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TARRANT COUNTY
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THOMAS A. WILDER
DISTRICT CLERK

CAUSE NO. 048-352249-24

AUTOMOTIVE FINANCIAL GROUP, INC.,	§	**IN THE DISTRICT COURT**
	§	
Plaintiff,	§	
	§	**48th JUDICIAL DISTRICT**
vs.	§	
	§	
TRAVIS GATES,	§	
	§	
Defendant.	§	**TARRANT COUNTY, TEXAS**

<u>AUTOMOTIVE FINANCIAL GROUP, INC.'S REPLY IN SUPPORT OF MOTION TO CONSOLIDATE</u>

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Automotive Financial Group, Inc. ("**AFG**") files this Reply in Support of its Motion to Consolidate (the "**Motion**"). In support thereof, AFG respectfully shows the Court as follows:

I.
<u>INTRODUCTION</u>

As demonstrated in AFG's Motion filed September 9, 2025, the above-styled case (the "**Gates 48th Case**") and the Cause Number 017-352358-24 (the "**Genuine Lifetime 17th Case**") share substantial overlapping—often identical—issues of fact and law. Subsequent investigation has revealed that, in addition to these two cases, there are *at least five* additional lawsuits, scattered across the United States, each sharing the same overlapping issues of fact and law. The Motion, originally filed to ensure the overlapping issues and parties between the Gates 48th Case and Genuine Lifetime 17th Case were not subjected to multiple trials, now represents a necessary first step in avoiding seven rounds of depositions, seven rounds of discovery, seven trials, and seven potentially contradicting judgments.

Genuine Lifetime, LLC ("**Genuine Lifetime**") and Tyler Luck ("**Luck**") (Genuine Lifetime and Luck collectively referred to as the "**Genuine Lifetime Defendants**"), who share counsel with Gates, oppose the Motion and argue that, because AFG asserts a handful of different claims against each of the Genuine Lifetime and Gates defendants, the Court should ignore the overwhelming commonalities of fact and law at issue between the cases.[1] AFG further anticipates that the Genuine Lifetime Defendants and Gates will argue that each of the numerous lawsuits addressed herein must be tried separately because they contain nominally different parties and marginally varied claim titles. The multiplicity of suits serves only to allow Gates, the Genuine Lifetime Defendants, and the other related litigants multiple opportunities to litigate the central issues in each of the cases, clearly hoping that multiple bites at the apple will eventually yield a favorable ruling or a resource-depleted opponent. As demonstrated in the Motion and further shown herein, the seven cases contain common questions of law and fact such that consolidation of the cases is necessary.

II.
<u>THE SEVEN CASES</u>

Of the seven related cases (the "**Seven Cases**"), this Gates 48th Case was the first filed on April 25, 2024. AFG then filed the Genuine Lifetime 17th Case on April 30, 2024.

[1] Genuine Lifetime filed its Non-Party Objections and Brief in Opposition to the Motion to Consolidate Filed By Plaintiff AFG Companies, Inc. in the evening of October 6, 2025 (the "**Response**"). Gates filed his Objections and Brief in Opposition to the Motion to Consolidate filed by Plaintiff on October 7, 2025. Because the Genuine Lifetime Response encompasses the arguments made by Gates, and Gates makes no new substantive arguments, references to a "Response" herein are directed toward the Genuine Lifetime Response, though the substantive arguments are applicable to the responses of both Genuine Lifetime and Gates.

On January 16, 2025, Brand Engagement Network, Inc. ("**BEN**") filed suit against AFG, Brewer, and several AFG subsidiaries and affiliates in the Northern District of Texas, Case Number 3:25-cv-00114-S-BN (the "**NDTX 1 Case**").

On January 21, 2025, AFG filed suit against Genuine Lifetime LLC, BEN, Michael Lucas, Tyler Luck, Due Figlie, LLC, Shawn Lucas, and Travis Gates in the Ninth Judicial District Court of Teton County, Wyoming; this case was subsequently removed to the United States District Court for Wyoming, Cause No. 2:24-cv-104 (the "**Wyoming Case**").

On March 5, 2025, Genuine Lifetime, LLC, Tyler Luck, and October 3rd Holdings, LLC, filed suit against AFG, Brewer, and several AFG subsidiaries and affiliates in the Northern District of Texas, Case Number 3:25-cv-01273-S-BN (the "**NDTX 2 Case**").

On March 14, 2025, Shawn Lucas and Due Figlie filed suit against AFG and Brewer in the Northern District of Texas, Case Number 3:25-cv-00629-S-BN (the "**NDTX 3 Case**").

Finally, on March 18, 2025, BEN filed suit against AFG in the Southern District of new York, Case Number 1:24-cv-02245 (the "**New York Case**") (collectively with the NDTX 1, 2, 3, Wyoming Case, Genuine Lifetime 17th Case, and Gates 48th Case, the "**Seven Cases**"). For reference purposes, a chart providing factual details and summarizing each of the Seven Cases is attached hereto as Exhibit B-1.

As described in the Motion and further demonstrated below, each of these cases share common legal and factual issues, including the events surrounding a ransomware attack suffered by AFG in August 2023, AFG's response to the ransomware attack, and AFG's subsequent transactions relating to Genuine Lifetime and BEN stock. These common factual and legal issues make necessary the consolidation of each of the Seven Cases.

III.
<u>ARGUMENTS & AUTHORITIES</u>

A. THE COURT IS AUTHORIZED TO CONSOLIDATE THE GENUINE LIFETIME 17TH CASE AND THIS GATES 48TH CASE.

The Genuine Lifetime Defendants claim that Rule 174(a) does not authorize the consolidation of the Genuine Lifetime 17th Case and this Gates 48th Case because Rule 174(a) only allows consolidation of "actions involving a common question of law or fact [that] are pending before *the court.*" [Response p. 11 (emphasis added by opposing counsel)]. They further assert that Rule 17(a) "does not empower a district court to snatch away an action pending in another district court, even if they are both situated in the same county." [Response p. 11]. In support of their position, the Genuine Lifetime Defendants cite *Flores v. Peschel*, 927 S.W.2d 209, 212–13 (Tex. App.—Corpus Christ-Edinburg 1996, no writ), including a quotation expressing the rule that Rule 174(a) does not authorize a court "to transfer and consolidate cases pending before other courts."

Tellingly, the Genuine Lifetime Defendants omit *the very next sentence*: "The Texas Constitution and the Texas Government Code authorize courts within the same county to transfer cases, exchange benches, and to provide local rules for the administration of such transfers and exchanges." *Id.* at 213 ("The statutes and rules generally rely on judicial restraint and collegiality to prevent district and county courts within the same county from fighting one another for jurisdiction over a particular case."). Far from prohibiting consolidation of these two cases, *Flores* expressly permits courts in the same county to do *just that*. Notably, *Flores* addressed a scenario where a Gonzales County District Court improperly granted a motion to transfer and consolidate a second-filed case then pending in a Calhoun County Court at Law; the proper procedure would have been a plea in abatement in the second-filed case based on dominant jurisdiction, rather than a motion to transfer and consolidate. *Id.* at 212. It is, therefore, inapposite to AFG's requested relief in the Motion.

Just as the Genuine Lifetime Defendants should have read the balance of the *Flores* opinion before improperly relying on it, they also should have read *any* Rule 174 jurisprudence before falsely stating that "Rule 174 does not authorize courts to transfer and consolidate cases pending before other courts[.]" [Response p. 1]. As just one example, the Court of Appeals in *Excel Corp. v. Valdez*, 921 S.W.2d 444, 446 (Tex. App.—Corpus Christi-Edinburg 1996, no writ), denied a petition for writ of mandamus arising out of the transfer (and anticipated subsequent order of consolidation)[2] of a case from the 197th District Court of Cameron County to the 357th District Court of Cameron County. As recognized therein, Texas law has long permitted the transfer and consolidation of cases pending in the same county. Both the Genuine Lifetime 17th Case and this Gates 48th Case are pending in Tarrant County District Courts. *See id.* at 449. Moreover, to the extent an administrative or procedural "transfer" to effectuate the consolidation may be required, any failure to title the Motion as one seeking transfer is immaterial to the Court's analysis. *See Interest of J.V.O.*, No. 04-20-00346, 2021 WL 3742678, at *3 (Tex. App.—San Antonio Aug. 25, 2021, no pet.) ("While submitted as a 'Motion to Consolidate,' Mother's request sought a transfer and consolidation. . . the request to consolidate implied a request to transfer. While the 'consolidation' may be more appropriately have been termed a 'transfer' we believe it accomplished the same purpose."); *Starnes v. Holloway*, 779 S.W.2d 86, 96 (Tex. App.—Dallas 1989, writ denied) ("Thus, the two cases consolidated by Judge Walker were in effect 'pending before the court' since the distinctions between Dallas County civil district courts are effectively

[2] The case in the 197th District Court was removed to federal court, but the Texas Court of Appeals anticipated imminent remand and potential subsequent consolidation. *Excel Corp.*, 921 S.W.2d at 449.

erased. Moreover, Judge Walker was effectively the judge of any civil district court in Dallas County. We reject Holloway's contention that Judge Walker acted in violation of Rule 174(a).").

B. THE GENUINE LIFETIME 17TH CASE AND THIS GATES 48TH CASE ARE ESSENTIALLY THE SAME.

The Genuine Lifetime Defendants argue that consolidation is improper because the "two cases do not substantially relate to one transaction, occurrence, subject matter, or question." [Resp. p. 11]. In support, they assert that AFG's *affirmative* claims against the Genuine Lifetime Defendants and Gates differ and Gates will be a mere witness in the Genuine Lifetime 17th Case "because he can authenticate evidence of AFG Companies' fraud." [Response p. 13]. In doing so, the Genuine Lifetime Defendants admit that Gates' testimony and related evidence will be material, relevant, and admissible in each case. *Owens-Corning Fiberglas Corp. v. Martin*, 942 S.W.2d 712, 716 (Tex. App.—Dallas 1997, no writ) ("The actions should be so related that the evidence presented will be material, relevant, and admissible in each case.").

The Response alleges that "AFG's Motion cannot cite to one instance where any actual common issues of law or fact are shared between the two actions." [Response p. 12]. This is patently false, [*see* Motion pp. 2–7], and ignores Gates' 2nd Amended Third-Party Petition, wherein Gates makes *verbatim factual and legal allegations to those asserted by the Genuine Lifetime Defendants' Response to Plaintiff's Partial No-Evidence Motion for Summary Judgment.* [*See* Motion p. 6].

Omitted from the Response is any rebuttal to the substantial analysis of similarities between the Genuine Lifetime 17th Case and this Gates 48th Case demonstrated in the Motion. [*See* Motion pp. 2–7]. As shown therein, the Genuine Lifetime Defendants assert affirmative defenses and submitted summary judgment briefing that mirror, and at times copy verbatim, the claims made by Gates in his 2nd Amended Third-Party Petition. That this case was originally brought by AFG to address Gates' misappropriation and improper disclosure of AFG's confidential information, rather than to litigate the entirety of AFG's alleged scheme to cover up a ransomware attack and fraudulently induce numerous parties to engage in various transactions regarding BEN stock, is immaterial. Indeed, at the time of filing for each of the lawsuits, AFG had no idea that the Genuine Lifetime Defendants and Gates would be partnering up, hiring the same attorney, and asserting the same claims across seven different lawsuits. Gates' subsequent third-party practice has put the broader claims against AFG, asserted by both Gates and the Genuine Lifetime Defendants, at the forefront of this case.

Likewise, that the Genuine Lifetime 17th Case was originally filed to remedy the Genuine Lifetime Defendants' failure to perform under a loan agreement is immaterial; through their affirmative defenses and summary judgment briefing, the Genuine Lifetime Defendants have broadened the scope of the litigation such that the facts and legal issues to be addressed mirror those of the Gates 48th Case. [*See* Motion pp. 3–8]. The Genuine Lifetime Defendants ask the Court to (1) conclude that Gates will be a key witness in establishing their affirmative defense of fraud, (2) ignore that *the same alleged fraud is the basis for Gates' affirmative third-party claims in this case*, and (3) find that the cases are entirely unrelated based solely on a superficial reading of AFG's affirmative claims. The presence of unique claims in each case does not defeat the existence of common issues of law and fact for consolidation purposes. *Martin*, 942 S.W.2d at 716 (affirming consolidation of 12 asbestos cases despite substantial differences in the claims of each plaintiff because common issues of fact, including exposure to asbestos, variety of resulting diseases, amount of exposure that causes diseases, and manufacturer's knowledge, were raised in each case); *see also Excel Corp.*, 921 S.W.2d at 449 (finding sufficient similarity between separate personal injury cases to transfer and potentially consolidate where there was a common question regarding whether two defendants were in fact the same entity, whether a defendant's presence in a county was sufficient to support venue there, whether one defendant was responsible for the negligence of another, and a defendant raised the same affirmative defense in both cases).

Any potential facial differences between the Genuine Lifetime 17th Case and this Gates 48th Case belie their true nature. These cases will necessarily address the same factual allegations based on the same evidence and testimony, including evidence and testimony the Genuine Lifetime Defendants have conceded will be material, relevant, and admissible in both cases. *See Martin*, 942 S.W.2d at 716. The Court should, therefore, grant the Motion and consolidate the cases.

C. CONSOLIDATION WILL NOT RESULT IN PREJUDICE.

The Genuine Lifetime Defendants claim that they will be prejudiced by the presentation of AFG's affirmative claims against Gates in the same trial as AFG's claims against the Genuine Lifetime Defendants. Not so. The Genuine Lifetime Defendants have already conceded that Gates' testimony will be a part of the trial in Genuine Lifetime 17th Case. Unless the Genuine Lifetime Defendants expect to call Gates as a witness without AFG examining him regarding his misappropriation of AFG's trade secrets—a subject indisputably relevant to Gates' credibility as a witness— these issues will be presented to the jury regardless of whether they are asked to adjudicate AFG's claims against Gates.

Moreover, absent from their analysis is the prejudicial impact of forcing AFG to litigate the Genuine Lifetime Defendants' affirmative defenses—including evidence and testimony from Gates—two separate times, including in cases where AFG would not—should the Genuine Lifetime Defendants have their way—be permitted to effectively cross-examine Gates. Also absent from their analysis is the prejudicial impact of contradictory evidentiary rulings, the doctrine of res judicata, and the confusion caused by presenting the jury with only the Genuine

Lifetime Defendants' preferred portions of the full story underlying these cases; each of these would necessarily prevent AFG from obtaining a fair and impartial trial on the merits in both cases. Proper jury instructions and charges on the causes of action and an orderly, consolidated trial will alleviate any prejudice.

Finally, the Response does not dispute that separate trials would create an unnecessary duplication of costs, including litigating the common issues between the cases and requiring numerous witnesses to testify multiple times on the same subject matter.

The Genuine Lifetime Defendants present no prejudice unique to consolidation—the issues raised in this Gates 48th Case will necessarily be presented in the Genuine Lifetime 17th Case regardless of the jury's charge—and AFG has raised multiple concrete prejudicial impacts of requiring separate trials. Accordingly, there is no prejudice to the Genuine Lifetime Defendants from consolidation, and the Motion should be granted.

D. AFG HAS NOT WAIVED ITS RIGHT TO CONSOLIDATION.

The Genuine Lifetime Defendants allege that AFG waived its right to have these cases tried together when it filed the lawsuits separately. On the contrary, AFG had no idea that the Genuine Lifetime Defendants would assert the same claims as defenses that Gates would assert as third-party claims. AFG had no idea that the Genuine Lifetime Defendants and Gates would rely on the same evidence, testimony, and verbatim allegations to support their positions. That knowledge necessarily developed *after* the cases were filed through subsequent pleadings and discovery. Because waiver requires an *intentional* relinquishment of a *known* right, AFG's initiation of the Genuine Lifetime 17th Case and the Gates 48th Case could not, by definition, have waived a right to a consolidated trial that arose as a result of Gates' and the Genuine Lifetime Defendants' subsequent pleadings.

AFG did not have knowledge before filing these lawsuits that the Genuine Lifetime Defendants and Gates would rely on the same factual and legal issues to support their respective affirmative defenses and third-party claims. There was, accordingly, no waiver of AFG's right to seek to have these nearly-identical cases consolidated for trial. The Court should disregard entirely the arguments made in subsection D of the Response.

E. THE REST OF THE SEVEN CASES CONTAIN THE SAME FACTUAL AND LEGAL ISSUES.

As demonstrated in the Motion, the Genuine Lifetime Defendants rely on the same factual and legal claims in the Genuine Lifetime 17th Case to support their affirmative defenses therein as Gates does to support his 2nd Amended Third-Party Petition Against Ralph Wright Brewer III and Automotive Financial Group. Specifically, Gates and the Genuine Lifetime Defendants each allege that Brewer and AFG enacted a scheme to:

1. improperly respond to and then cover-up a ransomware attack that occurred in 2023;
2. fraudulently misrepresent AFG's data security protocols;
3. use the alleged misrepresentations to induce the Genuine Lifetime Defendants into borrowing money from AFG to purchase shares of BEN stock; and
4. engage in illicit trading of BEN stock so as to harm BEN and BEN's other investors (i.e., Gates and the Genuine Lifetime Defendants) while benefitting AFG and Brewer.

[*See* Mot. pp. 3–6 and exhibits thereto]. The balance of the Seven Cases contain nearly identical claims. Specifically, each of the Seven Cases will require a jury to hear and adjudicate:

- AFG's data security protocols prior to August 2023;
- The ransomware attack suffered by AFG in August 2023;
- AFG's response to the ransomware attack;

- AFG's disclosure of, or failure to disclose, the ransomware attack to various parties;
- AFG's investment and interest in BEN;
- AFG's financing of other investments in BEN, including Genuine Lifetime's investment in BEN stock;
- AFG's transactions and trades involving BEN stock;
- AFG's alleged attempts and intentions to compete with BEN in the automotive artificial intelligence industry.

The presence of these common issues in the Genuine Lifetime 17th Case and this Gates 48th Case is detailed extensively in the motion. In a nearly identical fashion, they appear at the center of the other Seven Cases.

For example, in the NDTX 1 Case, BEN's Original Complaint alleges:

> This case arises out of a complex and coordinated scheme of fraudulent misrepresentations, bad faith conduct, violations of the Securities Exchange Act of 1934 and breaches of contract orchestrated by Defendant Ralph Wright Brewer III and the corporate entities under his control. Defendants concealed a critical ransomware attack, misrepresented their operational readiness and data security compliance, and failed to fulfill their obligations under multiple agreements with Plaintiff BEN and Due Figlie. Through this misconduct, Defendants unjust enriched themselves, caused significant financial harm to Plaintiff, and jeopardized Plaintiff's business relationships, reputation, and strategic initiatives.

[Ex. B-2, Pl. Or. Compl. in the NDTX 1 Case, pp. 1–2]. BEN further asserts that AFG and Brewer "assured BEN that AFG had robust cybersecurity protocols in place and that no incidents or vulnerabilities existed that could jeopardize the partnership" to support BEN's fraud claim. [Ex. B-2, Pl. Or. Compl. in the NDTX 1 Case, p. 33]. BEN alleges that AFG deliberately concealed the ransomware attack and violated the Gramm-Leach-Bliley Act, mirroring the allegations of both the Genuine Lifetime Defendants and Gates. [Ex. B-2, Pl. Or. Compl. in the NDTX 1 Case pp. 33–34]. The NDTX 1 Case also contains allegations of AFG conspiring to hide the ransomware attack from BEN, committing securities fraud in relation to BEN stock, and breaching various agreements pertaining to BEN stock. These allegations mirror those made in both the Genuine Lifetime 17th Case and this Gates 48th Case.

Likewise, in the NDTX 2 Case, Genuine Lifetime, Tyler Luck, and October 3rd Holdings, LLC allege that AFG and Brewer "represented to BEN and Tyler Luck that AFG and its subsidiaries had robust data security protocols in place" and further allege that the 2023 ransomware attack and AFG's response there to "led one of AFG's top executives—Travis Gates—to resign." [Ex. B-3, Pl. Or. Compl. in the NDTX 2 Case pp. 13, 19]. The plaintiffs in the NDTX 2 Case also allege violations of the Gramm-Bleach-Bliley Act. [Ex. B-3, Pl. Or. Compl. in the NDTX 2 Case p. 20]. They also seek a declaration that AFG's loan to Genuine Lifetime—given so that Genuine Lifetime could purchase BEN stock—is void; this loan was never repaid and now forms the basis for AFG's claims in the Genuine Lifetime 17th Case. [Ex. B-3, Pl. Or. Compl. in the NDTX 2 Case pp. 34–37].

The NDTX 3 Case is much the same. Therein, Shawn Lucas and Due Figlie LLC allege that AFG and Brewer "concealed a critical ransomware attack" and "misrepresented their operational readiness and data security compliance[.]" [Ex. B-4, Pl. Or. Compl. in the NDTX 3 Case p. 1]. The NDTX 3 Case plaintiffs also allege:

> [O]n March 7, 2024, Defendant Brewer convened a clandestine off-site executive meeting at 7343 Hilltop Road, Argyle, Texas ominously titled "AFG Executive Vision Meeting" to conspire with others to compete against BEN. During this meeting, Defendant Brewer unveiled a five-year plan centered on creating a new entity to compete against BEN, its new business partner, known as Pathwai." Specifically, Pathwai (now DaidaX) was designed to compete against BEN in the automotive AI market. Brewer openly declared "war on" BEN as AFG's direct competition. This declaration came despite the fact that defendant Brewer had already reaped significant personal financial gains from his BEN stock holdings. His calculated betrayal laid bare his intent to undermine Ben even as he grossly enriched himself to BEN's detriment in the automotive market.

[Ex. B-4, Pl. Or. Compl. in the NDTX 3 Case]. This language appears—nearly verbatim—in the filings of both the Genuine Lifetime 17th Case and this Gates 48th Case. [*See* Mot. pp. 6–7]. Unsurprisingly, the NDTX 3 Case shares the same claims for violations of the securities act—all arising out of AFG's transactions involving BEN stock—as the other Seven Cases. [*See* Ex. B-4, Pl. Or. Compl. in the NDTX 3 Case, pp. 32–35].

The Wyoming Case consists largely of the other side of the same coin. Therein, AFG asserts claims against Genuine lifetime, BEN, Due Figlie LLC, Michael Lucas, Tyler Luck, Shawn Lucas, and others arising out of the same series of transactions underlying the claims addressed above. [Ex.B-5, Compl. in the Wyoming Case]. The New York Case, likewise, alleges that AFG failed to make additional purchases of BEN stock pursuant to a subscription agreement; this is one of the many transactions regarding BEN stock underlying the claims made in each of the other Seven Cases. [Ex. B-6, Pl. Or. Compl. pp. 3–12 in the New York Case].

It is undeniable that each of the Seven Cases contain common issues of law and fact. In fact, the Honorable District Court Judge Reed O'Connor of the Northern District of Texas has already determined that the NDTX 2 should be transferred to the docket of the Honorable Judge Karen Gren Scholer because "it is related to *Brand Engagement Network Inc v. Brewer, III et al*, Civil Action No. 3:25-cv-00114-S[.]" [Ex. B-7, Order Transferring Case to Judge Scholer in NDTX 2 Case]. A plain reading of the pleadings shows that the same series of events and transactions underlie each of the Seven Cases. Any minor variation in the specific claims or parties contained in any of the Seven Cases are irrelevant; there are common issues of law and fact such that the doctrine of res judicata and the Texas Rules of Civil Procedure require these cases be consolidated and tried together. TEX. R. CIV. P. 174; The first step in that process is consolidating the Genuine Lifetime 17th Case and this Gates 48th Case.[3] Thus, the Court should grant the Motion.

F. COMMON COUNSEL ACROSS THE CASES WEIGHS IN FAVOR OF CONSOLIDATION.

In addition to the issues of law and fact, the Seven Cases share another commonality—the attorneys litigating the cases. In nearly all of the Seven Cases, the parties opposing AFG are represented by Buchalter, PC, and specifically Matthew Yarborough. The commonality of representation makes clear that these cases are not merely attempts to remedy unique harms suffered by distinct individuals arising out of several different factual events. The Seven Cases are, rather, related and coordinated attempts by Buchalter, PC, to raise the above-described issues in as many forums as possible. That the same counsel is raising the same above-described issues in each of the Seven Cases indicates that these issues should be litigated and tried together, rather than giving the common counsel several bites at the apple.

In this case, Gates is represented by Buchalter, and specifically Matthew Yarborough. In the Genuine Lifetime 17th Case, the Genuine Lifetime Defendants are represented by Buchalter—specifically Matthew Yarborough—and McCathern, PLLC. In the NDTX 1 Case, BEN is represented by Buchalter—specifically Matthew Yarborough—and Sheppard Mullin Richter & Hampton LLP. In the NDTX 2 Case, Genuine Lifetime, Tyler Luck, and October 3rd Holdings, LLC are represented by Buchalter—specifically Matthew Yarborough—and McCathern, PLLC. In the NDTX 3 Case, Due Figlie and Shawn Lucas are represented by Buchalter—specifically

[3] Consolidation of the Seven Cases will likely require additional motions to consolidate, transfer, and potentially abate. AFG hopes to streamline consolidation with cooperation from opposing counsel upon a ruling from the Court that these cases contain common issues of law and fact such that consolidation is proper.

Matthew Yarborough. In the New York Case, BEN is represented by Buchalter—specifically Matthew Yarborough—and Arnold & Porter Kaye Scholer LLP.

It is no surprise that Gates' counsel in this case, Buchalter, has appeared in other cases filed across the country alleging the same issues. Gates, like the other Buchalter-represented parties in the Seven Cases, alleges that his purported "whistleblower" claims regarding AFG's ransomware attack, response thereto, and subsequent investment and trading activities regarding BEN tell a tale of intentional fraud, improper competition, and illicit stock trading. In the Genuine Lifetime 17th Case, this case, and each of the other Seven Cases, Buchalter will attempt to make this case to a jury, using the same evidence and witnesses, without regard for judicial economy or the doctrine of res judicata.

That the parties opposing AFG across the Seven Cases largely share counsel weighs in favor of consolidating the Seven Cases; there are substantial efficiencies, cost savings, and other benefits (for all parties) from litigating these facts and issues a single time in a consolidated case. The known prejudice each party will suffer from duplicative litigation, combined with the benefits of a consolidation—especially in light of the common counsel throughout the cases—make clear that the Court should grant the Motion and begin the process of consolidating the Seven Cases.

G. THE GENUINE LIFETIME DEFENDANTS MISREPRESENT CONFERENCE ATTEMPTS.

In paragraph 18 of the Response, the Genuine Lifetime Defendants allege—falsely—that the undersigned stated the purpose of seeking consolidation was to avoid the then-upcoming trial setting in the Genuine Lifetime 17th Case. [*See* Ex. B (Affidavit of Shauna J. Wright)].[4] The reasons provided for seeking consolidation are those expressly reduced to writing in the Motion.

[4] It is worth noting that counsel for the Genuine Lifetime Defendants does not sign his name to these allegations in the form of an affidavit, declaration, or any other form of evidence.

Egregiously, the Genuine Lifetime Defendants imply that AFG was the lone party seeking an administrative reset of the trial date in the Genuine Lifetime 17th Case. [Response ¶ 18 ("presumably because she believed AFG Companies was not ready.")]. On the contrary, the Genuine Lifetime Defendants were unopposed that relief and executed the Agreed Order Granting Administrative Reset.

AFG has reduced its reasons for seeking consolidation to writing in the Motion. The Court should disregard entirely the false and improper accusations contained in subsection E of the Response.

IV.
CONCLUSION

The Genuine Lifetime Defendants' Response misrepresents the law on consolidation, falsely attributes improper motive to AFG's counsel, fails to disclose several related cases it has filed on the exact same subject matter, and attempts to obfuscate the clearly common issues of law and fact between the cases at issue by pointing to the existence of a few unique causes of action between the cases. The Genuine Lifetime Defendants' Response does not dispute that the Genuine Lifetime Defendants' affirmative defenses are the same as the affirmative third-party claims asserted by Gates, that the testimony, evidence, and parties will be the substantially the same in each of the cases, or that AFG will be materially prejudiced by having to try these issues two—much less seven—times.

Discovery and development of the Seven Cases has made clear that each of the Seven Cases is essentially the same and will rely on the same evidence. The Seven Cases should be consolidated and tried together; consolidating the Genuine Lifetime 17th Case and this Gates 48th Case is the first step in that process. Accordingly, AFG respectfully requests the Court grant the Motion.

Respectfully submitted,

By: */s/ Shauna J. Wright*

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that on October 8th, 2025, a true and correct copy of the foregoing was sent to all parties who have made an appearance or their attorney of record in accordance with Texas Rules of Civil Procedure.

/s/ Shauna J. Wright

Shauna J. Wright

EXHIBIT B

CAUSE NO. 048-352249-24

AUTOMOTIVE FINANCIAL GROUP, INC., ***Plaintiff,*** **vs.** **TRAVIS GATES,** ***Defendant.***	§ § § § § § § § § §	**IN THE DISTRICT COURT** **48th JUDICIAL DISTRICT** **TARRANT COUNTY, TEXAS**

AFFIDAVIT OF SHAUNA J. WRIGHT

STATE OF TEXAS	§
	§
COUNTY OF TARRANT	§

BEFORE ME, the undersigned authority, personally appeared Shauna J. Wright who, being by me duly sworn, deposed as follows:

1. "My name is Shauna J. Wright. I am over twenty-one (21) years of age and otherwise capable of making this affidavit, have never been convicted of a felony, and am fully competent to testify to, and have personal knowledge of, the matters stated in this affidavit, and every statement of fact contained herein is true and correct. I am a licensed attorney in the State of Texas and am currently an partner with the law firm of Kelly Hart & Hallman LLP ('**Kelly Hart**').

2. "Kelly Hart represents Automotive Financial Group, Inc. in the above-styled cause (the '**Gates 48th Case**') and the related Cause Number 017-352358-24, currently pending in the 17th Judicial District Court of Tarrant County, Texas (the '**Genuine Lifetime 17th Case**').

3. "Attached hereto as Exhibit B-1 is a chart prepared by counsel for AFG summarizing the Seven Cases addressed in AFG's Reply in support of Motion to Consolidate.

4. “Attached hereto as Exhibit B-2 is a true and correct copy of Plaintiff's Original Complaint in Case No. 3:24-cv-00114-S, currently pending in the United States District Court for the Northern District of Texas (the ‘**NDTX 1 Case**’).

5. “Attached hereto as Exhibit B-3 is a true and correct copy of Plaintiffs' Original Complaint in Case No. 3:24-cv-00629-N, currently pending under Case No. 3:24-cv-01273-S-BN in the Northern District of Texas (the ‘**NDTX 2 Case**’).

6. “Attached hereto as Exhibit B-4 is a true and correct copy of Plaintiffs' Original Complaint in Case No. 3:24-cv-00629-N, currently pending in the Northern District of Texas (the ‘**NDTX 3 Case**’).

7. “Attached hereto as Exhibit B-5 is a true and correct copy of the Complaint filed in Case N. 2025-cv-0019225 in the Ninth Judicial District Court of Teton County, Wyoming. This case has been removed to the United States District Court for the District of Wyoming under Case No. 2:25-cv-00104-ABJ (the ‘**Wyoming Case**’).

8. “Attached hereto as Exhibit B-6 is a true and correct copy of Plaintiff's Original Complaint in Case No. 1:25-cv-02245, currently pending in the United States District Court for the Southern District of New York (the ‘**New York Case**’).

