

EXHIBIT J-2

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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  
KHRYSALIS 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 FORTII, LP, 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  
29 wife; JANET LOSSICK and JOHN DOE  
30 LOSSICK, individually and as wife and  
31 husband; RON RANELONE and JANE DOE  
32 RANELONE, individually and as husband  
33 and wife; CHERYL HOKE and JOHN DOE  
34 HOKE, individually and as wife and husband;  
35 YOLANDA FAGEN and JOHN DOE FAGEN,  
36 individually and as husband and wife; PENNY  
37 CROOK and JOHN DOE CROOK,  
38 individually and as husband and wife; CATHY  
39 GALLI and JOHN DOE GALLI, individually  
40 and as wife and husband; CALLIE MILLER  
41 and JOHN DOE MILLER, individually and as  
42 wife and husband; DENNY MARSICO and  
43 JOHN DOE MARSICO, individually and as  
44 husband and wife; CARLY GOLOB and JOHN  
45 DOE GOLOB, individually and as husband and  
46 wife, and DOES 1 through 50.

47  
48 Defendants.

49 Come now Plaintiffs, Donna Barnhart, *et al.*, by and through their undersigned counsel,  
50 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 WWWLC 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 WWWLC 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 WWWLC, 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 WWL.C, 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 WWL.C, Thomas Gergley and Mark  
4 Golob;

5           n.       That Simon Levi sued WWL.C, 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, WWL.C 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 WWWLC 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

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

4 4.19. Defendants Thomas Gergley, Mark Golob and Mark Mastrov, as officers of BFL,  
5 used the plaintiffs' and other franchisees' funds to pay unreasonable salaries to Golob's children.  
6 Defendants Taylor Golob and Carly Golob, for positions and work for which they were not  
7 appropriately qualified.

8 4.20. The payment of plaintiffs' and other franchisees' fees to individual Defendants  
9 Thomas Gergley, Lisa Bellini (Gergley), Mark Golob, Susan Zager (Golob), Denny Marsico,  
10 Taylor Golob and Carly Golob through unreasonable salaries and expenses was oppressive,  
11 fraudulent and malicious.

12 4.21. Thomas Gergley and Mark Golob personally conducted and participated in the  
13 improper operations and undercapitalization of BFL and should be held "alter egos" of BFL in  
14 order to prevent injustice to Plaintiffs.

15 4.22. Following the unlawful conduct alleged in this 3rd Amended Complaint,  
16 Defendants Thomas Gergley and Lisa Bellini (Gergley) transferred substantial individual assets  
17 into a trust.

18 4.23. Defendants Thomas Gergley's and Lisa Bellini's transfer of substantial individual  
19 assets into a trust was an oppressive, fraudulent and malicious attempt to deny plaintiffs'  
20 recovery for Defendants' unlawful conduct alleged herein.

21 4.24. Following the unlawful conduct alleged in this 3rd Amended Complaint,  
22 Defendants Mark Golob and Susan Zager (Golob) transferred substantial individual assets into a  
23 trust.

24 4.25. Defendants Mark Golob's and Susan Zager's transfer of substantial individual  
25 assets into a trust was an oppressive, fraudulent and malicious attempt to deny plaintiffs'  
26 recovery for Defendants' unlawful conduct alleged herein.

27 **V. BARNHART**

28 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 LEEFC 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 WWLIC 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

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

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

5 12.5. Defendants Thomas Gergley, Mark Golob and Flora Aube knew that their  
6 statements, omissions and/or representations to Goodman in paragraphs 12.3 and 12.4(a) through  
7 (dd) above were false, misleading, or recklessly disregarded the truth.

8 12.6. Defendants Thomas Gergley, Mark Golob and Flora Aube intended that  
9 Goodman rely upon their untrue or misleading statements, omissions and/or representations in  
10 paragraphs 12.3 and 12.4(a) though (dd) above to induce Goodman to purchase BFL franchises.

11 12.7. When Goodman purchased the franchises, BFL had exclusive control of the true  
12 information and Goodman did not know and reasonably could not have discovered with  
13 investigation that the statements, omissions and/or representations of Defendants Thomas  
14 Gergley, Mark Golob and Flora Aube in paragraphs 12.3 and 12.4(a) through (dd) above were  
15 untrue or misleading.

16 12.8. When Goodman purchased the franchises, Goodman justifiably relied upon the  
17 untrue or misleading statements, omissions and/or representations of Thomas Gergley, Mark  
18 Golob and Flora Aube in paragraphs 12.3 and 12.4(a) through (dd) above.

19 12.9. Soon after purchasing the BFL franchise, Goodman formed First Fitness One,  
20 LLC to operate his BFL franchise. Defendants knew or had reason to know that Goodman  
21 would form a corporation to operate his franchise and that said corporation also would suffer the  
22 consequences of Defendants' wrongful acts.

23 12.10. As a direct and proximate result of the untrue or misleading statements, omissions  
24 and/or representations of Thomas Gergley, Mark Golob and Flora Aube in paragraphs 12.3 and  
25 12.4(a) through (dd) above, Goodman and First Fitness One, LLC suffered and continue to suffer  
26 damages.

27 **XIII. HARRELL**

28 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 WWLWC.

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 WWLWC 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 or 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

**SECOND CAUSE OF ACTION**

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

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

20.2 Defendant Thomas Gergley made the statements, omissions and/or representations identified in detail in paragraphs 4.6; 4.7; 5.3; 5.4(a) through (m); 6.4(c) through (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), (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); 18.3; and 18.4(a) through (h), and (l) through (m) above.

20.3 Defendant Mark Golob made the statements, omissions and/or representations 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) 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); 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 (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), (g), (h), (i), (l), (m), (o), (p), (r), (s) and (x); 18.3; and 18.4(a) and (c) above.

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

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

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

20.7 Defendant Yolanda Fagen made the statements, omissions and/or representations identified in detail in paragraphs 6.4(a), (b), (d) through (l), (n), (o), (p), (r) and (t); and 18.4(b), (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,  
Mark Golob, Susan Zager, Taylor Golob, Denny Marsico and Carly Golob)**

11 25.1 Plaintiffs repeat and incorporate by reference the allegations set forth in  
12 paragraphs 1.1 through 18.9 above.

