested in the Washington and Hawaii regions. Actually, there were no other  
7 legitimate buyers for the Washington and Hawaii regions at the time.

8 c. On December 14, 2005 in San Ramon, California, Thomas Gergley and  
9 Mark Golob represented to Chevalier that Lisa Bellini's new diet book for BFL would soon be  
10 published. The diet book was not new and never was published.

11 d. On December 14, 2005 in San Ramon, California, Thomas Gergley and  
12 Mark Golob represented to Chevalier that the entire country of Japan was "sold," and that BFL  
13 had over 1,000 territories already sold out here and abroad. Actually, there were few clubs in  
14 Japan and abroad.

15 e. On or about January 9-12, 2006 in San Ramon, California, Mark Golob  
16 represented to Chevalier that Mark Mastrov's finances were behind BFL and that franchisees  
17 "would never worry about money" for corporate support of their franchises. Golob assured  
18 Chevalier that Mark Mastrov will be part of the BFL team. Actually, Mastrov did not continue  
19 to fund BFL and was subject to a non-compete agreement with 24 Hour Fitness.

20 f. On or about February 15, 2006 in telephone conversations, Janet Lossick,  
21 Flora Aube and Thomas Gergley represented to Chevalier that Thomas Gergley had designed the  
22 BFL equipment; that Thomas Gergley had tested the equipment for over a year and had even  
23 used his mother for part of the tests; and that BFL's exclusive equipment had the edge over all  
24 other equipment in this industry due to Thomas's degree in physiology. Actually, BFL  
25 equipment was a standard design by the manufacturer.

26 g. On or about April 14-18, 2006 in San Ramon, California Mark Golob  
27 showed Chevalier the ½ hour "Take It Off" television program and represented that it would  
28 soon be shown on a national television network. Actually, the show never aired.

1 h. On or about April 14-18, 2006 in San Ramon, California, Thomas Gergley  
2 and Mark Golob represented to Chevalier that all of Japan is sold out. Actually, there were few  
3 clubs in Japan.

4 i. On or about April 14-18, 2006 in San Ramon, California, Thomas Gergley  
5 and Mark Golob assured Chevalier that Mark Mastrov was committed to BFL and again assured  
6 Mastrov's money and expertise are solidly behind BFL. Actually, Mastrov did not continue to  
7 fund BFL and was subject to a non-compete agreement with 24 Hour Fitness.

8 j. On or about April 14-18, 2006 in San Ramon, California, Thomas Gergley  
9 represented to Chevalier that all Area Representatives must open up a showcase club before  
10 selling to other investors. Actually, BFL did not require Area Representatives to open a  
11 showcase club.

12 k. On or about April 14-18, 2006 in San Ramon, California, Thomas Gergley  
13 represented to Chevalier that Chevalier should sell out most of their territory within 6 months  
14 after opening their showcase club. Actually, sales figures suggested few if any territories would  
15 sell out within six months of opening a showcase club.

16 l. On or about April 14-18, 2006 in San Ramon, California, Mark Golob  
17 represented to Chevalier that big name Hollywood and TV celebrities were going to endorse  
18 BFL. No big name Hollywood and TV celebrities ever endorsed BFL.

19 m. On or about April 14-18, 2006 in San Ramon, California, Mark Golob  
20 represented to Chevalier that BFL would rapidly build "dominance" in the northwest regions.  
21 Actually, BFL did little to build "dominance" in the northwest regions.

22 7.5. Defendants Thomas Gergley, Mark Golob, Flora Aube, Janet Lossick knew that  
23 their statements, omissions and/or representations to Chevalier in paragraphs 7.3 and 7.4(a)  
24 through (m) above were false, misleading, or recklessly disregarded the truth.

25 7.6. Defendants Thomas Gergley, Mark Golob, Flora Aube, Janet Lossick intended  
26 that Chevalier rely upon their untrue or misleading statements, omissions and/or representations  
27 in paragraphs 7.3 and 7.4(a) through (m) above to induce Chevalier to purchase the BFL Area  
28 Representative franchise.



1           7.7. When Chevalier purchased the Area Representative franchise, BFL had exclusive  
2 control of the true information and Chevalier did not know and reasonably could not have  
3 discovered with investigation that the statements, omissions and/or representations of Defendants  
4 Thomas Gergley, Mark Golob, Flora Aube, Janet Lossick in paragraphs 7.3 and 7.4(a) through  
5 (m) above were untrue or misleading.

6           7.8. When Chevalier purchased the Area Representative franchise, Chevalier  
7 justifiably relied upon the untrue or misleading the statements, omissions and/or representations  
8 of Defendants Thomas Gergley, Mark Golob, Flora Aube, Janet Lossick in paragraphs 7.3 and  
9 7.4(a) through (m) above.

10           7.9. As a direct and proximate result of the untrue or misleading the statements,  
11 omissions and/or representations of Defendants Thomas Gergley, Mark Golob, Flora Aube, Janet  
12 Lossick in paragraphs 7.3 and 7.4(a) through (m) above, Fitness Centers NW, Inc., NW Fitness  
13 Center No. 1, Inc., Chevalier and Uptain suffered damages and continue to suffer damages.

#### 14 **VIII. CICHOCKI**

15           8.1. Plaintiffs Cichocki repeat and incorporate by this reference the allegations set  
16 forth in paragraphs 1.1 through 4.25 above.

17           8.2. Plaintiff Terry Cichocki purchased from Defendants three BFL club franchises on  
18 or about September 27, 2005 for \$35,000 and converted these to a BFL Area Representative  
19 franchise on or about November 8, 2005 for \$250,000. Cichocki also purchased a second BFL  
20 Area Representative franchise on or about July 9, 2007 for \$200,000.

21           8.3. Prior to each purchase, Cichocki received from Defendants Thomas Gergley and  
22 Mark Golob a BFL UFOC containing many or all of the untrue or misleading statements or  
23 omissions detailed in paragraphs 4.6 and 4.7 above.

24           8.4. Defendants Mark Golob and Flora Aube also made the following untrue or  
25 misleading representations of existing fact:

26               a. On or about September 23, 2005 in San Ramon, California, Flora Aube  
27 represented to Cichocki that BFL had sold over 125 clubs in the past two years with 40 open.  
28 Actually, there were not that many open clubs.

1           b.       On or about September 23, 2005 in San Ramon, California, Flora Aube  
2 represented to Cichocki that the only BFL clubs to fail were those of an Atlanta man who  
3 purchased ten clubs, didn't know what he was doing, and failed to follow the corporate "road  
4 map." Actually, other clubs had failed.

5           c.       On or about September 23, 2005 in San Ramon, California, Flora Aube  
6 represented to Cichocki that BFL was about to launch a television show and television  
7 commercials that would make BFL a "household name" by the end of 2006. No BFL television  
8 show and few BFL commercials ever aired.

9           d.       On or about September 23, 2005 in San Ramon, California, Flora Aube  
10 represented to Cichocki that the most successful club owned by Annibel in Groton, Connecticut  
11 had almost 500 members as she approached her one year mark. Actually, Cichocki could never  
12 confirm that the Groton club had that many members;

13           e.       On or about September 23, 2005 in San Ramon, California, Flora Aube  
14 represented to Cichocki that Cichocki didn't need any prior business knowledge because BFL  
15 had everything already mapped out for them to succeed. Actually, Cichocki found that BFL's  
16 "map" to run clubs was ineffective and not successful.

17           f.       On or about September 23, 2005 in San Ramon, California, Flora Aube  
18 represented to Cichocki that the average time for clubs to break even was five to six months.  
19 Actually, few if any clubs broke even in that time.

20           g.       On or about September 23, 2005 in San Ramon, California, Flora Aube  
21 represented to Cichocki that Cichocki would only need 200 members to break even and that most  
22 owners are profitable within three to ten months. Actually, most clubs were never profitable.

23           h.       On or about September 23, 2005 in San Ramon, California, Flora Aube  
24 represented to Cichocki that the BFL Life Vision system was a huge part of BFL's success  
25 because it was updated regularly so that Cichocki would never have to pay instructors. Actually,  
26 BFL did not update its Life Vision system regularly as promised.

27           i.       On or about September 23, 2005 in San Ramon, California, Flora Aube  
28 represented to Cichocki that BFL would not charge for the nutrition program, only the Weight

1 Loss Express book. Actually, BFL did expect clubs to charge to the nutrition program.

2 j. On or about September 23, 2005 in San Ramon, California, Flora Aube  
3 represented to Cichocki that BFL would keep coming back to North Carolina until the state was  
4 sold out. Actually, BFL stopped coming to North Carolina before it was sold out.

5 k. On or about September 23, 2005 in San Ramon, California, Flora Aube  
6 represented to Cichocki that most BFL clubs already had 250 members. Actually, most BFL  
7 clubs did not have 250 members.

8 l. On or about September 23, 2005 in San Ramon, California, Flora Aube  
9 represented to Cichocki that only one person was needed to run a BFL club. Actually, Cichocki  
10 never knew of a club that was run by only one person.

11 m. On or about September 23, 2005 in San Ramon, California, Flora Aube  
12 represented to Cichocki that clubs should reach 800 to 1,000 members easily. Actually, few if  
13 any BFL clubs reached 800 to 1,000 members.

14 n. On or about September 23, 2005 in San Ramon, California, Flora Aube  
15 represented to Cichocki that all of Japan was "sold out" by several Japanese scientists and  
16 doctors who were opening 100 clubs in Japan after extensive research comparing all women's  
17 fitness centers. Actually, there were few clubs in Japan.

18 o. On or about September 23, 2005 in San Ramon, California, Flora Aube  
19 represented to Cichocki that Thomas Gergley had a degree in exercise physiology and he  
20 personally helped to design equipment exclusively for BFL that he tested with 200 women for  
21 proper height and weight adjustment. Actually, BFL equipment was a standard design by the  
22 manufacturer.

23 p. On or about September 23, 2005 in San Ramon, California, Flora Aube  
24 represented to Cichocki that it only costs \$65,000, including franchise fees, to open a club.  
25 Actually, few if any clubs opened with that little spent.

26 q. On or about October 5, 2005 in San Ramon, California, Mark Golob and  
27 Flora Aube represented to Cichocki that the Area Representative territory Cichocki would  
28 purchase would be sold out within three years earning Cichocki \$500,000 profit in franchise

1 sales and \$2.4 million on royalties. Actually, BFL sales figures did not suggest any Area  
2 Representative territory would sell out within three years.

3 8.5. Defendants Thomas Gergley, Mark Golob and Flora Aube knew that their  
4 statements, omissions and/or representations to Cichocki in paragraphs 8.3 and 8.4(a) through (q)  
5 above were false, misleading, or recklessly disregarded the truth.

6 8.6. Defendants Thomas Gergley, Mark Golob and Flora Aube intended that Cichocki  
7 rely upon their untrue or misleading statements, omissions and/or representations in paragraphs  
8 8.3 and 8.4(a) through (q) above to induce Cichocki to purchase the BFL Area Representative  
9 franchise.

10 8.7. When Cichocki purchased the Area Representative franchise, BFL had exclusive  
11 control of the true information and Cichocki did not know and reasonably could not have  
12 discovered with investigation that the statements, omissions and/or representations of Defendants  
13 Thomas Gergley, Mark Golob and Flora Aube in paragraphs 8.3 and 8.4(a) through (q) above  
14 were untrue or misleading.

15 8.8. When Cichocki purchased the Area Representative franchise, Cichocki justifiably  
16 relied upon the untrue or misleading statements, omissions and/or representations of Defendants  
17 Thomas Gergley, Mark Golob and Flora Aube in paragraphs 8.3 and 8.4(a) through (q) above.

18 8.9. Soon after purchasing her BFL franchises, Cichocki formed Livibeth, Inc. to  
19 operate her BFL franchises. Defendants knew or had reason to know that Cichocki would form a  
20 corporation to operate her franchises and that said corporation also would suffer the  
21 consequences of Defendants' wrongful acts.

22 8.10. As a direct and proximate result of the untrue or misleading statements, omissions  
23 and/or representations of Defendants Thomas Gergley, Mark Golob and Flora Aube in  
24 paragraphs 8.3 and 8.4(a) through (q) above, Cichocki and Livibeth, Inc. suffered damages and  
25 continue to suffer damages.

26 **IX. DAVIDSON**

27 9.1. Plaintiffs Davidson repeat and incorporate by this reference the allegations set  
28 forth in paragraphs 1.1 through 4.25 above.

1           9.2.     Plaintiffs Ali Davidson and Kelly Davidson, with Matt VanSooy, purchased a  
2 BFL Area Representative franchise from Defendants for \$325,000 on or about June 23, 2006.

3           9.3.     Prior to purchasing, Davidson received from Defendants Thomas Gergley and  
4 Mark Golob a BFL UFOC containing many or all of the untrue or misleading statements or  
5 omissions detailed in paragraphs 4.6 and 4.7 above.

6           9.4.     Defendants Thomas Gergley, Mark Golob and Callie Miller also made the  
7 following untrue or misleading representations of existing fact:

8                 a.     On or about June 21, 2006 in San Ramon, California, Mark Golob  
9 represented to Davidson that Mark Mastrov, former CEO of 24 hour Fitness, would be joining  
10 BFL after his non-compete ran out and Mastrov would be bringing lots of money with him to  
11 help with branding. Mark Mastrov did not join and did not continue to fund BFL.

12                b.     On or about June 21, 2006 in San Ramon, California, Mark Golob  
13 represented to Davidson that BFL has plenty of money and it is going to spend it to brand the  
14 company to be a household name. Actually, BFL did not have plenty of money and did not  
15 follow through with promises to brand the company to be a household name.

16                c.     On or about June 21, 2006 in San Ramon, California, Mark Golob  
17 represented to Davidson that he and Thomas Gergley owned and operated very successful Linda  
18 Evans clubs and sold them to start BFL. Actually, Linda Evans clubs were not successful, with  
19 some closing, some sold, and some converted to BFL.