9. “Attached hereto as Exhibit B-7 is a true and correct copy of an Order, ECF No. 21 in Case No. 3:25-cv-01273-S, entered by the Honorable Judge Reed O'Connor, transferring the NDTX 2 Case to the docket of the Honorable Judge Karen Gren Scholer as it is related to the NDTX 1 Case.

10. “I have read Non-Party Genuine Lifetime, LLC's Objections and Brief in Opposition to the Motion to Consolidate filed by Plaintiff AFG Companies, Inc., filed October 6, 2025, in this Gates 48th Case (the ‘**Response**’). I am familiar with its contents.

11. “In paragraph 18 of the Response, Genuine Lifetime, LLC (‘**Genuine Lifetime**’) alleged that ‘Ms. Wright’s express reason for this consolidation was to avoid the prior trial setting in the Genuine Lifetime Case of October 6, 2025, presumably because she believed AFG Companies was not ready.’ This allegation is false. AFG’s reasons for filing the Motion to Consolidate are each expressly reduced to writing in the Motion to Consolidate filed September 9, 2025.

“FURTHER AFFIANT SAYETH NOT.”

Shauna J. Wright, Affiant

SUBSCRIBED AND SWORN TO BEFORE ME on this 7th day of October, 2025.

JUDY COLLINS
Notary Public
STATE OF TEXAS
Notary ID # 126950548
My Comm. Exp. July 2, 2029

Judy Collins
Notary Public, State of Texas

EXHIBIT B-1

Case Style	Pending in (jurisdiction)	Summary of Claims	Plaintiff Counsel	Defense Counsel	File Date	Parties
Automotive Financial Group, Inc. v. Travis Gates (048-352249-24)	Tarrant County, 48th District Court (Judge Taylor)	AFG filed suit against Gates for misappropriating trade secrets, breaching his fiduciary duty, breaching his confidentiality agreement, and tortious interference with existing and prospective relationships. These claims arise from Gates's employment and his taking of confidential information when he quit working at AFG. Travis Gates brings counterclaims for retaliation, breach of contract, and constructive discharge related to the treatment of Gates after Brewer and AFG's alleged failure to properly report and handle the alleged Ransomware Attack.	**Kelly Hart & Hallman**: Shauna Wright, Meredith Knudsen, Klayton Hiland, & Stephanie Garner **Henry Hill PLLC**: Mark L. Hill & Mary Baker	**Buchalter**: Matthew Yarbrough & Jason Blackstone	4/25/2024	**Plaintiff:** Automotive Financial Group, Inc. **Defendant:** Travis Gates **Third-Party Defendants**: Ralph Wright Brewer III, Automotive Financial Companies, Inc., and Automotive Financial Group Technologies, LLC
AFG Companies, Inc. v. Genunie Lifetime, LLC, and Tyler Luck (017-352358-24)	Tarrant County, 17th District Court (Judge Wilkinson)	AFG filed suit against Genuine Lifetime and Tyler Luck regarding the breach of a 2023 Loan Agreement, Security Agreement, and Personal Guaranty which resulted in AFG losing $4 million. Defendants allege that they were fraudulently induced into these Agreements by AFG's alleged failure to disclose a Ransomware Attack.	**Kelly Hart & Hallman**: Shauna Wright, Meredith Knudsen, Klayton Hiland, & Stephanie Garner **Henry Hill PLLC**: Mark L. Hill & Mary Baker	**McCathern, PLLC**: Levi McCathern, Justin Bryan, and Asher Miller	4/30/2024	**Plaintiff:** AFG Companies, Inc. **Defendants:** Genuine Lifetime, LLC and Tyler Luck
Brand Engagement Network Inc. v. Brewer, III et al (3:25-cv-00114-S-BN)	Northern District of Texas (Judge Scholer)	This case arises from the alleged complex and coordinated scheme of fraudulent misrepresentations, bad faith conduct, violations of the Securities Exchange Act of 1934, and breaches of contract orcastrated by Wright Brewer and the entities under his control. Plaintiffs alleged that Defendants concealed a Ransomware Attack, misrepresented their operation readiness and data security compliance, and failed to fulfill their obligations under multiple agreements with BEN and Due Figlie.	**Buchalter**: Matthew Yarbrough & Jason Blackstone **Sheppard Mullin Richter & Hampton LLP**: Jonathan Evan Clark & Stephen E. Fox	**Henry Hill PLLC**: Kelly E Kleist & Mark L. Hill **Scheef & Stone, LLP**: Michael C. Smith	1/16/2025	**Plaintiff:** Brand Engagement Network, Inc. **Defendants:** Ralph Wright Brewer III, Automotive Financial Group, Inc., AFG Companies, Inc., AFG Technologies, LLC, CareGard Warranty Services, Inc., Southwest Colonial Reinsurance, Ltd., Prime Reserve Plus, Inc., DaidaX, Inc., and DeLaporte Learning, Inc.
AFG Companies, Inc. v. Genuine Lifetime LLC, Brand Engagement Network Inc., Blockchain Exchange Network Inc., October 3rd Holding LLC, Michael Lucas, Tyler Luck, Due Figlie, and Shawn Lucas (2:25-cv-00104-ABJ)	United States District Court, Wyoming (Judge Johnson)	This case arises from the overall dealings between all of the Plaintiffs and Defendants. One of the claims relates to AFG's dealings with Defendants regarding an exclusive Reseller Agreement and BEN's stock. This case also arises from two subscription agreements in 2023, and the 2023 Loan Agreement which is the subject of the 17th Court case. AFG also sues for breach of 2023 Lock-Up and Security agreements relating to BEN's shares to be acquired by Genuine Lifetime. This case further goes in to S. Lucas, M. Lucas, Tyler Luck, and Travis Gate's role in the alleged ransomware attacks, their disparagement of the company, and their use of confidential information.	**Walker Law LLP:** Robert J. Walker, Matthew A Walker, John M. Walker	**Crowley Fleck PLLP:** Brandon E Pryde, and Timothy Michael Stubson	1/21/2025	**Plaintiff:** AFG Companies, Inc. **Defendants:** Genuine Lifetime LLC, Brand Engagement Network Inc., October 3rd Holdings LLC, Michael Lucas, Tyler Luck, Due Figlie, LLC, and Shawn Lucas.
Genuine Lifetime, LLC et al. v. CareGard Warranty Services Inc., et al. (3:25-cv-01273-S-BN)	Northern District of Texas (Judge Scholer)	This cases arises from Wright Brewer, and his "multitude of alter ego entities," approaching the Plaintiffs in 2023 to allegedly feign interest in deepening business ties and jointly innovating their businesses through shared AI technology to allegedly induce Plaintiffs into entering a deceptive loan agreement and consenting to harmful key stock transaction. Plaintiffs alleged this was done ultimately to derive a benefit from insider trading, raid Genuine Lifetime, and eliminate it from the market.	**McCathern, PLLC:** Levi McCathern, Justin Bryan, and Asher Miller **Buchalter:** Matthew Yarbrough & Jason Blackstone	**Henry Hill PLLC:** Mark L. Hill & Kelly E. Kleist **Scheef & Stone, LLP:** Michael C. Smith	3/5/2025	**Plaintiffs:** Genuine Lifetime, LLC, Tyler Luck, and October 3rd Holdings, LLC **Defendants:** CareGard Warranty Services Inc., Ralph Wright Brewer III, Automotive Financial Group, Inc., AFG Companies, Inc., AFG Technologies, LLC d/b/a/ Tronix, Southwest Colonial Reinsurance, Ltd., Prime Reserve Plus Inc., DeLaporte Learning Inc., DaidaX, Inc., and CareGard Dealer Services, LLC.
Due Figlie and Shawn Lucas v. Ralph Wright Brewer III, and AFG Companies, Inc. (3:25-cv-00629-S-BN)	Northern District of Texas (Judge Scholer)	This case arises from AFG and Wright's alleged intentional deception of the investing public and intentionally causing Plaintiffs to buy Brand Engagement Network stock. The cases also stems from AFG and Wright's alleged sale of BEN stock while in possession of nonpublic information that they failed to disclose while they had the duty to disclose.	**Buchalter**: Matthew Yarbrough & Jason Blackstone	**Henry Hill PLLC:** Mark L. Hill & Kelly E. Kleist **Scheef & Stone, LLP**: Michael C. Smith	3/14/2025	**Plaintiffs:** Shawn Lucas, and Due Figlie **Defendants:** Ralph Wright Brewer III, and AFG Companies, Inc.
Brand Engagement Network Inc. v. AFG, Companies Inc. (1:25-cv-02245-CM)	Southern District of New York (Judge McMahon)	This case arises from the alleged breach of a 2023 Subscription Agreement between AFG and BEN, executed by Michael Zacharski and Brewer. BEN alleges that they fully performed under this agreement and that AFG failed to make their required installment payment of $6.5 million. AFG filed counterclaims against BEN, M. Lucas, P. Nunally, P. Chang, and C. Gaertner for their fraudulent inducement, and misrepresentations used to induce AFG to enter into this agreement with BEN when BEN's AI technology was not what it was promised to be.	**Arnold & Porter Kaye Scholer, LLP**: Eric N. Whitney & Michael Lynn **Buchalter**: Matthew Yarbrough & Jason Blackstone	**Katsky Korins LLP:** Daniel R. Walfish & Caroline Mansour	3/18/2025	**Plaintiff:** Brand Engagement Network, Inc. **Defendant:** AFG Companies, Inc. **Counterclaim-Plaintiff:** AFG Companies, Inc. **Counterclaim Defendants:** Brand Engagement Network, Inc., Michael Lucas, Patrick Nunally, Paul Chang, and Chris Gaertner.

EXHIBIT B-2

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
Northern District of Texas

BNL
PSC #
10485
01-21-2025

Brand Engagement Network Inc
Plaintiff
v.
Brewer, III et al
Defendant

Civil Action No. 3:25-cv-00114-S

Summons in a Civil Action

TO: AFG Companies Inc

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) -- or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) -- you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or the plaintiff's attorney, whose name and address are:

Matthew Yarbrough
5956 Sherry Lane, 20th Floor
Dallas , TX 75225

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT ★ NORTHERN DISTRICT OF TEXAS ★

DATE: 01/16/2025

Civil Action No. 3:25-cv-00114-S

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for (*name of individual and title, if any*) ______________________________
was received by me on (*date*) ________________.

☐ I personally served the summons on the individual at (*place*) ______________________________
______________________________ on (*date*) ________________; or

☐ I left the summons at the individual's residence or usual place of abode with (*name*) ________________
______________________________, a person of suitable age and discretion who resides there,
on (*date*) ______________________________, and mailed a copy to the individual's last known address; or

☐ I served the summons on (*name of individual*) ______________________________, who is designated
by law to accept service of process on behalf of (*name of organization*) ______________________________
______________________________ on (*date*) ________________; or

☐ I returned the summons unexecuted because ______________________________; or

☐ other (*specify*) ______________________________
____

My fees are $ ____________ for travel and $ ____________ for services, for a total of $ ____________

I declare under penalty of perjury that this information is true.

Date: ________________

____
Server's signature

____
Printed name and title

____
Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BRAND ENGAGEMENT NETWORK, INC., Plaintiff, v. RALPH WRIGHT BREWER III, AFG COMPANIES, INC., AUTOMOTIVE FINANCIAL GROUP, INC., AFG TECHNOLOGIES, LLC A/K/A TRONIX, CAREGARD WARRANTY SERVICES, INC., SOUTHWEST COLONIAL REINSURANCE, LTD., DELAPORTE LEARNING INC., PRIME RESERVE PLUS, INC., DAIDAX, INC., (FKA PATHWAI, INC., AND BEN AUTOMOTIVE INC.), Defendants.	§	CIVIL ACTION NO. 3:25-cv-114 JURY TRIAL DEMAND

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Brand Engagement Network, Inc. ("BEN") files this Original Complaint against Defendants Ralph Wright Brewer III, Automotive Financial Group, Inc., AFG Companies, Inc., AFG Technologies, LLC, CareGard Warranty Services, Inc., Southwest Colonial Reinsurance, Ltd., Prime Reserve Plus Inc., DeLaporte Learning Inc. and DaidaX, Inc. formerly known as Pathwai, Inc. and Ben Automotive Inc. (collectively, "Defendants") and respectfully shows the Court the following:

This case arises out of a complex and coordinated scheme of fraudulent misrepresentations, bad faith conduct, violations of the Securities Exchange Act of 1934 and breaches of contract orchestrated by Defendant Ralph Wright Brewer III and the corporate entities under his control.

Defendants concealed a critical ransomware attack, misrepresented their operational readiness and data security compliance, and failed to fulfill their obligations under multiple agreements with Plaintiff BEN and Due Figlie. Through this misconduct, Defendants unjustly enriched themselves, caused significant financial harm to Plaintiff, and jeopardized Plaintiff's business relationships, reputation, and strategic initiatives. Plaintiff now seeks to hold Defendants accountable for their actions and recover damages for the harm caused.

I. PARTIES

1. BEN is a publicly traded corporation incorporated in Delaware with its principal offices in Jackson, Wyoming and Seoul, Republic of Korea. BEN is an innovator in AI-powered customer engagement solutions, providing advanced technology designed to enhance data utilization, improve customer interactions, and drive operational efficiency. BEN entered into the Exclusive Reseller Agreement with AFG Companies Inc., ("AFG") as part of its strategy to expand into the automotive market. BEN has been assigned all claims to pursue this action by Due Figlie as elaborated on above.

2. Defendant Ralph Wright Brewer III is an individual residing in Bartonville, Texas, and serves as the Chairman and CEO of AFG Companies Inc. Brewer is the architect of the fraudulent schemes and bad faith actions described in this lawsuit, acting personally and through the AFG entities to misrepresent material facts, conceal a significant ransomware attack, and enrich himself at the expense of BEN and Due Figlie.

3. Brewer exercised complete control over the AFG entities, disregarding corporate formalities and using the entities as his alter ego to commit fraud and evade contractual obligations. Brewer's misconduct demonstrates personal liability under theories of fraud, securities violations, and piercing the corporate veil.

4. Defendant Automotive Financial Group, Inc. (AFG) is a Texas domestic for-profit corporation with its principal place of business in Grapevine, Texas. AFG was the primary counterparty to the Exclusive Reseller Agreement and failed to fulfill its contractual obligations by concealing the ransomware attack and breaching its data security and performance requirements.

5. Defendant AFG Companies, Inc. is a Texas domestic for-profit corporation that played a key role in facilitating the misconduct alleged in this lawsuit. It participated in misrepresenting AFG's compliance and performance during negotiations and actively benefited from the fraudulent actions described herein.

6. AFG Technologies, LLC d/b/a Tronix, is a Texas limited liability company focused on developing and delivering technology solutions for the automotive industry. This entity directly participated in the misrepresentations and omissions made during the negotiation of the Exclusive Reseller Agreement, particularly regarding data security and operational readiness.

7. CareGard Warranty Services, Inc. is a Texas corporation specializing in automotive warranty services. CareGard was a key party in the Due Figlie Consulting Agreements, which required payment of an Agent Fee for new business generated by Due Figlie and good faith negotiations regarding equity compensation in connection to the technology product known as Tronix. CareGard's failure to honor these agreements caused significant harm to Due Figlie.

8. Southwest Colonial Reinsurance, Ltd. is a reinsurance entity affiliated with the AFG entities that resides in Texas. This entity was instrumental in managing financial transactions and reinsurance programs related to the misconduct alleged herein. Its involvement ties it directly to the financial harm caused to BEN and Due Figlie.

9. Defendant Prime Reserve Plus, Inc. is a Texas corporation engaged in financial activities tied to the AFG entities. It acted in concert with Brewer and the other defendants to facilitate the fraudulent schemes described in this lawsuit.

10. Defendant DaidaX, Inc., formerly known as Pathwai, Inc. and Ben Automotive, Inc. is a Texas Corporation engaged in software technology and a subsidiary of AFG. It acted in concert with Brewer and other defendants to facilitate the fraudulent schemes described in this lawsuit.

11. Defendant DeLaporte Learning, Inc. is a Texas corporation that is controlled by Brewer and AFG. It acted in concert with Brewer and other defendants to facilitate the fraudulent schemes described in this lawsuit.

12. BEN brings this action not only on its own behalf but also on behalf of its shareholders as well as on behalf of Due Figlie, LLC ("Due Figlie"), pursuant to a valid and enforceable Claims Assignment Agreement (the "Agreement") executed between the parties, effective January 14, 2025.

13. Under the Agreement, Due Figlie assigned to BEN to a portion of its claims against AFG Companies, Inc. and its affiliates, as well as against Ralph Wright Brewer III arising from breaches of contractual obligations owed to Due Figlie, including but not limited to its ownership percentage in AFG and unpaid agent fees and bonuses.

14. The claims assigned to BEN are directly related to the fraudulent and deceptive conduct engaged in by AFG and Brewer and arise from the same nexus of facts, including the misrepresentation of AFG's value, wrongful denial of contractual payments owed to Due Figlie, and other acts of bad faith. BEN seeks to recover all damages owed to Due Figlie and itself as a result of Defendants' wrongful actions.

II. JURISDICTION AND VENUE

15. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, as Plaintiff asserts claims arising under federal law, including violations of the Securities Exchange Act of 1934, Section 10(b) (15 U.S.C. § 78j(b)), and Rule 10b-5 promulgated thereunder. Defendants engaged in fraudulent conduct and deceptive practices in connection with the purchase or sale of securities, including stock and warrant agreements issued to Defendant Brewer and his affiliated entities.

16. This Court also has jurisdiction under 28 U.S.C. § 1332(a), as there is complete diversity of citizenship between Plaintiff BEN and Defendants, and the amount in controversy exceeds $75,000, exclusive of interest and costs.

17. Plaintiff BEN is a citizen of Delaware and Wyoming, while the Defendants are citizens of Texas. The corporate defendants, including Automotive Financial Group, Inc., AFG Companies, Inc., AFG Technologies, LLC, CareGard Warranty Services, Inc., Southwest Colonial Reinsurance, Ltd., DeLaporte Learning Inc., Prime Reserve Plus, Inc. and DaidaX, Inc. formerly known as Pathwai Inc and Ben Automotive, Inc.., are all Texas entities. Defendant Brewer is an individual residing in Texas.

18. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367, as these claims are so closely related to the federal claims that they form part of the same case or controversy under Article III of the United States Constitution.

19. Venue is proper in the Northern District of Texas, Dallas Division, pursuant to 28 U.S.C. § 1391(b), because:

i. The Exclusive Reseller Agreement between BEN and AFG Companies, Inc. expressly designates Dallas, Texas, as the venue for resolving disputes arising under the Agreement.

ii. A substantial part of the events or omissions giving rise to the claims occurred in this District, including Defendants' execution of the fraudulent Reseller Agreement, concealment of the ransomware attack, and repudiation of contractual obligations to Plaintiff and Due Figlie.

iii. Defendants Brewer and the AFG entities conduct significant business operations in this District, including activities directly related to the claims in this action.

20. This Court has personal jurisdiction over all Defendants because they reside, are incorporated, or conduct substantial business in Texas, including within the Northern District of Texas. Defendant Brewer resides in Texas and personally participated in the misconduct alleged herein. The corporate defendants are Texas-based entities whose operations are central to the claims in this case. By entering into agreements with BEN, performing actions in furtherance of the fraudulent scheme, and breaching obligations in this District, Defendants purposefully availed themselves of the jurisdiction of this Court.

III. FACTUAL BACKGROUND

A. Brewers Scheme to Defraud BEN

21. In the summer of 2023, Ralph Wright Brewer III devised and executed a calculated plan to defraud BEN of its proprietary technology, intellectual property, and substantial value in securities and stock. This scheme was characterized by deception, manipulation, and a flagrant disregard for ethical and legal obligations.

22. Brewer's duplicity extended to his own workforce, as evidenced by a lawsuit filed against an AFG employee, Sean Dawson ("Dawson"), alleging misconduct. Brewer would further go on to file lawsuits against Travis Gates, President of AFG Technologies. This lawsuit was part of Brewer's broader pattern of retaliatory actions and abuse aimed at consolidating control and suppressing dissent.

23. In December of 2023, Brewer testified under oath during a deposition in the Dawson suit that AFG was "worth nothing," even going so far as to state that the company's net worth was in the negative due to mounting financial losses. Despite this sworn testimony, Brewer had negotiated with BEN to sell AFG for the valuation of $120 million—either in cash or in equivalent stock. These contradictory positions expose Brewer's deliberate misrepresentation of AFG's value and concealment of his financial situation to further his fraudulent objectives.

24. On March 7, 2024, Brewer convened a clandestine off-site executive meeting at 8343 Hilltop Road, Argyle, Texas ominously titled "AFG Executive Vision Meeting" to conspire with others to compete against BEN. During this meeting, Brewer unveiled a five-year plan centered on creating a new entity to compete against BEN, its new business partner, known as "Pathwai." Specifically, Pathwai was designed to compete against BEN in the automotive AI market. Brewer openly declared "war on" BEN as AFG's direct competition. This declaration came despite the fact that Brewer had already reaped significant personal financial gains from his BEN stock holdings. His calculated betrayal laid bare his intent to undermine BEN even as he grossly enriched himself to BEN's detriment in the automotive market.

25. By March 15, 2024, Brewer's scheme had reached its apex. BEN's stock became publicly traded, instantly making Brewer and his family multimillionaires. On or about March 19, 2024, Brewer wasted no time capitalizing on his ill-gotten gains. Witnesses observed Brewer in his office, pressuring his Goldman Sachs stockbroker, Sean Baird, to liquidate as much BEN stock as possible at the market's opening. Brewer acknowledged to the witness the sale of securities on Friday, March 15, 2024, the day BEN began trading on the NASDAQ. At this time, Brewer was an insider holding more than 7% of BEN's stock, a fact he knowingly concealed from BEN, the

public markets, and the SEC in direct violation of securities laws. This concealment was integral to Brewer's fraudulent scheme, allowing him to profit while evading disclosure obligations.

26. While AFG/Brewer was cashing out their BEN stock, AFG under their own admission in the AFG Vision meeting, lacked the technological infrastructure, data, or platform necessary to fulfill its contractual obligations to BEN. Instead, Brewer focused his efforts on advancing Pathwai (known as DaidaX as of October 17, 2024) by developing a new AI platform the covert initiative designed to compete with BEN. In the March 7, 2024, AFG Vision meeting with key executives, one executive stated, "We are not communicating this, by the way outside of this room. We are not communicating this is we have to build this covertly with no one knowing for a while. Okay, we have to do it that way or we lose it's part of the strategic advantage." Within days of the AFG Vision meeting, Brewer had pocketed millions from his fraudulent sale of BEN stock, all while continuing to conceal the existence of building a competing AI platform to BEN. At the AFG Vision meeting on March 7, 2024, Brewer and his executive team plotted to directly compete with BEN. Another example is the statement from their executive, "could be we force the, you know, Drive Centric, to play or we pivot, that can be one, but eventually, they're all going to get wind and go, the only way we win is to keep those people locked out." AFG restricted BEN from accessing AFG data and did not provide an application program interface (API) to BEN, because in their own words, "keep those people locked out".

27. On or about May 9, 2024, Brewer and AFG took down the BEN Automotive website www.benauto.ai and did not reactivate it until sometime recently in December of 2024 or January 2025. Neither Brewer or AFG notified BEN of their actions.

28. On or about June 28, 2024, AFG amended the name with the Texas Secretary of State of BEN Automotive, Inc. to Pathwai, Inc. This name amendment was not disclosed to BEN.

29. After the departure of another employee, and in order to further conceal their fraudulent scheme, on October 28, 2024, AFG filed another amended name with the Texas Secretary of State of Pathwai, Inc. to DaidaX, Inc., formerly known as BEN Automotive, Inc. originally filed with the Texas Secretary of State on December 22, 2023.

30. The scope of Brewer's duplicity became public in November 2024, when Maurice Fitzpatrick filed a motion to intervene in a matter currently pending before the 17th Judicial District court in Tarrant County, Texas cause number 017-352358-24 styled *AFG Companies, Inc., v. Genuine Lifetime, LLC, and Tyler J. Luck.* Fitzpatrick's filing included a damning recorded conversation between AFG's President Jason De Laporte and CTO David Dugan. In the recording, Dugan admitted that Pathwai was created to compete with BEN in the automotive AI market. A true and correct copy of the recorded conversation is attached hereto as **Exhibit A.** He further revealed that their actions were driven by a need to "protect the $33 million" Brewer had fraudulently acquired through his manipulation of BEN stock.

31. Brewer's conduct demonstrates a premeditated conspiracy to defraud BEN, sabotage its position in the automotive AI market, and amass personal wealth at the company's expense. This fraudulent scheme has inflicted significant financial and reputational harm on BEN, and Brewer's actions demand full accountability under the law.

B. The Exclusive Reseller Agreement

32. On August 19, 2023, BEN, a cutting-edge innovator in AI-powered customer engagement solutions, entered into an Exclusive Reseller Agreement with AFG. A true and correct copy of the Exclusive Reseller Agreement is attached hereto as **Exhibit B**. This agreement represented a strategic partnership designed to integrate BEN's proprietary AI technology into

AFG's dealership systems. The collaboration aimed to revolutionize how dealerships utilize real-time data to enhance customer interactions and streamline their operations.

33. The Exclusive Reseller Agreement was a cornerstone of BEN's efforts to expand into the automotive sector, leveraging AFG's established presence and network within the industry. AFG was tasked with reselling BEN's AI technology as part of its product offerings to automobile manufacturers, distributors and franchise dealerships across the country. The success of this partnership was dependent on AFG's compliance with data security standards and operational readiness, which AFG and its CEO, Ralph Wright Brewer III, explicitly represented as being fully in place.

34. As part of the Exclusive Reseller Agreement, AFG was required to:

i. Maintain strict compliance with all applicable state and federal laws, particularly those governing data privacy and cybersecurity.
ii. Disclose any cybersecurity incidents or vulnerabilities that could impact the partnership's success.
iii. Integrate BEN's AI technology into AFG's dealership systems and databases seamlessly and efficiently to ensure operational success.

35. During negotiations, AFG and Brewer made repeated assurances about AFG's operational capacity, dealership databases and data security compliance. These representations were material to BEN's decision to enter into the Reseller Agreement, as BEN sought to protect its proprietary technology and reputation from potential risks posed by AFG's systems and to integrate with AFG's databases.

36. AFG's CEO, Brewer, actively participated in the negotiation of the Reseller Agreement and personally guaranteed AFG's readiness to fulfill its data and access to pilot obligations. Brewer's assurances extended beyond AFG's general operational capacity, including

specific commitments regarding AFG's ability to handle sensitive dealership and consumer data securely.

37. Despite these representations, as detailed below, AFG was not operationally prepared, and its operational systems (the "P" database drive") were compromised by a ransomware attack just days before the execution of the Reseller Agreement. These facts were actively concealed by Brewer and AFG, constituting material misrepresentations and omissions that induced BEN into the agreement.

38. The Reseller Agreement was not merely a routine commercial transaction; it was a critical business initiative for BEN to establish a foothold in the automotive market. BEN relied on AFG and Brewer's representations as the foundation for its strategic expansion, believing the partnership would provide a secure and reliable channel to deploy its AI technology.

C. Brewer's Stock and Warrant Agreements

39. As part of the Exclusive Reseller Agreement executed on August 19, 2023, Defendant Ralph Wright Brewer III negotiated substantial personal financial benefits tied to BEN's stock and warrants. These agreements were central to Brewer's motivation to induce BEN into entering the Exclusive Reseller Agreement through misrepresentations and omissions.

40. Specifically, BEN allocated 1.75 million shares of its stock to AFG in September 2023, subject to the completion of the merger, valued at $10 per share at the time of issuance. Those shares were subsequently transferred in March of 2024 to AFG. This initial allotment provided AFG with stock valued at $17.5 million. Shortly after BEN began publicly trading on or about March 15, 2024, BEN's stock price rose to $19 per share, significantly increasing the value of AFG's holdings to approximately $33.25 million, creating a personal financial windfall for Brewer and AFG.

41. In addition to the stock allotment, AFG also secured a warrant agreement as part of the Exclusive Reseller Agreement. This warrant agreement granted AFG the right to purchase an additional 1 million shares of BEN stock at $10 per share, subject to performance benchmarks related to AFG's obligations and performance under the Exclusive Reseller Agreement. At the time the stock price reached $19, this warrant provided Brewer with an unrealized potential profit of approximately $9 million if exercised.

42. The stock and warrant agreements were predicated on the assumption that AFG, under Brewer's leadership, would fulfill its obligations under the Exclusive Reseller Agreement, including compliance with data security standards and successful integration of BEN's AI technology into AFG's databases and dealership systems. AFG's and Brewers significant financial stake in BEN's stock value and his personal gains from the warrant agreement tied him directly to the success of the partnership.

43. However, as detailed elsewhere in this complaint, Brewer's representations regarding AFG's readiness to perform under the Exclusive Reseller Agreement were false. At the time of the agreement's execution, AFG had recently suffered a ransomware/data breach attack that compromised customer social security numbers and over 105,000 sensitive files, rendering its systems inoperable. This attack, concealed by Brewer, directly impacted AFG's ability to meet its obligations and posed significant risks to BEN

44. Brewer's concealment of the ransomware attack and misrepresentations about AFG's compliance and technology readiness dealers' systems induced BEN into issuing the stock and warrants. Brewer's financial gains from these agreements were obtained through fraud and bad faith conduct, entitling BEN to seek rescission of the stock and warrant agreements and recover damages for the resulting harm.

45. Brewer's bad faith actions not only enriched him personally but also created conflicts of interest that undermined the entire partnership's success and loss of trust in Brewer/AFG. Despite having a direct financial incentive tied to BEN's stock price, Brewer failed to ensure that AFG fulfilled its obligations, instead engaging in retaliatory conduct when BEN raised concerns about AFG's noncompliance. Even worse, Brewer's scheme included taking his newly acquired ill-gotten gains in BEN stock to invest in Brewer's own competitor AI company against BEN.

D. The Concealment of the Ransomware Attack on AFG Data Breach from BEN

46. On August 13, 2023, just six days before BEN and AFG. AFG executed the Reseller Agreement, AFG's systems were crippled by a devastating ransomware attack perpetrated by the notorious "ALPHV" group, an affiliate of the BlackCat ransomware organization. This attack rendered AFG's systems inoperable and compromised over 105,000 files, including sensitive consumer and dealership data. In order to avoid payment of a ransom in the estimated range of 3 and 12 million dollars, Brewer refused to engage in any kind of communication with the threat actor.

47. The ransomware attack targeted AFG's central database of dealer systems, customer information, and IT infrastructure, encrypting files and locking out critical operational systems. The threat actor or/and hacker gained "root access" according to Amanda Tettleton, CFO of AFG. The attackers issued a demand for ransom, threatening to publish or destroy sensitive data if payment was not made. The compromised data obtained from AFG included financial records, dealership contracts, warranty files, and private consumer information, including social security numbers, creating an immediate and substantial risk of regulatory and legal exposure for AFG and soon to be unsuspecting business partner BEN.

48. AFG's executive leadership, including CEO Ralph Wright Brewer III, became aware of the attack immediately. However, instead of addressing the crisis honestly and transparently, Brewer and AFG leadership engaged in a deliberate campaign to destroy all evidence and conceal the breach. Brewer falsely portrayed the disruption as "routine system maintenance" in internal and external communications, including during ongoing negotiations with BEN Brewer made no effort to notify BEN, the AFG dealership clients, or regulatory authorities about the attack, as required under both the Reseller Agreement and applicable data protection laws.