13 25.2 Defendants Thomas Gergley, Lisa Bellini (Gergley), Mark Golob, Susan Zager  
14 (Golob), Taylor Golob, Denny Marsico and Carly Golob converted plaintiffs' funds through a  
15 scheme of unreasonable salaries, expenses and/or personal loans from BFL for work product  
16 previously produced for WWLWC, LEFC and/or 24 Hour Fitness, or for work for which the  
17 particular Defendant was not appropriately qualified.

18 25.3 Through the scheme of unreasonable salaries, expenses and personal loans,  
19 Defendants Thomas Gergley, Lisa Bellini (Gergley), Mark Golob, Susan Zager (Golob), Taylor  
20 Golob, Denny Marsico and Carly Golob wrongfully converted plaintiffs' funds to their own use  
21 in exclusion or defiance of the rights of plaintiffs.

22 25.4 As a direct and proximate result of Defendants' conduct, each Plaintiff has  
23 suffered and continues to suffer damages in an amount to be proven at trial.

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

25 **EIGHTH CAUSE OF ACTION**

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

27 26.1 Plaintiffs repeat and incorporate by reference the allegations set forth in  
28 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.

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

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

WHEREFORE, Plaintiffs pray for judgment as set forth below.

## PRAYER

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

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

Dated: December 18, 2009

GORDON & REES LLP

By: Gordon J. Endow  
Gordon Endow  
Attorneys for Plaintiffs  
DONNA BARNHART, et al.

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Gordon & Rees LLP  
275 Battery Street, Suite 2000  
San Francisco, CA 94111

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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):

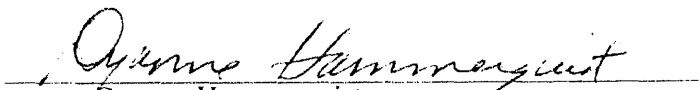
THIRD AMENDED COMPLAINT

- ☐ 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.  
LITIGATION ADVOCATES GROUP  
1990 North California Blvd., 8<sup>th</sup> Floor  
Walnut Creek, CA 94596  
Tel: (925) 932-7032  
Fax: (925) 932-8043  
Email: [shammel@astound.net](mailto:shammel@astound.net)

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

## EXHIBIT K

# United States Bankruptcy Court Northern District of California

## Voluntary Petition

Name of Debtor (if individual, enter Last, First, Middle): <b>Butterfly Fitness, Inc</b>	Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names):	All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all) <b>EIN 56-2359238</b>	Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all)
Street Address of Debtor (No. and Street, City, and State): <b>204 San Ramon Valley Blvd San Ramon, CA</b> ZIP Code <b>94583</b>	Street Address of Joint Debtor (No. and Street, City, and State):  ZIP Code
County of Residence or of the Principal Place of Business: <b>Contra Costa</b>	County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address): <b>Litigation Advocates Group 1990 North California Blvd. Suite 830 Walnut Creek, CA</b> ZIP Code <b>94596</b>	Mailing Address of Joint Debtor (if different from street address):  ZIP Code
Location of Principal Assets of Business Debtor (if different from street address above):	

<b>Type of Debtor</b> (Form of Organization) (Check one box)  <input type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> <input checked="" type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)	<b>Nature of Business</b> (Check one box)  <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101 (51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input checked="" type="checkbox"/> Other  <b>Tax-Exempt Entity</b> (Check box, if applicable) <input type="checkbox"/> Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).	<b>Chapter of Bankruptcy Code Under Which the Petition is Filed</b> (Check one box)  <input checked="" type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13  <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding  <b>Nature of Debts</b> (Check one box)  <input type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." <input checked="" type="checkbox"/> Debts are primarily business debts.
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<b>Filing Fee</b> (Check one box)  <input checked="" type="checkbox"/> Full Filing Fee attached  <input type="checkbox"/> Filing Fee to be paid in installments (applicable to individuals only). Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form 3A.  <input type="checkbox"/> Filing Fee waiver requested (applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B.	<b>Chapter 11 Debtors</b>  Check one box: <input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D). <input type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D). Check if: <input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than \$2,343,300 (amount subject to adjustment on 4/01/13 and every three years thereafter).  Check all applicable boxes: <input type="checkbox"/> A plan is being filed with this petition. <input type="checkbox"/> Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
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<b>Statistical/Administrative Information</b>  <input type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input checked="" type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.	THIS SPACE IS FOR COURT USE ONLY
<b>Estimated Number of Creditors</b> <input checked="" type="checkbox"/> 1-49 <input type="checkbox"/> 50-99 <input type="checkbox"/> 100-199 <input type="checkbox"/> 200-999 <input type="checkbox"/> 1,000-5,000 <input type="checkbox"/> 5,001-10,000 <input type="checkbox"/> 10,001-25,000 <input type="checkbox"/> 25,001-50,000 <input type="checkbox"/> 50,001-100,000 <input type="checkbox"/> OVER 100,000	
<b>Estimated Assets</b> <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input checked="" type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion	
<b>Estimated Liabilities</b> <input type="checkbox"/> \$0 to \$50,000 <input type="checkbox"/> \$50,001 to \$100,000 <input type="checkbox"/> \$100,001 to \$500,000 <input checked="" type="checkbox"/> \$500,001 to \$1 million <input type="checkbox"/> \$1,000,001 to \$10 million <input type="checkbox"/> \$10,000,001 to \$50 million <input type="checkbox"/> \$50,000,001 to \$100 million <input type="checkbox"/> \$100,000,001 to \$500 million <input type="checkbox"/> \$500,000,001 to \$1 billion <input type="checkbox"/> More than \$1 billion	