20                d.     On or about June 21, 2006 in San Ramon, California, Mark Golob  
21 represented to Davidson that he and Thomas Gergley brought in two million of their own money  
22 and BFL doesn't owe a cent to anyone. Actually, Mark Golob and Thomas Gergley took  
23 personal loans from BFL.

24                e.     On or about June 21, 2006 in San Ramon, California, Mark Golob showed  
25 to Davidson the ½ hour "Take It Off" television program and represented that it would soon be  
26 shown on a national television network with the host in the pilot replaced by a "big name, like  
27 Leeza Gibbons." The show never aired.

28                f.     On or about June 21, 2006 in San Ramon, California, Mark Golob

1 represented to Davidson that BFL had just sold the franchise rights to Japan and would be in  
2 Germany and England soon. Actually, there were few clubs in Japan and none in Germany.

3 g. On or about June 6, 2006 in San Ramon, California, Callie Miller, a  
4 representative of BFL, told Davidson that there were over 100 clubs open throughout the  
5 country. Actually, there were never 100 clubs open.

6 h. On or about June 6, 2006 in San Ramon, California, Callie Miller told  
7 Davidson that most clubs were "in the black with 200 members" in three months and "making  
8 tons of money" within six months. Actually, few if any clubs reached these goals and only a  
9 handful ever made it past "break even."

10 i. On or about June 9, 2006 in San Ramon, California, Thomas Gergley  
11 represented to Davidson that clubs are sold through very successful seminars: that as an area  
12 representative, Davidson would receive three seminars, the first paid completely by BFL and the  
13 cost of the other two shared half and half. Actually, it took nearly a year for BFL to provide  
14 Davidson its first and only seminar despite repeated requests.

15 j. On or about June 9, 2006 in San Ramon, California, Thomas Gergley  
16 represented to Davidson that BFL would supplement advertising in newspapers and T.V.  
17 between seminars. This never happened.

18 k. On or about June 21, 2006 in San Ramon, California, Mark Golob  
19 represented to Davidson that BFL would have no problem selling 10,000 clubs in the first five  
20 years: that clubs are being sold in seminars, approximately 5 each time, "so there will be no  
21 problem" meeting the requirements of the Area Representative agreement. Actually, seminars  
22 were not selling that many clubs and no sales figures suggested 10,000 clubs would be sold  
23 within five years.

24 l. On or about June 21, 2006 in San Ramon, California, Mark Golob  
25 represented to Davidson that members of Curves are leaving and moving to BFL by 5 to 6 a day.  
26 Actually, few if any clubs were experiencing a noticeable amount of Curves' members switching  
27 to BFL.

28 m. On or about June 21, 2006 in San Ramon, California, Mark Golob

1 represented to Davidson that Thomas Gergley personally designed the top of the line, state of the  
2 art BFL equipment; that Gergley tested the equipment with over 200 women to make sure they  
3 fit a woman's physiology. Actually, BFL equipment was a standard design by the manufacturer.

4 n. On or about June 21, 2006 in San Ramon, California, Mark Golob  
5 represented to Davidson that Denny Marsico had personally trained over 5,000 people at 24  
6 Hour Fitness. Actually, Marsico had no personal training involvement with Davidson's BFL  
7 franchises.

8 o. On or about June 21, 2006 in San Ramon, California, Mark Golob  
9 represented to Davidson that BFL created new marketing materials for franchisees and new  
10 DVD's every 3 months. Actually, BFL did not provide new marketing materials and Davidson  
11 received updated DVDs only once in the two years its club operated.

12 p. On or about June 21, 2006 in San Ramon, California, Mark Golob  
13 represented to Davidson that BFL has a panel of experts and is making new DVD's on different  
14 subjects that affect women, like an osteoporosis DVD by a doctor. Actually, no such DVDs  
15 were ever provided to Davidson.

16 q. On or about June 21, 2006 in San Ramon, California, Mark Golob  
17 represented to Davidson that "there will be national advertising" to help Area Representatives  
18 sell clubs and to get members for the clubs. Actually, BFL never had national advertising for  
19 club members.

20 r. On or about June 21, 2006 in San Ramon, California, Mark Golob  
21 represented to Davidson that BFL clubs are selling like "hotcakes" and corporate was so busy  
22 they were having trouble keeping up. Actually, BFL sales were not robust.

23 s. On or about June 21, 2006 in San Ramon, California, Mark Golob  
24 represented to Davidson that Lisa Bellini is an expert nutritionist who designed the BFL diet  
25 program specifically for BFL. Actually, the diet and nutrition information contributed by Lisa  
26 Bellini was not exclusive to BFL, but regurgitated WWLWC product.

27 t. On or about June 21, 2006 in San Ramon, California, Mark Golob  
28 represented to Davidson that BFL was working on a diet book deal that would be finalized by

1 September 2006. This never happened and the only diet book Davidson ever received from BFL  
2 was regurgitated from WWL.C.

3 u. On or about June 21, 2006 in San Ramon, California, Mark Golob  
4 represented to Davidson that BFL had several celebrities that were going to give their  
5 endorsements on the diet book and the clubs. No celebrities ever endorsed BFL.

6 v. On or about June 21, 2006 in San Ramon, California, Mark Golob  
7 represented to Davidson that BFL would be advertising on Oprah and once the diet book is out,  
8 "we'll probably be asked on the show." BFL never advertised nationally on Oprah.

9 w. On or about June 21, 2006 in San Ramon, California, Mark Golob  
10 represented to Davidson that he was a successful promoter with athletes and singers and that he  
11 knew "so many powerful and famous people who will be involved" in BFL branding. No  
12 athletes, singers or other famous people were involved with BFL.

13 x. On or about June 21, 2006 in San Ramon, California, Mark Golob  
14 represented to Davidson that BFL would have signature clubs around the country endorsed by "a  
15 big name like Leeza Gibbons," and that the celebrity endorsing the club would be there for the  
16 club's grand opening. Neither Leeza Gibbons nor any other celebrity endorsed BFL.

17 y. On or about June 21, 2006 in San Ramon, California, Mark Golob  
18 represented to Davidson that although the BFL contract states that it can "up charge" all  
19 materials, BFL is not making money on the machines or any other products that are required  
20 purchases for clubs. Actually, BFL received a "kickback" on some equipment and carpeting.

21 z. On or about June 21, 2006 in San Ramon, California, Mark Golob  
22 represented to Davidson that BFL would provide extensive training on how to conduct a sales  
23 seminar, how to sell clubs, and how to service the clubs in Davidson's territory. BFL was in the  
24 process of creating an Area Representative handbook and that it "would soon be provided."  
25 Actually, BFL provided only sales "scripts," and no manual of any kind until October, 2007.

26 aa. On or about June 21, 2006 in San Ramon, California, Thomas Gergley  
27 represented to Davidson that another couple was flying in the next day for the territory Davidson  
28 was interested in, so Davidson had to make their decision that day. BFL never disclosed any



1 other legitimate buyer for Davidson's territory.

2 bb. On or about June 21, 2006 in San Ramon, California, Thomas Gergley  
3 represented to Davidson that Area Representatives had to have a showcase club so that they  
4 could use it as an example to sell clubs in their territory. The showcase club needed to be about  
5 3,000 square feet and have a conference room for seminars. Actually, BFL did not require Area  
6 Representatives to open a showcase club.

7 cc. On or about June 21, 2006 in San Ramon, California, Thomas Gergley  
8 represented to Davidson that the lawsuits listed in the UFOC were "inconsequential  
9 misunderstandings" that were resolved. Actually, Thomas Gergley and Mark Golob had other  
10 lawsuits against them that were not disclosed.

11 9.5. Defendants Thomas Gergley, Mark Golob and Callie Miller knew that their  
12 statements, omissions and/or representations to Davidson in paragraphs 9.3 and 9.4(a) through  
13 (cc) above were false, misleading, or recklessly disregarded the truth.

14 9.6. Defendants Thomas Gergley, Mark Golob and Callie Miller intended that  
15 Davidson rely upon their untrue or misleading statements, omissions and/or representations in  
16 paragraph 9.3 and 9.4(a) through (cc) above to induce Davidson to purchase BFL franchises.

17 9.7. When Davidson purchased the franchises, BFL had exclusive control of the true  
18 information and Davidson did not know and reasonably could not have discovered with  
19 investigation that the statements, omissions and/or representations of Defendants Thomas  
20 Gergley, Mark Golob and Callie Miller in paragraphs 9.3 and 9.4(a) through (cc) above were  
21 untrue or misleading.

22 9.8. When Davidson purchased the franchises, Davidson justifiably relied upon the  
23 untrue or misleading statements, omissions and/or representations of Defendants Thomas  
24 Gergley, Mark Golob and Callie Miller in paragraphs 9.3 and 9.4(a) through (cc) above.

25 9.9. Soon after purchasing their BFL franchises, Davidson formed Khrysalis  
26 Enterprises, Inc. and BFL Incorporated to operate their BFL franchises. Defendants knew or had  
27 reason to know that Davidson would form corporations to operate their franchises and that said  
28 corporations also would suffer the consequences of Defendants' wrongful acts.

1           9.10. As a direct and proximate result of the untrue or misleading statements, omissions  
2 and/or representations of Defendants Thomas Gergley, Mark Golob and Callie Miller in  
3 paragraphs 9.3 and 9.4(a) through (cc) above, Davidson, Khrysalis Enterprises, Inc. and BFL  
4 Incorporated suffered and continue to suffer damages.

5 **X. DRISCOLL**

6           10.1. Plaintiffs Driscoll repeat and incorporate by this reference the allegations set forth  
7 in paragraphs 1.1 through 4.25 above.

8           10.2. Plaintiff The Driscoll Company, by and through Karen Driscoll and Kevin  
9 Driscoll, purchased a BFL Area Representative franchise from Defendants for \$250,000.00 on or  
10 about November 30, 2006. Pursuant to the BFL franchise agreement, Kevin Driscoll and Karen  
11 Driscoll executed personal guarantees to BFL.

12           10.3. Prior to purchasing, Driscoll received from Defendants Thomas Gergley and  
13 Mark Golob a BFL UFOC containing many or all of the untrue or misleading statements or  
14 omissions detailed in paragraphs 4.6 and 4.7 above.

15           10.4. Defendants Thomas Gergley and Flora Aube also made the following untrue or  
16 misleading representations of existing fact:

17               a. On or about September, 2006 in Raleigh, North Carolina, Flora Aube  
18 represented to Driscoll that BFL would conduct a national advertising campaign supporting its  
19 clubs on major network and cable television channels, including during Oprah, Regis & Kelly,  
20 TLC and other prominent programs. BFL never had a national advertising campaign supporting  
21 its clubs during Oprah, Regis & Kelly or other prominent programs.

22               b. On or about October, 2006 in San Ramon, California, Thomas Gergley  
23 represented to Driscoll that there were over 70 BFL clubs open and operating successfully, and  
24 that there were over 100 additional clubs sold but not yet opened. At the time, there were less  
25 than 70 clubs open, most were not running successfully, and there were less than 100 clubs sold  
26 but not opened.

27               c. On or about October, 2006 in San Ramon, California, Thomas Gergley  
28 represented to Driscoll that Flora Aube had sold BFL development rights to Japan where there

1 would be 1,000 clubs opened. Actually, there were never more than a few clubs in Japan.

2 d. On or about October, 2006 in San Ramon, California, Thomas Gergley  
3 represented to Driscoll that it was reasonable to expect their territory to be sold out within a 3 to  
4 5 year period. Actually, there were no BFL sales figures that would suggest a territory would  
5 sell out within that time.

6 e. On or about October, 2006 in San Ramon, California, Thomas Gergley  
7 represented to Driscoll that BFL was developing a "Diet Book" authored by Lisa Bellini to be  
8 published for national distribution. Actually, the diet and nutrition information contributed by  
9 Lisa Bellini was regurgitated from WWL.C and never published nationally.

10 f. On or about October, 2006 in San Ramon, California, Thomas Gergley  
11 represented to Driscoll that as an area representative opening a "Showcase Club" was optional  
12 not mandatory. Gergley told other Area Representatives that a showcase club was required.

13 10.5. Defendants Thomas Gergley, Mark Golob and Flora Aube knew that their  
14 statements, omissions and/or representations to Driscoll in paragraphs 10.3 and 10.4(a) through  
15 (f) above were false, misleading, or recklessly disregarded the truth.

16 10.6. Defendants Thomas Gergley, Mark Golob and Flora Aube intended that Driscoll  
17 rely upon their untrue or misleading statements, omissions and/or representations in paragraphs  
18 10.3 and 10.4(a) through (f) above to induce Driscoll to purchase BFL franchises.

19 10.7. When Driscoll purchased the franchises, BFL had exclusive control of the true  
20 information and Driscoll did not know and reasonably could not have discovered with  
21 investigation that the statements, omissions and/or representations of Thomas Gergley, Mark  
22 Golob and Flora Aube in paragraphs 10.3 and 10.4(a) through (f) above were untrue or  
23 misleading.

24 10.8. When Driscoll purchased the franchises, Driscoll justifiably relied upon the  
25 untrue or misleading statements, omissions and/or representations of Thomas Gergley, Mark  
26 Golob and Flora Aube in paragraphs 10.3 and 10.4(a) through (f) above.

27 10.9. As a direct and proximate result of the untrue or misleading statements, omissions  
28 and/or representations of Thomas Gergley, Mark Golob and Flora Aube in paragraphs 10.3 and

1 10.4(a) through (f) above, Driscoll suffered and continues to suffer damages.

2 **XI. FITZGERALD**

3 11.1. Plaintiffs Fitzgerald repeat and incorporate by reference the allegations set forth  
4 in paragraphs 1.1 through 4.25 above.

5 11.2. Plaintiff Janeene Fitzgerald purchased a BFL Area Representative franchise from  
6 Defendants for \$250,000 on or about July 7, 2006.

7 11.3. Prior to purchasing, Fitzgerald received from Defendants Thomas Gergley and  
8 Mark Golob a BFL UFOC containing many or all of the untrue or misleading statements or  
9 omissions detailed in paragraphs 4.6 and 4.7 above.