49. The ransomware attack occurred during a critical period in the negotiations between BEN and AFG. Brewer knew that disclosure of the attack would jeopardize AFG's ability to finalize the Reseller Agreement and the associated financial benefits, including stock and warrant agreements tied to AFG's performance. Brewer and AFG executives thus made a calculated decision to suppress this material information and proceed with the execution of the agreement under false pretenses.

50. Brewer and AFG also failed to take appropriate remedial measures to mitigate the consequences of the ransomware attack. Despite the severe compromise of its systems, AFG did not engage cybersecurity experts to address vulnerabilities, secure compromised data, or notify affected parties. Instead, Brewer prioritized concealing the breach to protect his personal financial interests and maintain the appearance of operational stability.

51. AFG Companies and CareGard Warranty Services had no Incident Response Plan ("IRP") in place to adequately respond to any cyber-attack. As required by various laws and regulations, including the Federal Trade Commission, Gramm-Leach-Bliley Act ("GLBA") and FTC Safeguard, AFG had a duty to protect its investors, stockholders, and most importantly its

consumers and customers. Despite full knowledge of the cyberattack, AFG and Brewer failed to file data breach notifications with approximately forty-eight states and other Federal Agencies, including the Federal Trade Commission under the GLBA and the updated Federal Trade Commission Safeguards Rule.

52. It became clear, through Brewer's inaction and refusal, that Brewer and AFG's intention was to conceal, secret and hide the event to remain noncompliant and ensure business negotiations would not be harmed.

53. On or about March 21, 2024, Travis Gates, former president of AFG Technologies notified the Office of the Attorney General of the State of Maryland of AFG's failure to file data breach notifications within the state.

54. On or about March 23, 2024, a separate individual notified the Office of the Attorney General of the State of California of AFG's failure to file data breach notifications within the state.

55. On April 22, 2024, Automotive News published an article under its finance and insurance section outlining a data breach event within CareGard. A true and correct copy of the Automotive News Article is attached hereto as **Exhibit C.**

56. The concealment of the ransomware attack constituted a **material omission** that directly induced BEN to finalize the Exclusive Reseller Agreement. Had BEN been aware of the attack, it would not have entered into the agreement or issued stock and warrants to Brewer and AFG. The concealed breach created immediate risks to BEN's proprietary technology, reputation, and regulatory compliance, which were only discovered after the agreement was executed.

57. The ransomware attack not only violated the Exclusive Reseller Agreement's disclosure requirements but also breached state and federal data protection laws, including the

Gramm-Leach-Bliley Act (GLBA) and related Federal Trade Commission (FTC) Safeguards Rule. AFG's failure to disclose the attack exposed BEN to significant regulatory scrutiny and potential liability.

58. Brewer's decision to conceal the attack was part of a broader pattern of bad faith conduct aimed at enriching himself personally at the expense of BEN Brewer's actions and omissions during and after the ransomware attack created long-term consequences for BEN, including damage to its reputation, lost business opportunities, and the need to invest significant resources into mitigating risks associated with the compromised partnership.

E. March 7, 2024, AFG "Vision Meeting"

59. On March 7, 2024, AFG held its "Vision Meeting" to set its five-year plan to set up its own AI company, Pathwai, to compete against BEN in the automotive AI marketplace. Ralph Wright Brewer, Chief Executive Officer of AFG, Jason DeLaporte (President of Pathwai Inc) William "Bill" Bigley (Chief Financial Officer of AFG), Amanda Tettleton (Chief Accounting Officer of AFG), Keith Cooper (Chief Operations Officer of AFG), Dave Duggan (Chief Technology Officer of AFG), Travis Gates (Former Chief Compliance Officer of AFG) and Erick Roberts (Former Vice President of Software of AFG) were all in attendance.

60. According to witnesses at the meeting on March 7, 2024, AFG's President, Jason De Laporte, stated that AFG "did not have the operational capacity to fulfill the exclusive reseller agreement" with BEN and also planned to violate the exclusivity clauses within the exclusive reseller agreement. De Laporte continued on, stating, *"If we do the SET deal, because now I don't have to go to market, I don't have to sell, I don't have to do all these things."*

61. BEN was never informed of other material information regarding AFG's intent to violate the exclusive reseller agreement. For example, BEN was not told about AFG's relationship

with another test dealership or AFG's intent not to meet its contractual requirements related to BEN's AI software.

62. According to witnesses present at the meeting, Dave Duggan stated: "if the technology were developed now and ready to go, they would all be signing up . . . We might be able to accelerate this actually because the technician assistant, BEN AI can do most of that without a ton of development on our side, because its feeding manuals." As such, not only could AFG not fulfill its commitment to BEN, but it was also wholly unprepared to move forward with any agreements.

63. Also, according to witnesses present at the March 7th meeting, Brewer blatantly admitted his intention to violate the exclusivity and non-compete provisions of the exclusive reseller agreement with BEN even before receiving BEN stock. Specifically, Wright Brewer stated, "to be quite frank with, the person we have to compete against (BEN), potentially on those ten companies, would be BEN Inc." Brewer exclaimed to the AFG team, "Oh no we keep everything," which was Brewer's strategy all along to compete against BEN, and to never provide BEN with any automotive dealer systems information for BEN AI Automotive.

64. AFG executives also outwardly acknowledged during this meeting that the ransomware attack and data breach in August of 2023 were concealed from BEN so AFG could fraudulently obtain BEN stock grants. Keith Cooper stated, "we're just lucky" that SET hasn't asked for any kind of notification since the data breach. As Travis Gates reminded the group, "the real concern is" that SET is going to ask for details of the ransomware attack, and "we're already in violation of our agreement" with regards to cyber security industry standards and the FTC Safe Guard guidelines.

65. At the March 7th meeting, Dave Duggan acknowledged that AFG was still behind in meeting AFG's cyber security industry standards and regulatory compliance. Dugan stated, "I'm sorry, I'm looking at accelerate completion of SOC2 and FTC Safeguards compliance."

66. Finally, at the March 7th meeting, Brewer acknowledged that even eight months later, AFG still had no database or dealer systems information to launch any products for AFG, let alone data sets for BEN under AFG's contractual obligations. Brewer made is clear the utter lack of functional data systems at AFG by stating, "so knowing the type of reports that their looking for, and knowing when we can put our database, finish our database with all the CareGard data, what does that look like" and "that depends on when the database is going to be completed."

F. Material Misrepresentations and Omissions

67. In June 2023, BEN and DHC Acquisition, Corp. ("DHCA"), a blank check company incorporated as a Cayman Islands exempted company for purpose of entering into a merger. BEN and DHCA had a non-binding letter of intent to acquire AFG for $120 million. This occurred just prior to the ransomware attack, and this deal later changed to the exclusive reseller agreement with BEN as AFG did not have the required audited financials needed to close. AFG subsequently agreed to a financing commitment when the business combination was consummated.

68. The business combination agreement, dated September 7, 2023, involved the merger between the prior BEN and DHCA.

69. During negotiations for the Exclusive Reseller Agreement, AFG and its CEO, Ralph Wright Brewer III, repeatedly assured BEN that AFG's systems were fully operational, compliant with data security standards, and capable of integrating BEN's AI-powered customer

engagement solutions. These assurances were a critical factor in BEN's decision to enter into the Exclusive Reseller Agreement.

70. Brewer specifically represented that AFG had robust data security protocols in place and that its IT infrastructure was fully prepared to support BEN's proprietary technology. Brewer emphasized AFG's long-standing reputation in the automotive industry, presenting AFG as a reliable and trustworthy partner.

71. AFG has provided significant financing for BEN. For example, in its S-1 filing, BEN described its interim financing as follows:

> Interim Financings
>
> On September 29, 2023, AFG Companies Inc. ("AFG") purchased 456,621 shares of Common Stock for $2.19 per share for an aggregate purchase price of approximately $1.0 million (the "AFG Interim Financing") and, in accordance with the terms thereof, AFG's obligation to purchase shares of Common Stock immediately prior to the Effective Time (as defined in the Subscription Agreement described below) under the Subscription Agreement was reduced by $1.0 million. . . . BEN expects to use the proceeds of the Interim Financings for working capital and expenses related to the Business Combination (as defined below).

BEN's revenue growth is also dependent on AFG as its exclusive reseller. According to BEN's filings:

> Our revenue growth depends in part on the success of our strategic relationships with third parties, including channel partners, and if we are unable to establish and maintain successful relationships with them, our business, operating results, and financial condition could be adversely affected.
>
> We rely, in part, on channel providers as a way to grow our business and customer bases. We anticipate that we will continue to establish and maintain relationships with third parties, such as channel partners, resellers, OEMs, system integrators, independent software and hardware vendors, and platform and cloud service providers. For example, <u>in August 2023, we entered into a Reseller Agreement (as defined below) with AFG Companies Inc. ("AFG") whereby AFG operates as the exclusive channel partner and</u>

reseller of certain of our projects in the motor vehicle marketing and manufacturing industry for a term of five years (emphasis added).

72. Despite representations, Brewer and AFG concealed the August 13, 2023, ransomware attack, which compromised all files, including over 105,000 encrypted files and rendered AFG's systems inoperable. Brewer knew that disclosing the attack would jeopardize the partnership and his personal financial gains tied to BEN's stock and warrants.

73. While BEN disclosed to its investors AFG's importance to the company's financing, revenue growth, and technology (one that aims to maintain **"compliance with applicable privacy and data protection laws and regulations")**, it omitted material facts regarding AFG's ransomware attack, data breach, and lack of adequate cybersecurity policies due to omission made by AFG. This is in direct violation of the SEC's requirements regarding disclosing material cybersecurity incidents. Specifically, under Item 1.05 of Form 8-K, public companies must disclose information about material cybersecurity incidents within four business days after the company determines that a cybersecurity incident is material. A material incident is one that a reasonable investor would consider important in making an investment decision.

74. By concealing the attack, Brewer and AFG falsely created the impression that AFG was capable of meeting its obligations under the Reseller Agreement, including the integration of BEN's AI technology into dealership systems. In reality, AFG's systems were crippled, and its ability to perform under the agreement was severely impaired.

75. Brewer and AFG also failed to disclose their non-compliance with federal and state data protection laws, including the Gramm-Leach-Bliley Act (GLBA) and the Federal Trade Commission's Safeguards Rule. AFG lacked an incident response plan and failed to implement adequate cybersecurity measures, leaving its systems vulnerable to attacks like the one it experienced.

76. These omissions were material to BEN's decision to enter the Exclusive Reseller Agreement, as BEN relied on AFG's assurances of compliance to protect its proprietary technology and reputation.

77. Brewer and AFG also made false and misleading statements about AFG's financial stability and performance during the negotiations. Brewer presented AFG as a financially sound company with a proven track record of successful partnerships in the automotive industry. However, Brewer failed to disclose financial challenges faced by AFG, including liabilities arising from the ransomware attack and operational disruptions caused by the compromised systems.

78. Brewer's misrepresentations created the illusion that AFG was a stable and capable partner, inducing BEN to issue stock and warrants valued at millions of dollars.

79. Brewer and AFG's material misrepresentations and omissions directly induced BEN to execute the Reseller Agreement and issue valuable stock and warrants to Brewer and the AFG entities. BEN relied on the false representations about AFG's operational readiness, data security compliance, and financial stability in making these decisions.

80. As a result of these misrepresentations, BEN suffered significant harm, including:

i. Exposure to regulatory scrutiny and liability due to AFG's non-compliance with data protection laws.
ii. Damage to its reputation and loss of trust among business partners and clients.
iii. Financial losses stemming from the diminished value of the Reseller Agreement and the costs of mitigating risks associated with the compromised partnership.

81. Brewer personally participated in and directed the misrepresentations and omissions described above. As CEO of AFG, Brewer had knowledge of the ransomware attack, AFG's non-compliance with data security standards, and the company's financial challenges.

Brewer intentionally withheld this information from BEN to secure personal financial benefits tied to the Reseller Agreement, including stock and warrants valued at millions of dollars.

82. Brewer's actions demonstrate a pattern of bad faith and fraudulent intent, further justifying BEN's claims for rescission of the agreement, damages, and other relief.

G. AFG Breach of the Due Figlie Consulting Agreements

83. On March 1, 2022, Due Figlie entered into a Consulting Agreement with AFG represented by its CEO, Ralph Wright Brewer III. A true and correct copy of the March 1, 2022, Agreement is attached hereto as **Exhibit D.** Under this agreement, Due Figlie provided consulting services to AFG and played a significant role in generating new business for CareGard Warranty Services, Inc., one of AFG's affiliated entities.

84. The March 2022 agreement required AFG to:

i. Pay an Agent Fee of up to $1.00 per contract for all new business brought to CareGard Warranty Services through Due Figlie's efforts.
ii. Negotiate in good faith the allocation of founder shares in Tronix, an affiliated business.
iii. Provide milestone equity compensation of up to 20% ownership in Tronix, contingent upon performance benchmarks achieved through Due Figlie's contributions.

85. On June 1, 2022, the Consulting Agreement was updated to reiterate the terms of the March 2022 agreement. A true and correct copy of the June 1, 2022, Agreement is attached hereto as **Exhibit E.** This included a reaffirmation of Due Figlie's entitlement to:

i. Agent Fees tied to new business generated for CareGard Warranty Services.
ii. Equity compensation and founder shares based on its significant contributions to Tronix.
iii. The updated agreement reflected Due Figlie's ongoing role in driving business growth and expanding AFG's market presence.

86. Due Figlie fully performed its obligations under both Consulting Agreements, generating substantial new business for CareGard Warranty Services and significantly enhancing the financial position of AFG and its affiliates.

87. Through its efforts, Due Figlie established new client relationships, increased contract volumes, and contributed to the overall profitability of AFG's operations. These contributions directly benefited Brewer and the AFG entities, aligning with the agreed-upon performance benchmarks.

88. Despite Due Figlie's full performance, Brewer, acting on behalf of AFG, repudiated the Consulting Agreements in a July 18, 2023, email to Shawn Lucas. In this email, Brewer dismissed the agreements as "new company-crap" and denied any obligation to honor the terms of the agreements.

89. Brewer further stated that he did not sign the August 2022 update to the Consulting Agreements and refused to negotiate milestone equity compensation or provide the founder shares Due Figlie was entitled to under the agreements.

90. In the same July 2023 email, Brewer demanded that Due Figlie provide a release absolving him and AFG of all obligations related to the Consulting Agreements and Tronix. Brewer threatened to "escalate the situation" and end all negotiations if the release was not delivered.

91. Brewer's statements and actions were part of a broader pattern of bad faith conduct aimed at evading AFG's contractual obligations and denying Due Figlie the compensation it was owed.

92. Brewer's repudiation of the Consulting Agreements caused significant harm to Due Figlie, including:

i. The loss of Agent Fees tied to new business generated for CareGard Warranty Services.
ii. The denial of founder shares and milestone equity compensation, which were key elements of the agreements.
iii. Reputational harm and lost opportunities arising from Brewer's bad faith conduct and refusal to honor AFG's contractual obligations.
iv. Due Figlie's contributions to AFG and its affiliates were instrumental in their financial success, yet Brewer and AFG sought to avoid compensating Due Figlie for its efforts.

93. Brewer's repudiation of the Consulting Agreements was not an isolated incident but part of a deliberate strategy to enrich himself at the expense of Due Figlie. Brewer personally directed AFG's refusal to honor the agreements and leveraged his control over the AFG entities to deny Due Figlie its rightful compensation.

94. Brewer's actions demonstrate bad faith and a disregard for contractual obligations, further justifying the claims for damages, rescission, and other relief sought by Due Figlie and BEN.

H. Brewer's Retaliation and Bad Faith Conduct

95. Following BEN's discovery of AFG's failure to comply with its obligations under the Reseller Agreement, including the concealment of the ransomware attack and the inability to meet performance benchmarks, BEN sought to address these issues collaboratively.

96. Instead of engaging in good faith to resolve these concerns, Brewer responded with open hostility toward BEN and its leadership. Brewer began making statements and taking actions aimed at undermining BEN's business interests and avoiding accountability for AFG's breaches and misconduct.

97. Unbeknown to BEN, in October 2023, Brewer explicitly declared in an internal meeting with executive leadership of AFG that AFG was, "going to war" and "had to own all of this" (referring to the intellectual property of BEN). This statement reflected Brewer's intent to

retaliate against BEN rather than work toward a resolution. AFG continued to demand access to BEN's source code.

98. Brewer's declaration of war was not an idle threat. It was followed by a series of deliberate actions aimed at damaging BEN, including:

i. Failing to perform under the Reseller Agreement while retaining the financial benefits provided by BEN, such as the stock and warrants issued to Brewer and AFG.
ii. Refusing to cooperate with BEN to address the risks posed by the ransomware attack and mitigate the resulting harm.
iii. Disparaging BEN to third parties in an effort to harm its reputation and business relationships.

99. Brewer's hostility was not limited to BEN but also extended to Due Figlie, which had raised concerns about AFG's failure to honor its obligations under the Consulting Agreements. Brewer's July 18, 2023, email to Shawn Lucas demonstrated his intent to repudiate the agreements and avoid compensating Due Figlie for its substantial contributions to AFG's success.

100. Brewer threatened to escalate the situation and end all negotiations with BEN unless it provided a release absolving Brewer and AFG of their contractual obligations with respect to Due Figlie. These threats were part of Brewer's broader strategy to avoid accountability for his actions while continuing to benefit from Due Figlie's performance under the agreements.

101. Brewer's actions reflect a consistent pattern of bad faith conduct aimed at enriching himself at the expense of BEN and Due Figlie. This pattern includes:

i. Concealing material facts during the negotiation of the Reseller Agreement, including the ransomware attack and AFG's non-compliance with data security standards.
ii. Retaining financial benefits tied to BEN's stock and warrants while failing to ensure AFG's performance under the Reseller Agreement.
iii. Repudiating the Consulting Agreements with Due Figlie and denying its rightful compensation.

iv. Threatening and retaliating against BEN and Due Figlie to avoid accountability for his and AFG's breaches.

102. Brewer's retaliation and bad faith conduct caused significant harm to BEN and Due Figlie, including:

i. Financial losses resulting from AFG's failure to perform under the Reseller Agreement.
ii. Damage to BEN's reputation and business relationships due to Brewer's disparaging statements and failure to address the ransomware attack.
iii. Loss of Agent Fees, equity compensation, and founder shares owed to Due Figlie under the Consulting Agreements.
iv. Brewer's actions have not only undermined the partnerships and agreements at issue but also demonstrated his intent to avoid accountability while personally benefitting from the financial gains tied to BEN's stock and warrants.

103. Brewer's retaliatory conduct and bad faith actions form a critical part of the claims in this lawsuit. His statements and behavior demonstrate a deliberate strategy to evade obligations, harm BEN and Due Figlie, and prioritize his personal financial interests over the success of the partnerships and agreements.

I. AFG/Brewer Causes Financial Losses to BEN

104. As a direct result of the Defendants' breaches of contract, material misrepresentations, omissions, and bad faith conduct, BEN has suffered significant financial harm. These damages include:

i. Loss of anticipated revenue from the Reseller Agreement due to AFG's failure to perform its obligations, including the inability to successfully integrate BEN's AI-powered technology into dealership systems.
ii. Costs incurred by BEN to address and mitigate risks arising from AFG's concealed ransomware attack, including regulatory compliance efforts, IT security upgrades, and reputational repair initiatives.

iii. Losses tied to the issuance of stock and warrants to Brewer and AFG, which were based on fraudulent representations about AFG's compliance, readiness, and operational capacity.

105. The concealment of the ransomware attack and AFG's subsequent non-performance under the Reseller Agreement damaged BEN's reputation in the automotive industry. As an innovator in the AI-powered solutions, BEN relies on its reputation for technological excellence and data security to build partnerships and secure business opportunities.

106. AFG's retaliatory statements and disparagement of BEN to third parties further eroded trust and confidence in BEN's brand, harming its ability to maintain existing business relationships and develop new partnerships.

107. AFG's failure to comply with data security standards and its concealment of the ransomware attack created significant regulatory and legal risks for BEN. These include:

i. Potential liability under state and federal data protection laws, including the Gramm-Leach-Bliley Act (GLBA) and Federal Trade Commission (FTC) Safeguards Rule.
ii. Investigations and scrutiny from regulatory authorities regarding BEN's role in the partnership with AFG and its failure to detect or disclose the concealed attack.
iii. Costs associated with defending against potential lawsuits from affected third parties, such as dealerships and consumers whose data was compromised during the ransomware attack.

108. The failure of the Reseller Agreement undermined BEN's strategic efforts to expand into the automotive market. This partnership was intended to establish a foothold in a competitive industry, leveraging AFG's existing relationships to deploy BEN's AI technology at scale.

109. By entering into a partnership based on fraudulent misrepresentations, BEN was deprived of the opportunity to pursue alternative, legitimate partnerships that could have achieved these strategic objectives.

110. Defendants' repudiation of the Consulting Agreements caused significant harm to Due Figlie, which fully performed its obligations and provided substantial value to AFG and its affiliates. These damages include:

i. Loss of Agent Fees tied to new business generated for CareGard Warranty Services, which constituted a critical source of revenue for Due Figlie under the agreements.
ii. Denial of founder shares and milestone equity compensation owed to Due Figlie based on its contributions to Tronix development and success.
iii. Reputational harm and lost business opportunities arising from Brewer's bad faith conduct and refusal to honor AFG's contractual obligations.

111. The interconnected nature of the Exclusive Reseller Agreement and Consulting Agreements amplified the harm caused by Brewer's and AFG's misconduct. Due Figlie's performance under the Consulting Agreements contributed directly to AFG's financial success, which was essential to the success of the Reseller Agreement with BEN

112. By repudiating the Consulting Agreements and failing to perform under the Reseller Agreement, Brewer and AFG created cascading effects that undermined both partnerships, causing significant harm to BEN and Due Figlie alike.

113. The harm caused by Brewer, AFG, and the affiliated entities extends beyond financial losses to include reputational damage, regulatory exposure, and lost opportunities for both BEN and Due Figlie. These damages are the direct result of Defendants' fraudulent conduct, material omissions, and bad faith actions, and they form the basis for the relief sought in this lawsuit.

J. Defendants' Misconduct

114. Defendant Ralph Wright Brewer III orchestrated and directed the misconduct detailed in this lawsuit. As CEO AFG and its affiliated entities, Brewer exercised complete control over the companies, using them as his personal tools to defraud BEN and Due Figlie.

115. Brewer's actions were not isolated incidents but part of a deliberate scheme to enrich himself at the expense of BEN and Due Figlie. By concealing material facts, misrepresenting AFG's compliance and capabilities, and repudiating contractual obligations, Brewer acted in bad faith and violated the trust placed in him by the parties he partnered with.

116. The AFG entities—Automotive Financial Group, Inc., AFG Companies, Inc., AFG Technologies, LLC, CareGard Warranty Services, Inc., Southwest Colonial Reinsurance, Ltd., and Prime Reserve Plus, Inc. DaidaX, Inc. f/k/a Pathwai Inc. and BEN Automotive Inc.—were integral to the fraudulent schemes carried out by Brewer.

117. These entities participated in and benefited from Brewer's fraudulent representations and omissions, including:

i. The concealment of the August 13, 2023, ransomware attack that compromised sensitive consumer and dealership data.
ii. The misrepresentation of AFG's compliance with data security standards during negotiations with BEN
iii. The repudiation of the Consulting Agreements with Due Figlie, depriving it of rightful compensation for its substantial contributions.

118. Brewer and the AFG entities pursued a coordinated strategy of concealment and retaliation to avoid accountability and maximize their financial gains. This strategy included:

i. Concealing the ransomware attack from BEN and failing to disclose material risks that undermined the Reseller Agreement.
ii. Misleading BEN about AFG's operational readiness and compliance, inducing BEN to issue stock and warrants tied to AFG's performance.

iii. Retaliating against BEN and Due Figlie when they attempted to enforce their contractual rights, including Brewer's explicit declaration, "We're going to war."

119. The actions of Brewer and the AFG entities caused significant harm to both BEN and Due Figlie. These damages, as outlined earlier, include:

i. Financial losses tied to AFG's failure to perform under the Reseller Agreement.
ii. Damage to BEN's reputation and regulatory exposure due to AFG's non-compliance with data security laws.
iii. Loss of Agent Fees, founder shares, and milestone equity compensation owed to Due Figlie under the Consulting Agreements.

K. Piercing the Corporate Veil – Brewer's Misuse of the AFG Entities

120. Brewer's misuse of the AFG entities demonstrates a clear need to pierce the corporate veil and hold him personally liable. Brewer disregarded corporate formalities, undercapitalized the AFG entities, and used them as his alter ego to carry out fraudulent and retaliatory actions.

121. Brewer's actions show a consistent pattern of personal enrichment and bad faith conduct, which cannot be shielded by the corporate entities he controlled. Holding Brewer personally liable is essential to ensure accountability for the harm caused to BEN and Due Figlie.

122. The harm caused by Brewer and the AFG entities continues to affect BEN and Due Figlie, requiring significant resources to address and mitigate. Both BEN and Due Figlie have suffered long-term financial and reputational damage, limiting their ability to pursue business opportunities and maintain trust with partners and clients.

123. This lawsuit seeks to hold Brewer and the AFG entities accountable for their actions and secure the relief necessary to compensate BEN and Due Figlie for the harm they have suffered.

IV. CAUSES OF ACTION

COUNT 1

Breach of Contract

(Against Automotive Financial Group, Inc., AFG Companies, Inc., and CareGard Warranty Services, Inc.)

124. Plaintiff reallege each and every allegation set forth above and incorporates them herein.

125. To establish a breach of contract claim under Texas law, the Plaintiff must prove 1) the existence of a valid contact; 2) Plaintiff's performance or tendered performance; 3) Defendants breach of the contract; and 4) damages sustained as a result of the breach.

126. On August 19, 2023, BEN entered into a valid and enforceable Reseller Agreement with Defendant AFG. Under the terms of the Reseller Agreement, AFG agreed to, among other things: Maintain strict compliance with data security standards and all applicable state and federal laws; disclose any cybersecurity incidents or vulnerabilities that could affect the partnership; and successfully integrate BEN's proprietary AI technology into its dealership systems.

127. This agreement was supported by mutual consideration: BEN provided its AI-powered customer engagement technology, while AFG gained exclusive rights to resell this technology within the automotive industry.

128. Plaintiff BEN fully performed its obligations under the Reseller Agreement, including delivering its proprietary AI technology to AFG, relying on AFG's representations of operational readiness and compliance with data security standards, and collaborating with AFG to integrate the technology into dealership systems.

129. BEN acted in good faith throughout the partnership, fulfilling all conditions precedent and cooperating with AFG to implement the Reseller Agreement.

130. AFG materially breached the Reseller Agreement in multiple ways. On August 13, 2023, six days before executing the Reseller Agreement, AFG suffered a devastating ransomware attack that compromised over 105,000 sensitive files and rendered its systems inoperable. AFG failed to disclose this critical incident to BEN, violating the contractual requirement to disclose cybersecurity vulnerabilities.

131. AFG misrepresented its compliance with applicable data protection laws, including the GLBA the FTC Safeguards Rule. AFG lacked an incident response plan and failed to secure its IT infrastructure, breaching the express terms of the Reseller Agreement.

132. AFG failed to integrate BEN's AI technology into its dealership systems, which was a central purpose of the agreement. This failure stemmed from AFG's inability to operate effectively after the ransomware attack, which it had actively concealed.

133. AFG's breaches were willful and deliberate, as evidenced by CEO Ralph Wright Brewer III's active concealment of the ransomware attack and misrepresentation of AFG's operational readiness.

134. As a direct and proximate result of AFG's breaches, Plaintiff BEN suffered substantial financial and reputational harm.

135. The Reseller Agreement was a cornerstone of BEN's strategic expansion into the automotive market, and AFG's breaches undermined this critical business initiative. AFG's actions—or lack thereof—were not only material breaches but were also compounded by bad faith conduct, including the concealment of material facts and misrepresentations made during the negotiation of the agreement.

COUNT 2

Fraud

(Against Ralph Wright Brewer III and All AFG Entities)

136. Plaintiff re-alleges and incorporates by reference each and every allegation set forth above.

137. To establish a claim for fraud under Texas law, Plaintiff must prove that Defendants made a material representation that was false, knew it was false or made it recklessly without knowledge of its truth, intended for Plaintiff to rely on the representation, and caused Plaintiff harm when it did so. Each element is satisfied here.

138. Defendants, led by Ralph Wright Brewer III, made numerous material misrepresentations during negotiations and the execution of the Reseller Agreement. Specifically, Brewer and AFG represented that AFG was fully operational, compliant with applicable data security standards, and capable of successfully integrating BEN's proprietary AI technology into its dealership systems. Brewer assured BEN that AFG had robust cybersecurity protocols in place and that no incidents or vulnerabilities existed that could jeopardize the partnership. These representations were critical to BEN's decision to execute the Reseller Agreement, issue stock and warrants to Brewer, and move forward with the strategic partnership.

139. These representations were knowingly false. Just six days before executing the Reseller Agreement, AFG suffered a crippling ransomware attack on August 13, 2023, which rendered its systems inoperable and compromised over 105,000 sensitive files, including financial records and consumer data. Brewer, fully aware of the attack, deliberately concealed this material information from BEN Rather than disclose the attack as required under the Reseller Agreement and applicable law, Brewer falsely portrayed the system disruptions as routine maintenance. AFG

was also in violation of multiple data protection laws, including the Gramm-Leach-Bliley Act (GLBA) and the FTC Safeguards Rule, as it lacked an incident response plan and adequate cybersecurity protocols. AFG's operational capabilities were similarly overstated, as its compromised systems were entirely unprepared to support the integration of BEN's AI technology.

140. Brewer and AFG not only knew these representations were false but made them with the intent to induce BEN to rely on them. Brewer sought to secure significant personal financial benefits, including the issuance of 1.75 million shares of BEN stock and warrants for an additional 1 million shares. These financial arrangements were valued at millions of dollars and were tied directly to AFG's performance under the Reseller Agreement. Brewer and AFG also had a strong interest in finalizing the Reseller Agreement to maintain the appearance of stability and operational readiness while concealing the devastating impact of the ransomware attack.

141. Plaintiff BEN reasonably relied on Defendants' representations. Brewer's assurances regarding AFG's compliance and operational capabilities directly influenced BEN's decision to execute the Reseller Agreement and issue valuable stock and warrants. Brewer's position as CEO of AFG and his repeated assurances during negotiations gave BEN ample reason to trust the accuracy of his statements. Based on these representations, BEN entered into a partnership it believed would serve as the foundation of its expansion into the automotive industry, with AFG acting as a reliable and secure channel partner.

142. As a direct result of its reliance on these fraudulent representations, BEN suffered significant harm. BEN issued stock and warrants valued at millions of dollars to Brewer and AFG under false pretenses. AFG's inability to perform under the Reseller Agreement deprived BEN of anticipated revenue and strategic opportunities, while Brewer's concealment of the ransomware attack exposed BEN to regulatory scrutiny and reputational damage. BEN also incurred substantial

costs to mitigate the risks associated with AFG's breaches, including expenses for IT security upgrades, regulatory compliance efforts, and reputational repair.

COUNT 3

Fraudulent Inducement

(Against Ralph Wright Brewer III and All AFG Entities)

143. Plaintiff re-alleges and incorporates by reference each and every allegation set forth above.

144. Under Texas law, fraudulent inducement requires proof that a party made a material false representation, knew the representation was false, intended the other party to rely on it, and caused the other party to enter into an agreement that resulted in harm. The facts of this case establish each element of fraudulent inducement.