<b>Voluntary Petition</b> <i>(This page must be completed and filed in every case)</i>		Name of Debtor(s): <b>Butterfly Fitness, Inc</b>	
<b>All Prior Bankruptcy Cases Filed Within Last 8 Years</b> (If more than two, attach additional sheet)			
Location Where Filed: <b>- None -</b>	Case Number:	Date Filed:	
Location Where Filed:	Case Number:	Date Filed:	
<b>Pending Bankruptcy Case Filed by any Spouse, Partner, or Affiliate of this Debtor</b> (If more than one, attach additional sheet)			
Name of Debtor: <b>- None -</b>	Case Number:	Date Filed:	
District:	Relationship:	Judge:	
<b>Exhibit A</b>  (To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)  <input type="checkbox"/> Exhibit A is attached and made a part of this petition.		<b>Exhibit B</b> (To be completed if debtor is an individual whose debts are primarily consumer debts.) I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by 11 U.S.C. §342(b).  <b>X</b> _____ Signature of Attorney for Debtor(s) (Date)	
<b>Exhibit C</b> Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety? <input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition. <input checked="" type="checkbox"/> No.			
<b>Exhibit D</b> (To be completed by every individual debtor. If a joint petition is filed, each spouse must complete and attach a separate Exhibit D.) <input type="checkbox"/> Exhibit D completed and signed by the debtor is attached and made a part of this petition. If this is a joint petition: <input type="checkbox"/> Exhibit D also completed and signed by the joint debtor is attached and made a part of this petition.			
<b>Information Regarding the Debtor - Venue</b> (Check any applicable box)			
<input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.			
<input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.			
<input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
<b>Certification by a Debtor Who Resides as a Tenant of Residential Property</b> (Check all applicable boxes)			
<input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)  <div style="text-align: center;">           _____            (Name of landlord that obtained judgment)         </div>  <div style="text-align: center;">           _____            (Address of landlord)         </div>			
<input type="checkbox"/> Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and			
<input type="checkbox"/> Debtor has included in this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.			
<input type="checkbox"/> Debtor certifies that he/she has served the Landlord with this certification. (11 U.S.C. § 362(l)).			

**Voluntary Petition**

(This page must be completed and filed in every case)

Name of Debtor(s):

**Butterfly Fitness, Inc****Signatures****Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.

[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7. [If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by 11 U.S.C. §342(b).

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X \_\_\_\_\_  
Signature of Debtor

X \_\_\_\_\_  
Signature of Joint Debtor

\_\_\_\_\_  
Telephone Number (If not represented by attorney)

\_\_\_\_\_  
Date

**Signature of Attorney\***

X /s/ Scott Schwartz  
Signature of Attorney for Debtor(s)

Scott Schwartz 104881

\_\_\_\_\_  
Printed Name of Attorney for Debtor(s)

Rust, Armenis & Schwartz

\_\_\_\_\_  
Firm Name

244 Jackson Street  
Fourth Floor  
San Francisco, CA 94111

\_\_\_\_\_  
Address

Email: mail@rustarmenis.com

(415) 765-5910 Fax: (415) 765-5914

\_\_\_\_\_  
Telephone Number

September 30, 2011

\_\_\_\_\_  
Date

\*In a case in which § 707(b)(4)(D) applies, this signature also constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules is incorrect.

**Signature of Debtor (Corporation/Partnership)**

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X /s/ Mark Golob  
Signature of Authorized Individual

Mark Golob

\_\_\_\_\_  
Printed Name of Authorized Individual

President

\_\_\_\_\_  
Title of Authorized Individual

September 30, 2011

\_\_\_\_\_  
Date

**Signature of a Foreign Representative**

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only one box.)

☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by 11 U.S.C. §1515 are attached.

☐ Pursuant to 11 U.S.C. §1511, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X \_\_\_\_\_  
Signature of Foreign Representative

\_\_\_\_\_  
Printed Name of Foreign Representative

\_\_\_\_\_  
Date

**Signature of Non-Attorney Bankruptcy Petition Preparer**

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19 is attached.

\_\_\_\_\_  
Printed Name and title, if any, of Bankruptcy Petition Preparer

\_\_\_\_\_  
Social-Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

\_\_\_\_\_  
Address

X \_\_\_\_\_

\_\_\_\_\_  
Date

Signature of Bankruptcy Petition Preparer or officer, principal, responsible person, or partner whose Social Security number is provided above.

Names and Social-Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

*A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. §110; 18 U.S.C. §156.*



**United States Bankruptcy Court**  
**Northern District of California**

In re Butterfly Fitness, Inc  
 Debtor

Case No. \_\_\_\_\_

Chapter 7

**SUMMARY OF SCHEDULES**

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors must also complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property	Yes	1	0.00		
B - Personal Property	Yes	4	600,000.00		
C - Property Claimed as Exempt	No	0			
D - Creditors Holding Secured Claims	Yes	1		0.00	
E - Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E)	Yes	1		0.00	
F - Creditors Holding Unsecured Nonpriority Claims	Yes	2		2,583,238.70	
G - Executory Contracts and Unexpired Leases	Yes	1			
H - Codebtors	Yes	1			
I - Current Income of Individual Debtor(s)	No	0			N/A
J - Current Expenditures of Individual Debtor(s)	No	0			N/A
Total Number of Sheets of ALL Schedules		11			
Total Assets			600,000.00		
Total Liabilities				2,583,238.70	

**United States Bankruptcy Court**  
**Northern District of California**

In re **Butterfly Fitness, Inc**,  
 Debtor

Case No. \_\_\_\_\_

Chapter 7

**STATISTICAL SUMMARY OF CERTAIN LIABILITIES AND RELATED DATA (28 U.S.C. § 159)**

If you are an individual debtor whose debts are primarily consumer debts, as defined in § 101(8) of the Bankruptcy Code (11 U.S.C. § 101(8)), filing a case under chapter 7, 11 or 13, you must report all information requested below.

- ☐ Check this box if you are an individual debtor whose debts are NOT primarily consumer debts. You are not required to report any information here.

**This information is for statistical purposes only under 28 U.S.C. § 159.**

**Summarize the following types of liabilities, as reported in the Schedules, and total them.**

Type of Liability	Amount
Domestic Support Obligations (from Schedule E)	
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)	
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E) (whether disputed or undisputed)	
Student Loan Obligations (from Schedule F)	
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	
TOTAL	

**State the following:**

Average Income (from Schedule I, Line 16)	
Average Expenses (from Schedule J, Line 18)	
Current Monthly Income (from Form 22A Line 12; OR, Form 22B Line 11; OR, Form 22C Line 20 )	

**State the following:**

1. Total from Schedule D, "UNSECURED PORTION, IF ANY" column		
2. Total from Schedule E, "AMOUNT ENTITLED TO PRIORITY" column		
3. Total from Schedule E, "AMOUNT NOT ENTITLED TO PRIORITY, IF ANY" column		
4. Total from Schedule F		
5. Total of non-priority unsecured debt (sum of 1, 3, and 4)		

In re Butterfly Fitness, Inc

Case No. \_\_\_\_\_

Debtor

**SCHEDULE A - REAL PROPERTY**

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

**Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.**

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim." If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
--------------------------------------	-----------------------------------------	------------------------------------	--------------------------------------------------------------------------------------------------	-------------------------

None

Sub-Total >	<b>0.00</b>	(Total of this page)
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Total >	<b>0.00</b>
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0 continuation sheets attached to the Schedule of Real Property

(Report also on Summary of Schedules)

Case: 11-70462 Doc# 1 Filed: 09/30/11 Entered: 09/30/11 13:30:19 Page 6 of 28

In re **Butterfly Fitness, Inc**

Case No. \_\_\_\_\_

Debtor

**SCHEDULE B - PERSONAL PROPERTY**

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

**Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.**

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property."