10 11.4. Defendants Thomas Gergley, Mark Golob and Callie Miller also made the  
11 following untrue or misleading representations of existing fact:

12 a. On or about June 30, 2006 in San Ramon, California, Mark Golob  
13 represented to Fitzgerald that Fitzgerald did not have to do any franchise selling, "just get the  
14 perspective franchisee to corporate" and they "would close the sale." Actually, Fitzgerald was  
15 expected to close club sales on their own.

16 b. On or about June 30, 2006 in San Ramon, California, Mark Golob  
17 represented to Fitzgerald that BFL was the best in the business, and that corporate "would be  
18 there every step of the way" to support Fitzgerald as an Area Representative by nationally  
19 branding BFL. Actually, BFL staff was not very supportive and did not follow through with  
20 numerous promises for national branding.

21 c. On or about June 30, 2006 in San Ramon, California, Thomas Gergley and  
22 Mark Golob represented to Fitzgerald that BFL had "gone global," and had sold rights to over  
23 1,000 clubs in Japan. Actually, there were few clubs in Japan.

24 d. On or about June 30, 2006 in San Ramon, California, Mark Golob  
25 represented that 60 clubs were open and another 100 clubs were scheduled to open before the  
26 end of year. Actually, there were less than 60 open clubs and less than 100 scheduled to open.

27 e. On or about June 30, 2006 in San Ramon, California, Thomas Gergley and  
28 Mark Golob represented to Fitzgerald that a "big, big name celebrity, namely Kathy Ireland,"

1 would very soon be endorsing BFL. Actually, no big name celebrity ever endorsed BFL and  
2 Kathy Ireland was never associated with BFL.

3 f. On or about June 30, 2006 in San Ramon, California, Mark Golob,  
4 Thomas Gergley and Callie Miller, represented to Fitzgerald that Thomas Gergley specifically  
5 designed the equipment exclusively for BFL and that it was tested on several hundred women.  
6 even his Mother, before it was put into production. Actually, BFL equipment was a standard  
7 design by the manufacturer.

8 g. On or about June 30, 2006 in San Ramon, California, Mark Golob and  
9 Thomas Gergley represented to Fitzgerald that the average break even time for all the BFL clubs  
10 was about six months. Actually, most clubs never broke even and most of those that did took  
11 longer than six months.

12 h. On or about June 30, 2006 in San Ramon, California, Mark Golob and  
13 Thomas Gergley represented to Fitzgerald that the BFL sales team was selling many franchises  
14 daily. Actually, BFL franchises were barely selling.

15 i. On or about June 30, 2006, in San Ramon, California, Mark Golob,  
16 Thomas Gergley, and Callie Miller represented to Fitzgerald there were BFL clubs with over 500  
17 members. Actually, Fitzgerald never learned of any BFL club that had 500 members.

18 11.5. Defendants Thomas Gergley, Mark Golob and Callie Miller knew that their  
19 statements, omissions and/or representations to Fitzgerald in paragraphs 11.3 and 11.4(a) through  
20 (i) above were false, misleading, or recklessly disregarded the truth.

21 11.6. Defendants Thomas Gergley, Mark Golob and Callie Miller intended that  
22 Fitzgerald rely upon their untrue or misleading statements, omissions and/or representations in  
23 paragraphs 11.3 and 11.4(a) through (i) above to induce Fitzgerald to purchase BFL franchises.

24 11.7. When Fitzgerald purchased the franchise, BFL had exclusive control of the true  
25 information and Fitzgerald did not know and reasonably could not have discovered with  
26 investigation that the statements, omissions and/or representations of Thomas Gergley, Mark  
27 Golob and Callie Miller in paragraphs 11.3 and 11.4(a) through (i) above were untrue or  
28 misleading.

1 11.8. When Fitzgerald purchased the franchise, Fitzgerald justifiably relied upon the  
2 untrue or misleading statements, omissions and/or representations of Thomas Gergley, Mark  
3 Golob and Callie Miller in paragraphs 11.3 and 11.4(a) through (i) above.

4 11.9. Soon after purchasing her BFL franchise, Janeene Fitzgerald formed Monarch  
5 Group, LLC to operate her BFL franchise. Defendants knew or had reason to know that  
6 Fitzgerald would form a corporation to operate her franchise and that said corporation also would  
7 suffer the consequences of Defendants' wrongful acts.

8 11.10. As a direct and proximate result of the untrue or misleading statements, omissions  
9 and/or representations of Thomas Gergley, Mark Golob and Callie Miller in paragraphs 11.3 and  
10 11.4(a) through (i) above, Fitzgerald and Monarch Group, LLC suffered and continue to suffer  
11 damages.

12 **XII. GOODMAN**

13 12.1. Plaintiffs Goodman repeat and incorporate by this reference the allegations set  
14 forth in paragraphs 1.1 through 4.25 above.

15 12.2. Plaintiff Seth Goodman purchased a BFL Area Representative franchise from  
16 Defendants for \$250,000 on or about May 16, 2006.

17 12.3. Prior to purchasing, Goodman received from Defendants Thomas Gergley and  
18 Mark Golob a BFL UFOC containing many or all of the untrue or misleading statements or  
19 omissions detailed in paragraphs 4.6 and 4.7 above.

20 12.4. Defendants Thomas Gergley, Mark Golob and Flora Aube also made the  
21 following untrue or misleading representations of existing fact:

22 a. On or about May 16, 2006 in San Ramon, California, Mark Golob  
23 represented to Goodman that Mark Mastrov was still involved with BFL and would be active  
24 again with BFL soon, but that he could not be listed on the documents any longer due to "some  
25 kind of clause" with 24 Hour Fitness. Actually, Mark Mastrov was no longer funding BFL.

26 b. On or about May 16, 2006 in San Ramon, California, Mark Golob showed  
27 to Goodman the ½ hour "Take It Off" television program and represented that it would soon be  
28 shown on a national television network. The show never aired.

1 c. On or about May 16, 2006 in San Ramon, California, Thomas Gergley and  
2 Mark Golob represented to Goodman that four doctors from Japan bought the all the rights for  
3 the country after doing a year of research on the matter comparing BFL against other gyms.  
4 Actually, there were few BFL clubs in Japan.

5 d. On or about May 16, 2006 in San Ramon, California, Mark Golob and  
6 Thomas Gergley represented to Goodman that BFL would soon be in England, Ireland, the  
7 Bahamas and Australia. Actually, BFL never sold in some of those countries.

8 e. On or about May 16, 2006 in San Ramon, California, Thomas Gergley  
9 represented to Goodman that there were so many versions of UFOC's "because they could not  
10 do anything different for any Area Rep that was not listed in the UFOC." Actually, the different  
11 versions of UFOCs had nothing to do with special terms for different Area Representatives.

12 f. On or about May 16, 2006 in San Ramon, California, Thomas Gergley,  
13 Mark Golob and Flora Aube held a viewing of the BFL Seminar Presentation for Goodman at  
14 their offices in California; it represented that BFL advertised on TV shows such as Oprah,  
15 Today, GMA, shows that target women. This was verbally reinforced by Ms. Aube after the  
16 viewing. Actually, BFL never advertised nationally on Oprah, Today, or GMA.

17 g. On or about May 16, 2006 in San Ramon, California, Mark Golob and  
18 Thomas Gergley represented to Goodman that the operation of a franchise was very easy, "push  
19 and play" set up and that "you did not even need to be a high school graduate and you could still  
20 be successful." Actually, running a BFL franchises required some significant sales acumen.

21 h. On or about May 16, 2006 in San Ramon, California, Mark Golob,  
22 Thomas Gergley, and Flora Aube represented to Goodman that "only one person was needed to  
23 operate a club and that was what made them profitable, easy to operate, and therefore easy to sell  
24 franchises." Actually, Goodman never knew of any BFL club that was run by a single person.

25 i. On or about April 29, 2006 in Raleigh, North Carolina, Flora Aube  
26 represented to Goodman that "clubs could accommodate 800-1,000 members" and that "clubs  
27 should have 200 members by 6 months and then 350-400 by the end of the first year." Actually,  
28 few, if any, BFL clubs had 200 members within six months and 350-400 within a year.

1 j. On or about April 29, 2006 in Raleigh, North Carolina, Flora Aube  
2 represented to Goodman that Curves was so profitable with an inferior product, and "that we  
3 offer so much more, we're bound to make even more money." Actually, BFL did not follow  
4 through on most of its claimed product offers.

5 k. On or about April 29, 2006 in Raleigh, North Carolina, Flora Aube  
6 represented to Goodman that Thomas Gergley "has a degree in exercise physiology and that he  
7 personally helped design the equipment used in the clubs. The equipment was designed  
8 specifically for BFL to fit a woman's body, height and weight, and that this was revolutionary  
9 and exclusive to BFL". Actually, BFL equipment was a standard design by the manufacturer.

10 l. On or about May 16, 2006 in San Ramon, California, Thomas Gergley and  
11 Flora Aube represented to Goodman that Thomas Gergley held a degree in exercise physiology  
12 and that he personally helped design the equipment used in the clubs. The equipment was  
13 designed specifically for BFL "to fit a woman's body, height, weight etc..." and that this was  
14 "revolutionary and exclusive to BFL." Actually, BFL equipment was a standard design by the  
15 manufacturer.

16 m. On or about April 29, 2006 in Raleigh, North Carolina, Flora Aube  
17 represented to Goodman that BFL advertised on television shows such as Oprah, Today, Good  
18 Morning America, and shows that target women. Actually, BFL never advertised nationally on  
19 Oprah, Today or Good Morning America.

20 n. On or about April 29, 2006 in Raleigh, North Carolina, Flora Aube  
21 represented to Goodman at a seminar that "it was best for a franchisee to open near a Curves as  
22 members were switching to BFL from Curves by the dozens." Actually, Goodman knew of no  
23 clubs that were getting a large number of members switching from Curves.

24 o. On or about May 16, 2006 in San Ramon, California, Thomas Gergley,  
25 Mark Golob and Flora Aube represented to Goodman that "it was best for a franchisee to open  
26 up near a Curves as members were switching by the dozens." Actually, Goodman knew of no  
27 clubs that were getting a large number of members switching from Curves.

28 p. On or about May 16, 2006 in San Ramon, California, Mark Golob



1 represented to Goodman that a "celebrity spokesperson" was "in the works, namely Leeza  
2 Gibbons." Actually, neither Leeza Gibbons nor any other celebrity ever endorsed BFL.

3 q. On or about May 16, 2006 in San Ramon, California, Mark Golob  
4 represented to Goodman that Bruce Fabel was working with BFL and "had helped develop the  
5 BFL marketing plan." Actually, Bruce Fabel left BFL early on.

6 r. On or about April 29, 2006 in Raleigh, North Carolina, Flora Aube  
7 represented to Goodman that the numbers for clubs listed in the UFOC as sold, but not opened.  
8 were merely "a book keeping issue" and that "it did not accurately reflect the success of the  
9 clubs" because these clubs simply "did not open within the timeline listed in the UFOC due to  
10 real estate problems associated with the California market." Actually, these club owners were in  
11 default because their first club had not broken even so they didn't open their second club.

12 s. On or about May 16, 2006 in San Ramon, California, Mark Golob  
13 represented to Goodman that "BFL was getting excellent quality leads in regards to franchise  
14 sales" and that his son, Taylor Golob, "was closing leads left and right." Actually, the clubs  
15 were not selling well.

16 t. On or about April 29, 2006 in Raleigh, North Carolina, Flora Aube  
17 represented to Goodman that Mark Golob had an "extremely successful career in marketing to go  
18 along with his success at Linda Evans." Actually, Linda Evans Fitness Centers failed.

19 u. On or about April 29, 2006 in Raleigh, North Carolina, Flora Aube  
20 represented to Goodman a highly exaggerated number of clubs sold by incorporating the  
21 territories sold to other Area Representatives as "clubs sold." The number of actual club  
22 franchises sold was far less.

23 v. On or about May 16, 2006 in San Ramon, California, Thomas Gergley,  
24 Mark Golob and Flora Aube represented that Mr. Gergley, Mr. Golob and Denny Marsico had all  
25 come from Linda Evans and that Linda Evans "was a success." Actually, Linda Evans Fitness  
26 Centers failed.

27 w. On or about May 16, 2006 in San Ramon, California, Mark Golob  
28 represented to Goodman in a bragging manner that "there was no losing litigation against me or

1 Mr. Gergley." Actually, Linda Evans sued Mark Golob and Thomas Gergley and they paid her a  
2 \$100,000 settlement.

3 x. On or about May 16, 2006 in San Ramon, California, Flora Aube and  
4 Mark Golob represented to Goodman that the corporate owners/members all came from "very  
5 successful backgrounds with no business failures." Actually, WWWLC and Linda Evans Fitness  
6 Centers had failed.

7 y. On or about April 29, 2006 in Raleigh, North Carolina, Flora Aube  
8 represented to Goodman that "new, innovative exercise classes were always being developed by  
9 corporate" and that this is what "kept the clubs exciting and fresh." Actually, BFL did not  
10 develop more than a few exercise classes, and those were not updated regularly as promised.

11 z. On or about May 16, 2006 in San Ramon, California, Mark Golob,  
12 Thomas Gergley, and Flora Aube represented to Goodman that "all of the exercise materials  
13 used in the franchise were designed exclusively for BFL" and that was what "made BFL so  
14 unique and successful." Actually, much of the BFL product was regurgitated from WWWLC  
15 and LEFC.

16 aa. On or about May 16, 2006 in San Ramon, California, Thomas Gergley  
17 represented to Goodman that there "were no other deals or options presented or available to other  
18 investors looking at BFL" other than what were listed in the UFOC as "every party had to be  
19 treated identical." Actually, BFL treated Area Representatives differently, charging different  
20 prices and requiring some to open a showcase club.

21 bb. On or about April 29, 2006 in Raleigh, North Carolina, Flora Aube  
22 represented to Goodman that clubs were successful because BFL would send out Janet Lossick  
23 or another corporate representative prior to the club opening to pre-sell a large number of  
24 memberships and to assist with the grand opening as well. Actually, BFL rarely pre-sold many  
25 memberships before opening a club.