145. Defendants, led by Ralph Wright Brewer III, made deliberate and material misrepresentations to induce BEN into entering the Reseller Agreement. Brewer specifically represented that AFG was operationally ready and fully compliant with all data security standards. Brewer assured BEN that AFG had robust cybersecurity measures in place, was capable of securely handling sensitive dealership and consumer data and could seamlessly integrate BEN's AI-powered technology into its dealership systems. These representations were critical because BEN relied on them to protect its proprietary technology and its reputation in the automotive industry. Brewer further assured BEN that no cybersecurity incidents or vulnerabilities could interfere with the success of the partnership.

146. These representations, however, were patently false and knowingly so. Just six days before the execution of the Reseller Agreement, AFG suffered a catastrophic ransomware attack that rendered its systems inoperable and compromised over 105,000 files containing sensitive

financial, dealership, and consumer data. Brewer was fully aware of this attack and its implications. Rather than disclose the incident, Brewer and AFG actively concealed it and falsely portrayed the resulting disruptions as routine system maintenance. At the time of the Reseller Agreement, AFG's systems were severely compromised, and the company was incapable of meeting its obligations. Brewer further misrepresented AFG's compliance with federal and state data protection laws, despite knowing that AFG lacked adequate cybersecurity protocols, an incident response plan, or the operational capacity to fulfill its contractual obligations.

147. Brewer made these misrepresentations with the specific intent to induce BEN into entering the Reseller Agreement. Securing the agreement was essential to AFG's financial survival and Brewer's personal financial gain. As part of the agreement, Brewer negotiated for himself a substantial personal benefit in the form of 1.75 million shares of BEN stock, valued at $17.5 million at the time of issuance, and [warrants for an additional 1 million shares]. Brewer knew that disclosure of the ransomware attack or AFG's operational deficiencies would jeopardize the deal and his financial windfall. By concealing these facts, Brewer ensured that BEN would execute the agreement under false pretenses.

148. BEN reasonably relied on Brewer's representations in deciding to enter the Reseller Agreement. Brewer, as the CEO of AFG, was in a position of authority and trust, and BEN had no reason to doubt his assurances regarding AFG's operational readiness and compliance with data security standards. These assurances were material to BEN's decision to enter into the agreement and issue millions of dollars' worth of stock and warrants to Brewer and AFG. BEN justifiably believed that AFG was capable of fulfilling its obligations and that the partnership would be a cornerstone of its expansion into the automotive sector.

149. As a direct result of this fraudulent inducement, BEN suffered significant harm. AFG's inability to perform under the Reseller Agreement deprived BEN of the anticipated revenue and strategic benefits of the partnership. The concealment of the ransomware attack exposed BEN to regulatory scrutiny, reputational damage, and substantial costs to address the risks associated with AFG's breaches. Additionally, BEN issued stock and warrants to Brewer and AFG, valued at over $33.25 million, based on fraudulent misrepresentations. These financial and reputational damages were foreseeable and directly caused by Brewer's deliberate and deceptive conduct.

150. Brewer's actions were intentional, calculated, and egregious. His fraudulent inducement was designed to enrich himself and his affiliated entities at BEN's expense, while deliberately concealing material facts that would have prevented the execution of the Reseller Agreement. As a result, BEN was irreparably harmed, both financially and reputationally.

COUNT 4

Securities Fraud

(Against Ralph Wright Brewer III and Automotive Financial Companies, Inc.)

151. Plaintiff re-alleges and incorporates by reference each and every allegation set forth above.

152. Securities fraud under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 requires proof that a party made a material misrepresentation or omission in connection with the purchase or sale of securities, acted with scienter, and caused reliance and damages to the plaintiff. The facts here demonstrate that Defendants engaged in securities fraud by intentionally misrepresenting material facts and concealing critical information to secure the issuance of stock and warrants from BEN

153. In connection with the Reseller Agreement executed on August 19, 2023, Defendant Ralph Wright Brewer III negotiated substantial personal financial benefits tied to BEN's stock and warrants. Brewer received 1.75 million shares of BEN stock, valued at $10 per share at the time of issuance, totaling $17.5 million. Brewer also obtained a warrant to purchase an additional 1 million shares of BEN stock at $10 per share, contingent upon certain performance benchmarks under the Reseller Agreement. The merger between DHCA and BEN was successful and shortly after the stock began trading on the NASDAQ under the stock symbol BNAI, BEN's stock price rose to $19 per share, increasing Brewer's unrealized profits to over $33.25 million. These financial benefits were directly tied to Brewer's misrepresentations and omissions.

154. Brewer, acting individually and on behalf of AFG, made deliberate and material misrepresentations to induce BEN to issue these securities. Brewer assured BEN that AFG was operationally ready, compliant with all applicable data security laws, and capable of meeting its obligations under the Reseller Agreement. These assurances included specific representations regarding AFG's ability to securely integrate BEN's proprietary AI technology into dealership systems. Brewer also omitted to disclose critical facts, including that just six days before executing the Reseller Agreement, AFG had suffered a devastating ransomware attack that rendered its systems inoperable and compromised over 105,000 files. Brewer's concealment of the ransomware attack and AFG's non-compliance with federal data protection laws were intentional omissions that materially affected BEN's decision-making.

155. Brewer and AFG acted with scienter, knowing that their representations and omissions were false or misleading. Brewer was fully aware of the ransomware attack and its impact on AFG's ability to meet its obligations. Rather than disclose the attack, Brewer intentionally concealed it and falsely assured BEN of AFG's operational readiness and compliance.

Brewer's conduct was not accidental or negligent but part of a calculated scheme to secure substantial personal financial benefits tied to BEN's stock and warrants. His actions demonstrate a willful disregard for the truth and a deliberate effort to mislead BEN

156. These material misrepresentations and omissions were made in connection with the purchase and sale of securities. Brewer's receipt of stock and warrants was a central component of the Reseller Agreement, and his fraudulent conduct directly influenced BEN's decision to issue these securities. The stock and warrants were issued based on the belief that AFG would perform under the Reseller Agreement and generate substantial revenue for BEN Brewer's fraudulent inducement undermined the value of the partnership and the securities tied to it.

157. BEN justifiably relied on Brewer's misrepresentations and omissions in deciding to issue the stock and warrants. Brewer held a position of trust as the CEO of AFG, and his repeated assurances gave BEN no reason to doubt his claims. BEN reasonably believed that AFG was a reliable partner capable of fulfilling its obligations under the Reseller Agreement. Brewer's deliberate concealment of the ransomware attack and other material facts deprived BEN of the opportunity to make an informed decision.

158. As a direct result of Brewer's securities fraud, BEN suffered significant damages. The stock and warrants issued to Brewer and AFG were valued at over $33.25 million, representing a substantial financial loss to BEN given AFG's inability to perform under the Reseller Agreement. BEN also incurred additional costs to mitigate the risks associated with AFG's failures, including regulatory compliance efforts, IT security upgrades, and reputational repair. The fraudulent issuance of securities caused both financial harm and reputational damage to BEN, further undermining its strategic objectives.

159. Brewer's conduct constitutes a clear violation of federal securities laws, including Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5. His actions were intentional, egregious, and designed to enrich himself at BEN's expense. Accordingly, BEN seeks rescission of the stock and warrant agreements, restitution of all financial benefits obtained by Brewer and AFG, actual damages, exemplary damages, attorneys' fees, and any additional relief deemed appropriate by the Court to fully compensate for the harm caused by Defendants' securities fraud.

COUNT 5

Piercing the Corporate Veil

(Against Ralph Wright Brewer III)

160. Plaintiff re-alleges and incorporates by reference each and every allegation set forth above.

161. To pierce the corporate veil and hold an individual personally liable, Plaintiff must demonstrate that the corporate structure was used to perpetrate a fraud, evade legal obligations, or commit other wrongful acts. The individual must have disregarded corporate formalities, used the corporation as an alter ego, and exercised control in a manner that caused harm to the Plaintiff. Here, the facts overwhelmingly support piercing the corporate veil to hold Defendant Ralph Wright Brewer III personally liable for the damages caused to Plaintiff BEN

162. Defendant Brewer dominated and controlled AFG and its affiliated entities—AFG Companies, Inc., AFG Technologies, LLC, CareGard Warranty Services, Inc., Southwest Colonial Reinsurance, Ltd., and Prime Reserve Plus, Inc.—to such an extent that these entities functioned as mere extensions of Brewer himself. Brewer used these corporations as his alter ego, disregarding corporate separateness to achieve personal financial enrichment and perpetrate fraud. By commingling assets, failing to adhere to corporate formalities, and undercapitalizing the

entities, Brewer rendered these corporations incapable of fulfilling their contractual obligations, including those under the Reseller Agreement with BEN

163. Brewer's misuse of the corporate form is evident in his deliberate concealment of AFG's financial instability and operational failures, including the ransomware attack on August 13, 2023. Brewer directed the entities to conceal the attack and misrepresent AFG's compliance with data security standards and operational readiness. These misrepresentations induced BEN to execute the Reseller Agreement and issue millions of dollars' worth of stock and warrants to AFG and Brewer, despite AFG's lack of capacity to meet its obligations. Brewer's fraudulent scheme benefited him personally, as he secured 1.75 million shares of BEN stock and warrants for an additional 1 million shares valued at over $33.25 million.

164. Brewer also used his control over the AFG entities to repudiate legitimate contractual obligations, such as those under the Consulting Agreements with Due Figlie. Brewer personally directed AFG's refusal to pay Agent Fees and provide equity compensation owed to Due Figlie, despite its full performance under the agreements. Brewer's actions were not isolated or incidental but part of a broader pattern of bad faith conduct aimed at avoiding accountability and maximizing his personal financial gain.

165. In furtherance of his misconduct, Brewer disregarded corporate formalities and undercapitalized the AFG entities, rendering them mere shells incapable of independently meeting their obligations. Brewer commingled corporate and personal funds, using the AFG entities to enrich himself at the expense of BEN and other business partners. This blatant disregard for the corporate form underscores the necessity of piercing the corporate veil to prevent Brewer from shielding himself from liability behind the entities he controlled.

166. Brewer's actions caused significant harm to BEN, including financial losses, reputational damage, and regulatory exposure. BEN issued stock and warrants valued at millions of dollars based on Brewer's fraudulent misrepresentations, only to discover that AFG was incapable of performing under the Reseller Agreement. The concealment of the ransomware attack and AFG's failure to meet data security standards exposed BEN to regulatory scrutiny and forced it to incur substantial costs to mitigate the resulting risks. Brewer's personal misconduct, facilitated through his misuse of the AFG entities, directly caused these damages.

167. Piercing the corporate veil is necessary to hold Brewer accountable for his actions. Brewer's domination and misuse of the AFG entities demonstrate a clear pattern of fraud, bad faith, and intentional harm. Allowing Brewer to escape liability by hiding behind the corporate form would enable him to benefit from his misconduct while leaving BEN and others to bear the financial and reputational consequences.

168. Accordingly, Plaintiff BEN seeks to pierce the corporate veil and hold Brewer personally liable for the damages caused by his actions.

COUNT 6

Civil Conspiracy

(Against Brewer and All AFG Entities)

169. Plaintiff re-alleges and incorporates by reference each and every allegation set forth above.

170. A claim for civil conspiracy under Texas law requires proof of (1) a combination of two or more persons, (2) an object to be accomplished, (3) a meeting of the minds on the object or course of action, (4) one or more unlawful, overt acts committed in furtherance of the conspiracy, and (5) damages resulting from the wrongful acts. Here, Defendant Ralph Wright Brewer III and

the AFG entities acted in concert to engage in a coordinated scheme of fraudulent conduct and contractual breaches that caused significant harm to BEN.

171. Defendants Brewer, AFG, AFG Companies, Inc., AFG Technologies, LLC, CareGard Warranty Services, Inc., Southwest Colonial Reinsurance, Ltd., and Prime Reserve Plus, Inc. worked together to defraud BEN and evade their contractual obligations. Their collective objective was to secure substantial financial benefits for Brewer and the AFG entities by inducing BEN to execute the Reseller Agreement and issue millions of dollars in stock and warrants, despite knowing that AFG was incapable of performing under the agreement. This objective included concealing material facts about the ransomware attack, misrepresenting AFG's operational capabilities, and repudiating legitimate contractual obligations owed to BEN and Due Figlie.

172. Defendants reached a meeting of the minds to accomplish this fraudulent objective. Brewer, as CEO of AFG and its affiliated entities, directed and orchestrated the conspiracy. Brewer used his control over the AFG entities to conceal the ransomware attack that occurred on August 13, 2023, misrepresent AFG's compliance with data security standards, and falsely assure BEN that AFG was ready to perform under the Reseller Agreement. The AFG entities, acting under Brewer's direction, actively participated in these fraudulent misrepresentations and omissions, enabling Brewer to enrich himself at BEN's expense.

173. In furtherance of the conspiracy, Defendants committed numerous unlawful, overt acts. These acts included Brewer's deliberate concealment of the ransomware attack, which compromised over 105,000 files and rendered AFG's systems inoperable, and his repeated misrepresentations about AFG's operational readiness and compliance with federal and state data protection laws. Defendants also issued false assurances during the negotiation of the Reseller Agreement, inducing BEN to issue stock and warrants valued at over $33.25 million. Additionally,

Brewer directed AFG to repudiate the Consulting Agreements with Due Figlie, depriving it of Agent Fees, equity compensation, and other contractual entitlements.

174. As a direct and proximate result of Defendants' conspiracy and wrongful acts, BEN suffered significant damages. These damages include financial losses from the issuance of stock and warrants based on fraudulent representations, lost revenue and strategic opportunities due to AFG's inability to perform under the Reseller Agreement, and substantial costs to address the risks created by AFG's noncompliance and concealment of the ransomware attack. BEN's reputation was also damaged, undermining its ability to secure future partnerships and exposing it to regulatory scrutiny.

175. Defendants' conduct was deliberate, egregious, and carried out in bad faith. Their coordinated efforts to defraud BEN and evade their obligations demonstrate a clear conspiracy to prioritize their own financial interests over their legal and contractual responsibilities. Brewer's statement unbeknown to BEN with his executive leadership in October 2023, declared "We're going to war," underscores his intent to harm BEN and avoid accountability for Defendants' actions.

176. Plaintiff BEN therefore seeks to hold all Defendants jointly and severally liable for the harm caused by their conspiracy.

COUNT 7

Breach of Contract

(Due Figlie Claim Against AFG Technologies, LLC, AFG Companies, Inc., and CareGard Warranty Services, Inc.)

177. Plaintiff reallege each and every allegation set forth above and incorporates them herein.

178. To establish a breach of contract claim under Texas law, the Plaintiff must prove 1) the existence of a valid contact; 2) Plaintiff's performance or tendered performance; 3) Defendants breach of the contract; and 4) damages sustained as a result of the breach.

179. On March 1, 2022, Due Figlie entered into a Consulting Agreement with Automotive Financial Group, Inc. (AFG), represented by its CEO, Ralph Wright Brewer III. Under this agreement, Due Figlie provided consulting services to AFG and played a significant role in generating new business for CareGard Warranty Services, Inc., one of AFG's affiliated entities. On June 1, 2022, the Consulting Agreement was updated to reiterate the terms of the March 2022 agreement.

180. This agreement was supported by mutual consideration: Due Figlie provided its contacts and relationships within the automotive industry as well as years of experience within the automotive industry in return for valuable consideration from AFG.

181. Through its efforts, Due Figlie established new client relationships, increased contract volumes, and contributed to the overall profitability of AFG's operations. These contributions directly benefited Brewer and the AFG entities, aligning with the agreed-upon performance benchmarks.

182. AFG failed to perform its responsibilities under the agreement by failing to provide the compensation called out by the Agreement, including Agent fees and equity compensation including founders share and equity based incentives.

183. As a direct and proximate result of AFG's breaches, Plaintiff BEN suffered substantial financial and reputational harm. Due Figlie has suffered damages including, but no limited, the Agent Fees tied to new business generated for CareGard Warranty Services, the

founder shares and milestone equity compensation, and the reputational harm and lost opportunities arising from failing to honor AFG's contractual obligations.

COUNT 8

Fraudulent Inducement

(Due Figlie Claim Against Ralph Wright Brewer III and All AFG Entities)

184. Plaintiff re-alleges and incorporates by reference each and every allegation set forth above.

185. Fraudulent inducement under Texas law requires proof that a party made a material false representation, knew the representation was false, intended the other party to rely on it, and caused the other party to enter into an agreement that resulted in harm. The facts of this case establish each element of fraudulent inducement.

186. Defendants, led by Ralph Wright Brewer III, made deliberate and material misrepresentations to induce Due Figlie into entering the Consulting Agreements. Brewer specifically represented that Due Figlie would receive considerable equity and payments of Agent Fees in return for the relationships and referrals within the automotive industry by Due Figlie.

187. These representations, however, were patently false and knowingly so. Among numerous other acts and statements, at the time of the signing of the first and second Consulting Agreements, Ralph Wright Brewer III deliberately refused to negotiate milestone equity compensation which illustrates AFG's unwillingness to comply with the terms of the Consulting Agreements.

188. Brewer made these misrepresentations with the specific intent to induce Due Figlie into entering the Consulting Agreements. Brewer and AFG desired the relationships and referrals made by Due Figlie. AFG and Brewer additionally knew at the time of signing the agreements that

AFG would not perform under the agreements but would only pretend to comply with the agreements until the benefits of the relationships and referrals made by Due Figlie were secured by contracts between AFG entities and the parties referred to AFG by Due Figlie. By concealing these facts, Brewer ensured that Due Figlie would execute the agreements under false pretenses.

189. Due Figlie reasonably relied on Brewer's representations in deciding into enter the Consulting Agreements. Brewer, as the CEO of AFG, was in a position of authority and trust, and Due Figlie had no reason to doubt his assurances regarding AFG's intention to provide the compensation due under the Consulting Agreements. These assurances were material to Due Figlies's decision to enter into the agreements and provide the referrals and relationships available to Brewer and AFG in the form of considerable new business. Due Figlie justifiably believed that AFG was capable of fulfilling its obligations.

190. As a direct result of this fraudulent inducement, BEN suffered significant harm. As a direct and proximate result of AFG's breaches, Plaintiff BEN suffered substantial financial and reputational harm. Due Figlie has suffered damages including, but no limited, the Agent Fees tied to new business generated for CareGard Warranty Services, the founder shares and milestone equity compensation, and the reputational harm and lost opportunities arising from failing to honor AFG's contractual obligations. These financial and reputational damages were foreseeable and directly caused by Brewer's deliberate and deceptive conduct.

191. Brewer's actions were intentional, calculated, and egregious. His fraudulent inducement was designed to enrich himself and his affiliated entities at Due Figlie's expense, while deliberately concealing material facts and as a result Due Figlie was irreparably harmed, both financially and reputationally.

DAMAGES

Actual Damages

192. BEN and Due Figlie have suffered significant actual damages as a direct result of the Defendants' breaches of contract, fraudulent conduct, and bad faith actions. These include:

Loss of Anticipated Revenue:

193. BEN has lost significant anticipated revenue from the Reseller Agreement due to AFG's failure to perform its obligations, including the inability to successfully integrate BEN's AI-powered technology into dealership systems.

194. Due Figlie has been deprived of Agent Fees owed under the Consulting Agreements for the substantial new business it generated for CareGard Warranty Services.

Loss of Equity Compensation:

195. Due Figlie has been denied founder shares and milestone equity compensation tied to its contributions to Tronix/1Basket, which were essential terms of the Consulting Agreements.

Costs of Mitigation:

196. BEN has incurred significant costs to mitigate the harm caused by AFG's misconduct, including addressing risks related to the concealed ransomware attack, upgrading IT security, and responding to regulatory inquiries.

Consequential Damages

197. The misconduct of Brewer and the AFG entities has caused cascading harm to BEN and Due Figlie, including:

Reputational Harm:

198. BEN's reputation has been significantly damaged due to the Defendants' concealment of the ransomware attack, non-performance under the Reseller Agreement, and Brewer's retaliatory statements to third parties.

199. Due Figlie's reputation has also suffered due to Brewer's repudiation of the Consulting Agreements and refusal to honor its obligations.

Lost Business Opportunities:

200. BEN has been deprived of the opportunity to pursue alternative partnerships in the automotive sector that could have advanced its strategic goals.

201. Due Figlie has lost opportunities to expand its consulting business due to the harm caused by Defendants' actions.

Exemplary Damages

202. The fraudulent conduct of Brewer and the AFG entities was willful, intentional, and carried out in bad faith, warranting the award of exemplary damages to deter such behavior in the future.

203. Brewer's actions, including his deliberate concealment of the ransomware attack, repudiation of the Consulting Agreements, and declaration of "war" against BEN, demonstrate egregious misconduct deserving of punitive damages.

Restitution

204. Restitution is necessary to return BEN to the position it was in before entering into the Reseller Agreement, including the recovery of any financial benefits improperly obtained by Brewer and the AFG entities

Attorneys' Fees and Costs

205. BEN and Due Figlie are entitled to recover their attorneys' fees and costs incurred in pursuing this action under applicable law and the terms of the Reseller and Consulting Agreements.

Pre- and Post-Judgment Interest

206. BEN and Due Figlie seek pre-judgment and post-judgment interest on all damages awarded, as permitted by law, to fully compensate them for the harm suffered due to Defendants' actions.

Plaintiff BEN and Due Figlie seek judgment against Defendants, jointly and severally, for:

1. Actual and consequential damages, including lost revenue, denied compensation, and mitigation costs.

2. Exemplary damages for fraud, fraudulent inducement, and civil conspiracy.

3. Rescission of the stock and warrant agreements issued to Brewer and AFG, along with restitution of all financial benefits improperly obtained.

4. Attorneys' fees and litigation costs.

5. Pre- and post-judgment interest on all damages awarded.

6. Any additional relief the Court deems just and proper.

Respectfully submitted,

By: */s/ Matthew E. Yarbrough*

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EXHIBIT "A"

Transcript of conversation with Dave Duggan (CTO) and Jason De LaPorte (President) of AFG, dated **October 11, 2024**, which includes discussions on AFG's efforts to circumvent the **Exclusive Reseller Agreement (ERA)** between AFG and **Brand Engagement Network, Inc. (BEN)**.

The following is a verbatim, transcribed portion of a recent conversation I personally had with Dave Duggan (CTO) and Jason De LaPorte (President) of Automotive Financial Group, Inc. at 1900 Champagne, Grapevine, TX 76051 (AFG), October 11, 2024 @ approx. 2:30 PM CST. Yesterday morning, Wednesday, October 30, 2024, I was retaliated against and wrongfully terminated (by email) from AFG because I was asking certain questions of executive leadership about the true nature of the Software Engineering work, that without full disclosure and under false pretenses, I (and several others) was hired to do. I found out for the first time during this particular conversation on October 11, 2024 (transcribed below) of the existence of an "*Exclusive Reseller Agreement*" (ERA) that apparently legally binds AFG to a non-compete forbidding the direct or indirect development or engagement in competing solutions. The below words of Dave Duggan will show the existence of a wider conspiracy amongst AFG leadership and others, including Mr. Wright Brewer, to clandestinely circumvent the ERA between AFG and Brand Engagement Network, Inc. (BEN, BenAI, etc.) of which Mr. Tyler J. Luck is the Chief Product Officer.

Start of Transcription:

"*Those guys ended up turning out to be crooks.*

We have a meeting on Monday with the Chairman of that company and another Board Member of that company to walk them thru all the criminal activities that their primary owner and investor are involved in.

So, what happened, is, we built our team, they were supposed to build a team. They didn't build a team. They were supposed to bring AI solutions that worked. Their AI solutions didn't work. So, we had to figure out, how do we protect Wright Brewer and AFG and this investment that he's making in modernizing the automotive industry with artificial intelligence solutions when we don't know if we're going to have an AI company available. Oh, by the way, Wright Brewer has an Exclusive Reseller Agreement that is a bi-directional agreement between AFG and BenAI where BenAI is the Artificial Intelligence Company. And in that Agreement, we (AFG) cannot build, develop competing solutions against BenAI. We can't do it.

However, they also have obligations on their side which they have not fulfilled. So, we've had to create an environment where we focus on getting the data, automating the data solutions, building the framework, *the platform, laying the foundation for where we're going to take this business over the next five (5) years. Develop the five (5) year plan that takes this company to a billion dollars deploying AI solutions thru our Symphainy platform across the automotive industry. He (Jason De LaPorte) and I have been going out and meeting with OEMs, the Distributor Groups, Dealer Groups and Dealers, talking about this solution. And they're all in, they're ready to go. We're not going to deploy a solution that doesn't work. AI.*

So now let's talk about AI. Uhmm. The BenAI solution didn't work because they couldn't do Oddo. Meaning, they could not go into a database, grab data, and spit out a right answer. They couldn't do that. They could not provide graphs or charts or anything. They did not have a base of technology that translated conversational AI into an answer, into data, from an automotive dealer's data. It didn't work so we had to go do research and find a Plan B. So, we did a systems engineering trade study on what other packages were available off the shelf. We can't go develop it because that would be us developing competing solutions. And go find what alternatives were available off the shelf that we can integrate with to solve that problem, creating an environment where if we solve that problem, if we need to apply, if if the relationship between AFG and Ben BenAI works out and we still we're still under the Reseller Agreement we can use their avatars we can use their automated speech recognition, we can use all this stuff.

The amount of crap that we have been dealing with behind the scenes would make you eyeballs fall out. The reason you don't see me in there. The reason you rarely see him (Jason De LaPorte) in there is because we are dealing with all of that for Wright Brewer. We're trying to help Wright Brewer not lose $32 Million Dollars. We're just trying to help Wright Brewer not lose the ten and a half ($10.5) Million Dollars he's already invested in all these technologies in dealing with these criminals, right. Uhh, and we're trying to help Wright Brewer have a technology company that can go start delivering AI solutions to the AI market when all this shit gets worked-out. Okay."

End of Transcription:

EXHIBIT "B"

EXCLUSIVE RESELLER AGREEMENT (SAAS)

This EXCLUSIVE RESELLER AGREEMENT (this "**Agreement**") is entered into as of August 19, 2023 (the "**Effective Date**") by Brand Engagement Network Inc., a Wyoming corporation, having a place of business at 145 East Snow King Ave, Jackson, WY 83001 ("**BEN**") and AFG Companies, Inc., a Texas corporation, having a place of business at 1900 Champagne Blvd., Grapevine, TX 76051 (collectively with its designated subsidiaries, "**Reseller**") and describes the terms and conditions pursuant to which BEN will make the Services (as defined below) available for re-sale by Reseller.

1 DEFINITIONS

For the purposes of this Agreement, in addition to the capitalized terms defined elsewhere in this Agreement, the following terms shall have the meanings ascribed to them as follows:

1.1 "**Affiliate**" of a party means any corporation or other entity that such party directly or indirectly controls, is controlled by, or is under common control with. "**Control**," for purposes of this definition, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract or otherwise.

1.2 "**Customer(s)**" means individuals or entities to which Reseller has re-sold Services.

1.3 "**Customer Data**" means all electronic data or information submitted by Customers in connection with such Customers' use of the Services, including data provided by Customers' Users.

1.4 "**Deliverable**" means any software, equipment consultations, documentation and/or other materials prepared by BEN for Reseller as described in an SOW.

1.5 "**Fees**" means the fees payable by Reseller to BEN in connection with the re-sale of the Services to Customers and any products and services sold/leased/licensed to Customers in connection with or related to the Services.

1.6 "**Field**" means entities that primarily manufacture, distribute, market, sell and/or repair new and used motor vehicles, recreational vehicles, and power sports vehicles, and third party administrators that solely provide finance and insurance (F&I) products, parts and service products, sales and marketing services, technology services, service contracts and/or warranties, in each instance for motor vehicles, recreational vehicles, and power sports vehicles. For the avoidance of doubt, motor vehicle manufacturers' financing arms (such as Ford Credit, Nissan Motor Acceptance Corp.) and banks that do indirect lending to dealers for consumers on premise at the dealer or on the dealer's website are part of the Field. For the further avoidance of doubt, other financial institutions (such as https://www.bankofamerica.com/auto-loans/), and motor vehicle insurance entities, are not part of the Field.

1.7 "**Initial Term**" has the meaning ascribed to that term in Section 8.1.

1.8 "**Level 1 Support**" means the service provided in response to a Customer's initial contact requesting assistance with the Services.

1.9 "**Level 2/3 Support**" means the service required to resolve a Customer's issues with the Services after Level 1 Support has been exhausted.

1.10 "**Malicious Code**" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

1.11 "**Non-BEN Applications**" means online applications and offline software products provided by entities or individuals other than BEN and are clearly identified as such, and that interoperate with the Services.

1.12 "**Order Form**" means the documents for placing orders pursuant to this Agreement that are entered into between BEN and Reseller (or Affiliates of BEN and Reseller) from time to time, including addenda and supplements thereto. By entering into an Order Form pursuant to this Agreement, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party to this Agreement. Order Forms shall be deemed incorporated into this Agreement by reference.

1.13 "**Professional Services**" means the services to be provided by BEN to Reseller as described in an SOW, which may include, without limitation, engineering, maintenance, installation, design consulting, business planning, support, network planning and analysis.

1.14 "**Renewal Term**" has the meaning ascribed to that term in Section 8.1.

1.15 "**Reseller Agent**" means a person or entity that Reseller appoints to market, promote or re-sell Services on behalf of Reseller.

1.16 "**Reseller Data**" means all electronic data or information submitted by Reseller to BEN in connection with the Services.

1.17 "**Service(s)**" means the products and services that are ordered by Reseller pursuant to an Order Form and made available by BEN online as designated by BEN, including associated offline components. "Services" exclude Non-BEN Applications.

1.18 "**Statement of Work**" or "**SOW**" means a statement of work for Professional Services and/or Deliverables that is executed by the parties.

1.19 **"Term"** has the meaning ascribed to that term in Section 8.1.

1.20 **"Territory"** means world-wide.

1.21 **"Users"** means individuals who are authorized by Customers to use the Services. Users may include but are not limited to Customer's employees, consultants, contractors and agents, and third parties with which Customers transact business.

2 SERVICES

2.1 **Provision of Services.** Conditioned on the provisions in this Section 2 and the other terms and conditions of this Agreement and payment of the applicable Fees, BEN hereby appoints Reseller, and Reseller hereby accepts, for the Term (unless terminated as provided in this Agreement), an exclusive (subject to Section 8.1 hereof), non-transferable (except as provided in this Agreement), appointment for the Territory to act as a BEN approved reseller of the Services solely for the Field. Reseller shall market, promote and re-sell the Services to Customers and potential Customers in the Field, at its own expense and using its own efforts with its own sales force (including Reseller Agents). Reseller shall pay BEN the Fees set forth in this Agreement. BEN shall make the Services available to Reseller for re-sale to Customers in the Field pursuant to this Agreement.

2.2 **Order Forms**. Reseller and BEN shall enter into Order Forms with respect to each Customer in order to document the Services that are to be provided for such Customer and to allow BEN to plan its delivery of Services.

2.3 **Non-Exclusive Customer Licenses**. Reseller may only resell non-exclusive rights to the Services and shall not grant any party any exclusive rights with respect to the Services.

2.4 **BEN Responsibilities for the Services**. BEN shall provide Reseller with the Services within the Territory for the purpose of the resale to Customers in the Field. The Services shall be made available by BEN subject to any unavailability caused by circumstances beyond BEN's reasonable control, including any force majeure events as contemplated in Section 10.11 and any computer, communications, Internet service or hosting facility failures or delays involving hardware, software, power or other systems not within BEN's possession or reasonable control, and denial of service attacks. The Services may be temporarily limited, interrupted or curtailed due to maintenance, repair, modifications, upgrades or relocation. BEN shall notify Reseller of scheduled and unscheduled network outages that are expected to last more than four (4) hours and that may affect the Services. BEN shall be entitled to change the Services during the Term provided that BEN will not materially reduce the capabilities provided by the Services.