If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
1. Cash on hand	X			
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.	X			
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, including audio, video, and computer equipment.	X			
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6. Wearing apparel.	X			
7. Furs and jewelry.	X			
8. Firearms and sports, photographic, and other hobby equipment.	X			
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.		Insurance: Directors and Officers liability policy Chubb Ct 82 Hopmeadow St. Simsbury, CT 06070 Policy limit-1,000,000.00	-	0.00
10. Annuities. Itemize and name each issuer.	X			

Sub-Total > **0.00**  
(Total of this page)

3 continuation sheets attached to the Schedule of Personal Property

In re **Butterfly Fitness, Inc**

Case No. \_\_\_\_\_

Debtor

**SCHEDULE B - PERSONAL PROPERTY**  
(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, or Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)	<b>X</b>			
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	<b>X</b>			
13. Stock and interests in incorporated and unincorporated businesses. Itemize.	<b>X</b>			
14. Interests in partnerships or joint ventures. Itemize.	<b>X</b>			
15. Government and corporate bonds and other negotiable and nonnegotiable instruments.	<b>X</b>			
16. Accounts receivable.	<b>X</b>			
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	<b>X</b>			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	<b>X</b>			
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	<b>X</b>			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	<b>X</b>			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.		<b>Terry Cichocki</b>	-	<b>20,000.00</b>
		<b>Karen and Kevin Driscoll:</b>	-	<b>10,000.00</b>

Sub-Total > **30,000.00**  
(Total of this page)

Sheet **1** of **3** continuation sheets attached  
to the Schedule of Personal Property

In re **Butterfly Fitness, Inc**

Case No. \_\_\_\_\_

Debtor

**SCHEDULE B - PERSONAL PROPERTY**

(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
		<b>Darwin Chevalier, Ken Uptain, Fitness Centers NW, Inc. and NW Fitness Center No. 1.</b>	-	<b>225,000.00</b>
		<b>Mary Bauer, Chicfit, Inc</b>	-	<b>85,000.00</b>
		<b>Chicfit, Inc., Janeene Fitzgerald</b>	-	<b>75,000.00</b>
		<b>Seth Goodman</b>	-	<b>70,000.00</b>
		<b>The Driscoll Company</b>	-	<b>70,000.00</b>
		<b>Geoff and Susie Henderson</b>	-	<b>45,000.00</b>
22. Patents, copyrights, and other intellectual property. Give particulars.	<b>X</b>			
23. Licenses, franchises, and other general intangibles. Give particulars.	<b>X</b>			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	<b>X</b>			
25. Automobiles, trucks, trailers, and other vehicles and accessories.	<b>X</b>			
26. Boats, motors, and accessories.	<b>X</b>			
27. Aircraft and accessories.	<b>X</b>			
28. Office equipment, furnishings, and supplies.	<b>X</b>			
29. Machinery, fixtures, equipment, and supplies used in business.	<b>X</b>			
30. Inventory.	<b>X</b>			
31. Animals.	<b>X</b>			
32. Crops - growing or harvested. Give particulars.	<b>X</b>			

Sub-Total > **570,000.00**  
(Total of this page)

Sheet 2 of 3 continuation sheets attached  
to the Schedule of Personal Property

Case: 11-70462 Doc# 1 Filed: 09/30/11 Entered: 09/30/11 13:30:19 Page 9 of 28

In re Butterfly Fitness, Inc

Case No. \_\_\_\_\_

Debtor

**SCHEDULE B - PERSONAL PROPERTY**

(Continuation Sheet)

Type of Property	N O N E	Description and Location of Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption
33. Farming equipment and implements.	<b>X</b>			
34. Farm supplies, chemicals, and feed.	<b>X</b>			
35. Other personal property of any kind not already listed. Itemize.	<b>X</b>			

Sub-Total > **0.00**  
 (Total of this page)  
 Total > **600,000.00**

Sheet 3 of 3 continuation sheets attached  
 to the Schedule of Personal Property

(Report also on Summary of Schedules)

In re **Butterfly Fitness, Inc**

Case No. \_\_\_\_\_

Debtor

**SCHEDULE D - CREDITORS HOLDING SECURED CLAIMS**

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor", include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H", "W", "J", or "C" in the column labeled "Husband, Wife, Joint, or Community".

If the claim is contingent, place an "X" in the column labeled "Contingent". If the claim is unliquidated, place an "X" in the column labeled "Unliquidated". If the claim is disputed, place an "X" in the column labeled "Disputed". (You may need to place an "X" in more than one of these three columns.)

Total the columns labeled "Amount of Claim Without Deducting Value of Collateral" and "Unsecured Portion, if Any" in the boxes labeled "Total(s)" on the last sheet of the completed schedule. Report the total from the column labeled "Amount of Claim" also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report the total from the column labeled "Unsecured Portion" on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
		H W J C					
Account No.							
		Value \$					
Account No.							
		Value \$					
Account No.							
		Value \$					
Account No.							
		Value \$					
Subtotal (Total of this page)							
Total (Report on Summary of Schedules)						0.00	0.00

0 continuation sheets attached



In re Butterfly Fitness, Inc

Case No. \_\_\_\_\_

Debtor

**SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS**

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112 and Fed. R. Bankr. P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

Report the total of amounts not entitled to priority listed on each sheet in the box labeled "Subtotals" on each sheet. Report the total of all amounts not entitled to priority listed on this Schedule E in the box labeled "Totals" on the last sheet of the completed schedule. Individual debtors with primarily consumer debts report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☒ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

**TYPES OF PRIORITY CLAIMS** (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)☐ **Domestic support obligations**

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$11,725\* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to \$5,775\* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

☐ **Deposits by individuals**

Claims of individuals up to \$2,600\* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

☐ **Taxes and certain other debts owed to governmental units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to maintain the capital of an insured depository institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