26 cc. On or about May 16, 2006 in San Ramon, California, Thomas Gergley and  
27 Flora Aube represented to Goodman that they only sold franchises to qualified people to help  
28 assure the success of the franchise itself. Actually, BFL not investigate franchise purchasers or

ask them to demonstrate their financial strength to make a BFL franchise successful.

dd. On or about May 16, 2006 in San Ramon, California, Mark Golob represented to Goodman that he would "spare no expense" in making BFL a "household name." Actually, BFL did not follow through on promises for national branding.

12.5. Defendants Thomas Gergley, Mark Golob and Flora Aube knew that their statements, omissions and/or representations to Goodman in paragraphs 12.3 and 12.4(a) through (dd) above were false, misleading, or recklessly disregarded the truth.

12.6. Defendants Thomas Gergley, Mark Golob and Flora Aube intended that Goodman rely upon their untrue or misleading statements, omissions and/or representations in paragraphs 12.3 and 12.4(a) though (dd) above to induce Goodman to purchase BFL franchises.

12.7. When Goodman purchased the franchises, BFL had exclusive control of the true information and Goodman did not know and reasonably could not have discovered with investigation that the statements, omissions and/or representations of Defendants Thomas Gergley, Mark Golob and Flora Aube in paragraphs 12.3 and 12.4(a) through (dd) above were untrue or misleading.

12.8. When Goodman purchased the franchises, Goodman justifiably relied upon the untrue or misleading statements, omissions and/or representations of Thomas Gergley, Mark Golob and Flora Aube in paragraphs 12.3 and 12.4(a) through (dd) above.

12.9. Soon after purchasing the BFL franchise, Goodman formed First Fitness One, LLC to operate his BFL franchise. Defendants knew or had reason to know that Goodman would form a corporation to operate his franchise and that said corporation also would suffer the consequences of Defendants' wrongful acts.

12.10. As a direct and proximate result of the untrue or misleading statements, omissions and/or representations of Thomas Gergley, Mark Golob and Flora Aube in paragraphs 12.3 and 12.4(a) through (dd) above, Goodman and First Fitness One, LLC suffered and continue to suffer damages.

### **XIII. HARRELL**

13.1. Plaintiffs Harrell repeat and incorporate by reference the allegations set forth in

1 paragraphs 1.1 through 4.25 above.

2 13.2. Plaintiffs Lee Harrell, Debbie Harrell, Todd Harrell and Scott Harrell purchased  
3 from Defendants Thomas Gergley and Mark Golob BFL Center franchises and BFL Area  
4 Representative franchises on or about January 26, 2007.

5 13.3. Prior to purchasing, Harrell received from Defendants Thomas Gergley and Mark  
6 Golob a BFL UFOC containing many or all of the untrue or misleading statements or omissions  
7 detailed in paragraphs 4.6 and 4.7 above.

8 13.4. Defendants Thomas Gergley and Mark Golob knew that their statements,  
9 omissions and/or representations to Harrell detailed in paragraphs 4.6 and 4.7 above were false,  
10 misleading, or recklessly disregarded the truth.

11 13.5. Defendants Thomas Gergley and Mark Golob intended that Harrell rely upon  
12 their untrue or misleading statements, omissions and/or representations in paragraphs 4.6 and 4.7  
13 above to induce Harrell to purchase BFL franchises.

14 13.6. When Harrell purchased the franchises, BFL had exclusive control of the true  
15 information and Harrell did not know and reasonably could not have discovered with  
16 investigation that the statements, omissions and/or representations of Defendants Thomas  
17 Gergley and Mark Golob in paragraphs 4.6 and 4.7 above were untrue or misleading.

18 13.7. When Harrell purchased the franchises, Harrell justifiably relied upon the untrue  
19 or misleading statements, omissions and/or representations of Defendants Thomas Gergley and  
20 Mark Golob in paragraphs 4.6 and 4.7 above.

21 13.8. Soon after purchasing their BFL franchises, Harrell formed Emerald Coast  
22 Women's Fitness, LLC to operate their BFL franchises. Defendants knew or had reason to know  
23 that Harrell would form a corporation to operate their franchises and that said corporation also  
24 would suffer the consequences of Defendants' wrongful acts.

25 13.9. As a direct and proximate result of the untrue or misleading statements, omissions  
26 and/or representations of Defendants Thomas Gergley and Mark Golob in paragraphs 4.6 and 4.7  
27 above, Harrell and Emerald Coast Women's Fitness, LLC suffered and continue to suffer  
28 damages.

1 **XIV. HENDERSON**

2 14.1. Plaintiffs Henderson repeat and incorporate by reference the allegations set forth  
3 in paragraphs 1.1 through 4.25 above.

4 14.2. Plaintiff Henderson Consulting, LLC, by and through Geoffrey Henderson and  
5 Susie Henderson, purchased a BFL Area Representative franchise from Defendants Thomas  
6 Gergley and Mark Golob for \$250,000 on or about July 4, 2006. Pursuant to the franchise  
7 agreement, Susie Henderson and Geoffrey Henderson executed personal guarantees to BFL.

8 14.3. Prior to purchasing, Henderson received from Defendants Thomas Gergley and  
9 Mark Golob a BFL UFOC containing many or all of the untrue or misleading statements or  
10 omissions detailed in paragraphs 4.6 and 4.7 above.

11 14.4. Defendant Mark Golob also made the following untrue or misleading  
12 representations of existing fact:

13 a. On or about March 7, 2006 in San Ramon, California, Mark Golob  
14 represented to Henderson that Mark Mastrov had "recently cashed out" 24 Hour Fitness with  
15 \$1.56 billion was "on board with BFL" and that money "would not be a problem." Actually,  
16 Mark Mastrov was subject to a non-compete agreement with 24 Hour Fitness and did not  
17 continue to fund BFL.

18 b. On or about March 7, 2006 in San Ramon, California, Mark Golob  
19 represented to Henderson that he had lots of people who "know the industry" wanting to invest.  
20 Actually, BFL never disclosed any "industry people" who invested.

21 c. On or about March 7, 2006 in San Ramon, California, Mark Golob  
22 showed Henderson the ½ hour "Take It Off America" television show and represented that it  
23 soon would be shown on a national television network and include highlighting of BFL clubs.  
24 The show never aired.

25 d. On or about March 7, 2006 in San Ramon, California, Mark Golob  
26 represented to Henderson that 1,000 locations had been sold in Japan and that BFL would have a  
27 global brand in the next two to three years. Actually, there were few BFL clubs in Japan and  
28 BFL never was global.

1 e. On or about March 7, 2006 in San Ramon, California, Mark Golob  
2 represented to Henderson that they could expect to have their territories sold in six months.  
3 Actually, there were no sales figures that suggested a territory would sell out in six months.

4 f. On or about March 7, 2006 in San Ramon, California, Mark Golob  
5 represented to Henderson that clubs were designed to be run by one person. That it was a "push  
6 and play" business model and it could be done easily with one person. Actually, Henderson  
7 never knew of any club that was run by only one person.

8 g. On or about March 7, 2006 in San Ramon, California, Mark Golob  
9 represented to Henderson that it was not necessary for an Area Representative to open a club.  
10 Actually, BFL had required other Area Representatives to open clubs.

11 h. On or about March 7, 2006 in San Ramon, California, Mark Golob  
12 represented to Henderson that the corporate office was committed to supporting the clubs, to  
13 assisting with their success, and that the corporate office would send a representative at any time  
14 to help a club owner. Actually, BFL rarely sent representatives to help club owners, but  
15 provided platitudes over the telephone instead.

16 i. On or about March 7, 2006 in San Ramon, California, Mark Golob  
17 represented to Henderson that the BFL equipment had been designed exclusively for BFL by  
18 Thomas Gergley. Actually, BFL equipment was a standard design by the manufacturer.

19 j. On or about March 7, 2006 in San Ramon, California, Mark Golob  
20 represented to Henderson that BFL was on the verge of contracting with a celebrity to provide  
21 name recognition to "signature clubs." BFL never had any celebrity endorse it.

22 k. On or about March 7, 2006 in San Ramon, California, Mark Golob  
23 represented to Henderson that club owners should be profitable and breakeven in six months.  
24 Actually, few if any clubs broke even within six months and most never were profitable.

25 l. On or about March 7, 2006 in San Ramon, California, Mark Golob  
26 represented to Henderson that BFL would co-op advertising at 50/50. Actually, BFL declined  
27 several times to advertise with Henderson.

28 m. On or about March 7, 2006 in San Ramon, California, Mark Golob

1 represented to Henderson that at any time Area Representatives and club Owners would have the  
2 support of the corporate office with its over 100 years of experience in the industry. Actually,  
3 the corporate office was not supportive.

4 14.5. Defendants Thomas Gergley and Mark Golob knew that his statements, omissions  
5 and/or representations to Henderson in paragraphs 14.3 and 14.4(a) through (m) above were  
6 false, misleading, or recklessly disregarded the truth.

7 14.6. Defendants Thomas Gergley and Mark Golob intended that Henderson rely upon  
8 his untrue or misleading statements, omissions and/or representations in paragraphs 14.3 and  
9 14.4(a) through (m) above to induce Henderson to purchase BFL franchises.

10 14.7. When Henderson purchased the franchises, BFL had exclusive control of the true  
11 information and Henderson did not know and reasonably could not have discovered with  
12 investigation that the statements, omissions and/or representations of Defendants Thomas  
13 Gergley and Mark Golob in paragraphs 14.3 and 14.4(a) through (m) above were untrue or  
14 misleading.

15 14.8. When Henderson purchased the franchises, Henderson justifiably relied upon the  
16 untrue or misleading statements, omissions and/or representations of Defendants Thomas  
17 Gergley and Mark Golob in paragraphs 14.3 and 14.4(a) through (m) above.

18 14.9. As a direct and proximate result of the untrue or misleading statements, omissions  
19 and/or representations of Defendants Thomas Gergley and Mark Golob in paragraphs 14.3 and  
20 14.4(a) through (m) above, Henderson suffered and continues to suffer damages.

21 **XV. KIM**

22 15.1. Plaintiffs Kim repeat and incorporate by reference the allegations set forth in  
23 paragraphs 1.1 through 4.25 above.

24 15.2. Plaintiff Haesook Kim purchased a BFL Area Representative franchise in  
25 California from Defendants Thomas Gergley and Mark Golob for \$250,000 on or about July 13,  
26 2006

27 15.3. Prior to purchasing, Kim received from Defendants Thomas Gergley and Mark  
28 Golob a BFL UFOC containing many or all of the untrue or misleading statements or omissions

1 detailed in paragraphs 4.6 and 4.7 above.

2 15.4. Defendants Thomas Gergley, Mark Golob and Cheryl Hoke identified herein also  
3 made the following untrue or misleading representations of existing fact:

4 a. On or about June 29, 2006 in San Ramon, California, Mark Golob  
5 represented to Kim that the Los Angeles area is an excellent territory for BFL and that Golob  
6 would not be surprised if Kim sold twenty territories after one seminar in Los Angeles. Actually,  
7 no BFL sales figures supported such a claim.

8 b. On or about June 29, 2006, in San Ramon, California, Mark Golob  
9 represented to Kim that Mark Mastrov is the money man behind BFL with his "one billion  
10 dollars." Actually, Mark Mastrov was subject to a non-compete agreement with 24 Hour Fitness  
11 and did not continue to fund BFL.

12 c. On or about June 29, 2006 in San Ramon, California, Mark Golob showed  
13 to Kim the ½ hour "Take It Off America" television program and represented that it would soon  
14 be shown on a national television network. The show never aired.

15 d. On or about June 29, 2006 in San Ramon, California, Thomas Gergley and  
16 Mark Golob represented to Kim that all of the territories in Japan were sold out. Actually, few  
17 BFL clubs were in Japan.

18 e. On or about June 29, 2006 in San Ramon, California, Mark Golob  
19 represented to Kim that BFL is global company, and is going to open in Europe soon including  
20 London, Scotland, and Ireland. Actually, BFL never opened in some of these countries.

21 f. On or about June 29, 2006 in San Ramon, California, Hakan Degirmenci  
22 and Cheryl Hoke represented to Kim that BFL had sold over 1,500 territories since the beginning  
23 of BFL. Actual sales were less.

24 g. On or about June 29, 2006 in San Ramon, California, Mark Golob  
25 represented to Kim that he developed the Linda Evans Fitness club concept that was very  
26 successful. Actually, Linda Evans Fitness Centers failed.

27 h. On or about June 29, 2006 in San Ramon, California, Hakan Degirmenci  
28 represented to Kim that Mark Golob had over 25 years of promotional industry experiences and



1 that Mark Golob had taken Linda Evans fitness to almost 27 million dollars revenue a year.  
2 Actually, Linda Evans Fitness Centers did not have that much revenue any time before it failed.

3 15.5. Defendants Thomas Gergley, Mark Golob and Cheryl Hoke knew that their  
4 statements, omissions and/or representations to Kim in paragraphs 15.3 and 15.4(a) through (h)  
5 above were false, misleading, or recklessly disregarded the truth.

6 15.6. Defendants Thomas Gergley, Mark Golob and Cheryl Hoke intended that Kim  
7 rely upon their untrue or misleading statements, omissions and/or representations in paragraphs  
8 15.3 and 15.4(a) through (h) above to induce Kim to purchase BFL franchises.

9 15.7. When Kim purchased the franchises, BFL, Thomas Gergley and Mark Golob had  
10 exclusive control of the true information and Kim did not know and reasonably could not have  
11 discovered with investigation that the statements, omissions and/or representations of Defendants  
12 Thomas Gergley, Mark Golob and Cheryl Hoke in paragraphs 15.3 and 15.4(a) through (h)  
13 above were untrue or misleading.

14 15.8. When Kim purchased the franchises, Kim justifiably relied upon the untrue or  
15 misleading statements, omissions and/or representations of Defendants Thomas Gergley, Mark  
16 Golob and Cheryl Hoke in paragraphs 15.3 and 15.4(a) through (h) above.