2.5 **Reseller Responsibilities.** Reseller shall maintain marketing and customer service standards that are appropriate in order to maintain high-quality Services and to reflect favorably on Reseller's and BEN's reputation. Reseller shall provide Customers with prompt, courteous, and efficient service, shall take every reasonable precaution not to disclose any Customer information, other than as permitted by any applicable privacy or personal health information legislation, and shall deal with Customers honestly and fairly. Reseller shall be responsible for all activities of its Customers and Reseller shall (i) use commercially reasonable efforts to prevent unauthorized access to or use of the Services and shall notify BEN promptly of any such unauthorized access or use; and (ii) comply with all applicable local, state, provincial, federal and foreign laws in respect to the promotion and re-sale of the Services.

2.6 **Mutual Obligations.** Neither party shall by way of statement, act or omission, discredit or reflect adversely upon the reputation of or the quality of the other party or the products or services provided by the other party.

2.7 **Customer Contracts.** The Services shall be provided to Customers on terms and conditions that are mutually agreed to between BEN and Reseller, in accordance with any applicable regulations. Reseller acknowledges that the Customer agreements will require commercially reasonable flow-down obligations that will apply to Users' use of the Services, including the right for BEN to use data submitted and generated through the use of the Services. Reseller shall not make any representations or warranties on behalf of BEN, or in any way bind or attempt to bind BEN contractually or otherwise with any Customer(s) beyond BEN's delivery of the Services.

2.8 **Restrictions.** Reseller shall not (and shall not authorize any third party to): (a) modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Services except to the extent that enforcement of the foregoing restriction is prohibited by applicable law; (b) circumvent any user limits or other timing, use or functionality restrictions built into the Services; (c) remove any proprietary notices, labels, or marks from the Services (except to the extent Reseller is so permitted to for the purposes of re-branding the Services); or (d) access the Services in order to (i) build a competitive product or service, or (ii) copy any ideas, features, functions or graphics of the Services for use outside of the Services.

2.9 **Training and Real Time Data.** The parties acknowledge that the Services require ingestion of industry jargon/master data, initial training, as well as training updates from time to time, using data relevant to the Field as well access to real time data provided via application programming interface or similar method. In addition, conversation and dialogue management shall be developed to address the specific use cases and solutions pursued by both parties. This entails crafting conversational patterns and responses that align with industry norms and ensuring that the AI is capable of addressing specific challenges and questions within the Field context. Accordingly, throughout the Term of this Agreement, Reseller shall collaborate closely with BEN, providing BEN with access to essential information, real time data provided via application programming interface or similar method, guidance, and expertise needed to train and improve the Services (the "**Training and Real Time Data**") in the Field. It is expected that the Reseller's contributions will encompass, but not be limited to:

- Preprocessing of future data deliveries, including data cleaning, normalizing, and the annotation of datasets where necessary. This is to ensure that the data provided is in a usable format for immediate integration into the Services' machine learning models, optimizing the efficiency and effectiveness of the AI training process;
- Regular provision of up-to-date and relevant data sets, including sales data, Customer Data, manufacturing data, customer behavior data (if applicable), conversational data and other forms of data relevant to the Field;
- Regular feedback and input to enhance the performance and accuracy of the Services, including the review of outputs, validation of model assumptions, and participation in testing and fine-tuning processes;
- Assistance in the development of conversational scenarios and patterns specific to the Field, including customer service inquiries, technical support questions, dealer interactions, and other typical automotive-related dialogues; and
- Provision of expert knowledge and insight on the auto industry, to guide the development and refinement of the AI model, ensuring it is tailored to the realities of the Field, its jargon, its nuances, and its evolving trends.

2.10 Ownership and Proprietary Rights. BEN and its suppliers and/or licensors own and shall retain all right, title and interest (including without limitation all patent rights, copyrights, trademark rights, trade secret rights and other intellectual property rights), in and to the Services. Reseller agrees that only BEN shall have the right to maintain, enhance or otherwise modify the Services. Except as expressly set forth in this Section 2, BEN reserves all rights and grants Reseller no licenses of any kind, whether by implication, estoppel, or otherwise.

2.11 Improvements. BEN shall own all right, title and interest in and to any enhancements and improvements to the Services made by Reseller or its Affiliates, jointly or independently, or resulting from use of the Training and Real Time Data, including, but not limited to, all patent, copyright, trade secret and other proprietary rights therein (collectively, "**Improvements**"). Reseller hereby assigns, and upon creation shall be deemed to have assigned, to BEN all right title and interest in and to the Improvements. Reseller shall execute and deliver, and shall cause its personnel, contractors, sub-contractors and advisors to execute and deliver, without additional compensation (provided that BEN prepares the applicable documents at its cost and expense), (i) such documents and instruments as BEN may reasonably request to transfer and assign to BEN all right, title and interest in the Improvements; and (ii) any and all applications or registrations for patents, copyrights and other intellectual property rights and any other instruments deemed necessary or appropriate for BEN to secure and enforce such rights.

2.12 Suggestions. From time to time Reseller may provide BEN with suggestions, enhancement requests, recommendations or other feedback relating to the Services ("**Suggestions**"). BEN shall own all right, title and interest in and to any Suggestions, including, but not limited to, all patent, copyright, trade secret and other proprietary rights therein (collectively, "**Suggestions**"). Reseller hereby assigns, and upon creation shall be deemed to have assigned, to BEN all right title and interest in and to the Suggestions. Reseller shall execute and deliver, and shall cause its personnel to execute and deliver, without additional compensation (provided that BEN prepares the applicable documents at its cost and expense), (i) such documents and instruments as BEN may reasonably request to transfer and assign to BEN all right, title and interest in the Suggestions; and (ii) any and all applications or registrations for patents, copyrights and other intellectual property rights and any other instruments deemed necessary or appropriate for BEN to secure and enforce such rights.

2.13 Non-Competition. During the Initial Term, Reseller shall not: (a) directly or indirectly market, promote, or solicit customers or subscriptions for, supply, sell or re- sell any product or service in competition with the Services; (b) have any controlling interest in any entity that markets, promotes, sells or provides any product or service in competition with the Services; (c) enter into any agreements with any provider to resell, redistribute, sub-license or otherwise commercialize any product or service that competes with the Services; or (d) display on its website or elsewhere any advertising or marketing materials of any provider of any product or service that competes with the Services. The parties acknowledge the need for each Customer to have continuity of service beyond such Customer's subscription period; accordingly, if either party gives timely written notice of non-renewal, then upon such notice Reseller may market to such Customers subscriptions for products or services in competition with the Services, for the period of time following such Customer's subscription period.

2.14 Reseller's Use of Agents and Subcontractors. Reseller may, without the prior written consent of BEN, appoint Reseller Agents to market, promote and/or re-sell the Services within the Territory, provided that Reseller shall continue to be responsible for all of its duties and obligations under this Agreement and for any acts or omissions of any of its Reseller Agents, and any acts or omissions of any of its Reseller Agents shall be attributed to Reseller, and Reseller shall: (a) be liable to BEN for all losses, costs, damages and expenses of whatsoever nature, that BEN may sustain or incur as a result or in connection with any act or omission of any Reseller Agent, and (b) indemnify BEN, its officers, directors, employees, agents and Affiliates (including their officers, directors, employees, and agents) from and against any and all actions, causes of action, claims and demands of whatsoever nature caused by, arising directly or indirectly out of, or in connection with any acts or omissions of any Reseller Agent.

2.15 Professional Services. Upon execution of an SOW by the parties and subject to the terms and conditions set forth in Schedule A, Reseller may retain BEN to provide Professional Services (including the development of Deliverables) for Reseller, all as described in such SOW. If Reseller submits a purchase order for Professional Services, such order shall not be binding upon BEN until accepted by BEN. BEN shall respond to each such order submitted by Reseller within five (5) business days following receipt thereof. Once an order has been accepted, it shall be subject to the terms and conditions of this Agreement (such terms superseding any and all pre-printed terms and/or conditions within such order).

2.16 Customer and Reseller Data. BEN shall have the non-exclusive, irrevocable, perpetual, royalty-free, sublicensable and transferable right to use the Customer Data and Reseller Data to provide the Services in accordance with this Agreement, to improve the Services and to train and improve the software and artificial intelligence models used by BEN in its business, and Reseller shall obtain such rights from its Customers for the benefit of BEN. Subject to the rights granted to BEN pursuant to this Agreement, BEN acquires no right, title or interest (i) from Reseller in or to any Reseller Data or (ii) from any Customers in or to Customer Data, including in each instance any intellectual property rights therein. Notwithstanding the foregoing, the Parties will work together to expand the rights for BEN to use the Customer Data to the extent permitted by applicable law. Moreover, to the extent Reseller obtains broader rights in the Customer Data than are granted to BEN in this Agreement, such broader rights shall be deemed to have been automatically granted to BEN hereunder.

2.17 Marketing Alignment. Reseller shall provide BEN with a monthly report on its sales pipeline, including, without limitation, a list of its then-current targeted potential Customers, details regarding the engagement and status with potential Customers, and any other information typically generated regarding sales pipeline efforts.

2.18 Trademarks. BEN hereby grants Reseller during the Term of this Agreement a nonexclusive, nontransferable, non-sublicensable, royalty-free license to use BEN's trademarks and associated logos, including the name "BEN Auto" (or similar name agreed between the parties) (collectively, "**Marks**") solely in connection with the marketing and sale of the Services. Any use of Marks shall be in accordance with BEN's trademark usage policies, with proper markings and legends, and subject to BEN's prior written approval in each case. Accordingly, Reseller shall provide BEN with copies of all marketing materials regarding the Services before they are distributed, and shall not use or distribute any such materials without BEN's approval. BEN may withdraw any approval of any use of its Marks at any time in its sole discretion, although no such withdrawal shall require the recall of any previously published or distributed materials that was approved by BEN. Reseller shall reasonably cooperate with BEN in facilitating BEN's monitoring and control of the nature and quality of products and services bearing the Marks, and shall supply BEN with specimens of Reseller's use of the Marks upon request. If BEN notifies Reseller that Reseller's use of the Marks is not in compliance with BEN's trademark policies or is otherwise deficient, then Reseller shall promptly comply with such policies or otherwise as reasonably directed by BEN. Reseller shall not make any express or implied statement or suggestion, or use the other Marks in any manner, that dilutes, tarnishes, degrades, disparages or otherwise reflects adversely on BEN or its business, products or services. Reseller acknowledges that the Marks are and shall remain owned by BEN. Reseller shall not gain any right, title or interest with respect to the Marks by use thereof, and all rights and goodwill associated with the Marks shall inure to the benefit of BEN.

3 SERVICES SETUP AND OPERATION

3.1 Launch of the Services with Reseller. Upon execution of this Agreement, the parties will co-operate and use commercially reasonable efforts to integrate the Services with any Reseller software or infrastructure with which the Services need to interact in order to allow the Services to be marketed by Reseller to Customers in the Field in the Territory. Once the Services have been integrated with Reseller's software or infrastructure and the parties agree that the integrated Services are of a reasonable quality (having regard to similar commercial offerings), the Reseller shall be entitled to begin reselling the Services to Customers in the Field in the Territory.

3.2 Support. BEN shall provide basic support for the Services to Reseller at no additional charge, and shall provide upgraded support for the Services to Reseller if purchased separately by Reseller. Reseller shall be responsible for providing First Line Support to Customers and Users of the Services. For the purposes of this Agreement, "First Line Support" means (i) fielding each initial call on a Services problem or other inquiry from a Customer or User; (ii) generating and issuing a trouble ticket containing a reference/tracking number to the Customer or User (i.e., provision of a Reseller support number to the Customer or User); (iii) to the extent reasonably possible, identifying the problem or performance deficiency in the Services; (iv) by reference to only a troubleshooting guide that may be provided by BEN, attempted resolution of the problem; (v) where such problem has not been resolved, preparation of an error notification in relation to the problem or performance deficiency; (vi) managing communications and expectations with the Customer and/or User until the problem is referred to BEN; and (vii) escalating the error notification to BEN. Under no circumstances will BEN be obliged to deal directly with a Customer or User.

3.3 **White Labelling**. If mutually agreed by the parties in writing, BEN shall brand the Services with Reseller-specific branding prior to making the Services available for re-sale by Reseller. The Services shall also be branded with "powered by BEN" marks and logos as specified by BEN. The Services shall in all cases retain any relevant patent, copyright and/or other intellectual property notices as may be determined to be appropriate by BEN. Reseller shall provide, in softcopy/electronic format as reasonably specified by BEN, the Reseller-specific branding to be used to white-label the Services. BEN shall provide Reseller with access to the white-labeled Services to review prior to making any production versions of the white-labeled Services commercially available for re-sale by Reseller. Reseller shall use commercially reasonable efforts to promptly review the white-labeled Services. The Reseller-specific branding will be applied to the Services by BEN for the fees specified in the applicable SOW for such Professional Services. BEN shall only use any Reseller-specific branding materials provided to BEN for the purposes of re-branding the Services as contemplated in this Section 3.3 and for the operation of the white-labeled Services. Except for the foregoing limited rights, Reseller shall retain all right, title and interest in the Reseller-specific branding provided to BEN.

3.4 **Acquisition of Non-BEN Products and Services.** BEN or third parties may from time to time make available to Reseller third-party products or services, including but not limited to Non-BEN Applications and implementation, customization and other consulting services. Any acquisition by Reseller of such non-BEN products or services, and any exchange of data between Reseller or its Customers and any non-BEN provider, is solely between Reseller or the applicable Customer, as the case may be, and the applicable non-BEN provider. BEN does not warrant or support non-BEN products or services, whether or not they are designated by BEN as "certified" or otherwise, except as specified in an Order Form.

3.5 **Non-BEN Applications and Customer and Reseller Data.** If Reseller or any of its Customers installs or enables Non-BEN Applications for use with the Services, Reseller acknowledges that BEN may allow providers of those Non-BEN Applications to access Customer Data and Reseller Data as required for the interoperation of such Non-BEN Applications with the Services. BEN shall not be responsible for any disclosure, modification or deletion of any Customer Data and Reseller Data resulting from any such access by Non-BEN application providers. The Services shall allow Customers to restrict such access by restricting Customer users from installing or enabling such Non- BEN applications for use with the Services.

3.6 **Integration with Non-BEN Services**. The Services may contain features designed to interoperate with Non-BEN Applications. To use such features, Reseller and Customers may be required to obtain access to such Non-BEN Applications from their providers. If the provider of any such Non-BEN application ceases to make the Non-BEN application available for interoperation with the corresponding Service features on reasonable terms, BEN may cease providing such Service features without entitling Reseller or any Customers to any refund, credit, or other compensation.

3.7 **BEN Protection of Customer Data**. BEN shall maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. BEN will abide by all applicable State and Federal laws including, to the extent applicable, the Gramm Leach Bliley Act and the Federal Trade Commission "Safeguards Rule." BEN will work with Reseller in countries where the Services could be deployed to abide by that particular country's laws regarding consumer information. BEN will be SOC2 Type 1 compliant no later than December 31, 2023.

3.8 **Reseller Responsibilities**. Reseller shall (i) be responsible for Customers' and Users' compliance with BEN's policies and procedures applicable to the Services; (ii) be responsible for the accuracy, quality and legality of the Customer Data and of the means by which it was acquired. Reseller shall not: (a) make the Services available to anyone other than Customer and Users; (b) sell, resell, rent or lease the Services outside the Field; (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (d) use the Services to store or transmit Malicious Code; (e) interfere with or disrupt the integrity or performance of the Services or third- party data contained therein; or (f) attempt to gain unauthorized access to the Services or their related systems or networks. Reseller shall, solely at its own cost, employ experienced salespeople who are knowledgeable concerning the functions and advantages of the Services and experienced technical personnel who are knowledgeable concerning the functions, specifications and advantages of the Services.

3.9 **Usage Limitations.** If BEN opts to impose Services limitations on all customers, such as but not limited to disk storage space and application programming interface calls, BEN will use commercially reasonable efforts to provide at least three (3) months written notice of such limitations to Reseller.

4 PAYMENT TERMS AND TAXES

4.1 **Stock Issuance.** Immediately prior to the consummation of BEN's contemplated business combination with DHC Acquisition Corp. (the "**Merger**") pursuant to that certain Business Combination Agreement and Plan of Reorganization (the "**BCA**") to be entered with DHC Acquisition Corp. ("**DHCA**"), BEN Merger Subsidiary Corp., and, solely with respect to certain provisions thereto, DHC Sponsor, LLC, BEN will issue a number of shares of its common stock to Reseller which shall, pursuant to the terms and subject to the conditions set forth in the BCA, convert into shares of DHCA common stock upon the effectiveness of the Merger that have an initial aggregate value of $17.5 million (based on a price of $10.00 per share of DHCA common stock).

4.2 **Earnout**. The Parties have agreed, subject to the consummation of the Merger, to a milestone-based earnout incentive plan as provided in the attached Schedule B.

4.3 **Customer Pricing and Responsibility.** All fees, rates or charges charged by Reseller to Customers for the Services shall be determined mutually between Reseller and BEN. BEN shall have no responsibility for billing or collecting such fees or any other amounts from Customers. Reseller is solely responsible for payment to BEN for all Fees for the Services re-sold to Customers. In connection with such activities, Reseller will act in all respects for its own account and will be responsible for such matters as credit verification, deposits, billing, collection, bad debts and any unauthorized use of the Services by or on behalf of Customers. BEN is obligated only to Reseller, with which it is in privity of contract, and not to Customers, with whom BEN is not in privity of contract. Customers are not to be deemed third-party beneficiaries of this Agreement.

4.4 **Fees.** Reseller shall pay BEN fifty percent (50%) of all amounts collected from Customers for the Services and any products and services sold/leased/licensed to Customers in connection with or related to the Services.

4.5 **Payment Terms.** Reseller will Pay BEN the Fees within ten (10) days following the end of the calendar month in which Reseller collected invoiced amounts, in whole or in party, from the Customer(s). All amounts are payable in United States dollars unless mutually agreed to in writing by the parties. Any amounts not paid when due shall accrue interest at the lesser of one and one half percent (1.5%) per month (19.57% annually) or the maximum rate allowed by law.

4.6 **Record Retention and Audit**. Reseller will maintain and retain records and supporting documentation sufficient to support and evidence the amounts payable under this Agreement during the Term and for one (1) year thereafter. BEN may audit Reseller's records and supporting documentation for the purposes of verifying the accuracy of all Fees paid hereunder and for the purposes of verifying Reseller's compliance with the terms and conditions of this Agreement. These audits may be conducted no more than once per year during the Term. If an audit demonstrates that Reseller's payments for the audited period were not correct, Reseller will pay BEN the unpaid amount within thirty (30) days following the final determination of the amount payable and, if the underpayment for the period under audit is five percent (5%) or greater, then Reseller shall also pay BEN for the reasonable costs of such audit. With respect to any audits conducted pursuant to this Section, Reseller will reasonably cooperate with BEN. BEN will give Reseller reasonable prior notice of an audit and conduct such audits during normal business hours in a manner designed to minimize disruption to Reseller's business. Unless otherwise agreed to in writing by the Parties, Reseller will deliver information or documentation that is reasonably requested in conjunction with an audit within ten (10) business days of request for such information or documentation. Audits may be conducted by BEN or a certified public accountant. Notwithstanding anything to the contrary in this Agreement, in the event that Reseller breaches this Section, in addition to all other remedies available to BEN, Reseller shall reimburse BEN for its reasonable legal fees incurred to enforce Reseller's obligations under this Section.

4.7 **Suspension of Services**. If any amount owing by Reseller under this or any other agreement for the Services is thirty (30) or more days overdue, BEN may, without limiting BEN's other rights and remedies, suspend provision of the Services to Reseller and the Customers until such amounts are paid in full. BEN will give Reseller at least fifteen (15) days prior notice that its account is overdue, before suspending the Services.

4.8 **Taxes.** Unless otherwise stated, the Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, goods and services, harmonized, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**"). Reseller is responsible for paying all Taxes associated with its sales of the Services. For clarity, BEN is solely responsible for taxes assessable against BEN based on its income, property and employees.

5 CONFIDENTIALITY

5.1 **Definition of Confidential Information.** "Confidential Information" means any and all information disclosed by either party to the other which is marked "confidential" or "proprietary", or which the recipient knows or has reason to know is regarded by the disclosing party as such, including oral information. "Confidential Information" does not include any information that the receiving party can demonstrate by its written records: (a) was known to it prior to its disclosure hereunder by the disclosing party; (b) is or becomes known through no wrongful act of the receiving party; (c) has been rightfully received from a third party authorized to make such a disclosure; (d) is independently developed by the receiving party; (e) has been approved for release with the disclosing party's prior written authorization; or (f) has been disclosed by court order or as otherwise required by law, provided that the party required to disclose the information provides prompt advance notice to enable the other party to seek a protective order or otherwise prevent such disclosure.

5.2 **Obligation.** Neither party will use any Confidential Information of the disclosing party except as necessary to exercise its rights or perform its obligations pursuant to this Agreement or as expressly authorized in writing by the other party. Each party shall use the same degree of care to protect the disclosing party's Confidential Information as it uses to protect its own confidential information of like nature, but in no circumstances less than reasonable care. Neither party shall disclose the other party's Confidential Information to any person or entity other than its officers, employees, consultants and legal advisors who need access to such Confidential Information in order to effect the intent of the Agreement and who have entered into written confidentiality agreements with it as least as restrictive as those in this Section 5. Upon any termination of this Agreement, the receiving party will promptly return to the disclosing party or destroy, at the disclosing party's option, all of the disclosing party's Confidential Information.

5.3 **Injunctive Relief.** Each party acknowledges that due to the unique nature of the other party's Confidential Information, the disclosing party may not have an adequate remedy in money or damages in the event of any unauthorized use or disclosure of its Confidential Information. In addition to any other remedies that may be available in law, in equity or otherwise, the disclosing party shall be entitled to seek injunctive relief to prevent such unauthorized use or disclosure.

5.4 **Other Exemptions.** Notwithstanding the foregoing provisions in this Section 5, the parties may disclose this Agreement: (i) as otherwise required by law or the rules of any stock exchange or over-the-counter trading system provided that reasonable measures are used to preserve the confidentiality of this Agreement, (ii) in confidence to legal counsel, (iii) in connection with the requirements of a public offering or securities filing provided reasonable measures are used to obtain confidential treatment for the proposed disclosure, to the extent such treatment is available, (iv) in connection with the enforcement of this Agreement or any rights under this Agreement, provided that reasonable measures are used to preserve the confidentiality of this Agreement, (v) in confidence, to auditors, accountants, and their advisors, (vi) in confidence, in connection with a change of control or potential change of control of a party or an Affiliate of a party, provided that reasonable measures are used to preserve the confidentiality of this Agreement. For any legally compelled disclosure or disclosure pursuant to a court, regulatory, or securities filing, the parties shall reasonably cooperate to limit disclosure.

5.5 **Compelled Disclosure.** If a receiving party is compelled by law to disclose Confidential Information of a disclosing party, it shall provide the disclosing party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the disclosing party's cost, if the disclosing party wishes to contest the disclosure.

5.6 **Securities Compliance.** Reseller (i) is aware that BEN or an Affiliate may become a reporting company under the Securities Exchange Act of 1934, as amended (the "**Act**"), and that the United States securities laws prohibit any person who has material, non-public information about a public company from purchasing or selling securities of that company, or from communication of that information to any person under circumstances where it is reasonably foreseeable that such person is likely to purchase or sell those securities, (ii) is familiar with the Act, and (iii) shall not use, nor cause any third party to use, any information relating to this Agreement in contravention of the Act.

6 WARRANTIES AND DISCLAIMERS

6.1 **Warranties.** Each party warrants to the other party that: (i) such party is a business duly incorporated, validly existing, and in good standing under the laws of its jurisdiction of incorporation; (ii) such party has all requisite corporate power, financial capacity, and authority to execute, deliver, and perform its obligations under this Agreement; (iii) the execution, delivery, and performance of this Agreement constitutes the legal, valid, and binding agreement of such party; (iv) as of the Effective Date, there is no outstanding litigation, arbitrated matter or other dispute to which such party is a party, which, if decided unfavorably to it, would reasonably be expected to have a potential or actual material adverse effect on such party's ability to fulfill its obligations under this Agreement; and (v) no consent, approval or withholding of objection is required from any entity, including any governmental authority, with respect to such party's entering into this Agreement. BEN warrants that (vi) the Services shall perform materially in accordance with its documentation, and (vii) subject to Sections 3.4 and 3.6, the functionality of the Services will not be materially decreased. For any breach of a warranty in (vi) or (vii) above, Reseller's exclusive remedy shall be to request that BEN use commercially reasonable efforts to correct the non-conformity.

6.2 **Disclaimer. EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION 6, THE SERVICES ARE PROVIDED "AS IS" AND WITHOUT ANY REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS OF ANY KIND. EACH PARTY AND ITS LICENSORS AND/OR SUPPLIERS MAKE NO OTHER REPRESENTATIONS AND GIVE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE REGARDING THE SERVICES PROVIDED UNDER THIS AGREEMENT AND**

EACH PARTY SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, NON-INFRINGEMENT, DURABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, RESELLER ACKNOWLEDGES THAT BEN AUTO DOES NOT REPRESENT OR WARRANT OR PROVIDE ANY CONDITIONS THAT THE SERVICES WILL BE ERROR-FREE OR WORK WITHOUT INTERRUPTIONS.

7 INDEMNITY

7.1 BEN IP Indemnity. BEN shall defend and/or settle at its expense, any claims, actions or proceedings against Reseller to the extent arising out of or relating to any misappropriation or infringement by the Services and/or any Professional Services of any third party's proprietary or intellectual property right ("**Reseller Claims**"), and BEN shall pay all damages finally awarded by a court of competent jurisdiction to such third party against Reseller, or any settlement amounts agreed by BEN in writing; subject to the conditions that, Reseller shall notify BEN promptly of any Reseller Claims, permit BEN to control the defense and settlement of such Reseller Claims (provided that Reseller may participate with counsel of its own choosing, at its own expense), and assist BEN, at BEN's expense, in defending or settling such Reseller Claims. BEN shall not be liable for any settlement amounts entered into by Reseller without BEN's prior written approval. If BEN has reason to believe that it would be subject to an injunction or continuing damages based on the Services, then BEN shall be entitled to either modify the Services to make the Services non-infringing and/or remove the misappropriated material, replace the Services or portion thereof with a service or materials that provide substantially the same functionality or information, or, if neither of the foregoing is commercially practicable, require Reseller and the Customers to cease reselling, receiving and/or using the Services, as the case may be, and refund to Reseller (a) a pro-rata portion of any one (1) time Fees (based on a three (3) year, straight-line depreciation schedule from the date of payment), and any Fees that have been pre-paid by Reseller but are unused. The foregoing notwithstanding, BEN shall have no liability for a claim of infringement or misappropriation to the extent (i) caused by the combination of Services with any other service, software, data or products not provided by BEN, which claim would have been avoided if the Services had not been so combined; or (ii) directly attributable to the use of any material provided by Reseller or any Customers; or (iii) caused by any breach by Reseller of this Agreement or by any Customers of any Services policies and/or procedures. THE FOREGOING IS BEN AUTO'S SOLE AND EXCLUSIVE LIABILITY, AND RESELLER'S SOLE AND EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OR MISAPPROPRIATION OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

7.2 Reseller Indemnity. Reseller shall defend and/or settle at its expense, any claims, actions or proceedings against BEN and its Affiliates and its and their officers, directors, employees and contractors (the "**BEN Indemnified Parties**") to the extent arising out of or relating to (a) bodily injury or damage to tangible or real property, including death, caused by or arising out of any negligent act or omission of Reseller or any of its Affiliates or any of its or their officers, directors, employees, contractors or agents; (b) the provision, use or failure of any product or service provided by Reseller; (c) any representations or warranties made by Reseller in respect to the Services or any portions thereof beyond those authorized in this Agreement; (d) any infringement or misappropriation of any intellectual property or other rights by any Customer Data; or (e) any violation of any law or regulation by Reseller or any of its Affiliates or any of its or their officers, directors, employees, contractors or agents ("**BEN Claims**"), and Reseller shall pay all damages finally awarded by a court of competent jurisdiction to such third party against any of the BEN Indemnified Parties, or any settlement amounts agreed by Reseller in writing. The indemnification obligation of Reseller set forth in this Section 7.2 is subject to the conditions that, BEN shall notify Reseller promptly of any BEN Claims, permit Reseller to control the defense and settlement of such BEN Claims (provided that BEN may participate with counsel of its own choosing, at its own expense), and assist Reseller, at Reseller's expense, in defending or settling such BEN Claims. Reseller shall not be liable for any settlement amounts entered into by BEN without Reseller's prior written approval.

8 TERM AND TERMINATION

8.1 Term. This Agreement shall commence as of the Effective Date and shall continue in effect for an initial term of five (5) years (such initial term referred to in this Agreement as the "**Initial Term**"). For the avoidance of doubt, this Agreement and the Initial Term shall survive in the event a third party acquires or merges with BEN. Following the Initial Term of this Agreement, this Agreement shall be automatically renewed on the anniversary of the Effective Date for additional one (1) year renewal terms (any such subsequent renewal terms referred to in this Agreement as a "**Renewal Term**"), unless either party gives written notice of non-renewal to the other party at least six (6) months prior to the end of the Initial Term or any Renewal Term hereof. Collectively, the Initial Term and any subsequent Renewal Terms shall constitute the "**Term**". Notwithstanding Section 2.1 hereof, the exclusive nature of the appointment of Reseller under this Agreement shall terminate upon the end of the Initial Term, whereafter such Initial Term such appointment shall be on a non-exclusive basis.

8.2 Termination. This Agreement may be terminated as follows: (a) if Reseller fails to make any payment due hereunder within thirty (30) days after receiving written notice from BEN that such payment is delinquent, BEN may terminate this Agreement on written notice to Reseller at any time following the end of such period; (b) if either party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice of the breach, the non-breaching party may terminate this Agreement on written notice at any time following the end of such thirty (30) day period; and (c) if either party becomes insolvent (i.e., becomes unable to pay its debts in the ordinary course of business as they come due) or makes an assignment for the benefit of creditors, then the other party may terminate this Agreement immediately upon notice.

8.3 Survival. The following sections shall survive the termination or expiration of this Agreement for any reason: 1, 2.10, 2.11, 2.12, 2.16, 4, 5, 7, 8.3, 8.4, 8.5, 9, 10 and any payment obligations incurred prior to the expiration or termination of this Agreement.

8.4 Effect of Termination. Upon expiration or termination of this Agreement, Reseller shall cease all use of the Services, and shall promptly return all copies of the documentation for the Services to BEN or else destroy those copies and provide assurances (signed by an officer of Reseller) to BEN that it has done so.

8.5 Rights upon Termination. Termination is not an exclusive remedy and is in addition to other rights or remedies that may be available. Upon any termination for cause by Reseller, BEN shall refund Reseller any prepaid Fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by BEN, Reseller shall pay any unpaid Fees. In no event shall any expiration or termination relieve Reseller of the obligation to pay any Fees payable to BEN. Following termination, and for any Customers to whom Reseller has sold subscriptions for the Services during the Term, BEN will continue to provide Services for such Customers for the remainder of their then-current subscription period (as of the effective date of termination of expiration of this Agreement) subject to payment of the applicable Fees for such Customers and subject to Reseller's continued compliance with the terms and conditions of this Agreement, which shall continue in respect to such Customers. It is agreed between both the parties that once the Reseller has sold a subscription for the Services to a Customer during the Term with a duration longer than the Term (which shall require the written approval of BEN) and this Agreement terminates in accordance with its terms, the Services for any such Customer shall continue with both parties continuing to provide services to such Customer in the manner prescribed in this Agreement.