☐ **Claims for death or personal injury while debtor was intoxicated**

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

\* Amount subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

In re **Butterfly Fitness, Inc**

Case No. \_\_\_\_\_

Debtor

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B T O R  H W J C	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.				
Account No.		<b>Area representatives in AAA Case # 741140057309LGB arbitration pending</b>				
<b>Ali and Kelly Davidson Khrysalis Enterprises, LLC and BFL Incorporated 2115 NE Highway 20, Ste. 107 Bend, OR 97701</b>	-					<b>723,674.00</b>
Account No.		<b>01/01/2011 Legal fees</b>				
<b>Dorsey Whitney Law Firm Seattle Washington Seattle Washington, WA 12345</b>	-				X	<b>200,000.00</b>
Account No.		<b>Area representatives in AAA Case # 741140057309LGB arbitration pending</b>				
<b>Henderson Consulting, LLC 3909 E. Phillips Circle Littleton, CO 80122</b>	-					<b>1,102,637.70</b>
Account No.		<b>Area representatives in AAA Case # 741140057309LGB arbitration pending</b>				
<b>Lee, Debbie, Scott and Todd Harrell Emerald Coast Women's Fitness, LLC 7009 North Lagoon Drive , Unit #113 Panama City, FL 32408</b>	-					<b>511,927.00</b>
Subtotal (Total of this page)						<b>2,538,238.70</b>

1 continuation sheets attached

In re **Butterfly Fitness, Inc**

Case No. \_\_\_\_\_

Debtor

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**  
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B O R R	Husband, Wife, Joint, or Community	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.				
Account No.		<b>Other Bill</b>				
<b>Wells Fargo</b> <b>Attn: Collection Servicing, 1st Floor,</b> <b>M</b> <b>1 Home Campus</b> <b>Des Moines, IA 50328</b>	-					<b>45,000.00</b>
Account No.						
Account No.						
Account No.						
Account No.						

Sheet no. 1 of 1 sheets attached to Schedule of  
Creditors Holding Unsecured Nonpriority Claims

Subtotal  
(Total of this page)

**45,000.00**

Total  
(Report on Summary of Schedules)

**2,583,238.70**

In re Butterfly Fitness, Inc

Case No. \_\_\_\_\_

Debtor

**SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser", "Agent", etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code,  
of Other Parties to Lease or Contract

Description of Contract or Lease and Nature of Debtor's Interest.  
State whether lease is for nonresidential real property.  
State contract number of any government contract.

In re Butterfly Fitness, Inc

Case No. \_\_\_\_\_

Debtor

**SCHEDULE H - CODEBTORS**

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☒ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR

NAME AND ADDRESS OF CREDITOR

**United States Bankruptcy Court  
Northern District of California**

In re **Butterfly Fitness, Inc**

Debtor(s)

Case No. \_\_\_\_\_

Chapter **7**

**DECLARATION CONCERNING DEBTOR'S SCHEDULES**

**DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP**

I, the President of the corporation named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of **13** sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date **September 30, 2011**

Signature **/s/ Mark Golob**

**Mark Golob  
President**

*Penalty for making a false statement or concealing property:* Fine of up to \$500,000 or imprisonment for up to 5 years or both.  
18 U.S.C. §§ 152 and 3571.

**United States Bankruptcy Court  
Northern District of California**

In re Butterfly Fitness, Inc

Debtor(s)

Case No.

Chapter

7

**STATEMENT OF FINANCIAL AFFAIRS**

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. To indicate payments, transfers and the like to minor children, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

*DEFINITIONS*

**"In business."** A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

**"Insider."** The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

---

**1. Income from employment or operation of business**

None



State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT  
**\$0.00**

SOURCE  
**2009  
loss of \$99,234**

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**2. Income other than from employment or operation of business**

None



State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

**3. Payments to creditors**

None

**Complete a. or b., as appropriate, and c.**

a. *Individual or joint debtor(s) with primarily consumer debts.* List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within **90 days** immediately preceding the commencement of this case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$600. Indicate with an (\*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
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None

b. *Debtor whose debts are not primarily consumer debts.* List each payment or other transfer to any creditor made within **90 days** immediately preceding the commencement of the case unless the aggregate value of all property that constitutes or is affected by such transfer is less than \$5,850\*. If the debtor is an individual, indicate with an asterisk (\*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and credit counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS/ TRANSFERS	AMOUNT PAID OR VALUE OF TRANSFERS	AMOUNT STILL OWING
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None

c. *All debtors:* List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND RELATIONSHIP TO DEBTOR	DATE OF PAYMENT	AMOUNT PAID	AMOUNT STILL OWING
------------------------------------------------------------	-----------------	-------------	-----------------------

**4. Suits and administrative proceedings, executions, garnishments and attachments**

None

a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT OR AGENCY AND LOCATION	STATUS OR DISPOSITION
AAA 741140057309LGB	Former Area Representatives filing breach of contract claims	Superior Court of California 725 Court Street Martinez CA 94553-0000	Arbitration pending

None

b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY
---------------------------------------------------------------------	-----------------	--------------------------------------

\* Amount subject to adjustment on 4/01/13, and every three years thereafter with respect to cases commenced on or after the date of adjustment.



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**5. Repossessions, foreclosures and returns**

- None ☒ List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY
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**6. Assignments and receiverships**

- None ☒ a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT
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- None ☒ b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY
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**7. Gifts**

- None ☒ List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
--------------------------------------------	--------------------------------	--------------	-------------------------------

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**8. Losses**

- None ☒ List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case**. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
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**9. Payments related to debt counseling or bankruptcy**

- None ☐ List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of the petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
Rust, Armenis & Schwartz 244 Jackson Street Fourth Floor San Francisco, CA 94111	September 2011	\$1,600.00

**10. Other transfers**

None



a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE,  
RELATIONSHIP TO DEBTOR

DATE

DESCRIBE PROPERTY TRANSFERRED  
AND VALUE RECEIVED

None



b. List all property transferred by the debtor within **ten years** immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER  
DEVICE

DATE(S) OF  
TRANSFER(S)

AMOUNT OF MONEY OR DESCRIPTION AND  
VALUE OF PROPERTY OR DEBTOR'S INTEREST  
IN PROPERTY

**11. Closed financial accounts**

None



List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION

TYPE OF ACCOUNT, LAST FOUR  
DIGITS OF ACCOUNT NUMBER,  
AND AMOUNT OF FINAL BALANCE

AMOUNT AND DATE OF SALE  
OR CLOSING

**12. Safe deposit boxes**

None



List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK  
OR OTHER DEPOSITORY

NAMES AND ADDRESSES  
OF THOSE WITH ACCESS  
TO BOX OR DEPOSITORY

DESCRIPTION  
OF CONTENTS

DATE OF TRANSFER OR  
SURRENDER, IF ANY

**13. Setoffs**

None



List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR

DATE OF SETOFF

AMOUNT OF SETOFF

**14. Property held for another person**

None



List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER

DESCRIPTION AND VALUE OF PROPERTY

LOCATION OF PROPERTY

**15. Prior address of debtor**

None



If the debtor has moved within **three years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS

NAME USED

DATES OF OCCUPANCY

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**16. Spouses and Former Spouses**

None



If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within **eight years** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

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**17. Environmental Information.**

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law

None



a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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None



b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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None



c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION
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**18. Nature, location and name of business**

None



a. *If the debtor is an individual*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full- or part-time within **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

*If the debtor is a partnership*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within **six years** immediately preceding the commencement of this case.