17 15.9. Soon after purchasing her BFL franchises, Kim formed Living Solutions, Inc. to  
18 operate her BFL franchises. Defendants knew or had reason to know that Kim would form a  
19 corporation to operate her franchises and that said corporation also would suffer the  
20 consequences of Defendants' wrongful acts.

21 15.10. As a direct and proximate result of Defendants' untrue or misleading statements,  
22 omissions and/or representations of Defendants Thomas Gergley, Mark Golob and Cheryl Hoke  
23 in paragraphs 15.3 and 15.4(a) through (h) above, Kim and Living Solutions, Inc. suffered and  
24 continue to suffer damages.

25 **XVI. MERSCHEN**

26 16.1. Plaintiff Merschen repeats and incorporates by reference the allegations set forth  
27 in paragraphs 1.1 through 4.25 above.

28 16.2. Plaintiff Merschen purchased from Defendants Thomas Gergley and Mark Golob

1 a BFL Area Representative franchise for \$250,000 on or about April 2, 2007.

2 16.3. Prior to purchasing, Merschen received from Defendants Thomas Gergley and  
3 Mark Golob a BFL UFOC containing many or all of the untrue or misleading statements or  
4 omissions detailed in paragraphs 4.6 and 4.7 above.

5 16.4. Defendants Mark Golob, Cheryl Hoke, Penny Crook and Cathy Galli also made  
6 the following untrue or misleading representations of existing fact:

7 a. On or about February 5, 2007 in San Ramon, California, Mark Golob  
8 represented to Merschen that BFL was growing rapidly. Actually, sales were not robust.

9 b. On or about February 5, 2007 in San Ramon, California, Mark Golob,  
10 Cheryl Hoke and Penny Crook represented to Merschen that all BFL clubs would be branded  
11 alike with the same equipment so that any client could enter any club and feel that they were in  
12 their own club. Actually, BFL did not follow through with national branding.

13 c. On or about February 5, 2007 in San Ramon, California, Mark Golob told  
14 Merschen that he and Thomas Gergley were suing LEFC for not following the BFL plan.  
15 Actually, Linda Evans sued Gergley and Golob.

16 d. On or about February 4, 2007 in San Ramon, California, Mark Golob  
17 represented to Merschen that there were over 200 clubs currently sold and operating, and that  
18 these clubs were "profitable in a 6 month window." Actually, few if any clubs broke even within  
19 six months and few ever were profitable.

20 e. On or about February 4, 2007 in San Ramon, California, Mark Golob  
21 represented to Merschen that BFL clubs were "emptying" Curves clubs everywhere and women  
22 were "flocking" to BFL clubs. Actually, few if any clubs were experiencing a noticeable amount  
23 of Curves' members switching to BFL.

24 f. On or about February 4, 2007 in San Ramon, California, Cheryl Hoke  
25 represented to Merschen that the BFL sales office could not keep up with the volume of calls and  
26 that Penny Crook was selling three clubs per week. Actually, BFL sales were not robust.

27 g. On or about February 5, 2007 in San Ramon, California, Mark Golob,  
28 Cheryl Hoke and Penny Crook represented to Merschen that Chevalier had sold 19 clubs during

1 his first seminar. Actually, Chevalier did not sell near 19 clubs in his first seminar.

2 h. On or about February 4, 2007 in San Ramon, California, Mark Golob  
3 represented to Merschen that Thomas Gergley had designed the equipment exclusively for BFL.  
4 studying 200 women and his mother. Actually, BFL equipment was a standard design by the  
5 manufacturer.

6 i. On or about April 2, 2007 in a telephone conversation, Cathy Galli  
7 represented to Merschen that all the lawsuits in the UFOC were settled out of court and that there  
8 was no pending litigation at the time. Actually, some BFL franchise owners were in arbitration  
9 against BFL.

10 16.5. Defendants Thomas Gergley, Mark Golob, Cheryl Hoke, Penny Crook and Cathy  
11 Galli knew that their statements, omissions and/or representations to Merschen in paragraphs  
12 16.3 and 16.4(a) through (i) above were false, misleading, or recklessly disregarded the truth.

13 16.6. Defendants Thomas Gergley, Mark Golob, Cheryl Hoke, Penny Crook and Cathy  
14 Galli intended that Merschen rely upon their untrue or misleading statements, omissions and/or  
15 representations in paragraphs 16.3 and 16.4(a) through (i) above to induce Merschen to purchase  
16 BFL franchises.

17 16.7. When Merschen purchased the franchises, BFL, Thomas Gergley and Mark  
18 Golob had exclusive control of the true information and Merschen did not know and reasonably  
19 could not have discovered with investigation that the statements, omissions and/or  
20 representations of Defendants Thomas Gergley, Mark Golob, Cheryl Hoke, Penny Crook and  
21 Cathy Galli in paragraphs 16.3 and 16.4(a) through (i) above were untrue or misleading.

22 16.8. When Merschen purchased the franchises, Merschen justifiably relied upon the  
23 untrue or misleading statements, omissions and/or representations of Defendants Thomas  
24 Gergley, Mark Golob, Cheryl Hoke, Penny Crook and Cathy Galli in paragraphs 16.3 and  
25 16.4(a) through (i) above.

26 16.9. As a direct and proximate result of the untrue or misleading statements, omissions  
27 and/or representations of Defendants Thomas Gergley, Mark Golob, Cheryl Hoke, Penny Crook  
28 and Cathy Galli in paragraphs 16.3 and 16.4(a) through (i), Merschen suffered and continues to

1 suffer damages.

2 **XVII. NAPURANO**

3 17.1. Plaintiffs Napurano repeat and incorporate by reference the allegations set forth in  
4 paragraphs 1.1 through 4.25 above.

5 17.2. Plaintiffs Marion Napurano and John Napurano purchased a BFL Area  
6 Representative franchise from Defendants Thomas Gergley and Mark Golob for \$250,000 on or  
7 about February 14, 2007.

8 17.3. Prior to purchasing, Napurano received from Defendants Thomas Gergley and  
9 Mark Golob a BFL UFOC containing many or all of the untrue or misleading statements or  
10 omissions detailed in paragraphs 4.6 and 4.7 above.

11 17.4. Defendants Thomas Gergley and Mark Golob, and Penny Crook also made the  
12 following untrue or misleading representations of existing fact:

13 a. On or about January 30, 2007 in San Ramon, California, Mark Golob  
14 represented to Napurano that Mark Mastrov's finances were behind BFL. Actually, Mark  
15 Mastrov was subject to a non-compete agreement with 24 Hour Fitness and has stopped funding  
16 BFL.

17 b. On or about January 30, 2007 in San Ramon, California, Mark Golob  
18 represented to Napurano that BFL was the only women's fitness franchise with its own TV show  
19 and that this was being run on TLC to raise awareness of BFL, not to sell anything. It was only  
20 5 minutes now but that it would air as a half hour show in the fall of 2007 or for sure by January  
21 of 2008. No ½ hour show ever aired.

22 c. On or about January 13, 2007 in Grapevine, Texas, Penny Crook  
23 represented to Napurano that the BFL television show, then a five-minute show on TLC, would  
24 expand to a half hour show in the fall of 2007, or for sure by January 2008. No ½ hour show  
25 ever aired.

26 d. On or about January 13, 2007 in Grapevine, Texas, Penny Crook  
27 represented to Napurano that there were 16 clubs sold from the seminar in Seattle. Actually, no  
28 seminar in Seattle sold 16 clubs.

1 e. On or about January 13, 2007 in Grapevine, Texas, Penny Crook  
2 represented to Napurano that one person could easily run the club and therefore there was no  
3 need for additional money for salaries. Actually, Napurano never knew of any club that was run  
4 by only one person.

5 f. On or about January 30, 2007 in San Ramon, California, Thomas Gergley  
6 represented to Napurano that they were better fit for a BFL Area Representative franchise and  
7 that if Napurano purchased the area before all the other people that were at the seminar,  
8 Napurano would get the club commissions. Actually, there was nothing about Napurano that  
9 made them a better fit for Area Representative other than they had the finances to purchase an  
10 Area Representative franchise.

11 g. On or about January 30, 2007 in San Ramon, California, Mark Golob and  
12 Penny Crook represented to Napurano that BFL was still working with most of the people that  
13 were at the January 13, 2007 seminar and that several of them would be "sending in their  
14 money" to buy clubs within the month. Actually, BFL was doing little follow up and no one  
15 bought clubs from the January 13, 2007 seminar.

16 h. On or about January 30, 2007 in San Ramon, California, Mark Golob  
17 represented to Napurano that BFL's classes and lecture series would be updated frequently and  
18 that when anything new came on the scene they would find an expert in that field bring them into  
19 BFL's studio and shoot a new class. Actually, BFL did not even update its classes and lectures  
20 quarterly as represented.

21 i. On or about January 29, 2007 in San Ramon, California, Mark Golob  
22 represented to Napurano that each time a BFL opened near a Curves the members "came over in  
23 droves" to join BFL. Actually, few if any clubs were experiencing a noticeable amount of  
24 Curves' members switching to BFL.

25 j. On or about January 13, 2007 in Grapevine, Texas, Penny Crook  
26 represented to Napurano that the BFL Diet Plan was written by Lisa Bellini exclusively for BFL.  
27 Actually, the diet and nutrition information contributed by Lisa Bellini was not exclusive to BFL,  
28 but regurgitated WWLC product.

1 k. On or about January 13, 2007 in Grapevine, Texas, Penny Crook  
2 represented to Napurano that Bellini, the BFL dietician on staff, would be "available to both our  
3 club owners and members" for nutritional advice and consulting. Actually, Bellini provided no  
4 advice or counseling to Napurano other than information regurgitated from WWL.C.

5 l. On or about January 29, 2007 in San Ramon, California, Mark Golob and  
6 Thomas Gergley also represented to Napurano that Lisa Bellini had written the diet plan  
7 exclusively for BFL and that she was a dietician available for consultation with club owners and  
8 members. Actually, the diet and nutrition information contributed by Lisa Bellini was not  
9 exclusive to BFL, but regurgitated WWL.C product, and she never consulted for Napurano.

10 m. On or about January 29, 2007, Penny Crook, Mark Golob and Thomas  
11 Gergley represented to Napurano that BFL had a staff of experts in the fields of Nutrition,  
12 Fitness, Psychology, Yoga, Fashion and Medicine and that the BFL lecture series would be  
13 updated regularly. Actually, any such staff was short lived and materials were not updated  
14 regularly.

15 n. On or about January 13, 2007 in Grapevine, Texas, Penny Crook  
16 represented to Napurano that Thomas Gergley took "200 women of every shape and size into a  
17 lab, including his own mother," to design the BFL equipment "from the ground up." Crook  
18 represented that this equipment was being built exclusively for BFL by Star Trac. Actually, BFL  
19 equipment was a standard design by the manufacturer.

20 o. On or about January 29, 2007 in San Ramon, California, Mark Golob  
21 represented to Napurano that Thomas Gergley designed the BFL equipment "from the ground  
22 up" by "studying 200 women, including his mother," and that the equipment was built  
23 exclusively for BFL. Actually, BFL equipment was a standard design by the manufacturer.

24 p. On or about January 30, 2007 in San Ramon, California, Mark Golob  
25 represented to Napurano that the television show "The Biggest Loser" was his idea and that the  
26 Susan Winston was producing the ½ hour BFL television show, "Take It Off America" "not for  
27 the money, but because she believed" in the business. Ms. Winston's commitment, if any, only  
28 produced a "demo" because the show never aired.

1           q.     On or about January 13, 2007 in Grapevine, Texas, Penny Crook  
2 represented to Napurano that BFL had sold the rights to 1,000 clubs in Japan with 3 clubs opened  
3 in the Tokyo metropolitan area at the time. BFL also had sold the rights to 50 clubs in Canada  
4 and would be opening the European market that year. Actually, few clubs were in Japan and  
5 BFL never opened in Canada or Europe.

6           r.     On or about January 30, 2007 in San Ramon, California, Mark Golob  
7 represented to Napurano that the Linda Evans Clubs were very successful and that they were  
8 sold to 24 Hour Fitness. Actually, most Linda Evans Clubs were not successful and several  
9 failed.

10          s.     On or about January 29, 2007 in San Ramon, California, Penny Crook and  
11 Mark Golob represented to Napurano that there was a person wanting to buy the entire state of  
12 Texas, but they were only going to sell the Houston area to that person. Napurano never learned  
13 of a legitimate buyer for the entire state of Texas, and BFL never limited a person's ability to  
14 buy territories if they had the money.

15          t.     On or about January 30, 2007 in San Ramon, California, Thomas Gergley  
16 represented to Napurano that they would need to have \$10,000 to \$20,000 above the \$250,000 in  
17 order to begin their business because they would be selling clubs very quickly and getting the  
18 \$14,500 commission per club, plus the \$400 per month royalty check for each club. Actually,  
19 Area Representative sales experiences did not suggest that Napurano would sell clubs very  
20 quickly.

21          u.     On or about January 29, 2007 in San Ramon, California, Penny Crook  
22 represented to Napurano that BFL had an ad agency called Purple Door which was "working on  
23 getting free advertisings for the clubs." Actually, there never was any free advertising for clubs.

24          v.     On or about January 13, 2007 in Grapevine, Texas, Penny Crook  
25 represented to Napurano that the then existing BFL clubs were making substantial revenue each  
26 month selling BFL apparel and running two weight loss express classes in which half of the class  
27 attendees were non-members paying \$150 instead of the normal \$99 fee. Actually, few if any  
28 BFL clubs were making substantial revenue on apparel and Napurano never learned of any club

1 with many non-members taking classes.

2 w. On or about January 13, 2007 in Grapevine, Texas, Penny Crook  
3 represented to Napurano that Susan Zager was an experienced marketer and would create with  
4 her staff collateral advertising materials for clubs at no charge. Actually, Zager and BFL never  
5 produced any marketing for clubs at no charge.