9 LIMITATION OF LIABILITY

9.1 WITH THE EXCEPTION OF A PARTY'S OBLIGATION TO PROVIDE INDEMNIFICATION UNDER THIS AGREEMENT AND EACH PARTY'S CONFIDENTIALITY OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY, OR ITS LICENSORS OR SUPPLIERS BY VIRTUE OF THIS AGREEMENT, HAVE ANY LIABILITY TO ANY OTHER PARTY FOR ANY LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INCIDENTAL, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE LIMITATIONS SET FORTH IN THIS SECTION 9 DO NOT APPLY TO ANY INFRINGEMENT OR MISAPPROPRIATION BY EITHER PARTY OR ITS CONTRACTORS OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS. IN NO EVENT SHALL BEN AUTO, ITS AFFILIATES OR ITS OR THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, LICENSORS OR SUPPLIERS BE LIABLE TO RESELLER FOR MORE THAN THE AMOUNT OF ANY ACTUAL DIRECT DAMAGES UP TO THE GREATER OF U.S. $100,000.00 (OR EQUIVALENT IN LOCAL CURRENCY) OR THE FEES FOR THE SERVICES THAT ARE THE SUBJECT OF THE CLAIM, REGARDLESS OF THE CAUSE AND WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE. THE PARTIES AGREE THAT THIS SECTION 9 REPRESENTS A REASONABLE ALLOCATION OF RISK.

10 GENERAL

10.1 Invoices. The terms, provisions or conditions of any purchase order or other business form or written authorization used by either party will have no effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement, regardless of any failure of the receiving party to object to those terms, provisions or conditions.

10.2 Marketing Activities. Following the execution of this Agreement, the parties may issue a joint press release highlighting the relationship contemplated by this Agreement. Notwithstanding the foregoing, neither party will publish a press announcement related to this Agreement without prior written consent of the other party.

10.3 Assignment. Neither party may assign any of its rights or delegate any of its obligations under this Agreement, whether by operation of law or otherwise, without the prior express written consent of the other party, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, BEN may assign this Agreement in connection with any merger or acquisition or sale of all or substantially all of BEN's or any of its Affiliates' assets or stock. Such assignment will not in any event relieve the assignor of any obligations that accrue under this Agreement prior to any such assignment. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns. Any attempted assignment in violation of this Section 10.3 shall be null and void.

10.4 For the Term of this Agreement, in the event Reseller or a party directly or indirectly controlling Reseller, proposes to enter into a sale or other transfer of a controlling interest in such entity, or a sale of all or substantially all of its assets (a "**Proposed Sale**") to a Qualified Purchaser (as defined below), in each case, pursuant to a transaction or series of related transactions, BEN shall have the right, but not the obligation, to purchase such controlling interest or such assets, as applicable, at the same purchase price and on substantially similar terms and conditions as the Proposed Sale (the "**Right of First Refusal**"). BEN shall have 30 business days after receipt of notice of the Proposed Sale (which such notice shall be promptly delivered by Reseller to BEN following receipt of a bona fide offer for such Proposed Seller) to elect to exercise the Right of First Refusal. For the Term of this Agreement, Reseller and each party directly or indirectly controlling Reseller shall be prohibited from consummating a Proposed Sale prior to Reseller achieving the Earnout as set forth above in Section 4.2, or with a person or entity that is not a Qualified Purchaser without the express written consent of BEN, which consent may be provided or withheld in its sole discretion. Any consummation of a Proposed Sale in contravention of this Agreement shall be void ab initio. For purposes of this Agreement, a "**Qualified Purchaser**" shall be any person or entity that is not engaged in the development, licensing, sale, use, provision or monetization of artificial intelligence applications in the Field.

10.5 **Waiver and Amendment.** No modification, amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party to be charged. No failure or delay by either party in exercising any right, power, or remedy under this Agreement, except as specifically provided herein, shall operate as a waiver of any such right, power or remedy.

10.6 **Choice of Law; Jurisdiction; Venue.** This Agreement shall be governed by the laws of the state of Texas, without regard to its conflict of law principles. The parties irrevocably agree to the exclusive jurisdiction of the state and Federal courts in Dallas County, Texas. No choice of laws rules of any jurisdiction shall apply to this Agreement. Each of the parties irrevocably waives the defense of an inconvenient forum to the maintenance of any such action or proceeding and any other substantive or procedural rights or remedies it may have with respect to the maintenance of any such action or proceeding in any such forum. The application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement is expressly excluded. The parties confirm that it is their wish that this Agreement as well as all other documents relating to this Agreement, including notices, be drawn up in English only.

10.7 **Compliance with Laws.** Each party shall comply with all applicable laws and regulations regarding the general conduct of business including without limitation all relevant anti-corruption and anti-bribery laws, including the United States *Foreign Corrupt Practices Act*. Reseller agrees to fully comply with all export, re-export and import restrictions and regulations of all agencies and/or authorities of any applicable countries.

10.8 **Notices.** All notices, demands or consents required or permitted under this Agreement shall be in writing and delivered to the addresses set forth above. Notice shall be considered delivered and effective on the earlier of actual receipt or one day following dispatch registered overnight carrier (such as FedEx or UPS). Notice shall be sent to the parties at the addresses set forth on the first page of this Agreement or at such other address as shall be specified by either party to the other in a notice in accordance with this Section 10.8.

10.9 **Independent Contractors.** The parties are independent contractors. This Agreement does not create a legal partnership (notwithstanding any use of the term "partner" by the parties, which if used is meant only to convey a spirit of cooperation between the parties), or a joint venture, agency, employee/employer relationship, or franchisee/franchisor relationship between the parties. Neither party shall have any right, power or authority to create any obligation or responsibility on behalf of the other.

10.10 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of this Agreement shall remain in full force and effect.

10.11 **Force Majeure.** Except for each party's obligations to pay money, neither party shall be deemed to be in breach of this Agreement for any failure or delay in performance caused by reasons beyond its reasonable control, including but not limited to acts of God, earthquakes, wars, pandemics, terrorism, communication failures, strikes or shortages of materials.

10.12 **Headings and References.** The headings and captions used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.

10.13 **Counterparts.** This Agreement may be executed in counterparts, both of which, when taken together, shall constitute a signed agreement binding upon the parties. Delivery of a signed counterpart of this Agreement by facsimile transmission, in paper copy by courier or regular

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mail or as an email attachment in PDF format shall constitute valid and sufficient delivery thereof.

10.14 BEN Affiliates. BEN may use one or more Affiliates to perform its obligations under this Agreement, provided that such use will not affect BEN's obligations hereunder.

10.15 Complete Understanding. This Agreement, including all Order Forms, Statements of Work and Schedules, constitutes the final, complete and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreement.

IN WITNESS WHEREOF, the authorized representatives of the parties hereby bind the parties by signing below:

Acknowledged and Agreed to:

AFG Companies, Inc.	**Brand Engagement Network Inc.**
Signature: DocuSigned by: 3F01CA52FF6C415	Signature: DocuSigned by: F9F55F973165433
Name: Wright Brewer	Name: Tyler Luck
Title: Authorized Signatory	Title: Authorized Signatory
Date: August 19, 2023	Date: August 19, 2023

SCHEDULE A

PROFESSIONAL SERVICES TERMS AND CONDITIONS

The following terms and conditions are incorporated into the Agreement. Capitalized words not defined in this Schedule shall have the meaning ascribed to such words in the Agreement.

BEN is willing to provide Professional Services (including the development of Deliverables) on a time and materials or fixed price basis according to the terms and conditions set forth in this Schedule A or such other form as the parties may agree in writing. The price to be paid by Reseller for Professional Services (including the development of Deliverables) shall be no less favorable than the price charged by BEN to any third parties. Such Professional Services may include: instruction and training on the use of BEN products and services; installation, configuration, maintenance and testing of BEN products and services; evaluation, design and implementation of system architectures; business and network planning; and custom software development.

1. **General.** All Professional Services to be performed and Deliverables to be developed by BEN at Reseller's request shall be described in a Statement of Work, in the form attached as Appendix A to this Schedule A. Upon execution by authorized representatives of each party, each Statement of Work shall become a part of the Agreement. Each Statement of Work will incorporate the terms and conditions of this Schedule A. In the event of a conflict between (a) the Statement of Work and (b) this Schedule A or the Agreement, this Schedule A or the Agreement, as the case may be, shall prevail.

2. **BEN's Obligations**. BEN shall perform Professional Services and develop Deliverables for Reseller as described in any Statements of Work agreed to by the parties. BEN shall perform such Professional Services and develop Deliverables in a reasonable, professional and workmanlike manner in keeping with industry standards and practices. BEN shall be entitled, in its sole discretion, to determine the method and means for performing the Professional Services and developing the Deliverables. Reseller acknowledges and agrees that BEN may retain the services of independent consultants ("**Subcontractors**") from time to time to perform, or to assist BEN in performing the Professional Services and developing the Deliverables under this Schedule A or a Statement of Work. BEN personnel or Subcontractors shall remain under the direction and control of BEN. BEN shall in the performance of any Professional Services and development of any Deliverables use reasonable efforts to comply with all Reseller procedures and rules which have been communicated to BEN in writing. BEN shall be responsible for developing the BEN core products that are used to provide the Services at no additional expense to Reseller. Any customizations to the BEN core products after the Parties have agreed to the core products shall be considered Professional Services.

3. **Reseller Obligations**. Reseller acknowledges and agrees that performance of Professional Services is heavily dependent upon information and responses to be provided by Reseller. Accordingly, in addition to any specific responsibilities set out in the SOW, Reseller shall: (i) provide the appropriate and necessary resources, and timely and accurate information and documentation, as reasonably required by BEN, to allow BEN to perform the Professional Services and develop the Deliverables; (ii) carry out reviews and respond to requests for approval and information on a timely basis; (iii) ensure that BEN has available to it, the personnel familiar with Reseller's requirements and with the expertise necessary to permit BEN to undertake and complete the Professional Services; and (iv) make available to BEN all equipment, material, information, data, network access and/or facilities that BEN may reasonably require to carry out its obligations. Reseller acknowledges that any delay on its part in the performance of its obligations may have an impact on BEN's performance of its activities under this Agreement or under any Statement of Work, and BEN shall not be liable for any delay to the extent caused by Reseller's failure to fulfill any of its requirements under the Agreement, this Schedule A and/or any SOW. If the Professional Services are performed on Reseller premises or if BEN needs to attend at Reseller premises for the development of the Deliverables, Reseller shall provide to BEN such workspace, computers, equipment and software as is reasonably required by BEN for the performance of the Professional Services and the development of the Deliverables. Reseller shall be responsible for assisting BEN in the development of BEN core products that are used to provide the Services at its own expense. Any customizations to the BEN core products after the parties have agreed to the original core products shall be considered Professional Services, and Reseller shall not charge BEN for any such Professional Services. Reseller shall use its reasonable best efforts to work with BEN to develop BEN core products.

Reseller shall designate a Project Management Contact for the purposes of communication with BEN. The Project Management Contact shall be the primary point of contact for Reseller with BEN for matters relating to the provision of Professional Services and development of Deliverables.

4. **Price and Payment**. Reseller shall pay BEN the fees set forth in the Statement of Work either on a time and materials basis at BEN's then-current price, or on a fixed price per project basis to be negotiated between the parties and set forth in the applicable SOW. Reseller shall reimburse BEN for all reasonable out of pocket expenses (including travel, lodging and related expenses) incurred by BEN in the performance of any Professional Services or development of any Deliverables, provided that such expenses are approved in advance in writing by Reseller. The fees for Professional Services and development of Deliverables shall exclude all applicable federal, state, provincial, value-added, goods and services, harmonized and local taxes (other than taxes on BEN's net income).

Unless otherwise specified in the Statement of Work, BEN shall invoice Reseller for fees for Professional Services and development of Deliverables provided pursuant to this Agreement or a Statement of Work on a monthly basis. All such fees shall be paid within thirty (30) days of the date of the invoice.

5. **Term and Termination**. This Schedule A shall remain in effect only during the Term of the Agreement. Unless provided otherwise in a Statement of Work, Reseller may terminate a Statement of Work without cause upon thirty (30) days prior written notice to BEN. Unless provided otherwise in a Statement of Work, if Reseller terminates a Statement of Work for convenience, Reseller shall pay BEN the full fee for any Professional Services performed (including all other costs for which BEN has the right to reimbursement) up to the effective date of termination of such Statement of Work, provided that if the fees for any Deliverables are based on identified milestones being achieved by BEN, Reseller shall pay BEN the pro-rated fee for the next scheduled milestone with such pro-rated fee to be determined based on the percentage of time between the commencement of work on such milestone and the effective date of termination. For greater certainty, if the time from the commencement of work on the next milestone to the scheduled achievement date for that milestone is three (3) months, and if the effective date of termination occurs at the two (2) month point in such timeframe, then Reseller shall pay BEN two-thirds of the fee for such milestone.

Each party shall be entitled to immediately terminate a Statement of Work for cause in the event of: (i) the material breach by the other party of its obligations under this Schedule A or a Statement of Work, provided that such material breach is notified to such party and is not cured within thirty (30) days of the date of such notice, (ii) the filing of a bankruptcy petition by or against a party, the filing of an assignment for the benefit of creditors, the appointment of a receiver or trustee, or (iii) the assignment or attempt to assign the Agreement to a third party (except as permitted in the Agreement). In the event of termination for cause, the non-defaulting party may terminate this Schedule A and any Statements of Work hereunder. The non-defaulting party's right to terminate shall be in addition to any other rights that it may have in law or in equity.

6. **Intellectual Property Rights**. Except as set forth in the Agreement or otherwise set forth in the relevant Statement of Work, BEN shall own all right, title and interest and all intellectual property rights to any Deliverables created by BEN pursuant to this Schedule A or any Statement of Work hereunder. BEN shall retain all right, title and interest and all intellectual property rights to any and all BEN proprietary information and BEN software (including, without limitation, any modifications to the Services). Subject to payment of the applicable fees set forth in the Statement of Work, BEN grants to Reseller a non-exclusive, non-transferable (except as provided in the Agreement) license to use the Deliverables created pursuant to this Schedule A or any Statement of Work during the term and for the purposes described in the accompanying Statement of Work.

7. **Indemnification**. Each party shall indemnify and defend the other party against any claims and costs awarded by a court of competent jurisdiction (including reasonable attorney's fees) arising out of or relating to the other party's negligence or intentional misconduct where actions result in death or bodily injury to any person or damage to tangible or real property, provided that: (a) the indemnified party gives the indemnifying party prompt notice in writing of each claim received by the indemnified party, (b) the indemnified party gives the indemnifying party the right to control and direct the investigation, defense and settlement of each claim, and (c) the indemnified party has not compromised or settled the claim.

8. **Non-Solicitation**. Reseller shall not enter into a contract for or of service with an employee of BEN who has been involved with, directly or indirectly, any of the Professional Services or development of any Deliverables hereunder within twelve (12) months of such employee's last involvement with such Professional Services or Deliverables. Reseller shall be permitted to make generalized employment searches, by advertisements or by engaging firms to conduct searches which are not focused on the employees of BEN.

Appendix A
Form of Statement of Work

The following is a Statement of Work and Price Estimate for______________________.

PROJECT TITLE
PROJECT DESCRIPTION
WORK PLAN SUMMARY
    Professional Services Overview
    Scope of Work and Deliverables
PROJECT PURPOSE
DELIVERABLES
DELIVERABLE SPECIFICATIONS
PROJECT ASSUMPTIONS
PROFESSIONAL SERVICES SPECIFICATIONS

    Milestones

    Project Management Contact
PRICE AND PAYMENT
    Estimated Price
PROJECT TERM

IN WITNESS WHEREOF, the authorized representatives of the parties hereby bind the parties by signing below:

Acknowledged and Agreed to:

AFG Companies, Inc.	**Brand Engagement Network, Inc.**
Signature	Signature
Name	Name
Title	Title
Date	Date

SCHEDULE B

EARNOUT

Subject to the terms and conditions of this Schedule B, and only upon and at closing of the Merger, BEN shall cause DHCA to issue to Reseller a non-transferrable, unassignable warrant (the "***Earnout Warrant***") with the following terms:

(a) the Earnout Warrant shall entitle Reseller to purchase up to 3,750,000 shares of DHCA common stock (the "***Warrant Shares***"), divided into 11 tranches as set forth in the following table (the "***Warrant Tranches***"), at a strike price of $10.00 per share. Each Warrant Tranche shall become exercisable if the amount actually paid by Reseller to BEN under this Agreement during an annual period meets or exceeds the corresponding threshold set forth in the following table (the "***Earnout Threshold***"). The first annual period shall begin on the Effective Date. Each annual period thereafter shall start on an anniversary of the Effective Date. When Reseller satisfies an Earnout Threshold, Reseller shall have three (3) years from the date of the Board determination described below, to exercise the corresponding Warrant Tranche shares.

Warrant Tranche	Earnout Threshold	Warrant Shares on Exercise
A	$18,000,000	190,120
B	$21,000,000	211,318
C	$24,00,0000	234,888
D	$27,000,000	261,086
E	$30,000,000	290,206
F	$33,000,000	322,573
G	$36,000,000	358,551
H	$39,000,000	398,542
I	$42,000,000	442,993
J	$45,000,000	492,402
K	$48,000,000	547,321

Upon the achievement of an Earnout Threshold for the first time, on the day the Board (as defined below) has determined the Earnout Threshold has been achieved (as further described below) for a particular Warrant Tranche, then the corresponding Warrant Tranche shall become exercisable for a three-year period (any three year period, an "***Exercise Period***"). Any Warrant Tranche that is not exercised, in whole or in part, within the corresponding Exercise Period shall expire and Reseller shall no longer be permitted to exercise such Warrant Tranche.

For the avoidance of doubt and for illustrative purposes only, in the event Reseller pays BEN $30,000,000 in the first annual period, $30,000,000 in the second annual period, and $33,000,000 in the third annual period, then at the end of the first annual period, Reseller shall be entitled to exercise Warrant Tranches A-E to receive aggregate Warrant Shares on exercise of up to 1,187,618 Warrant Shares, until the third anniversary of the date that the Board determines the Earnout Thresholds for Warrant Tranches A-E were met. At the end of the second annual period, Reseller shall not become eligible to exercise any additional Warrant Tranches. At the end of the third annual period Reseller shall become eligible to exercise Warrant Tranche F to receive 322,573 Warrant Shares until the third anniversary of the date that the Board determines the Earnout Threshold for Warrant Tranche F was met.

(b) In the event that any Earnout Threshold is not achieved prior to the earlier of termination of the Agreement or the end of the Initial Term (the "***Earnout Expiration Date***"), then the corresponding Warrant Tranches shall expire, shall not become exercisable, and all liabilities and obligations hereunder with respect to such Warrant Tranche shall immediately terminate without any further action

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of the parties. For the avoidance of doubt, the Earnout Expiration Date shall not impact the Exercise Period for Warrant Tranches whose Earnout Threshold was previously met.

(c) If applicable, the Warrant Shares issuable upon the exercise, and if appropriate exercise price, of each unexpired Warrant Tranche, to the extent such Warrant Tranche has not yet been exercised, shall be equitably adjusted for stock splits, stock dividends and stock combinations and recapitalizations affecting the Warrant Shares.

(d) Whenever any provision hereunder provides that the board of directors of DHCA (the "***Board***") is permitted or required to make a decision in its "sole discretion" or "discretion", any such decision shall be made by a majority of the "Independent Directors" (as determined under applicable stock exchange and SEC rules and regulations) then serving on the Board. For the avoidance of doubt, and notwithstanding anything to the contrary set forth hereunder, the Board will have sole discretion in determining whether an Earnout Threshold has been achieved.

(e) In the event that, prior to the Earnout Expiration Date, (i) BEN (or DHCA) effects a sale (directly or indirectly) of all or substantially all of the assets of BEN to a third party, or (ii) BEN (or DHCA) effects a merger or consolidation or other transaction involving BEN, in each case which results in BEN (or DHCA) being controlled, directly or indirectly, by a third party following the closing of such transaction (a "***Triggering Transaction***"), then, in each such case, BEN (or DHCA) shall cause the third party acquirer or successor in such Triggering Transaction to expressly assume all of the obligations under this Agreement with respect to the Earnout Warrant.

(f) The contractual right of Reseller to exercise the Earnout Warrant upon the achievement of the Target Amounts (i) is solely a contractual right and is not a security for purposes of any federal or state securities laws (and shall confer upon Reseller only the rights of a general creditor under applicable state law), (ii) does not give Reseller any dividend or distribution rights, voting rights, liquidation rights, preemptive rights or other rights common to BEN equityholders and (iii) is not redeemable.

(g) Notwithstanding anything to the contrary contained herein, no fraction of a Warrant Share will be issued, and each person who would otherwise be entitled to a fraction of a Warrant Share (after aggregating all fractional shares of Warrant Shares that otherwise would be received by such person in connection with the exercise of the Earnout Warrant) shall instead have the number of Warrant Shares issued to such person upon exercise of the Earnout Warrant rounded down to the nearest whole Warrant Share.

DocuSign

Certificate Of Completion

Envelope Id: 1333B8FAF3BF4360999F774FA811F795

Status: Completed

Subject: Please DocuSign: BEN - AFG Exclusive Reseller Agreement (SaaS) copy.docx

Source Envelope:

Document Pages: 18

Signatures: 2

Envelope Originator:

Certificate Pages: 5

Initials: 0

Logan Weissler

AutoNav: Enabled

2323 Victory Ave., Ste. 700

EnvelopeId Stamping: Enabled

Dallas, TX 75219

Time Zone: (UTC-06:00) Central Time (US & Canada)

Logan.Weissler@haynesboone.com

IP Address: 174.246.131.210

Record Tracking

Status: Original 8/19/2023 7:25:25 PM	Holder: Logan Weissler Logan.Weissler@haynesboone.com	Location: DocuSign

Signer Events

Signer Events	Signature	Timestamp
Tyler Luck Tyler@beninc.ai Security Level: Email, Account Authentication (None)	DocuSigned by: F9F55F973165433... Signature Adoption: Uploaded Signature Image Using IP Address: 35.150.76.13	Sent: 8/19/2023 7:29:01 PM Viewed: 8/21/2023 9:28:08 AM Signed: 8/21/2023 9:32:20 AM

Electronic Record and Signature Disclosure:
Accepted: 8/21/2023 9:28:08 AM
ID: 02421ce5-d867-43c3-81ee-ef3907621fa2

Wright Brewer wbrewer@afgusa.net CEO, President AFG Companies, Inc. Security Level: Email, Account Authentication (None)	DocuSigned by: 3F01CA52FF6C415... Signature Adoption: Uploaded Signature Image Using IP Address: 174.246.139.246 Signed using mobile	Sent: 8/19/2023 7:29:02 PM Viewed: 8/19/2023 7:52:23 PM Signed: 8/19/2023 7:53:04 PM

Electronic Record and Signature Disclosure:
Accepted: 8/9/2023 5:52:16 AM
ID: 0c87c5f5-6ff8-4ff9-8198-7e719a769629

In Person Signer Events	Signature	Timestamp

Editor Delivery Events	Status	Timestamp

Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp

Certified Delivery Events	Status	Timestamp

Carbon Copy Events	Status	Timestamp
Logan Weissler logan.weissler@haynesboone.com Security Level: Email, Account Authentication (None)	COPIED	Sent: 8/19/2023 7:29:01 PM Resent: 8/21/2023 9:32:23 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Carbon Copy Events	Status	Timestamp
Roger Crabb Roger.Crabb@solidcounsel.com Security Level: Email, Account Authentication (None) **Electronic Record and Signature Disclosure:** Not Offered via DocuSign	COPIED	Sent: 8/19/2023 7:29:01 PM Viewed: 8/19/2023 7:38:04 PM

Witness Events	Signature	Timestamp

Notary Events	Signature	Timestamp

Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	8/19/2023 7:29:02 PM
Certified Delivered	Security Checked	8/19/2023 7:52:23 PM
Signing Complete	Security Checked	8/19/2023 7:53:04 PM
Completed	Security Checked	8/21/2023 9:32:20 AM

Payment Events	Status	Timestamps

Electronic Record and Signature Disclosure

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

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ii. send us an e-mail to thomas.wisinski@haynesboone.com and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	•Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

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- Until or unless I notify Haynes and Boone, LLP as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by Haynes and Boone, LLP during the course of my relationship with you.

EXHIBIT "C"

finance insurance

Former exec: CareGard bungled data breach

F&I company says it had no obligation to report beyond FBI

John Huetter
john.huetter@crain.com

A finance and insurance provider was unprepared for a ransomware attack last summer and for months failed to alert automaker partners and agents selling its coverage to dealerships, a whistleblower alleges.

Travis Gates was president of AFG Technologies, which developed software for CareGard Warranty Services Inc., for more than a decade before resigning April 5. He said he worked to rebuild CareGard's systems after an attack was discovered in August. A hacker or hackers allegedly encrypted 105,910 files from CareGard, a finance and insurance products provider that Gates estimated had ties to at least 1,000 dealerships, and threatened to publish information they claimed they downloaded.

Gates: Partners not alerted

Gates provided Automotive News with multiple internal emails from AFG Cos., the parent of AFG Technologies and CareGard, which described the breach and the company's response. Gates said that after his resignation, he alerted attorneys general in 48 states and CareGard customers including Nissan, Southeast Toyota Distributors and Mercedes-Benz about the breach.

"I don't want to be in this position," Gates told Automotive News. "I definitely don't have any offense against anybody there."

In a statement shared with Automotive News last week, CareGard said it was told Aug. 13 by cybersecurity information technology firm Integris that "our anti-virus caught a ransomware attack" and acknowledged files had been encrypted. But it said its IT team and cybersecurity firm Booz Allen Hamilton "extensively reviewed the encrypted files and did not identify any access to personal information protected under state law for employees, customers, or any other groups of individuals."

CareGard said Booz Allen Hamilton continues to monitor the Internet for leaks but found no "mention of AFG Companies or any of its subsidiaries to date."

GETTY

Extent may be unknown

Gates alleges a CareGard employee accidentally wiped out internal access logs for the files after the incident and that AFG Cos. rejected Booz Allen Hamilton's recommendation to contact the attacker. Thus, it has no idea if any other records were compromised besides the encrypted files, according to Gates. He said contractual relationships and the Federal Trade Commission's Safeguards Rule would dictate alerting business partners.

Neither current nor former versions of the Safeguards Rule discuss disclosing a breach to potentially affected parties. However, the FTC website advises businesses that suffer a breach to have a plan for sharing information with "all affected audiences — employees, customers, investors, business partners, and other stakeholders. Don't make misleading statements about the breach. And don't withhold key details that might help consumers protect themselves and their information. Also, don't publicly share information that might put consumers at further risk."

According to Gates, at the time of his resignation, CareGard had not contacted the FBI, state regulators, its clients or the F&I agents selling products to dealerships. Potentially affected companies would include Southeast Toyota, Nissan and Mercedes-Benz, he said.

CareGard said it reported the attack to the FBI following the recommendation of law firm Mullen Coughlin. In a follow-up statement, it said the report was made Aug. 17. The FBI declined to comment on the timing.

"AFG/CareGard was advised it had no further reporting obligations," the company said in its original statement. The company had not responded to a request for clarification on whether business partners ultimately were informed, and if so, when.

CareGard said it replaced hardware and "fully engaged" Integris for cybersecurity following the breach. Gates agreed CareGard's cybersecurity is now robust.

A breach and threat

Gates said CareGard was alerted of the breach Aug. 13 — two months after auto dealerships and other federally classified "financial institutions" were to be in compliance with new detailed Safeguards Rule requirements originally approved by the FTC in 2021. Gates argues CareGard should have held itself to the same standard so as not to leave its partners' data exposed.

The update also added a requirement that financial institutions periodically check the security and risk of service providers such as CareGard.

On Aug. 15, a sender known as "alphv.alphv" emailed Wright Brewer, CEO of AFG Cos. and CareGard, and announced it had breached the CareGard system and threatened to release data, according to an email Gates provided to Automotive News.

Gates alleged the attacker was affiliated with Blackcat, which the Justice Department in December said over the prior year and a half had become "the second most prolific ransomware-as-a-service variant in the world based on the hundreds of millions of dollars in ransoms paid by victims around the world." Blackcat also

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Ill. court blocks floorplan collection

The dealers allege the bank took part in fraud scheme

Eric Freedman
autonews@crain.com

A floorplan lender remains blocked from collecting about $2.8 million from an Illinois dealership and its owners in a dispute involving allegations the bank participated in a fraud scheme by store employees behind the dealers' backs.

The Appellate Court of Illinois refused to lift a preliminary injunction preventing the Bank of Herrin from foreclosing on collateral from Ward Chrysler Center in Carbondale and principals Ronald and Mark Ward.

The bank was the floorplan lender for the Wards' Chrysler store and their Chevrolet store in Metropolis, Ill., from 2016 to 2018, according to the unanimous decision written by Justice Thomas Welch. In 2017, employees at the Chrysler store started double-booking loans — requesting multiple loans from the Bank of Herrin for the same vehicles, the decision said.

"These double-booked loans were part of a scheme in which the employees sold new vehicles at a reduced rate — one half of the price — in exchange for payments under the table," it said.

To cover the losses, the employees asked the bank for advances although the store's business loan agreement allowed only the Wards to authorize advances, it said. "The employees used this money to hide the losses that the dealerships were taking on the discounted sales," the decision said.

By the time the Wards discovered the alleged scheme in 2018, they owed the bank about $2.8 million for the double-booked loans, the court said. As part of a 2020 loan refinancing, Ward Chrysler signed a $2,573,874 promissory note the Wards personally guaranteed, the

see LAWSUIT, Page 16

F&I DATA

Average interest rate increases to 11.7% for used-vehicle loans

Car shoppers in the 1st quarter of 2024 financed an average of $27,774 on used vehicles, down $836, or 2.9%, compared with a year earlier, according to Edmunds.

But used-vehicle monthly payments held steady, down $5 to $546, as the average interest rate on used models rose to 11.7%.

The average new-vehicle interest rate was 7.1% during the quarter.

Edmunds said its analysts encouraged consumers to watch incentives on certified pre-owned vehicles "since used-vehicle interest rates are particularly high."

	Q1 2024	Q4 2023	Q1 2023
Average used-vehicle loan term (months)	69.7	69.9	70
Average used-vehicle monthly payment	$546	$561	$551
Average amount financed on used vehicles	$27,774	$28,643	$28,610
Average used-vehicle interest rate	11.7%	11.6%	11.1%
Average used-vehicle down payment	$4,133	$4,122	$3,999

Source: Edmunds

Gates 000047

CAREGARD

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is known as ALPHV, the agency said.

Gates said the stressful work environment following the breach took its toll, and he resigned for health reasons. But he said he also felt remaining with AFG would represent condoning secrecy about the incident.

"I feel like I have a duty to let people know," he said. "In my mind, this is a deliberate cover-up to try to get past not reporting."

Safeguards Rule

The Safeguards Rule has required since 2003 that dealerships and other "financial institutions" protect customer information. In 2021, the FTC demanded businesses enact specific practices by Dec. 9, 2022, to support that protection; it later extended the compliance deadline to June 9, 2023.