*If the debtor is a corporation*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

	LAST FOUR DIGITS OF SOCIAL-SECURITY OR OTHER INDIVIDUAL TAXPAYER-I.D. NO. (ITIN)/ COMPLETE EIN	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
NAME				
Butterly Fitness Inc	9238	204 San Ramon Valley Blvd San Ramon, CA 94583	Franchising of fitness clubs	March 2003-March 2009

None ☒ b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME	ADDRESS
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The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership, a sole proprietor, or self-employed in a trade, profession, or other activity, either full- or part-time.

*(An individual or joint debtor should complete this portion of the statement only if the debtor is or has been in business, as defined above, within six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)*

---

#### 19. Books, records and financial statements

None ☐ a. List all bookkeepers and accountants who within **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS  
**Sweeney Kovar, LLC**  
**3800 Blackhawk Road, Suite 100**  
**Danville, CA 94506**

DATES SERVICES RENDERED  
**2006-20010**

None ☒ b. List all firms or individuals who within the **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME	ADDRESS	DATES SERVICES RENDERED
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None ☒ c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME	ADDRESS
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None ☒ d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued by the debtor within **two years** immediately preceding the commencement of this case.

NAME AND ADDRESS	DATE ISSUED
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#### 20. Inventories

None ☐ a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY  
**3/2009**

INVENTORY SUPERVISOR  
**Thomas Gergley**

DOLLAR AMOUNT OF INVENTORY  
 (Specify cost, market or other basis)  
**Franchise agreements -\$50,000**

- None ☐ b. List the name and address of the person having possession of the records of each of the two inventories reported in a., above.

DATE OF INVENTORY  
3/2009

NAME AND ADDRESSES OF CUSTODIAN OF INVENTORY  
RECORDS  
**Litigation Advocates Group**  
**1990 North California Blvd. Suite 830**  
**Walnut Creek, CA 94596**

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**21 . Current Partners, Officers, Directors and Shareholders**

- None ☒ a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS	NATURE OF INTEREST	PERCENTAGE OF INTEREST
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- None ☒ b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS	TITLE	NATURE AND PERCENTAGE OF STOCK OWNERSHIP
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**22 . Former partners, officers, directors and shareholders**

- None ☒ a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL
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- None ☒ b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION
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**23 . Withdrawals from a partnership or distributions by a corporation**

- None ☒ If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS OF RECIPIENT, RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
-----------------------------------------------------------	-----------------------------------	------------------------------------------------------------

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**24. Tax Consolidation Group.**

- None ☒ If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within **six years** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION	TAXPAYER IDENTIFICATION NUMBER (EIN)
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**25. Pension Funds.**

- None ☐ If the debtor is not an individual, list the name and federal taxpayer-identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within **six years** immediately preceding the commencement of the case.

NAME OF PENSION FUND  
**Add Butterfly Fitness Inc. Pension and Profit Sharing Plan**

TAXPAYER IDENTIFICATION NUMBER (EIN)  
**EIN# 56-2359238**

**DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP**

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief.

Date September 30, 2011

Signature /s/ Mark Golob  
**Mark Golob**  
**President**

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

*Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571*

**United States Bankruptcy Court  
Northern District of California**

In re Butterfly Fitness, Inc  
Debtor(s)

Case No. \_\_\_\_\_  
Chapter 7

**CREDITOR MATRIX COVER SHEET**

I declare that the attached Creditor Mailing Matrix, consisting of 1 sheets, contains the correct, complete and current names and addresses of all priority, secured and unsecured creditors listed in debtor's filing and that this matrix conforms with the Clerk's promulgated requirements.

Date: September 30, 2011

/s/ Scott Schwartz  
Signature of Attorney  
**Scott Schwartz**  
**Rust, Armenis & Schwartz**  
**244 Jackson Street**  
**Fourth Floor**  
**San Francisco, CA 94111**  
**(415) 765-5910 Fax: (415) 765-5914**

Ali and Kelly Davidson  
Khrysalis Enterprises, LLC  
and BFL Incorporated  
2115 NE Highway 20, Ste. 107  
Bend, OR 97701

Dorsey Whitney Law Firm  
Seattle Washington  
Seattle Washington, WA 12345

Henderson Consulting, LLC  
3909 E. Phillips Circle  
Littleton, CO 80122

Lee, Debbie, Scott and Todd Harrell  
Emerald Coast Women's Fitness, LLC  
7009 North Lagoon Drive , Unit #113  
Panama City, FL 32408

Superior Court of CA-Contra Costa  
Martinez Civil Division  
725 Court Street  
Martinez, CA 94553

Wells Fargo  
Attn: Collection Servicing, 1st Floor, M  
1 Home Campus  
Des Moines, IA 50328



**United States Bankruptcy Court  
Northern District of California**

In re Butterfly Fitness, Inc

Debtor(s)

Case No.  
Chapter

7

**CORPORATE OWNERSHIP STATEMENT (RULE 7007.1)**

Pursuant to Federal Rule of Bankruptcy Procedure 7007.1 and to enable the Judges to evaluate possible disqualification or recusal, the undersigned counsel for Butterfly Fitness, Inc in the above captioned action, certifies that the following is a (are) corporation(s), other than the debtor or a governmental unit, that directly or indirectly own(s) 10% or more of any class of the corporation's(s') equity interests, or states that there are no entities to report under FRBP 7007.1:

■ None [*Check if applicable*]