6 x. On or about January 29, 2007 in San Ramon, California, Mark Golob and  
7 Thomas Gergley also represented to Napurano that Susan Zager would apply her significant  
8 marketing experience to create with her staff collateral materials the clubs would need for their  
9 advertising at no charge. Actually, Zager and BFL never produced any marketing for clubs at no  
10 charge.

11 17.5. Defendants Thomas Gergley and Mark Golob, and Penny Crook knew that their  
12 statements, omissions and/or representations to Napurano in paragraphs 17.3 and 17.4(a) through  
13 (x) above were false, misleading, or recklessly disregarded the truth.

14 17.6. Defendants Thomas Gergley and Mark Golob, and Penny Crook intended that  
15 Napurano rely upon their untrue or misleading statements, omissions and/or representations in  
16 paragraphs 17.3 and 17.4(a) through (x) above to induce Napurano to purchase the BFL Area  
17 Representative franchise.

18 17.7. When Napurano purchased the Area Representative franchise, BFL, Thomas  
19 Gergley and Mark Golob had exclusive control of the true information and Napurano did not  
20 know and reasonably could not have discovered with investigation that the statements, omissions  
21 and/or representations of Defendants Thomas Gergley and Mark Golob, and Penny Crook in  
22 paragraphs 17.3 and 17.4(a) through (x) above were untrue or misleading.

23 17.8. When Napurano purchased the Area Representative franchise, Napurano  
24 justifiably relied upon the untrue or misleading statements, omissions and/or representations of  
25 Thomas Gergley and Mark Golob, and Penny Crook in paragraphs in paragraphs 17.3 and  
26 17.4(a) through (x) above.

27 17.9. Soon after purchasing their BFL franchises, Napurano formed Napurano Healthy  
28 Solutions, Inc. to operate their BFL franchise. Defendants knew or had reason to know that



1 Napurano would form a corporation to operate their franchise and that said corporation also  
2 would suffer the consequences of Defendants' wrongful acts.

3 17.10. As a direct and proximate result of the untrue or misleading statements, omissions  
4 and/or representations of Thomas Gergley and Mark Golob, and Penny Crook in paragraphs 17.3  
5 and 17.4(a) through (x) above, Napurano and Napurano Healthy Solutions, Inc. suffered  
6 damages and continue to suffer damages.

7 **XVIII. WASHINGTON**

8 18.1. Plaintiffs Washington repeat and incorporate by reference the allegations set forth  
9 in paragraphs 1.1 through 4.25 above.

10 18.2. Plaintiffs Hubert Washington and Robin Washington purchased a BFL Area  
11 Representative 100 unit franchise territory from Defendants Thomas Gergley and Mark Golob  
12 for \$ 250,000 on or about December 1, 2006.

13 18.3. Prior to purchasing, Washington received from Defendants Thomas Gergley and  
14 Mark Golob a BFL UFOC containing many or all of the untrue or misleading statements or  
15 omissions detailed in paragraphs 4.6 and 4.7 above.

16 18.4. Defendants Thomas Gergley, Mark Golob, Yolanda Fagen also made the  
17 following untrue or misleading representations of existing fact:

18 a. On or about July 18, 2006 in San Ramon, California, Thomas Gergley and  
19 Mark Golob represented to Washington that they had been successful with Womens Workout  
20 and Weight Loss Clubs and that they owned and managed twenty-three womens' clubs in  
21 California. Actually, WWWLC was not successful and several of its clubs failed.

22 b. On or about July 18, 2006 in San Ramon, California, Thomas Gergley and  
23 Yolanda Fagen showed Washington the ½ hour "Take It Off" television program and represented  
24 that it would soon be shown on a national television network. The show never aired.

25 c. On or about July 18, 2006 in San Ramon, California, Thomas Gergley,  
26 Mark Golob and Yolanda Fagen represented to Washington that "1,000 territories had been sold  
27 in Tokyo Japan" and that BFL was expanding in the Bahamas and Canada. Actually, few clubs  
28 were in Japan, only one in Canada, and plaintiffs are unaware of any BFL clubs in the Bahamas.

1 d. On or about July 18, 2006 in San Ramon, California, Thomas Gergley  
2 represented to Washington that BFL was conducting a national advertising campaign that was  
3 "airing on several major networks," regional advertising to bring brand recognition, and that they  
4 were "expanding their brand globally." Gergley represented to Washington that BFL already  
5 was advertising on Good Morning America and The View, and would run ads on Oprah, Ellen,  
6 and Regis & Kelly. Actually, Washington never saw any commercials on Oprah, Ellen or Regis  
7 & Kelly and BFL never produced any national advertising schedule or campaign when asked.

8 e. On or about July 18, 2006 in San Ramon, California, Thomas Gergley  
9 represented to Washington that "most clubs break even within six months." Actually, few if any  
10 clubs broke even within six months.

11 f. On or about July 18, 2006 in San Ramon, California, Thomas Gergley  
12 represented to Washington that its showcase club in Livermore had over 300 members. The club  
13 owners reported to Washington that they were not quite at 300 even nearly a year later.

14 g. On or about July 18, 2006 in San Ramon, California, Thomas Gergley  
15 represented to Washington that typical club expenses were \$8,000 per month. Washington was  
16 unaware of any clubs that had expenses at or below \$8,000 per month.

17 h. On or about July 18, 2006 in San Ramon, California, Thomas Gergley  
18 represented to Washington that BFL had a medical expert, Regina Widman, available to answer  
19 members' medical questions. Dr. Widman never was available to Washington and was not  
20 associated with BFL.

21 i. On or about July 18, 2006 in San Ramon, California, Yolanda Fagen  
22 represented to Washington that the BFL exercise equipment was designed by Thomas Gergley,  
23 manufactured exclusively for BFL, and that no other fitness company had the same equipment.  
24 Actually, BFL equipment was a standard design by the manufacturer.

25 j. On our about August 2, 2006 in San Ramon, California, Yolanda Fagen  
26 represented to Washingotn that BFL takes \$400 out of the monthly \$1,000 license fee paid by  
27 each franchise and "puts it back into advertising." Fagen said that BFL was "running all of their  
28 ads nationally," television ads as well as full color magazine and newspaper ads. Washington

1 never saw any national BFL advertising and had to pay for all advertising themselves.

2 k. On our about August 2, 2006 in San Ramon, California, Yolanda Fagen  
3 represented to Washington that the franchise fee would increase to \$39,500 before the end of the  
4 year. Actually, the franchise fee did not increase.

5 l. On or about August 8, 2006 in San Ramon, California, Thomas Gergley  
6 represented to Washington that a 50 club territory would sell out in two to three years. Actually,  
7 Area Representatives were not selling out their territories within three years.

8 m. On or about August 8, 2006 in San Ramon, California, Thomas Gergley  
9 represented to the Washingtons that almost all but a couple of the franchises listed in default in  
10 the UFOC were due to the fact that "the real estate market in California was so tight that they did  
11 not sign their lease within three months" and they "were taking six to nine months to find their  
12 locations and sign their leases." Actually, these club owners were in default because their first  
13 club had not broken even so they didn't open their second club.

14 n. On or about Sept. 6, 2006 in San Ramon, California, Thomas Gergley  
15 represented to Washington that all lawsuits against BFL were listed in the UFOC, that the  
16 lawsuits all were minor, that BFL came out ahead in all but one which settled. Actually, Linda  
17 Evans had sued WWLWC, LEFC, Thomas Gergley and Golob and the Orange County District  
18 Attorney had taken action against LEFC.

19 o. On several occasions in October and November 2006, Yolanda Fagen  
20 represented that the price of franchises would increase before the end of the year and  
21 Washington "needed to get our money together to 'lock in' the price." The price of franchises  
22 did not increase.

23 18.5. Defendants Thomas Gergley, Mark Golob, Yolanda Fagen knew that their  
24 statements, omissions and/or representations to Washington in paragraphs 18.3 and 18.4(a)  
25 through (o) above were false, misleading, or recklessly disregarded the truth.

26 18.6. Defendants Thomas Gergley, Mark Golob, Yolanda Fagen intended that  
27 Washington rely upon their untrue or misleading statements, omissions and/or representations in  
28 paragraphs 18.3 and 18.4(a) through (o) above to induce Washington to purchase the BFL Area

1 Representative franchise.

2 18.7. When Washington purchased the Area Representative franchise, BFL, Thomas  
3 Gergley and Mark Golob had exclusive control of the true information and Washington did not  
4 know and reasonably could not have discovered with investigation that the statements, omissions  
5 and/or representations of Defendants Thomas Gergley, Mark Golob and Yolanda Fagen in  
6 paragraphs 18.3 and 18.4(a) through (o) above were untrue or misleading.

7 18.8. When Washington purchased the Area Representative franchise, Washington  
8 justifiably relied upon the untrue or misleading statements, omissions and/or representations of  
9 Defendants Thomas Gergley, Mark Golob and Yolanda Fagen in paragraphs 18.3 and 18.4(a)  
10 through (o) above.

11 18.9. Soon after purchasing their BFL franchise, Washington formed Stretch Forth, LP  
12 to operate their BFL franchise. Defendants knew or had reason to know that Washington would  
13 form a corporation to operate their franchise and that said corporation also would suffer the  
14 consequences of Defendants' wrongful acts.

15 18.10. As a direct and proximate result of the untrue or misleading statements, omissions  
16 and/or representations of Defendants Thomas Gergley, Mark Golob and Yolanda Fagen in  
17 paragraphs 18.3 and 18.4(a) through (o) above, Washington and Stretch Forth, LP suffered  
18 damages and continue to suffer damages.

19 **FIRST CAUSE OF ACTION**

20 **(Fraud, Against Defendants Thomas Gergley, Mark Golob,**  
21 **Flora Aube, Janet Lossick, Ron Rannelone, Taylor Golob, Yolanda Fagen,**  
22 **Penny Crook, Callie Miller and Cathy Galli)**

23 19.1 Plaintiffs repeat and incorporate by reference the allegations set forth in  
24 paragraphs 1.1 through 18.10 above.

25 19.2 Defendant Thomas Gergley made the statements, omissions and/or  
26 representations identified in detail in paragraphs 4.6; 4.7; 5.3; 5.4(a) through (m); 6.4(c) through  
27 (f), (j), (k), (m), and (q) through (t); 7.3; 7.4(c), (d), (f), and (h) through (k); 8.3; 9.3; 9.4(i), (j),  
28 (aa) and (cc); 10.3; 10.4(b) through (f); 11.3; 11.4(c) and (e) through (i); 12.3; 12.4(c) through  
(h), (l), (o), (v), (z), (aa) and (cc); 14.3; 15.3; 15.4(d); 16.3; 17.3; 17.4(f), (l), (m), (t) and (x);

1 18.3; and 18.4(a) through (h), and (l) through (m) above.

2 19.3 Defendant Mark Golob made the statements, omissions and/or representations  
3 identified in detail in paragraphs 4.6; 4.7; 5.3; 5.4(n); 6.3; 7.3; 7.4(a) through (e), (g), (h), (i), (l)  
4 and (m); 8.3; 8.4(q); 9.3; 9.4(a) through (f), and (k) through (z); 10.3; 11.3; 11.4(a) through (i);  
5 12.3; 12.4(a) through (g), (o), (p), (q), (s), (v), (w), (x), (z) and (dd); 13.3; 14.3; 14.4(a) through  
6 (m); 15.3; 15.4(a) through (e) and (g); 16.3; 16.4(a) through (e), (g) and (h); 17.3; 17.4(a), (b),  
7 (g), (h), (i), (l), (m), (o), (p), (r), (s) and (x); 18.3; and 18.4(a) and (c) above.

8 19.4 Defendant Flora Aube made the statements, omissions and/or representations  
9 identified in detail in paragraphs 7.4(f); 8.4(a) through (q); 10.4(a); 12.4(f), (h) through (o), (r),  
10 (t), (u), (v), (x), (y), (z), (bb) and (cc) above.

11 19.5 Defendant Janet Lossick made the statements, omissions and/or representations  
12 identified in detail in paragraph 7.4(f) above.

13 19.6 Defendant Taylor Golob made the statements, omissions and/or representations  
14 identified in detail in paragraphs 5.4(a) through (m) above.

15 19.7 Defendant Yolanda Fagen made the statements, omissions and/or representations  
16 identified in detail in paragraphs 6.4(a), (b), (d) through (l), (n), (o), (p), (r) and (t); and 18.4(b),  
17 (c), (i), (j), (k) and (o) above.

18 19.8 Defendant Penny Crook made and adopted the statements, omissions and/or  
19 representations identified in detail in paragraphs 16.4(b) and (g); 17.4(c), (d), (e), (g), (j), (k),  
20 (m), (n), (q), (s), (u), (v) and (w) above.

21 19.9 Defendant Callie Miller made the statements, omissions and/or representations  
22 identified in detail in paragraphs 9.4(g) and (h), and 11.4(f) and (i) above.

23 19.10 Defendant Cathy Galli made the statements, omissions and/or representations  
24 identified in detail in paragraph 16.4(i) above.

25 19.11 The statements and/or representations of Thomas Gergley, Mark Golob, Flora  
26 Aube, Janet Lossick, Taylor Golob, Yolanda Fagen, Penny Crook, Callie Miller and Cathy Galli  
27 identified in detail above were material to that plaintiff's purchase of BFL Area Representative  
28 franchises and/or club franchise(s) and to that plaintiff's continued operation of said franchises.

1 19.12 The statements and/or representations of Thomas Gergley, Mark Golob, Flora  
2 Aube, Janet Lossick, Taylor Golob, Yolanda Fagen, Penny Crook, Callie Miller and Cathy Galli  
3 identified above were false.

4 19.13 Defendants Thomas Gergley, Mark Golob, Flora Aube, Janet Lossick, Taylor  
5 Golob, Yolanda Fagen, Penny Crook, Callie Miller and Cathy Galli knew their statements and/or  
6 representations identified above were false, or recklessly disregarded the truth or falsity of the  
7 statements and/or representations.

8 19.14 Defendants Thomas Gergley, Mark Golob, Flora Aube, Janet Lossick, Taylor  
9 Golob, Yolanda Fagen, Penny Crook, Callie Miller and Cathy Galli intended that each particular  
10 plaintiff rely upon their false statements and/or representations above to induce that plaintiff to  
11 purchase their franchise(s).