The Safeguards Rule before its current iteration already required financial institutions to use "service providers that are capable of maintaining appropriate safeguards for the customer information at issue" and contractually compel those businesses "to implement and maintain such safeguards." The FTC has defined service providers broadly, describing them as any vendor that "receives, maintains, processes, or otherwise is permitted access to customer information."

The updated rule adds a requirement that dealerships and financial institutions periodically review those vendors "based on the risk they present and the continued adequacy of their safeguards."

Gates alleged CareGard wasn't ready for either the FTC deadline or the breach. Though the auto retail industry faced the FTC's June 9 deadline, Southeast Toyota allowed CareGard a "grace period" of extra months to meet the privacy obligations the distributor demanded, according to Gates.

Southeast Toyota said it had reached out to CareGard after being contacted for this report by Automotive News and was told none of its data was affected.

"SET is not aware of any data incident CareGard experienced that impacted SET's data or would have required CareGard to provide notice to SET," Southeast Toyota said in a statement.

Southeast Toyota provided no response to an inquiry about Gates' account of an extended deadline.

Gates also alleged AFG over time had cut Integris' IT role "down to just monitoring." At the time of the breach, CareGard's IT had been delegated to a claims manager who was not a technology specialist, he said.

Integris "found the ransomware and alerted CareGard, but they couldn't do anything about it," Gates said. CareGard said in its statement that Integris "promptly restricted access to our network immediately" upon alerting CareGard on Aug. 13.

AFG and CareGard had no incident response plan when the breach occurred, Gates alleges.

"For years prior to this incident, CareGard has maintained both internal IT personnel as well as third-party cybersecurity service company support," CareGard said in its follow-up statement.

'Reporting requirements'

Booz Allen Hamilton, which was assigned by an AFG insurer, asked AFG to save the firewall and virtual private network logs, according to Gates. However, the claims manager had reset the firewall and server following the breach — which inadvertently erased access records and details on which files were compromised, Gates said. That outcome wasn't intentional; the manager simply didn't know any better, he said. The manager did not respond to messages from Automotive News seeking comment.

On Aug. 17, CareGard CFO Amanda Tettleton told Brewer, Gates and others that 105,910 files had been encrypted and provided a summary of their contents, according to an email provided by Gates. She did not identify which third-party companies and customers were affected, but her assessment did mention hundreds of QuickBooks records and claims files.

Safeguards Rule updates

The Federal Trade Commission's Safeguards Rule is meant to protect consumer information used by auto dealerships and other "financial institutions." Here are 9 key provisions of the updated Safeguards Rule that took effect June 9. The provisions require the institutions to:

1. Select a qualified person (either an internal expert or expert contractor supervised internally) to oversee security.
2. Have that expert report to a board or a senior officer.
3. Develop an information security risk assessment.
4. Create a plan to control those risks.
5. Have a plan for responding to a "security event" such as a breach.
6. Regularly monitor or test the system.
7. Train staff.
8. Use service providers that can secure information, contractually mandate they do so and periodically review their risk and security precautions.
9. Adapt the security program as needed so it stays current.

Upcoming addition: Starting May 13, businesses that find an unauthorized party has acquired unencrypted information on at least 500 consumers must notify the FTC no later than 30 days after discovery of the access.

Later that day, AFG consultant Shawn Lucas wrote to Brewer, Tettleton, CareGard Chief Revenue Officer Keith Cooper and Gates: "There are several reporting requirements with respect to data breaches and ransomware," according to another email provided by Gates. Lucas wrote that required notifications included the local FBI branch; any "employees, contractors, agents, customers and/or dealers" whose information was exposed; and "Dealers, Nissan, SET, Genuine Lifetime, MBUSA, etc.," because "if information that exposes their customers was breached there is a requirement in most cases."

In October, the FTC would announce a Safeguards Rule amendment demanding financial institutions tell the agency about any breaches where the threat actor acquired unencrypted information on at least 500 customers. That mandate takes effect May 13.

On Aug. 21 of last year, Tettleton called a meeting to discuss whether AFG should communicate with Blackcat, according to another email provided by Gates. According to Gates, this communication — which he said could have discovered the extent of the breach — never happened, despite being recommended by Booz Allen Hamilton.

CareGard said it "replaced all computers, firewalls, network switches, Wi-Fi routers, and anything else that was network related" in response to the breach.

"We also fully engaged Integris to extend our coverage and harden our systems and security to further ensure this will not happen again," it said in the statement. "Since then, Integris has remained fully engaged, and we work closely with them to ensure we are doing everything possible to eliminate future threats."

Integris told Automotive News it was looking into a request for clarification on its role in the breach response but did not respond by press time.

A final report?

Booz Allen Hamilton ended its investigation Sept. 18, according to Gates. On Oct. 30, Lucas asked whether Booz Allen Hamilton had provided a final report, according to another email Gates provided.

"Did they determine how many customers were affected?" Lucas wrote, and said he was thinking about "regulatory compliance and SOC 2 final audit prep.," in reference to Service Organization Controls 2 auditing, which looks at a company's security processes.

"I am not aware and have not seen a final report from Booz Allen," Gates wrote in the packet of documents he provided Automotive News. "I find this to be extremely troubling."

Brewer, in an Oct. 31 email provided by Gates, told Tettleton to send him the report from Booz Allen Hamilton, but in another communique that day told Lucas: "We will not be receiving a formal legal report. This is not customary for obvious [reasons]. Who said we needed it. Why are you asking?"

As of press time, Booz Allen Hamilton had not responded to a request from Automotive News for clarification on its role in the breach response and the existence of a final report.

CareGard said it issued its statement in response to "recent email(s) received by some CareGard Dealers, Agents, and National Accounts concerning an alleged 'ransomware data breach.'" It was unclear which other parties besides Automotive News, if any, had received the statement.

"There are a lot of deals, business deals and a lot of clients that are relying on the premonition that CareGard and ... subsidiaries are handling their data properly, and have made commitments to CareGard, and CareGard has never let them know," Gates said. "They just act like nothing ever happened."

LAWSUIT

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court said.

The Wards and the Chrysler dealership sued the Bank of Herrin for breach of contract, negligent misrepresentation, racketeering and consumer fraud violations. They alleged in the suit the bank knew about the scheme by June 2018 "and knowingly issued loans for which it had no collateral. Instead of revealing this information to the Wards, the bank made a conscious and deliberate decision to join the scheme."

The suit alleges the bank backdated the double-booked loans and failed to disclose to the Wards certain vehicles weren't physically present on the store's lots during inspections. In addition, it said the bank was "well aware" it was approving loans for up to 75 vehicles at a time but didn't tell that to the Wards during negotiations on new loans and guarantees.

According to an affidavit by Mark Ward, he discovered a problem with the inventory in December 2018 "when he was informed about missing cars from the used car lots, cars for which they had borrowed money to purchase but were no longer present to sell to pay back the borrowed money."

The Appellate Court's March 20 ruling upheld a lower court order barring the bank from seizing collateral while the litigation continues. The court accepted the Wards' argument that allowing the seizure of assets would cause them "irreparable harm." A spokesperson for the dealership's law firm declined to comment on the case. The bank's lawyer didn't respond to multiple messages from Automotive News.

EXHIBIT "D"

INTERIM CEO
MARCH 1, 2022
CONSULTING AGREEMENT

This Consulting Agreement (the "Agreement") is entered into the date set forth on the signature page by and between CareGard Warranty Services Inc., a Texas Corporation on behalf of itself and all of its affiliates ("CareGard" or "Company") having its principal place of business 1900 Champagne Boulevard, Grapevine, Texas 76051; Due Figlie LLC a Wyoming Limited Liability Company with its address 125 S King Street 2A, Jackson, Wyoming 83001-1045 ("Due Figlie") and Shawn Lucas, the Interim CEO of 1Basket currently a division of AFG Companies ("Interim CEO"). The parties agree as follows:

1. **Services.** The Interim CEO has completed a wide array of successful business engagements affording him the laser vision needed to cross industries, tackle multiple challenges, and positively impact CareGard's business quickly. The Interim CEO is accountable for results and without the cost to Company for benefit packages, long term contracts, severance, and other perks associated with a full time hire. Instead the focus is on solving challenges immediately, so CareGard can realize a positive financial impact. The Interim CEO will act as a tactical, strategic help, advisor and mentor to the Company and provide advice and assistance to the Company related to the Development, Marketing and Customer Support of 1Basket, Tronix and CareGard. Interim CEO shall assist Company in seeking and providing corporate guidance, including, but not limited to, corporate advice, strategy, general mentoring and advice on the 1Basket, Tronix and CareGard products. Interim CEO will work directly with Wright Brewer regarding 1Basket, CareGard and Tronix to provide the following:

- a.) Finalize the 1Basket App features with Ismael and Travis, content and function (technical documentation).
- b.) Finalize wire frames of 1Basket for product launch no later than March 15, 2022 so that a product launch of May 31, 2022 is achievable.
- c.) Finalize Agreement, Integration and launch with South East Toyota and CareGard including 1Basket for Lifetime Limited Warranty of batteries and CV Axles.
- d.) Introduce Company to Cox Automotive, CarNow and other relationships at NADA 2022 in Las Vegas for potential partnerships.
- e.) Introduce new OE's (original equipment manufacturer), distributors and dealers to CareGard, 1Basket and Tronix.
- f.) Finalize legal structure of entities with Wright as quickly as possible.
- g.) Finalize by March 10, 2022 – Sales, Marketing, Customer Support organization chart, processes and work flow to streamline company performance and review in Las Vegas at NADA.
- h.) Finalize security compliance of AFG Companies, CareGard and 1Basket with OE's and major automotive groups.

2. **Compensation**. Interim CEO, shall receive a total of Sixty Thousand Dollars ($60,000.00) payable as follows:

a. On or before March 1, 2022, the amount of Twenty Thousand Dollars ($20,000.00).
b. On or before April 1, 2022, the amount of Twenty Thousand Dollars ($20,000.00).
c. On or before May 2, 2022, the amount of Twenty Thousand Dollars ($20,000.00)

Due Figlie or assigns will also receive an "Agent Fee" up to $1.00 for all new business brought to CareGard Warranty Services. This fee will be negotiated between Wright Brewer, Company CEO, and Shawn Lucas, Interim CEO on a case by case basis, as product margins warrant.

Company and Due Figlie agree to negotiate in good faith both founder shares of Tronix/1Basket and milestone equity compensation up to 20%, as agreed to in writing by Wright Brewer and Shawn Lucas.

All payments due and payable will be sent wire or ACH to the bank account directed by Interim CEO.

3. **Term and Termination**. The term of this Agreement shall commence on March 1, 2022 and terminate on May 31, 2022, without further obligation or liability by either Party. However, the obligations of paragraphs 5, 7 and 8 below shall survive termination of this Agreement.

a) Company and Interim CEO will work on an employment agreement for Interim CEO to become the permanent CEO of 1Basket by June 1, 2022 should both Parties mutually agree on the terms including the equity and compensation plan.

b) Interim CEO will fly to Dallas Texas as needed to meet with the AFG development team and CareGard marketing team. Interim CEO will listen and learn how the AFG development team currently conducts business. Company will reimburse Interim CEO for reasonable Accommodations (Hotel, Airbnb etc.), Transportation (Rental Car, UBER etc..) Airfare, and meals from November 2021 through May 31, 2022. Company will also reimburse Interim CEO for all reasonable expenses to attend the NADA in Las Vegas March 10-14, 2022.

4. **Interim CEO**. Interim CEO's relationship with the Company will be that of an independent contractor and not that of an employee. Interim CEO will not be eligible for any employee benefits, nor will the Company make deductions from payments made to Interim CEO for employment or income taxes, all of which will be Interim CEO's responsibility. Interim CEO will have no authority to enter into contracts that bind the Company or create obligations on the part of the Company without the prior written authorization of Wright Brewer which can be in the form of email or text message.

5. **Nondisclosure of Confidential Information.**

a. **Agreement Not to Disclose**. Interim CEO agrees not to disclose or use, in any manner, any Confidential Information (as defined below) disclosed to Interim CEO by the Company for Interim CEO's own use or for any purpose other than to carry out discussions concerning, and the undertaking of, the Services. Interim CEO agrees to take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the Company in order to prevent it from falling into the public domain or the possession of persons other than agents of the Company or persons to whom the Company consents to such disclosure. Upon request by the

Company, any materials or documents that have been furnished by the Company to Interim CEO in any manner in connection with the Services shall be promptly returned by Interim CEO to the Company.

b. **Definition of Confidential Information**. "Confidential Information" means any information, technical data or know-how (whether disclosed before or after the date of this Agreement), including, but not limited to, information relating to business and product or service plans, financial projections, customer lists, business forecasts, sales and merchandising, human resources, patents, patent applications, computer object or source code, research, inventions, processes, designs, drawings, engineering, marketing or finance to be confidential or proprietary or which information would, under the circumstances, appear to a reasonable person to be confidential or proprietary. Confidential Information does not include information, technical data or know-how that: (i) is in the possession of Interim CEO at the time of disclosure, is currently known by Interim CEO through industry experience or knowledge obtained by Interim CEO or shown by Interim CEO's files and records immediately prior to the time of disclosure; or (ii) becomes part of the public knowledge or literature, not as a direct or indirect result of any improper inaction or action of Interim CEO. Notwithstanding the foregoing, Interim CEO may disclose Confidential Information with the prior written approval of the Company or pursuant to the order or requirement of a court, administrative agency or other governmental body.

6. **No Rights Granted**. Nothing in this Agreement shall be construed as granting any rights under any patent, copyright or other intellectual property rights of the Company, nor shall this Agreement grant Interim CEO any rights in or to the Company's Confidential Information, except the limited right to use the Confidential Information in connection with the Services.

7. **Assignment of Intellectual Property**. To the extent that Interim CEO jointly or solely conceives, develops or reduces to practice any new inventions, original works of authorship, trademarks, service marks, trade dress, developments, concepts, know-how, improvements or trade secrets, whether or not patentable or registrable under copyright or similar laws or other intellectual property which would be deemed to be Confidential Information of the Company (collectively, "Intellectual Property") which clearly relates to the Company's business or technology and has been created by the Interim CEO solely or jointly in the course of the performance of Services relating to the Company, Interim CEO hereby acknowledges that it is "work made for hire" for the benefit of the Company and hereby assigns all rights, titles and interest to such Intellectual Property to the Company.

8. **Duty to Assist**. As requested by the Company and only with respect to Intellectual Property created by Interim CEO for the Company as provided in paragraph 7 above, Interim CEO shall take all steps reasonably necessary to assist the Company in perfecting, obtaining and enforcing in its own name any such Intellectual Property right.

9. **No Conflicts**. Interim CEO represents that Interim CEO's compliance with the terms of this Agreement and provision of Services hereunder will not violate any duty which Interim CEO may have to any other person or entity (such as a present or former employer), and Interim CEO agrees that Interim CEO will not do anything in the performance of Services hereunder that would violate any such duty. The

Company agrees not to request that the Interim CEO do anything illegal or that would break Local, State or Federal Law or violate any rights of other third parties. In addition, Interim CEO agrees that, during the term of this Agreement, Interim CEO shall promptly notify the Company in writing of any direct competitor of the Company which Interim CEO is also performing services. It is understood that in such event, the Company will review whether Interim CEO's activities are consistent with Interim CEO remaining as an Interim CEO of the Company.

10. **Miscellaneous**. Any term of this Agreement may be amended or waived only with the written consent of the parties. So long as Interim CEO continues to serve as an Interim CEO to the Company, Interim CEO hereby consents to the Company including Interim CEO's name on its marketing materials, Web site or private placement memo, or offering materials as an Interim CEO of the Company. This Agreement, including any schedules hereto, constitute the sole agreement of the parties and supersedes all oral negotiations and prior writings with respect to the subject matter hereof. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Texas, without giving effect to the principles of conflict of laws. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned agree to and have executed this Agreement as of March 1, 2022.

Company	**Interim CEO**
By: DocuSigned by: [signature] 3F01CA52=F6C415... Name: CareGard Warranty Services Inc., Address: 1900 Champagne Boulevard Grapevine, Texas 76051 Date: 3/1/2022	By: DocuSigned by: [signature] 3F192DF7B9EF471... Name: Shawn Lucas Address: 2112 Huntington Lane #B Redondo Beach, CA 90278 Date: 3/1/2022
	Due Figlio LLC By: DocuSigned by: Shawn Lucas EF50C9C7798D48F... M 125 S King Street 2A Jackson, Wyoming 83001-1045 Date: 3/1/2022

EXHIBIT "E"

INTERIM CEO
JUNE 1, 2022
CONSULTING AGREEMENT

This Consulting Agreement (the "Agreement") is entered into the date set forth on the signature page by and between CareGard Warranty Services Inc., a Texas Corporation on behalf of itself and all of its affiliates ("CareGard" or "Company") having its principal place of business 1900 Champagne Boulevard, Grapevine, Texas 76051; Due Figlie LLC a Wyoming Limited Liability Company with its address 125 S King Street 2A, Jackson, Wyoming 83001-1045 ("Due Figlie") and Shawn Lucas, the Interim CEO of 1Basket currently a division of AFG Companies ("Interim CEO"). The parties agree as follows:

1. **Services.** The Interim CEO has completed a wide array of successful business engagements affording him the laser vision needed to cross industries, tackle multiple challenges, and positively impact CareGard's business quickly. The Interim CEO is accountable for results and without the cost to Company for benefit packages, long term contracts, severance, and other perks associated with a full time hire. Instead the focus is on solving challenges immediately, so CareGard can realize a positive financial impact. The Interim CEO will act as a tactical, strategic help, advisor and mentor to the Company and provide advice and assistance to the Company related to the Development, Marketing and Customer Support of 1Basket, Tronix and CareGard. Interim CEO shall assist Company in seeking and providing corporate guidance, including, but not limited to, corporate advice, strategy, general mentoring and advice on the 1Basket, Tronix and CareGard products. Interim CEO will work directly with Wright Brewer regarding 1Basket, CareGard and Tronix to provide the following:

a.) Launch the 1Basket App features phase 1 with Ismael and Travis, content and function (technical documentation) already provided. Phase 2 1Basket App target completion by end of August.
b.) Wire frames of 1Basket phase 2 are finalized and provided.
c.) South East Toyota executive and technical team confirmed on May 31, 2022 call that the launch date is August 1, 2022 for Limited Lifetime Warranty of batteries and CV Axles. SET confirmed their support for 1Basket as well.
d.) Launch Don Davis Auto Group Tronix BI and 1Basket week of June 13th and the dealership groups proposed to Wright in the sales plan through the first week of August 2022.
e.) David Fouts Sr. VP of Cox Automotive is interested in potential partnerships with the products we are offering SET.
f.) Finalize documentation and security compliance for AFG Companies, CareGard, Tronix and 1Basket by reviewing and implementing the following if approved in writing by Wright Brewer; ISO 27001, SOC 1 and SOC 2 Compliance, FTC December 9, 2022 deadline compliance, PCI-DSS compliance (certification not needed at this point).

2. **Compensation**. Interim CEO, shall receive a total of Forty-Thousand Dollars ($40,000.00) payable as follows:

a. On or before June 1, 2022, the amount of Twenty Thousand Dollars ($20,000.00).

b. On or before July 1, 2022, the amount of Twenty Thousand Dollars ($20,000.00).

Due Figlie or assigns will also receive an "Agent Fee" up to $1.00 for all new business brought to CareGard Warranty Services. This fee will be negotiated between Wright Brewer, Company CEO, and Shawn Lucas, Interim CEO on a case by case basis, as product margins warrant.

Company and Due Figlie agree to negotiate in good faith both founder shares of Tronix/1Basket and milestone equity compensation up to 20%, as agreed to in writing by Wright Brewer and Shawn Lucas.

All payments due and payable will be sent wire or ACH to the bank account directed by Interim CEO.

3. **Term and Termination**. The term of this Agreement shall commence on June 1, 2022 and terminate on July 31, 2022, without further obligation or liability by either Party. However, the obligations of paragraphs 2, 5, 7 and 8 below shall survive termination of this Agreement.

a) Company and Interim CEO will work on an employment agreement for Interim CEO to become the permanent CEO of 1Basket by June 1, 2022 should both Parties mutually agree on the terms including the equity and compensation plan.

b) Interim CEO will fly to Dallas Texas as needed to meet with the AFG development team and CareGard marketing team. Interim CEO will listen and learn how the AFG development team currently conducts business. Company will reimburse Interim CEO for reasonable Accommodations (Hotel, Airbnb etc.), Transportation (Rental Car, UBER etc..) Airfare, and meals from June 1 through July 31, 2022.

4. **Interim CEO**. Interim CEO's relationship with the Company will be that of an independent contractor and not that of an employee. Interim CEO will not be eligible for any employee benefits, nor will the Company make deductions from payments made to Interim CEO for employment or income taxes, all of which will be Interim CEO's responsibility. Interim CEO will have no authority to enter into contracts that bind the Company or create obligations on the part of the Company without the prior written authorization of Wright Brewer which can be in the form of email or text message.

5. **Nondisclosure of Confidential Information.**

a. **Agreement Not to Disclose**. Interim CEO agrees not to disclose or use, in any manner, any Confidential Information (as defined below) disclosed to Interim CEO by the Company for Interim CEO's own use or for any purpose other than to carry out discussions concerning, and the undertaking of, the Services. Interim CEO agrees to take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the Company in order to prevent it from falling into the public domain or the possession of persons other than agents of the Company or persons to whom the Company consents to such disclosure. Upon request by the Company, any materials or documents that have been furnished by the Company to Interim CEO in any manner in connection with the Services shall be promptly returned by Interim CEO to the Company.

b. **Definition of Confidential Information**. "Confidential Information" means any information, technical data or know-how (whether disclosed before or after the date of this Agreement), including, but not limited to, information relating to business and product or service plans, financial projections, customer lists, business forecasts, sales and merchandising, human resources, patents, patent applications, computer object or source code, research, inventions, processes, designs, drawings, engineering, marketing or finance to be confidential or proprietary or which information would, under the circumstances, appear to a reasonable person to be confidential or proprietary. Confidential Information does not include information, technical data or know-how that: (i) is in the possession of Interim CEO at the time of disclosure, is currently known by Interim CEO through industry experience or knowledge obtained by Interim CEO or shown by Interim CEO's files and records immediately prior to the time of disclosure; or (ii) becomes part of the public knowledge or literature, not as a direct or indirect result of any improper inaction or action of Interim CEO. Notwithstanding the foregoing, Interim CEO may disclose Confidential Information with the prior written approval of the Company or pursuant to the order or requirement of a court, administrative agency or other governmental body.

6. **No Rights Granted**. Nothing in this Agreement shall be construed as granting any rights under any patent, copyright or other intellectual property rights of the Company, nor shall this Agreement grant Interim CEO any rights in or to the Company's Confidential Information, except the limited right to use the Confidential Information in connection with the Services.

7. **Assignment of Intellectual Property**. To the extent that Interim CEO jointly or solely conceives, develops or reduces to practice any new inventions, original works of authorship, trademarks, service marks, trade dress, developments, concepts, know-how, improvements or trade secrets, whether or not patentable or registrable under copyright or similar laws or other intellectual property which would be deemed to be Confidential Information of the Company (collectively, "Intellectual Property") which clearly relates to the Company's business or technology and has been created by the Interim CEO solely or jointly in the course of the performance of Services relating to the Company, Interim CEO hereby acknowledges that it is "work made for hire" for the benefit of the Company and hereby assigns all rights, titles and interest to such Intellectual Property to the Company.

8. **Duty to Assist**. As requested by the Company and only with respect to Intellectual Property created by Interim CEO for the Company as provided in paragraph 7 above, Interim CEO shall take all steps reasonably necessary to assist the Company in perfecting, obtaining and enforcing in its own name any such Intellectual Property right.

9. **No Conflicts**. Interim CEO represents that Interim CEO's compliance with the terms of this Agreement and provision of Services hereunder will not violate any duty which Interim CEO may have to any other person or entity (such as a present or former employer), and Interim CEO agrees that Interim CEO will not do anything in the performance of Services hereunder that would violate any such duty. The Company agrees not to request that the Interim CEO do anything illegal or that would break Local, State or Federal Law or violate any rights of other third parties. In addition, Interim CEO agrees that, during the term of this Agreement, Interim CEO shall promptly notify the Company in writing of any direct competitor

of the Company which Interim CEO is also performing services. It is understood that in such event, the Company will review whether Interim CEO's activities are consistent with Interim CEO remaining as an Interim CEO of the Company.

10. **Miscellaneous**. Any term of this Agreement may be amended or waived only with the written consent of the parties. So long as Interim CEO continues to serve as an Interim CEO to the Company, Interim CEO hereby consents to the Company including Interim CEO's name on its marketing materials, Web site or private placement memo, or offering materials as an Interim CEO of the Company. This Agreement, including any schedules hereto, constitute the sole agreement of the parties and supersedes all oral negotiations and prior writings with respect to the subject matter hereof. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Texas, without giving effect to the principles of conflict of laws. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned agree to and have executed this Agreement as of June 1, 2022.

Company	**Interim CEO**
DocuSigned by: By: ____ 3F01CA52=F6C415... Name: CareGard Warranty Services Inc., Address: 1900 Champagne Boulevard Grapevine, Texas 76051 Date: 6/3/2022	DocuSigned by: By: shawn lucas ____ C3359CADA0764FB... Name: Shawn Lucas Address: 2112 Huntington Lane #B Redondo Beach, CA 90278 Date: 6/3/2022
	Due F DocuSigned by: By: ____ M 3F192DF7B9EF471... 125 S King Street 2A Jackson, Wyoming 83001-1045 Date: 6/3/2022

EXHIBIT B-3

PSC3357 3-28-25

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
Northern District of Texas

Genuine Lifetime et al *Plaintiff* v. Brewer III et al *Defendant*	)))))))	Civil Action No. 3:25-cv-00692-K

Summons in a Civil Action

TO: AFG Companies Inc

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) -- or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12(a)(2) or (3) -- you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or the plaintiff's attorney, whose name and address are:

Justin Bryan
3710 Rawlins, Suite 1600
Dallas , TX 75229

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT ★ NORTHERN DISTRICT OF TEXAS ★

DATE: 03/25/2025

Civil Action No. 3:25-cv-00692-K

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for (*name of individual and title, if any*) ______________________
was received by me on (*date*) ______________.

☐ I personally served the summons on the individual at (*place*) ______________________
______________________ on (*date*) ______________; or

☐ I left the summons at the individual's residence or usual place of abode with (*name*) ______________
______________________, a person of suitable age and discretion who resides there,
on (*date*) ______________________, and mailed a copy to the individual's last known address; or

☐ I served the summons on (*name of individual*) ______________________, who is designated
by law to accept service of process on behalf of (*name of organization*) ______________________
______________________ on (*date*) ______________; or

☐ I returned the summons unexecuted because ______________________; or

☐ other (*specify*) ______________________
____

My fees are $ ____________ for travel and $ ____________ for services, for a total of $ ____________

I declare under penalty of perjury that this information is true.

Date: ______________

____
Server's signature

____
Printed name and title

____
Server's address

Additional information regarding attempted service, etc:

JURY TRIAL DEMANDED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

GENUINE LIFETIME, LLC, TYLER LUCK, AND OCTOBER 3RD HOLDINGS, LLC,	§	
Plaintiffs,	§	
v.	§	**CIVIL ACTION NO. __________**
CAREGARD WARRANTY SERVICES INC., RALPH WRIGHT BREWER III, AFG COMPANIES, INC., AUTOMOTIVE FINANCIAL GROUP, INC., AFG TECHNOLOGIES, LLC A/K/A TRONIX, SOUTHWEST COLONIAL REINSURANCE, LTD., DELAPORTE LEARNING INC., PRIME RESERVE PLUS, INC., DAIDAX, INC., (FKA PATHWAI, INC., AND BEN AUTOMOTIVE INC.), & CAREGARD DEALER SERVICES, LLC,	§	
Defendants.	§	

PLAINTIFFS' ORIGINAL COMPLAINT

COME NOW, Plaintiffs Genuine Lifetime, LLC ("**Genuine Lifetime**"), Tyler Luck ("**Luck**"), and October 3rd Holdings, LLC (collectively, "**Plaintiffs**") who hereby file this their Original Complaint against Defendants CareGard Warranty Services Inc., Ralph Wright Brewer III, Automotive Financial Group, Inc., AFG Companies, Inc., AFG Technologies, LLC d/b/a Tronix, Southwest Colonial Reinsurance, Ltd., Prime Reserve Plus Inc., DeLaporte Learning Inc., DaidaX, Inc. formerly known as Pathwai, Inc. and Ben Automotive Inc., and CareGard Dealer Services, LLC (collectively, "**Defendants**"), and in support thereof, would show the Court the following:

I. PARTIES

1. Genuine Lifetime is a limited liability company formed in the State of Wyoming. Its members are both individuals and entities. The individual members are (1) Michael Lucas, a citizen of the State of California, (2) Shawn Lucas, a citizen of the State of California, (3) James D. Henderson Jr., a citizen of the State of California, and (4) Lynda Shea, in her capacity legal trustee of the Shea Family Trust, a citizen of the State of Nevada. Genuine Lifetime's entity members are: (5) October 3rd Holdings, LLC, a limited liability company formed in the State of Wyoming having two members of its own: (a) Tyler Luck, a citizen of the State of Wyoming, and (b) Michael Lucas, a citizen of the State of California; and (6) Great North Capital Corp., a for-profit corporation incorporated in the State of Nevada and having its principal place of business in the State of California.

2. Plaintiff Tyler Luck is an individual residing in Jackson Hole, Wyoming and serves as a member of October 3rd Holdings LLC and is the personal guarantor to the loan agreement.

3. Plaintiff October 3rd Holdings, LLC is a Wyoming limited liability company formed in the State of Wyoming. Its members are both individuals. The individual members are (1) Michael Lucas, a citizen of the State of California and (2) Tyler Luck, a citizen of the State of Wyoming.

4. Defendant Ralph Wright Brewer III ("**Brewer**") is an individual residing in Bartonville, Texas, and serves as the Chairman, CEO, and/or principal officer of CareGard Warranty Services, AFG Companies Inc., its subsidiaries, and all other defendant entities named in this lawsuit.

5. Defendant CareGard Warranty Services, Inc. ("**CareGard**") is a Texas corporation specializing in automotive warranty services. CareGard is a key party in the Mercedes-Benz USA

LLC ("**MBUSA**") and Southeast Toyota Distributors LLC ("**SET**") Dealer Agreements (defined below) with Genuine Lifetime. CareGard's failure to honor these agreements and conspiracy with Brewer and the other AFG entities to defraud Genuine Lifetime and enrich themselves at the same time caused significant harm to Genuine Lifetime. Its principal place of business and registered office and headquarters is: 1900 Champagne Blvd Grapevine, TX 76051,

6. Defendant AFG Companies, Inc. ("**AFG**") is a Texas domestic for-profit corporation that played a key role in facilitating the misconduct alleged in this lawsuit with its principal place of business in Grapevine, Texas. Its principal place of business of business and registered office and headquarters is: 1900 Champagne Blvd Grapevine, TX 76051.

7. Defendant Automotive Financial Group, Inc. is a Texas domestic for-profit corporation with its principal place of business in Grapevine, Texas. AFG was the primary counterparty to the Exclusive Reseller Agreement and failed to fulfill its contractual obligations by concealing the ransomware attack and breaching its data security and performance requirements. Its principal place of business of business and registered office and headquarters is: 1900 Champagne Blvd Grapevine, TX 76051.