September 30, 2011

Date

/s/ Scott Schwartz

Scott Schwartz

Signature of Attorney or Litigant

Counsel for Butterfly Fitness, Inc

Rust, Armenis & Schwartz

244 Jackson Street

Fourth Floor

San Francisco, CA 94111

(415) 765-5910 Fax: (415) 765-5914

mail@rustarmenis.com

EXHIBIT M

From: Butterfly Fitness Inc. UFOC  
Dated: December 28, 2006

### ITEM 3. LITIGATION

Shelly's Body Shoppe, LLC v Lorraine Cervoni, Patricia Jarusinsky, and Butterfly Fitness, Inc., (State of Connecticut, Superior Court, Case No. CV-064010769). This action was filed on May 25, 2006. The plaintiff, who owns a women's fitness center in Connecticut, alleges breach of a non-compete contract and tortious interference with plaintiff's contracts and business relations by defendants Cervoni and Jarusinsky, who are former employees of plaintiffs, and unfair trade practices by all defendants. Defendant Cervoni is currently a Butterfly Life franchisee

v22 Offering Circular.doc

9

owner in Connecticut, and defendant Jarusinsky is employed at defendant Cervoni's Butterfly Life business. Plaintiff alleges that we knew or should have known that defendant Cervoni was subject to restrictive covenants. The plaintiff is seeking an injunction (i) restraining defendant Cervoni from participating in the ownership or operation of her competing Butterfly Life business, and (2) restraining defendant Jarusinsky from participating in the operation of defendant Cervoni's Butterfly Life business; unspecified damages; unspecified punitive damages; and attorney's fees and costs. We denied the claims against us. This matter was settled on September 18, 2006, by payment of an agreed amount by an insurance carrier to the franchisee's former employer, without any admission of liability on our part or on the part of our franchisee. The case was dismissed with prejudice.

Butterfly Life, Inc. v Susan Kruse and Linda Coogan, (American Arbitration Association, Western Case Management Center, Case No.: 74 114 00618 05). On September 9, 2005, we filed an amended claim for arbitration against the named franchisees for breach of contract pursuant to a November 5, 2003 Franchise Agreement; breach of the implied covenant of good faith and fair dealing; misappropriation of trade secrets; and interference with economic relationship. The franchisees filed a counter claim for fraud, intentional misrepresentation, violation of the California Franchise Act, breach of contract and breach of the duties of good faith and fair dealing. We filed a general denial and affirmative defenses against the franchisees' counterclaim. On October 6, 2005, the parties entered into a Settlement Agreement which resolved all differences without either party admitting liability. No money was paid. There was a mutual release of claims by the parties and the case was dismissed.

Beth J. Shaw vs. Butterfly Fitness, Inc., (Superior Court of the State of California, County of Los Angeles, Case No.: BC329592). On March 1, 2005, Ms. Shaw filed suit against us alleging improper use of a person's name or image in advertising or soliciting under California Civil Code Section 3344; appropriation of likeness; quasi contract and breach of contract. Her complaint demanded (without specifying an amount) damages for profits and compensation from the unauthorized sale of products and services using her picture and name, damages from emotional distress, punitive damages, and attorneys fees and costs. Ms. Shaw entered into a Trainer Independent Contractor Agreement for certain yoga, training and consulting services with us on October 15, 2003, which we believe gave us certain rights to exploit the results and proceeds of Ms. Shaw's services in perpetuity. Ms. Shaw alleged that the agreement terminated on October 15, 2004 and that any further use of her name or likeness is unauthorized. The parties entered into a Settlement Agreement on November 1, 2005. We agreed to pay Ms. Shaw \$10,000, and Ms. Shaw agreed to complete a shoot for five new yoga DVDs for us. Ms. Shaw will receive royalties on the sales of these five DVDs. We may market, promote and sell the DVDs in perpetuity, but otherwise agreed to cease using Ms. Shaw's image and likeness in promotional materials after December 31, 2007. The case has been dismissed.

Other than these three actions, no litigation is required to be disclosed in this Offering Circular.

## EXHIBIT L

# CLUB INDUSTRY

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## Financial Trouble Plagues Some Health Club Franchisees

Club Industry

Stuart Goldman, Executive Editor

Stuart Goldman, managing editor

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Lights Out: The troubles that continue to plague circuit club companies also extend to business-savvy franchisees who trusted the reputations of some of the biggest names in the industry.



It sounded so simple. It made so much sense. Experienced, knowledgeable people banked on the marriage of a well-known sandwich chain and a fitness industry legend to create an exciting new circuit club franchise. At another promising company, people counted on the experience of a group of investors that included the founder of the biggest revenue-producing chain in the industry.

1-2-3 Fit, Denver, which opened in 2005, was the brainchild of Rick Schaden and Brooksy Smith, two men who made Quiznos a successful national restaurant chain. Schaden and Smith called upon fitness legend Ray Wilson, whose background includes opening several club companies, to help them with their venture into the fitness industry.

"It was the perfect mixture of franchise team and fitness team," one former 1-2-3 Fit franchisee says.

Butterfly Life, San Ramon, CA, opened in 2003 and had the initial backing of Mark Mastrov, the founder of 24 Hour Fitness who resigned last month as chairman of 24 Hour. Mastrov's colleagues, Mark Golob and Tom Gergley, had operated Linda Evans clubs in California before opening Butterfly Life.

“With Mastrov's name, how could you go wrong?” one former Butterfly Life franchisee says.

But according to many franchisees at the two companies, plenty did go wrong. The same problems that have confounded franchisees at express club companies such as ShapeXpress and Contours for Women (both of which were featured in the November issue of *Club Industry's Fitness Business Pro* and online at [www.fitnessbusinesspro.com/mag/fitness\\_times/](http://www.fitnessbusinesspro.com/mag/fitness_times/)) have hit 1-2-3 Fit and Butterfly Life franchisees. Several have closed their doors and face debts of more than a quarter of a million dollars. Even Mastrov and Wilson have left the two companies.

“I call it an American tragedy,” says Barbara Jorgensen, who closed her Redmond, WA, 1-2-3 Fit store last month, just nine months after its opening. She says her losses total \$300,000.

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## **Butterfly Life**

Although 1-2-3 Fit franchisees say they have few resources to file a lawsuit, Butterfly Life and its franchisees are in litigation.

Butterfly Life filed an arbitration last fall against one of its franchisees, Beth Tomei of Walnut Creek, CA, for terminating the franchise agreement in the company's UFOC and changing the name of her club. Tomei and nine other franchisees then filed a class-action counterclaim against Butterfly Life on Jan. 10 in California through the American Arbitration Association.