12 19.15 The statements and/or representations of Thomas Gergley, Mark Golob, Flora  
13 Aube, Janet Lossick, Taylor Golob, Yolanda Fagen, Penny Crook, Callie Miller and Cathy Galli  
14 identified above were oppressive, fraudulent and malicious.

15 19.16 Each particular plaintiff did not know that the statements and/or representations of  
16 Thomas Gergley, Mark Golob, Flora Aube, Janet Lossick, Taylor Golob, Yolanda Fagen, Penny  
17 Crook, Callie Miller and Cathy Galli identified above were false or misleading.

18 19.17 Each particular plaintiff did not have access to the true information and justifiably  
19 relied upon the statements and/or representations of Thomas Gergley, Mark Golob, Flora Aube,  
20 Janet Lossick, Taylor Golob, Yolanda Fagen, Penny Crook, Callie Miller and Cathy Galli  
21 identified above when purchasing that plaintiff's franchise(s).

22 19.18 As a direct and proximate result of the false statements and/or representations of  
23 Thomas Gergley, Mark Golob, Flora Aube, Janet Lossick, Taylor Golob, Yolanda Fagen, Penny  
24 Crook, Callie Miller and Cathy Galli identified above, each plaintiff has suffered and continues  
25 to suffer damages in an amount to be proven at trial.

26 WHEREFORE, Plaintiffs pray for judgment as set forth below.  
27  
28

1 **SECOND CAUSE OF ACTION**

2 **(Negligent Misrepresentation, Against Defendants Thomas Gergley, Mark Golob,**  
3 **Flora Aube, Janet Lossick, Ron Rannelone, Taylor Golob, Yolanda Fagen,**  
4 **Penny Crook, Callie Miller and Cathy Galli)**

5 20.1 Plaintiffs repeat and incorporate by reference the allegations set forth in  
6 paragraphs 1.1 through 18.10 (excepting paragraph 4.15) above.

7 20.2 Defendant Thomas Gergley made the statements, omissions and/or  
8 representations identified in detail in paragraphs 4.6; 4.7; 5.3; 5.4(a) through (m); 6.4(c) through  
9 (f), (j), (k), (m), and (q) through (t); 7.3; 7.4(c), (d), (f), and (h) through (k); 8.3; 9.3; 9.4(i), (j),  
10 (aa) and (cc); 10.3; 10.4(b) through (f); 11.3; 11.4(c) and (e) through (i); 12.3; 12.4(c) through  
11 (h), (l), (o), (v), (z), (aa) and (cc); 14.3; 15.3; 15.4(d); 16.3; 17.3; 17.4(f), (l), (m), (t) and (x);  
12 18.3; and 18.4(a) through (h), and (l) through (m) above.

13 20.3 Defendant Mark Golob made the statements, omissions and/or representations  
14 identified in detail in paragraphs 4.6; 4.7; 5.3; 5.4(n); 6.3; 7.3; 7.4(a) through (e), (g), (h), (i), (l)  
15 and (m); 8.3; 8.4(q); 9.3; 9.4(a) through (f), and (k) through (z); 10.3; 11.3; 11.4(a) through (i);  
16 12.3; 12.4(a) through (g), (o), (p), (q), (s), (v), (w), (x), (z) and (dd); 13.3; 14.3; 14.4(a) through  
17 (m); 15.3; 15.4(a) through (e) and (g); 16.3; 16.4(a) through (e), (g) and (h); 17.3; 17.4(a), (b),  
18 (g), (h), (i), (l), (m), (o), (p), (r), (s) and (x); 18.3; and 18.4(a) and (c) above.

19 20.4 Defendant Flora Aube made the statements, omissions and/or representations  
20 identified in detail in paragraphs 7.4(f); 8.4(a) through (q); 10.4(a); 12.4(f), (h) through (o), (r),  
21 (t), (u), (v), (x), (y), (z), (bb) and (cc) above.

22 20.5 Defendant Janet Lossick made the statements, omissions and/or representations  
23 identified in detail in paragraph 7.4(f) above.

24 20.6 Defendant Taylor Golob made the statements, omissions and/or representations  
25 identified in detail in paragraphs 5.4(a) through (m) above.

26 20.7 Defendant Yolanda Fagen made the statements, omissions and/or representations  
27 identified in detail in paragraphs 6.4(a), (b), (d) through (l), (n), (o), (p), (r) and (t); and 18.4(b),  
28 (c), (i), (j), (k) and (o) above.

20.8 Defendant Penny Crooks made the statements, omissions and/or representations

1 identified in detail in paragraphs 16.4(b) and (g); 17.4(c), (d), (e), (g), (j), (k), (m), (n), (q), (s),  
2 (u), (v) and (w) above.

3 20.9 Defendant Callie Miller made the statements, omissions and/or representations  
4 identified in detail in paragraphs 9.4(g) and (h), and 11.4(f) and (i) above.

5 20.10 Defendant Cathy Galli made the statements, omissions and/or representations  
6 identified in detail in paragraph 16.4(i) above.

7 20.11 The statements and/or representations of Thomas Gergley, Mark Golob, Flora  
8 Aube, Janet Lossick, Taylor Golob, Yolanda Fagen, Penny Crook, Callie Miller and Cathy Galli  
9 identified in detail above were material to that plaintiff's purchase of BFL Area Representative  
10 franchises and/or club franchise(s) and to that plaintiff's continued operation of said franchises.

11 20.12 The statements and/or representations of Thomas Gergley, Mark Golob, Flora  
12 Aube, Janet Lossick, Taylor Golob, Yolanda Fagen, Penny Crook, Callie Miller and Cathy Galli  
13 identified above were false or misleading.

14 20.13 Defendants Thomas Gergley, Mark Golob, Flora Aube, Janet Lossick, Taylor  
15 Golob, Yolanda Fagen, Penny Crook, Callie Miller and Cathy Galli did not have an honest belief  
16 in the truth of their statements and/or representations identified above or were without a  
17 reasonable ground to believe that their statements and/or representations were true and not  
18 misleading.

19 20.14 Defendants Thomas Gergley, Mark Golob, Flora Aube, Janet Lossick, Taylor  
20 Golob, Yolanda Fagen, Penny Crook, Callie Miller and Cathy Galli intended that each particular  
21 plaintiff rely upon their false statements and/or representations above to induce that plaintiff to  
22 purchase their franchise(s).

23 20.15 Each particular plaintiff did not know that the statements and/or representations of  
24 Thomas Gergley, Mark Golob, Flora Aube, Janet Lossick, Taylor Golob, Yolanda Fagen, Penny  
25 Crook, Callie Miller and Cathy Galli identified above were false or misleading.

26 20.16 Each particular plaintiff did not have access to the true information and justifiably  
27 relied upon the statements and/or representations of Thomas Gergley, Mark Golob, Flora Aube,  
28 Janet Lossick, Taylor Golob, Yolanda Fagen, Penny Crook, Callie Miller and Cathy Galli



1 identified above when purchasing that plaintiff's franchise(s).

2 20.17 As a direct and proximate result of the false or misleading statements and/or  
3 representations of Thomas Gergley, Mark Golob, Flora Aube, Janet Lossick, Taylor Golob,  
4 Yolanda Fagen, Penny Crook, Callie Miller and Cathy Galli identified above, each plaintiff has  
5 suffered and continues to suffer damages in an amount to be proven at trial.

6 WHEREFORE, Plaintiffs pray for judgment as set forth below.

7  
8 **THIRD CAUSE OF ACTION**  
9 **(Fraudulent Concealment, Against Defendants Thomas Gergley, Mark Golob,**  
10 **Flora Aube, Janet Lossick, Ron Rannelone, Taylor Golob, Yolanda Fagen,**  
11 **Penny Crook, Callie Miller and Cathy Galli)**

12 21.1 Plaintiffs repeat and incorporate by reference the allegations set forth in  
13 paragraphs 1.1 through 18.10 above.

14 21.2 Defendant Thomas Gergley concealed the true information identified in detail in  
15 paragraphs 4.6; 4.7; 5.3; 5.4(a) through (m); 6.4(c) through (f), (j), (k), (m), and (q) through (t);  
16 7.3; 7.4(c), (d), (f), and (h) through (k); 8.3; 9.3; 9.4(i), (j), (aa) and (cc); 10.3; 10.4(b) through  
17 (f); 11.3; 11.4(c) and (e) through (i); 12.3; 12.4(c) through (h), (l), (o), (v), (z), (aa) and (cc);  
18 14.3; 15.3; 15.4(d); 16.3; 17.3; 17.4(f), (l), (m), (t) and (x); 18.3; and 18.4(a) through (h), and (l)  
19 through (m) above that would have made the statements, omissions and/or representations in  
20 those paragraphs not false or misleading.

21 21.3 Defendant Mark Golob concealed the true information identified in detail in  
22 paragraphs 4.6; 4.7; 5.3; 5.4(n); 6.3; 7.3; 7.4(a) through (e), (g), (h), (i), (l) and (m); 8.3; 8.4(q);  
23 9.3; 9.4(a) through (f), and (k) through (z); 10.3; 11.3; 11.4(a) through (i); 12.3; 12.4(a) through  
24 (g), (o), (p), (q), (s), (v), (w), (x), (z) and (dd); 13.3; 14.3; 14.4(a) through (m); 15.3; 15.4(a)  
25 through (e) and (g); 16.3; 16.4(a) through (e), (g) and (h); 17.3; 17.4(a), (b), (g), (h), (i), (l), (m),  
26 (o), (p), (r), (s) and (x); 18.3; and 18.4(a) and (c) above that would have made the statements,  
27 omissions and/or representations in those paragraphs not false or misleading.

28 21.4 Defendant Flora Aube concealed the true information identified in detail in  
paragraphs 4.6; 4.7; 7.4(f); 8.4(a) through (q); 10.4(a); 12.4(f), (h) through (o), (r), (t), (u), (v),

1 (x), (y), (z), (bb) and (cc) above that would have made the statements, omissions and/or  
2 representations in those paragraphs not false or misleading.

3 21.5 Defendant Janet Lossick concealed the true information identified in detail in  
4 paragraphs 4.6, 4.7; and 7.4(f) above that would have made the statements, omissions and/or  
5 representations in that paragraph not false or misleading.

6 21.6 Defendant Taylor Golob concealed the true information identified in detail in  
7 paragraphs 4.6; 4.7; and 5.4(a) through (m) above that would have made the statements,  
8 omissions and/or representations in those paragraphs not false or misleading.

9 21.7 Defendant Yolanda Fagen concealed the true information identified in detail in  
10 paragraphs 4.6; 4.7; 6.4(a), (b), (d) through (l), (n), (o), (p), (r) and (t); and 18.4(b), (c), (i), (j),  
11 (k) and (o) above that would have made the statements, omissions and/or representations in those  
12 paragraphs not false or misleading.

13 21.8 Defendant Penny Crooks concealed the true information identified in detail in  
14 paragraphs 4.6; 4.7; 16.4(b) and (g); 17.4(c), (d), (e), (g), (j), (k), (m), (n), (q), (s), (u), (v) and  
15 (w) above that would have made the statements, omissions and/or representations in that  
16 paragraph not false or misleading.

17 21.9 Defendant Callie Miller concealed the true information identified in detail in  
18 paragraphs 9.4(g) and (h), and 11.4(f) and (i) above that would have made the statements,  
19 omissions and/or representations in that paragraph not false or misleading.

20 21.10 Defendant Cathy Galli concealed the true information identified in detail in  
21 paragraph 4.6; 4.7; and 16.4(i) above that would have made the statements, omissions and/or  
22 representations in that paragraph not false or misleading.

23 21.11 The true information concealed or suppressed by Defendants Thomas Gergley,  
24 Mark Golob, Flora Aube, Janet Lossick, Ron Rannelone, Taylor Golob, Yolanda Fagen, Penny  
25 Crook, Callie Miller and Cathy Galli was material to each plaintiff's purchase of BFL Area  
26 Representative and/or Center franchises.

27 21.12 By making the false and/or misleading statements and representations above,  
28 Defendants Thomas Gergley, Mark Golob, Flora Aube, Janet Lossick, Ron Rannelone, Taylor

1 Golob, Yolanda Fagen, Penny Crook, Callie Miller and Cathy Galli were under a duty to disclose  
2 material information necessary to make their statements and/or representations to particular  
3 plaintiffs not false or misleading;

4 21.13 Defendants Thomas Gergley, Mark Golob, Flora Aube, Janet Lossick, Ron  
5 Rannelone, Taylor Golob, Yolanda Fagen, Penny Crook, Callie Miller and Cathy Galli  
6 intentionally concealed or suppressed material information identified above with the intent to  
7 defraud particular plaintiffs;

8 21.14 The concealment or suppression of material information identified above by  
9 Defendants Thomas Gergley, Mark Golob, Flora Aube, Janet Lossick, Ron Rannelone, Taylor  
10 Golob, Yolanda Fagen, Penny Crook, Callie Miller and Cathy Galli was oppressive, fraudulent  
11 and malicious.

12 21.15 Each plaintiff did not have access to and was unaware of the material information  
13 identified above and concealed or suppressed by Defendants Thomas Gergley, Mark Golob,  
14 Flora Aube, Janet Lossick, Ron Rannelone, Taylor Golob, Yolanda Fagen, Penny Crook, Callie  
15 Miller and Cathy Galli, and would not have purchased a BFL Area Representative or Center  
16 franchise if they had known the material information;

17 21.16 As a direct and proximate result of the concealment or suppression of the material  
18 information detailed above by Defendants Thomas Gergley, Mark Golob, Flora Aube, Janet  
19 Lossick, Ron Rannelone, Taylor Golob, Yolanda Fagen, Penny Crook, Callie Miller and Cathy  
20 Galli detailed above, each plaintiff has suffered and continues to suffer damages in an amount to  
21 be proven at trial.