Mario L. Herman, a Washington, DC-based class arbitration attorney who is representing Butterfly Life franchisees, says 250 franchisees are potential members in the counterclaim. Herman says Butterfly Life misrepresented itself by orally providing illegal earnings claims, such as stating that the break-even point for franchisees was 200 members and that franchisees would make a profit within their first six months of operation. None of the franchisees have made a profit in that time frame, Herman says.

“We believe that there was a standardized pitch that was provided to everyone before they purchased,” Herman says. “It's fraud in the inducement of the agreement as opposed to any breach-of-contract, post-signature, post-execution agreement.”

Item 19 of the Butterfly Life UFOC, titled Earnings Claims, states: “Butterfly [Life] does not furnish or authorize sales persons to furnish any oral or written information concerning potential sales, costs, income or profit of a Butterfly Life Center. Actual results may vary from unit to unit and Butterfly cannot estimate the results of a particular franchise.”

Golob, Butterfly Life's president and CEO, refutes the claims by franchisees that they were misled about how much it costs to operate a Butterfly Life club.

“Whatever they were told was in that franchise circular,” Golob says. “If one of my employees told somebody something that wasn't true — and I do not believe they did — they still had the numbers.”

The numbers don't look good for Butterfly Life. In an unaudited financial statement dated Aug. 31, 2007, the company listed losses of \$815,255 and pretax losses of \$771,361.

In an apparent attempt to reach out to franchisees, Gergley, the company's chairman, sent out two letters on Dec. 11, 2007. In the first letter to current franchisees, Gergley offered services such as a \$200 per month reduction in royalty fees for 2008 and announced the establishment of a franchisee advisory council and an area representative council.

In the second letter addressed to former Butterfly Life franchisees, Gergley wrote that the company would attempt to re-sell the territory of closed clubs and send the closed franchisee 50 percent of the \$29,500 franchise fee. The company also says it will attempt to re-sell available equipment, with 100 percent of the earnings going to the closed franchisee.

Whether or not these efforts will quell complaints by former franchisees, they don't address the belief that many franchisees held that Mastrov was going to play a big role in the company, Herman says. In the first three Butterfly Life UFOCs, Mastrov was listed as a director and founding shareholder of Butterfly Life, but he was not listed in either of the last two company UFOCs.

"Our understanding is that [Mastrov] may have made a financial contribution to this thing initially but really has nothing to do with it on an on-going basis," Herman says.

Mastrov could not be reached for comment for this story. Golob refused to answer questions involving Mastrov's involvement with the company, but he did respond to the counterclaim by Butterfly Life franchisees.

"There is no merit to their answer of the lawsuit," Golob says. "We plan on fighting this lawsuit to the end, and there is no doubt in my mind we will win."

In 1991, Golob was 24 Hour's vice president of marketing. In 1992, he left 24 Hour and along with Gergley started the Linda Evans clubs. In 2003, Golob launched Butterfly Life. In 2004, he sold six Linda Evans clubs to 24 Hour, but kept five Linda Evans clubs, some of which became Butterfly Life clubs.

Tomei purchased one of the former Linda Evans franchises and converted it to a Butterfly Life club, which boasts a 30-minute training circuit along with group exercise classes and a weight-loss program. But Tomei's club began struggling, and she started receiving e-mails from other Butterfly Life owners who were in the same boat. Tomei began compiling a list of Butterfly Life franchises that were closed, closing, in the process of re-sale or had not yet opened. By Tomei's count, 88 Butterfly Life clubs in 16 states fit in one of those categories.

Golob would not provide details about the number of Butterfly Life clubs in operation. He did, however, say that franchisees should be responsible for their failures.

"People think when they buy a franchise, they're automatically going to make a lot of money," Golob says. "They don't realize it takes a lot of hard work. Very few people ever blame their

failures on themselves. If for any reason a franchise is struggling, it's always the franchisor's fault.

"You really have to feel bad for anybody that invests money in anything that doesn't make it. But how many health clubs have you known to close their doors for whatever reason? There's not a franchise out there today that doesn't have franchises that close."

Golob says the company spent \$2 million in marketing alone last year. Part of that marketing went toward a TV spot on The Learning Channel. Tomei describes the spot as a 5-minute infomercial.

"It's not an easy thing to create a brand," Golob says. "But I can tell you we'll be standing when the rest are gone because we have the product. When we all put this together — and that was all of us — we wanted to have the best product out there. We knew selling franchises was the easy part of the business. Having them make money and being around 20 years from now is the key to the whole business."

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### **Too Much of a Good Thing?**

Purvin is trying to mediate the problems with Butterfly Life and its franchisees and chose not to comment on that company specifically. However, Purvin says he does notice problems throughout the industry, suggesting that the market is oversaturated and oversold.

"With the exception of Curves, in terms of the circuit-training [companies], I don't know of any that appear to be doing well," Purvin says. "Curves has garnered a huge part of the market with happy customers. So you have to distinguish yourself to ween away from the industry leader. Every place I go, there will be a Curves. Every place I go, there will not necessarily be one of the others. So what do I do? I spend more money on the location, I spend more money in the decoration, I spend more money on rent. The underscore is I spend more money. If I have a bigger cost of doing business, then it's going to be a difficult problem."

Sean Kelly, who publishes the Internet blog [FranchisePick.com](http://FranchisePick.com), sees several posts on his Web site from struggling franchisees. Kelly says the 30-minute circuit club companies are suffering from what he calls the "hot new franchise syndrome."

"When someone buys a 'hot new' franchise concept, they are saddled with both the financial burden and restrictions of a franchise and the uncertainty of a new, experimental start-up," Kelly says. "Could the women-only, 30-minute model retain members in the third, fourth or fifth year? Can a club be successful on membership fees alone? Can they compete against the wave of new competitors? When you buy a franchise, you are paying for certainty, not questions."

Despite the troubles that his franchisees face, Golob is adamant that Butterfly Life will succeed.



“Any new business has to cross the Grand Canyon,” Golob says. “You just need people that when times get tough, they know how to stay calm and steer this thing. That's why people buy a franchise. They're betting on us to be able to steer clear of a lot of this. I'm betting on the management team to make this thing happen.”

Some circuit club franchisees, however, no longer have the resources to weather the storm, nor do they have the trust in their franchisors.

“I think they're just bleeding us of all our money,” says Jorgensen, the 1-2-3 Fit owner who closed her club last month. “And they don't care.”

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