22 WHEREFORE, Plaintiffs pray for judgment as set forth below.  
23

24 **FOURTH CAUSE OF ACTION**  
25 **(Violation Of Corp. Code § 31200, Against All Defendants)**

26 22.1 Plaintiffs repeat and incorporate by reference the allegations set forth in  
27 paragraphs 1.1 through 18.10 above.

28 22.2 The statements and omissions detailed in paragraphs 4.6 and 4.7 above were

1 willful.

2 22.3 Defendants Thomas Gergley, Mark Golob, Flora Aube, Janet Lossick, Taylor  
3 Golob, Yolanda Fagen, Penny Crook, Callie Miller and Cathy Galli used the offending UFOCs  
4 detailed in paragraphs 4.6 and 4.7 above in offers and sales of a franchise or franchises to each  
5 plaintiff as defined under Corp. §31005, §31010 and §31013g.

6 22.3 The willful untrue statements of material fact in UFOCs detailed above in  
7 paragraphs 4.6(a) through (p) are unlawful acts prohibited under Corp. § 31200.

8 22.4 The willful omissions detailed above in paragraphs 4.7(a) through (t) were  
9 required to be stated in the UFOCs filed with the Corporations Commissioner of the State of  
10 California and are unlawful acts prohibited by Corp. § 31200.

11 22.5 All Defendants had a financial interest in the offer and sale of franchise(s) to each  
12 plaintiff.

13 22.6 As a principal, officer and/or director of BFL, Mark Mastrov directly or indirectly  
14 controlled the offering and selling of BFL franchises detailed above, and is jointly and severally  
15 liable under Corp. Code §31302.

16 22.7 Defendants Mark Mastrov, Lisa Bellini, Susan Zager, Denny Marsico and Carly  
17 Golob knowingly participated and materially aided in the offer and sale of BFL franchises to  
18 each plaintiff with the offending UFOCs detailed above and are jointly and severally liable under  
19 Corp. Code §31302.

20 22.8 But for the willful untrue statements, omissions and/or representations in the  
21 UFOCs detailed above in paragraphs 4.6 and 4.7, each plaintiff would not have purchased their  
22 BFL franchise(s).

23 22.9 As a direct and proximate result of the acts and omissions of all Defendants in  
24 violation of Corp. Code § 31200, including as applied through Corp. Code §31302, each plaintiff  
25 has suffered and continues to suffer damages in an amount to be proven at trial.

26 WHEREFORE, Plaintiffs pray for judgment as set forth below.  
27  
28

**FIFTH CAUSE OF ACTION**  
**(Violation Of Corp. Code § 31201, by Plaintiffs Cichocki, Harrell, Merschen and**  
**Napurano only Against All Defendants)**

23.1 Plaintiffs Cichocki, Harrell, Merschen and Napurano repeat and incorporate by reference the allegations set forth in paragraphs 1.1 through 18.9 above.

23.2 Defendants Thomas Gergley, Mark Golob and Flora Aube offered and sold to Plaintiffs Cichocki, Harrell, Merschen and Napurano franchises as defined under Corp. §31005, §31010 and §31013.

23.3 As a principal, officer and/or director of BFL, Mark Mastrov directly or indirectly controlled the offering and selling franchises to Cichocki, Harrell, Merschen and Napurano detailed above, and is jointly and severally liable under Corp. Code §31302

23.4 Defendants Mark Mastrov, Lisa Bellini, Susan Zager, Denny Marsico, Callie Miller, Taylor Golob, Carly Golob, Janet Lossick, Ron Ranellone, and Yolanda Fagen knowingly participated and materially aided in the offer and sale of the franchises to plaintiffs Cichocki, Harrell, Merschen and Napurano and are jointly and severally liable under Corp. Code §31302.

23.5 All Defendants had a financial interest in the offer and sale of the franchises to plaintiffs Cichocki, Harrell, Merschen and Napurano.

23.6 The statements, omissions and/or representations of material fact by Defendants Thomas Gergley, Mark Golob and Flora Aube detailed in paragraphs 4.6; 4.7; 8.3; 13.3; 16.3; 16.4; 17.3; and 17.4 above were untrue or misleading.

23.7 To the extent that the statements, omissions and/or representations of material fact by Defendants Thomas Gergley, Mark Golob and Flora Aube detailed in paragraphs 4.6; 4.7; 8.3; 13.3; 16.3; 16.4; 17.3; and 17.4 were not willful, these statements, omissions and/or representations were unlawful acts prohibited under Corp. Code § 31201.

23.8 To the extent that the omissions by Defendants Thomas Gergley and Mark Golob detailed in paragraph 4.7 were not required to be disclosed in UFOCs filed with the Corporations Commissioner of the State of California, these omissions were unlawful acts prohibited under Corp. Code § 31201.

1           23.9 But for the untrue or misleading statements, omissions and/or representations of  
2 material facts by Defendants Thomas Gergley, Mark Golob and Flora Aube detailed in  
3 paragraphs 4.6; 4.7; 8.3; 13.3; 16.3; 16.4; 17.3; and 17.4 above, Plaintiffs Cichocki, Harrell,  
4 Merschen and Napurano would not have purchased their franchise.

5           23.10 Under Corp. § 31201 and §31302, all Defendants are jointly and severally liable  
6 for the acts and omissions detailed above.

7           23.11 As a direct and proximate result of the untrue or misleading statements, omissions  
8 and/or representations of material facts by Defendants Thomas Gergley, Mark Golob and Flora  
9 Aube detailed in paragraphs 4.6; 4.7; 8.3; 13.3; 16.3; 16.4; 17.3; and 17.4 above, plaintiffs  
10 Cichocki, Harrell, Merschen and Napurano and their respective companies or partnerships have  
11 suffered and continue to suffer damages in an amount to be proven at trial.

12           WHEREFORE, Plaintiffs Cichocki, Harrell, Merschen and Napurano pray for judgment  
13 as set forth below.

14  
15                               **SIXTH CAUSE OF ACTION**  
16                               **(Negligence, Against Defendants Mastrov)**

17           24.1 Plaintiffs repeat and incorporate by reference the allegations set forth in  
18 paragraphs 1.1 through 18.10 (excepting paragraph 4.15) above.

19           24.2 As a director or former director of BFL, Defendant Mark Mastrov owed a duty to  
20 Plaintiffs to insure that the statements, omissions and/or representations detailed in paragraphs  
21 4.6 and 4.7 above were true or not misleading.

22           24.3 Mark Mastrov failed to exercise reasonable care to insure that the statements,  
23 omissions and/or representations detailed in paragraphs 4.6 and 4.7 were true or not misleading.

24           24.4 Mark Mastrov knew or should have known that Defendants Thomas Gergley and  
25 Mark Golob were trading on his name in the offer and sale of BFL franchises to plaintiffs.

26           24.5 Defendant Mark Mastrov owed a duty to plaintiffs that his involvement with BFL,  
27 or lack thereof, be fully and completely disclosed in the offer and sale of franchises to plaintiffs.

28           24.6 Defendant Mark Mastrov failed to exercise reasonable care to insure that BFL

1 UFOCs and other representations to plaintiffs fully and completely disclosed his involvement  
2 with BFL, or lack thereof.

3 24.7 Defendant Mark Mastrov's involvement with, service to, and conduct related to  
4 BFL was on behalf of and benefit to his marital community.

5 24.8 As a direct and proximate result of Mastrov's conduct, each Plaintiff has suffered  
6 and continues to suffer damages in an amount to be proven at trial.

7 WHEREFORE, Plaintiffs pray for judgment as set forth below.

8  
9 **SEVENTH CAUSE OF ACTION**

10 **(Conversion, Against Defendants Thomas Gergley, Lisa Bellini,**  
11 **Mark Golob, Susan Zager, Taylor Golob, Denny Marsico and Carly Golob)**

12 25.1 Plaintiffs repeat and incorporate by reference the allegations set forth in  
13 paragraphs 1.1 through 18.9 above.

14 25.2 Defendants Thomas Gergley, Lisa Bellini (Gergley), Mark Golob, Susan Zager  
15 (Golob), Taylor Golob, Denny Marsico and Carly Golob converted plaintiffs' funds through a  
16 scheme of unreasonable salaries, expenses and/or personal loans from BFL for work product  
17 previously produced for WWLIC, LEFC and/or 24 Hour Fitness, or for work for which the  
18 particular Defendant was not appropriately qualified.

19 25.3 Through the scheme of unreasonable salaries, expenses and personal loans,  
20 Defendants Thomas Gergley, Lisa Bellini (Gergley), Mark Golob, Susan Zager (Golob), Taylor  
21 Golob, Denny Marsico and Carly Golob wrongfully converted plaintiffs' funds to their own use  
22 in exclusion or defiance of the rights of plaintiffs.

23 25.4 As a direct and proximate result of Defendants' conduct, each Plaintiff has  
24 suffered and continues to suffer damages in an amount to be proven at trial.

25 WHEREFORE, Plaintiffs pray for judgment as set forth below.

26 **EIGHTH CAUSE OF ACTION**

27 **(FRAUDULENT TRANSFER - CIVIL CODE §3439.04,**  
28 **Against Defendants Thomas Gergley, Lisa Bellini, Mark Golob, and Susan Zager)**

29 26.1 Plaintiffs repeat and incorporate by reference the allegations set forth in  
30 paragraphs 1.1 through 18.9 above.

1 26.2 Defendants Thomas Gergley, Lisa Bellini (Gergley), Mark Golob and Susan  
2 Zager (Golob) did oppressively, fraudulently and maliciously transfer substantial individual  
3 assets into trusts.

4 26.3 Plaintiffs' claims arose before the transfer into trusts of substantial individual  
5 assets by Defendants Thomas Gergley, Lisa Bellini (Gergley), Mark Golob and Susan Zager  
6 (Golob).

7 26.4 Defendants Thomas Gergley, Lisa Bellini (Gergley), Mark Golob and Susan  
8 Zager (Golob) transferred substantial individual assets into trusts with actual intent to hinder,  
9 delay, or defraud plaintiffs.

10 26.5 Defendants Thomas Gergley, Lisa Bellini (Gergley), Mark Golob and Susan  
11 Zager (Golob) transferred substantial individual assets into trusts was oppressive, fraudulent and  
12 malicious to Plaintiffs.

13 26.6 As a direct and proximate result of Defendants' conduct, each Plaintiff has  
14 suffered and continues to suffer damages in an amount to be proven at trial.

15 WHEREFORE, Plaintiffs pray for judgment as set forth below.

16  
17 **NINTH CAUSE OF ACTION**

18 **(FRAUDULENT TRANSFER - CIVIL CODE §3439.05,**  
19 **Against Defendants Thomas Gergley, Lisa Bellini, Mark Golob, and Susan Zager)**

20 27.1 Plaintiffs repeat and incorporate by reference the allegations set forth in  
21 paragraphs 1.1 through 18.9 above.

22 27.2 Defendants Thomas Gergley, Lisa Bellini (Gergley), Mark Golob and Susan  
23 Zager (Golob) transferred substantial individual assets into trusts.

24 27.3 Plaintiffs' claims arose before the transfer into trusts of substantial individual  
25 assets by Defendants Thomas Gergley, Lisa Bellini (Gergley), Mark Golob and Susan Zager  
26 (Golob).

27 27.4 Defendants Thomas Gergley, Lisa Bellini (Gergley), Mark Golob and Susan  
28 Zager (Golob) did not receive reasonably equivalent value in exchange for the transfer of  
substantial individual assets into trusts.



1           27.5   The transfer into trusts of substantial individual assets by Defendants Thomas  
2 Gergley, Lisa Bellini (Gergley), Mark Golob and Susan Zager (Golob) effectively rendered them  
3 insolvent in light of plaintiffs' claims.

4           27.6   As a direct and proximate result of the transfer into trusts of substantial individual  
5 assets by Defendants Thomas Gergley, Lisa Bellini (Gergley), Mark Golob and Susan Zager  
6 (Golob), each Plaintiff has suffered and continues to suffer damages in an amount to be proven at  
7 trial.

8           WHEREFORE, Plaintiffs pray for judgment as set forth below.

9                               **PRAYER**

10           Plaintiffs, and each of them, pray for judgment as follows:

- 11           a.   For money judgment awarding \$7,909.040.09 to Plaintiffs, including but not  
12 limited to the amount paid for each franchise and consequential losses, or as amended to  
13 conform to the evidence of damages proven at trial;
- 14           b.   For rescission of the fraudulent transfers of Gergley/Bellini and Golob/Zager;
- 15           d.   For exemplary damages under Civ. Code §3294 (excluding the 4<sup>th</sup> and 6<sup>th</sup> causes  
16 of action);
- 17           e.   For prejudgment interest at the legal rate;
- 18           f.   For post judgment interest at the legal rate until paid in full;
- 19           g.   For such other and further relief as the court may deem just and equitable.

20   Dated: December 18, 2009

GORDON & REES LLP

21  
22   By: 

Gordon Endow

Attorneys for Plaintiffs

DONNA BARNHART, et al.

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TACEY GOSS P.S.

By: 

C. Chip Goss  
Attorneys for Plaintiffs

DONNA BARNHART, et al.

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PROOF OF SERVICE  
*Donna Barnhart, et al., v. Thomas Gergley, et al.*  
Contra Costa Superior Court, Case No. C09-00120

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Gordon & Rees LLP 275 Battery Street, Suite 2000, San Francisco, CA 94111. On December 18, 2009, I served the within document(s):

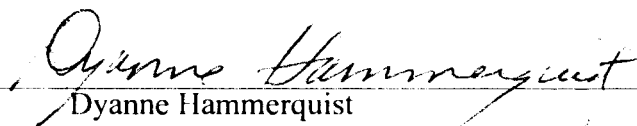
THIRD AMENDED COMPLAINT

- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at San Francisco, addressed as set forth below.
- ☐ by sending the documents via Fed Ex Overnight mail, addressed as set forth below.

Attorneys for Defendants Thomas Gergley,  
Mindee Mastrov and Flora Aube  
Scott Hammel, Esq.  
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service and Fed Ex on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on December 18, 2009, at San Francisco, California.

  
\_\_\_\_\_  
Dyanne Hammerquist