8. Defendant AFG Technologies, LLC d/b/a Tronix, is a Texas limited liability company focused on developing and delivering technology solutions for the automotive industry. This entity directly participated in the misrepresentations and omissions made during the negotiation of the Reseller Agreement (defined below), particularly regarding data security and operational readiness. Upon information and belief, all members of Defendant AFG Technologies, LLC d/b/a Tronix are residents of the State of Texas. Its registered office and headquarters is: 1900 Champagne Blvd Grapevine, TX 76051.

9. Defendant CareGard Dealer Services, LLC is a Texas limited liability company also owned by AFG and affiliated with Brewer, its registered agent for service of process. Like CareGard Warranty Services, Inc., this entity was instrumental was directly involved in the breached broker dealer agreements and the fraudulent schemes pled in this lawsuit, which resulted in financial harm to Genuine Lifetime. Upon information and belief, all members of Defendant CareGard Dealer Services, LLC are residents of the State of Texas.

10. Defendant Southwest Colonial Reinsurance, Ltd. is a reinsurance entity affiliated with the AFG entities that resides in Texas. This entity was instrumental in managing financial transactions and reinsurance programs related to the misconduct alleged herein. Its involvement ties it directly to the financial harm caused to BEN and Genuine Lifetime. Upon information and belief, all partners of Defendant Southwest Colonial Reinsurance, Ltd. are individuals domiciled in the state of Texas, corporations incorporated and having their principal place of business in the State of Texas, and unincorporated associations whose members or partners are also domiciliary or citizens of the state of Texas.

11. Defendant Prime Reserve Plus, Inc. is a Texas corporation engaged in financial activities tied to the AFG entities. It acted in concert with Brewer and the other counter-defendants to facilitate the fraudulent schemes described in this lawsuit. Its principal place of business of business and registered office and headquarters is: 1900 Champagne Blvd Grapevine, TX 76051.

12. Defendant DaidaX, Inc., formerly known as Pathwai, Inc. and Ben Automotive, Inc. is a Texas Corporation engaged in software technology and a subsidiary of AFG. It acted in concert with Brewer and other counter-defendants to facilitate the fraudulent schemes described in this lawsuit. Its principal place of business of business and registered office and headquarters is: 1900 Champagne Blvd Grapevine, TX 76051.

13. Defendant DeLaporte Learning, Inc. is a Texas corporation that is controlled by Brewer and AFG. It acted in concert with Brewer and other counter-defendants to facilitate the fraudulent schemes described in this lawsuit. Its principal place of business of business and registered office and headquarters is: 1900 Champagne Blvd Grapevine, TX 76051.

II. JURISDICTION AND VENUE

A. Subject Matter Jurisdiction.

14. Diversity jurisdiction exists under 28 U.S.C. § 1332(a), as this controversy is between parties who do not share citizenship and the amount in controversy for this case exceeds $75,000.00 (U.S.), exclusive of interest and costs.

15. Plaintiffs consist of one individual and two limited liability companies. Taken together, Plaintiffs are citizens of three different states for diversity jurisdiction purposes: (1) California, (2) Nevada, and (3) Wyoming. Genuine Lifetime's citizenship is derived from the citizenship of its six members: (1) Michael Lucas, a natural person domiciled in the State of California, (2) Shawn Lucas, a natural person domiciled in the State of California, (3) James D. Henderson Jr., a natural person domiciled in the State of California, and (4) Lynda Shea, legal trustee of the Shea Family Trust, a natural person domiciled in the State of Nevada, (5) October 3rd Holdings, LLC, a limited liability company having two members of its own: (a) Tyler Luck, a natural person domiciled in the State of Wyoming, and (b) Michael Lucas, a natural person domiciled in the State of California, and (6) Great North Capital Corp., a for-profit corporation incorporated in the State of Nevada and having its principal place of business in the State of California. Therefore, Genuine Lifetime is a citizen of California, Nevada, and Wyoming, only. October 3rd Holdings, LLC (a citizen of Wyoming and California) and Tyler Luck (Wyoming) are the remaining two plaintiffs.

16. Conversely, the state citizenship of all Defendants is the State of Texas. As explained in paragraphs 4 through 13 above, Defendants are a collection of individuals, corporations, and unincorporated business associations that are domiciled in, have members or partners domiciled in, or are both incorporated and chiefly operated in the State of Texas. *Infra*, at ¶¶ 4–13. Therefore, in accordance with contemporary diversity of citizenship jurisprudence, Plaintiff alleges based upon the information available to it that all Defendants are citizens of the State of Texas only.

17. Because Plaintiffs and Defendants do not share state citizenship, there is complete diversity between the parties, and because Plaintiffs hereby plead that the amount in controversy in this matter exceeds $75,000, this Court has subject matter jurisdiction over all of Plaintiffs' claims in this case under 28 U.S.C. § 1332(a).

B. Personal Jurisdiction.

18. This Court has general personal jurisdiction over all Defendants because they reside, are incorporated, or conduct substantial business in the Northern District of Texas. Defendant Brewer resides in the Northern District of Texas and personally participated in the misconduct alleged herein from within this jurisdiction. All corporate defendants are Texas-based entities whose operations are within Texas such that they are essentially "at home" within the State of Texas, and this Court has general personal jurisdiction over them. Moreover, the specific misconduct on Defendants' part, complained of herein, took place squarely within the State of Texas, such corporate defendants and central to the Plaintiffs claims in this case. By entering into agreements with Genuine Lifetime and performing actions in breach of those agreements within the Northern District of Texas, Defendants purposefully availed themselves of the jurisdiction of this Court.

III. FACTUAL BACKGROUND

A. Introduction of the Parties and the Case.

19. This is a case about broken promises and the fraud, greed, and subterfuge of Defendant Ralph Wright Brewer, III and his multitude of alter ego entities, who together in 2023 approached Genuine Lifetime, Luck, and October 3rd Holdings, LLC to feign interest in deepening business ties and jointly innovating their businesses through shared artificial intelligence technology to induce Plaintiffs into entering a deceptive loan agreement and consenting to harmful key stock transactions—all to ultimately derive a benefit from insider trading, raid Genuine Lifetime, and eliminate it from the market.

20. Brewer is the owner and president of a host of entities, including limited liability companies AFG and CareGard.[1] Brewer also owns and controls companies called "AFG Technologies, LLC,"[2] a domestic for profit corporation, a domestic for-profit corporation called "Automotive Financial Group, Inc."[3] wholly owned by Brewer, and the other entities named in this Complaint. As verified by public records, Brewer and all his AFG entities operate out of a single location, two buildings in Grapevine, Texas with main street address 1900 Champagne Blvd. with some operations at 1904 Champagne Blvd., Grapevine, Texas 76051. Brewer so dominates

[1] Under Federal Rule of Evidence 201, Counter-Plaintiffs request the Court take judicial notice of Automotive Financial Group, Inc.'s latest Public Information Report (PIR), filed on December 31, 2022 with document number 1215071450001, available publicly on the Texas Secretary of State's website, which shows "Wright Brewer" is president, director, and chief executive.

[2] Under Federal Rule of Evidence 201, Counter-Plaintiffs request the Court take judicial notice of AFG Technology, LLC's latest Public Information Report (PIR), filed on December 31, 2023 with document number 1300619320001, available publicly on the Texas Secretary of State's website, which shows "AFG Companies, Inc." as the sole member and Wright Brewer as its sole director.

[3] Under Federal Rule of Evidence 201, Counter-Plaintiffs request the Court take judicial notice of Automotive Financial Group, Inc.'s latest Public Information Report (PIR), filed on December 31, 2023 with document number 1302641540001, available publicly on the Texas Secretary of State's website, which shows that "Wright Brewer" is president of Automotive Financial Group, Inc.

AFG and its related entities that there has ceased to be any separation between them, if one ever existed at all.

21. Genuine Lifetime is a company engaged in providing technology solutions, extended warranty coverage programs, lifetime limited warranties, and service contracts for automotive manufacturers, automotive dealers, parts distributors, tire distributors, wholesale clubs, retail locations, third party software solution providers, ecommerce platforms, independent repair facilities, and collision repair facilities.

22. But for the most part, Genuine Lifetime's business is creating automotive service contracts and "Lifetime Limited Warranties" that dealerships may then offer, provide and/or sell to their customers. These service contracts and Lifetime Limited Warranties cover a wide range of common automobile parts and accessories, including batteries, axles, windshield wiper blades, etc. And after a successful sale of one of these contracts or providing a Lifetime Limited Warranty, Genuine Lifetime provides the dealership with a third-party administrator ("**TPA**") that capably manages and administers the ongoing warranty program. This TPA acts as a liaison between the customer and the dealership, reviews and processes claims under the warranties sold, processes payments to repair facilities for covered repairs, and much more. Throughout the administration of the warranty programs, Genuine Lifetime works closely with the TPAs, providing technical support, software solutions, and other forms of assistance to ensure its automotive service contracts and Lifetime Limited Warranties

23. Over the years, Genuine Lifetime has established prosperous business relationships with major automotive dealerships located in the United States, including titans Mercedes Benz U.S.A. ("**MBUSA**") and Southeast Toyota Distributors ("**SET**").[4] Using these industry

[4] SET is a group of over 175 Toyota dealerships in various Southern states.

connections, Genuine Lifetime successfully *brokers* major service contracts between automotive dealerships and TPAs that Genuine Lifetime has developed working relationships with. These brokered transactions are made pursuant to a binding broker agreement between Genuine Lifetime and its TPAs entered at the outset. Importantly, these broker agreements contain Performance Award Programs ("**PAP**") whereby Genuine Lifetime derives its primary ongoing source of income. The PAPs in each broker agreement obligate the TPA to split proceeds from sales of brokered service contracts with dealerships with Genuine Lifetime during periods where the sales are highly profitable.

24. To break this down, one simply looks at the amount of money earned from providing Lifetime Limited Warranty contracts or selling service contracts which includes fees as well as "**Earned Reserves**," and then compares that with the amount of money lost from paying out and administering claims and pending claims covered under the same service contracts and Lifetime Limited Warranty agreements, which is referred to as "**Losses**." If the percentage of *Losses* to *Earned Reserves*, called the "**Loss Ratio**," reaches a specific threshold (less than 75%), then the TPA retains as compensation the first 25% of Earned Reserves for that period (called the "**Risk Fee**") and Genuine Lifetime receive the remaining 75% of Earned Reserves and can divide that up with its partners as negotiated. The fees per product and money from the Earned Reserves are its income for that underwriting year. This is Genuine Lifetime's primary business model.

B. *Above the Surface.* GL and AFG/CareGard enter into valuable broker dealership agreements.

25. Genuine Lifetime first began doing business with Defendants CareGard, AFG, and Brewer in 2020. It was in January of that year that Genuine Lifetime brokered a program between MBUSA and CareGard, whereby CareGard (as TPA) would administer some of Genuine Lifetime's lifetime limited warranties. This initial three-party program was limited to the sale and

administration of Genuine Lifetime's warranties for wiper blades on vehicles at MBUSA's dealerships. Genuine Lifetime and CareGard agreed to a PAP, and both parties began dutifully performing under the terms of that PAP with positive results.

26. Over the next two years, the MBUSA program proved to be a profitable and mutually enjoyable arrangement that fostered a closer relationship between Genuine Lifetime and CareGard.

27. In 2022, an opportunity arose for CareGard when Genuine Lifetime was called upon by Southeast Toyota/SET to replace the existing TPA Genuine Lifetime was using for very lucrative battery and axle warranty contracts. Because of the historic success of the MBUSA wiper program, Genuine Lifetime naturally considered working again with CareGard and offered to broker a deal between CareGard and SET.

28. After conferring, Brewer said "yes," and on August 3, 2022, Genuine Lifetime and CareGard entered the contract which now forms the basis of Genuine Lifetime's breach of contract claim—the Broker, Marketing, Product, and License Agreement (the "**Original Broker Agreement**"). Under the Original Broker Agreement, Genuine Lifetime and CareGard agreed to replace and supersede all prior contracts, and entered into a new binding agreement with an indefinite term for all warranty programs going forward. The Original Broker Agreement contained thirty-nine pages of overarching terms, and included an updated Statement of Work ("**SOW**") for all the MBUSA and SET warranty programs. The Original Broker Agreement and each of these SOWs contained uniform PAP terms as follows: For all SOWs and warranty programs between CareGard and Genuine Lifetime, if the Loss Ratio from an underwriting year is less than 75%, then CareGard retains the first 25% of Earned Reserves and the remaining 75%

is paid to Genuine Lifetime. If the Loss Ratio is 75% or above, then CareGard retains all Earned Reserves.

29. Additionally, the Original Broker Agreement obligated CareGard to pay Genuine Lifetime a fee for each automotive warranty contract successfully issued to the dealership. The amount of each fee varied depending on the program and SOW, but in the Original Broker Agreement a range of "a minimum of $0.50 cents (US$) up to a maximum of $6.75 (US$) per Contract issued" was provided.

30. The term of the Original Broker Agreement is indefinite. Wright Brewer personally signed the Original Broker Agreement on August 3, 2022, and the contract became fully executed and binding.

31. From there, Genuine Lifetime introduced CareGard to SET and brokered the Lifetime Limited Warranty Program Master Services Agreement, dated November 2, 2022, between CareGard & SET. SOWs between CareGard and SET followed soon thereafter, and a new Genuine Lifetime-CareGard-SET business relationship began.

32. Once both the SET and MBUSA brokered programs were well underway and humming, Genuine Lifetime began to enjoy an average revenue of about $35,000 *per month* under the Original Brokered Agreement, and revenues were on pace to grow significantly from there. An SET executive informed Genuine Lifetime that it was pleased with the TPA transition over to CareGard and stated that additional automotive parts were going to be added to the program. Genuine Lifetime's industry experience will show that including such parts was reasonably certain to increase Genuine Lifetime's monthly revenue to, conservatively, $100,000 per month under the agreements with CareGard.

C. *Above the Surface.* Brewer takes interest in a new AI-technology startup being pioneered by BEN, a company owned by some of Genuine Lifetime's members.

33. Meanwhile, in 2023, Genuine Lifetime's members were looking to capitalize on a different business opportunity in the burgeoning field of artificial intelligence ("**AI**"), which they had been working on for years separately from Genuine Lifetime.

34. This tech startup was and still is called Brand Engagement Network, Inc. ("**BEN**"), formed originally in 2018. BEN was formed to create powerful AI assistants capable of improving the automotive industry, heath care, and even more. In the world of cars and auto dealerships, BEN's technology was designed to be a customer-facing AI assistant that could increase dealership sales, improve data management systems, and lower labor costs. In health care, BEN invented a similar AI assistant that was capable of listening to, processing, and analyzing symptoms of healthcare patients with the goal of one day providing accurate diagnoses of simple health conditions through large data sets approved by medical professionals. This same technology was also customizable to fill any business' customer service needs.

35. Ultimately, across all these industries (but particularly auto and health care), BEN designed its AI products to be secure, ethical, and legally compliant. Part of BEN's value was its promise to business clients that their end-user's consumer data and protected health information would be safe and kept in conformity with global data privacy regulations.

36. Due to rapid advancements in AI in recent years, BEN's proprietary technology was well-poised to succeed. At or around June of 2023, BEN filed a business registration application in the State of Texas, with the intention of transacting business with dealerships in this State. Around this time, BEN also began a securities transaction with Genuine Lifetime, whereby BEN issued 500,000 shares of Class B Common Stock in BEN to Genuine Lifetime with certificate number CSB-79.

37. Upon learning about BEN through his business relationship with Genuine Lifetime, Brewer became very interested in BEN's AI technology. Brewer informed his contacts at Genuine Lifetime that he badly wanted to integrate BEN's AI technology into CareGard's TPA systems and even into the systems of his other business entities, including the entity that wholly owns CareGard: AFG Companies, Inc. Defendant Brewer also represented for the first time that AFG had a valuable database with a large volume of secure customer data that could leverage BEN's AI technology. Defendant Brewer assured BEN and Genuine Lifetime that AFG's databases were fully operational, compliant with data security standards, and capable of legally integrating BEN's AI-powered customer engagement solutions technology. Defendant Brewer also specifically represented to BEN and Tyler Luck that AFG and its subsidiaries had robust data security protocols in place and that its IT infrastructure was fully prepared to support BEN's proprietary technology. Brewer emphasized AFG's long-standing reputation in the automotive industry, presenting AFG as a reliable and trustworthy partner. Defendant Brewer even went so far as to propose an acquisition of all his entities, including AFG and CareGard, by BEN for $140 million dollars. Clearly, Brewer was all in, and he wanted to be in business with BEN.

38. Obviously, Defendant Brewer's representations in connection with these business proposals were material to the officers of Genuine Lifetime, as any misuse or data leak of sensitive customer data forever disrupt or jeopardize Genuine Lifetime's ongoing brokered deals with automotive dealerships, distributors and manufacturers and harm Plaintiff Genuine Lifetime's reputation in the industry. It was no secret that these databases included sensitive customer information from at least 175 Toyota dealerships through the SET programs and SOWs. Simply put, Genuine Lifetime would not have agreed to any deal with AFG involving BEN AI-Technology

or BEN securities if the robust data security protocols represented by Brewer were not in properly in place.

D. Genuine Lifetime and CareGard Amend the Broker Deal and BEN enters the Picture.

39. After negotiations between Plaintiff Genuine Lifetime, Defendant Brewer, and BEN, on or about August 18, 2023, Genuine Lifetime and CareGard agreed upon and signed a First Amendment to their Original Broker Agreement (the "**First Amended Broker Agreement**"). This amendment made a few material changes to the Original Broker Agreement entered on back on August 9, 2022.

40. First, it modified Genuine Lifetime's compensation structure slightly so that Genuine Lifetime's fee from each contract issued to the dealership was lowered from $0.50 cents to $0.25 cents. Second, the amendment added Defendant CareGard's parent company, Defendant AFG Companies, Inc., as a party and signatory to the broker deal. Third, the deal was modified to add an acknowledgement that the certificate of 500,000 shares of BEN shares originally issued to Plaintiff Genuine Lifetime would be transferred to Defendant Brewer and his relatives. Specifically, 470,000 shares to Tina & Wright Brewer (Tina is Brewer's wife); 10,000 shares to Ralph Wright Brewer IV (Brewer's son); 10,000 shares to Taylor Ann Brewer (Brewer's daughter); and 10,000 shares to Morgan Sue Brewer (Brewer's daughter). Apart from a few other minor changes, the terms of the Original Broker Agreement expressly remained in full force and effect.

41. The following day, on August 19, 2023, BEN and Defendant AFG entered into a bilateral Exclusive Reseller Agreement ("**ERA**" or "**Reseller Agreement**"). This ERA was a professional services contract whereby AFG and all its subsidiaries (including CareGard) would integrate BEN's innovative AI technology into all ongoing dealership systems, including the major dealer agreements in place with Plaintiff Genuine Lifetime. As a part of the Reseller Agreement,

Defendant AFG promised it would invest a substantial amount of cash in BEN annually over the next five years as well as purchase a set number of BEN shares. In exchange, Defendant AFG received favorable stock purchase terms and it was able to deepen its partnership with Plaintiff Genuine Lifetime.

42. Additionally, because the Reseller Agreement involved BEN's provision of its proprietary AI-technology to Defendants Brewer and AFG, the contract contained several express restrictive covenants of non-competition during the deal's full 5-year term, including a total prohibition on modifying, translating, reverse engineering, or otherwise building products or services to compete with BEN. Obviously, these safeguards were included because Defendant Brewer and his entities were about to become deeply involved with BEN and see behind the wizard's curtain. So, close cooperation would be essential, and gamesmanship was unacceptable.

43. Additionally, the Reseller Agreement served to benefit all parties to the already brokered dealer agreements with SET and MBUSA. Defendant CareGard's services would be improved, customers' and dealerships' experiences would be improved, and Plaintiff Genuine Lifetime's and CareGard's profits would also grow from increased sales and more parts contracts. Therefore, even though Plaintiff Genuine Lifetime was not a party to this Reseller Agreement between BEN and Defendant AFG, Plaintiff Genuine Lifetime was a notable beneficiary with an expectation interest and was involved in negotiating the ERA. Defendant Brewer and BEN officer Tyler Luck personally signed the ERA on behalf of their respective companies behalf on August 19, 2023.

44. On September 7, 2023, BEN further executed a Subscription Agreement with Defendant AFG (the "**Subscription Agreement**") to facilitate the future issuance, purchase, and delivery of an additional 650,000 initial shares of BEN common stock. As consideration,

Defendant AFG was required to make payment of $6.5 million to BEN, due on March 13, 2025, as the first of four consecutive yearly installments for a total investment into BEN of $32.5 million. The Subscription Agreement imposed clear, unconditional, and enforceable financial obligations on Defendant AFG, including its irrevocable commitment to purchase Initial Shares and subsequent Installment Shares in accordance with the agreed-upon schedule with no offsets.

45. By the end of September 2023, BEN had allocated 1.75 million shares of its common stock to Defendant AFG, subject to completion of the business combination agreement between BEN and the NASDAQ traded SPAC called DHC Acquisition Corp which would soon become NASDAQ traded BNAI in March of 2025.

E. *Above the Surface.* One month later, Genuine Lifetime enters a special loan agreement with AFG to raise capital for BEN.

46. In October of 2023, BEN was seeking additional working capital, and BEN approached Defendant AFG about accelerating a future payment it owed pursuant to the Reseller Agreement. Notably, around the timing of these conversations, Defendant Brewer and AFG were made aware of BEN's growth potential and that BEN had begun plans to raise capital through the public stock market. Indeed, BEN planned to go public on the NASDAQ via a merger with a Special Purpose Acquisition Company ("**SPAC**").

47. So, in response to BEN's question about a potential advance payment under the Reseller Agreement, Defendants Brewer/AFG expressed reluctance to accelerate any upcoming payments, and instead, Defendant Brewer stated he was willing to explore "loan possibilities" involving Plaintiffs Genuine Lifetime and Tyler Luck, personally. Trusting in Defendant Brewer's transparency up until this point and relying on his/AFG's commitments under the ERA and dealer agreements, Genuine Lifetime and Luck entered good-faith negotiations on the "loan possibilities" Brewer was envisioning.

48. Defendants AFG, through Brewer, represented that it would loan $4,000,000 to Genuine Lifetime, to directly purchase shares of BEN, all in order to help BEN meet its need for working capital and to be the catalyst for a successful launch in the automotive industry. During negotiations, Defendants Brewer and AFG openly represented that the intent for this loan of money was to *support* BEN and to accommodate BEN's sincere requests for funding.

49. These negotiations culminated in the October 17, 2023, loan agreement *between GL and AFG* which is the subject of Plaintiff's Original Petition (the "**Loan**"). Under the terms of the Loan, the parties agreed that Defendant AFG would lend to Plaintiff Genuine Lifetime, four million dollars ($4,000,000) upon two conditions which Brewer insisted: (a) **that Plaintiff Genuine Lifetime would use those funds to purchase shares of BEN before it went public**, and (b) **that Plaintiff Genuine Lifetime would pledge its assets and member interests as collateral for the loan.**[5] Additionally, per Defendant Brewer's insistence, Plaintiff Tyler Luck had to agree to personally guarantee the Loan, which he did through execution of a guaranty agreement on October 17, 2023 (the "**Guaranty**").

50. The first of the two conditions insisted by Defendants Brewer and AFG is significant. In essence, the Loan made Defendant Brewer and AFG insiders to what would be a major multi-million-dollar stock transaction of BEN before it went public. The second condition and the Guaranty terms were of course also very significant to Plaintiffs. Because pledging Genuine Lifetime and Luck's assets as a security for a $4,000,000 loan that could only be invested in BEN, that greatly increased the need for BEN having a successful launch and made Plaintiffs' and AFGs' joint investment and cooperation in BEN all the more important.

[5] Interest terms were also contained in the Loan.

51. On October 17, 2023, both the Loan and all security agreements, including the Guaranty, were entered. As promised, Plaintiff Genuine Lifetime used the proceeds of the Loan to purchase 493,333 shares in BEN, making those shares Genuine Lifetime's largest asset. And BEN used the increased working capital to proceed onward as hoped.

52. On March 15, 2024, BEN began trading publicly on the NASDAQ under the symbol **BNAI**. With this, the stage was set for one of the worst betrayals in either Genuine Lifetime's or BEN's history.

F. ***Beneath the Surface*. AFG's data systems had been hacked at all relevant times, and AFG/Brewer concealed the date breach from everyone, including the government.**

53. Hidden beneath the surface is the disturbing truth that Defendant Brewer and his web of sham entities had been engaging in a fraudulent scheme for many months, intentionally concealing crucial facts to both subvert and plunder Plaintiff Genuine Lifetime and BEN through the agreements described above. While it is unclear when Brewer *first* made the malicious move to turn on Plaintiff Genuine Lifetime, BEN, and their respective owners, whom he had entered into close ties with, the first evidence of his betrayal can be traced back to at least August of 2023.

54. ***Five days*** before Defendant Brewer and Plaintiff Genuine Lifetime amended the Original Broker Agreement to integrate BEN and *two months* prior to any negotiations on the Genuine Lifetime Loan Agreement, Defendant AFG had sustained a massively sweeping data security breach and ransomware attack on August 13, 2023 (the "**Hack**"). This Hack resulted in the involuntary disclosure of an enormous volume of sensitive consumer information—including the information of customers covered under the SET and MBUSA dealer agreements. But despite its systems being completely compromised, Defendants AFG and Brewer told no one about the Hack, despite having a fiduciary and statutory responsibility to do so.

55. This breach and ransomware attack was so serious, and the cover up so damning, that it led one of AFG's top executives—Travis Gates—to resign. At the time, Gates was the President of AFG Technologies, another one of AFG's wholly owned subsidiaries noted earlier. Gates also performed services for multiple other AFG-related companies, as those companies all operated out of the same office building in Grapevine, Texas where Brewer. Gates, because of position at AFG, was intimately familiar with AFG, AFG operational structure, the data breach, and AFG's response to it.

56. The Hack was conducted by the notorious "ALPHV" group, an affiliate of the BlackCat ransomware organization. BlackCat was the same hacking group or threat actor that infiltrated MGM Casinos and the same threat actor that elicited a multi-million-dollar extortion payment from Caesars Palace.

57. This attack rendered AFG's systems inoperable and compromised over 105,000 files, including sensitive consumer and dealership data. AFG's controller, Amanda Tettleton, confirmed that more than 105,000 files on AFG servers and employee workstations, including files containing personal information of customers and individual warranty policy holders, had been compromised and encrypted. "Encrypted" means that a threat actor infiltrated a computer network and changed password and security keys so that only the threat actor (ALPHV) had access to the encrypted files, holding them hostage. Generally—just like here—the threat actor then sends a ransomware note demanding an extortion payment in return for providing the owner with access to its own computer network.

58. AFG was first notified of the data breach by Integris, a cybersecurity company. Upon learning that there had been a ransomware attack and data breach, AFG's immediate initial response to this data breach was to contact its insurer Cowbell who put AFG in touch with its law

firm Mullen & Coughlin as well as Booz Allen, one of the nation's leading cybersecurity organizations, and to ask Integris to assess the extent of damage and data compromised by the breach. Integris's assessment revealed the damage done by the hack was severe and Booz Allen was going to provide advice for an informed, prudent response.

59. At this point, Defendants Brewer and AFG should have allowed Booz Allen and Integris to finish an investigation of what files, exactly, had been taken by the threat actor to determine what reporting obligations AFG needed to make to various state and federal agencies as well as its contracting business partners. Instead, ***Brewer and AFG affirmatively dismissed Booz Allen and Integris before the analysis could be completed and set about trying to cover up the ransomware and data breach.***

60. For lack of a better term, Defendant Brewer then ordered Gates to "throw out" AFG's old servers and workstations and replace them with new servers and workstations containing updated security systems. Defendant Brewer refused to engage in any kind of communication with the threat actor or pay the ransom to officially put a cork in ALPHV's ransomware attacks. Accordingly, instead of determining what personal information of consumers had been comprised by the breach, Defendants Brewer and AFG simply buried their collective heads in the sand and acted like nothing had happened.

61. Moreover, Defendants AFG and CareGard had no Incident Response Plan ("**IRP**") in place to adequately respond to any cyber-attack. As required by various laws and regulations, including the Federal Trade Commission, Gramm-Leach-Bliley Act ("**GLBA**") and FTC Safeguard, AFG had a duty to protect its investors, stockholders, and most importantly its consumers and customers. Despite full knowledge of the cyberattack, Defendants AFG and Brewer failed to file data breach notifications with any state governments or federal agencies, including

the Federal Trade Commission under the GLBA and the updated Federal Trade Commission Safeguards Rule.

62. AFG also omitted crucial information about the Hack to Genuine Lifetime and BEN. Defendant Brewer knew that disclosing the existence of the Hack would have jeopardized his plans with respect to the ERA and his personal financial gains tied to BEN's stock and warrants (discussed further below). So, Defendants Brewer and AFG proceeded to enter into the Reseller Agreement with BEN less than a week later on August 19, 2023, beginning toward a possible full integration of BEN's AI-technology with the compromised consumer data, effectively tainting BEN's maiden voyage into the southern automotive industry. Defendants Brewer, AFG, and CareGard also said nothing to Plaintiff Genuine Lifetime, or Genuine Lifetime's customers SET, or MBUSA about the compromise of their dealership data or their customer's data. And Defendants Brewer/AFG continued to say nothing to Plaintiffs Genuine Lifetime or Luck about this breach before the parties entered the Loan Agreement and Guaranty, which was premised on transparency and BEN's future market success, which was now doomed if the Hack ever came to light.

63. Before making the decision to leave Defendant AFG over this cover up, former AFG Technologies president Travis Gates continued to implore Brewer to have Defendant AFG make reporting obligations as required by law, but Defendant Brewer was insistent on a cover up. Because of the inaction by Defendant AFG, Gates notified the Office of the Attorney General of the State of Maryland of Defendant AFG's failure to file data breach notifications within the state and filed "whistleblower" notices of the breach (upon information and belief) with the Attorney General offices of 48 states, including Texas. On or about March 23, 2024, a separate individual whistleblower, upon information and belief, notified the Office of the Attorney General of the State of California of AFG's failure to file data breach notifications within the state. On April 22, 2024,

Automotive News published an article under its finance and insurance section outlining a data breach event within Defendant CareGard.

64. When it first received notice of the whistleblower notices, Plaintiff Genuine Lifetime asked Defendant AFG to confirm. Two days later, on March 26, AFG's counsel responded as follows:

> *Yes, AFG Companies suffered a data breach last August. And the company did everything it was supposed to have done, in response. That included properly reporting to the FBI, working with special counsel and the company's insurance carrier, doing the necessary forensic work, and ultimately hardening the company's systems.*

65. This response was replete with half-truths, as the claim that Defendant AFG had done "the necessary forensic work" is controverted by Defendant AFG dismissing its own forensic experts before their work was complete.[6] In fact, no final forensic report was ever generated. Accordingly, AFG was, and remains, in violation of various federal and state reporting requirements, including the State of Texas. Tex. Bus. & Com. Code Ann. §§ 521.002, 521.053.

66. But ultimately, Defendants Brewer, CareGard, and AFG's total concealment of the ransomware Hack constituted a material omission that directly induced Plaintiff Genuine Lifetime to enter the Loan and continue working at risk with Defendants AFG, CareGard, and Brewer. Had Plaintiff Genuine Lifetime been made aware of the attack, it would not have entered into the Loan or agreed to provide Defendant Brewer and his relatives the 500,000 shares of BEN stock originally issued to Genuine Lifetime. The concealed breach created immediate risks to Plaintiff Genuine Lifetime's relationship with SET and MBUSA, and Plaintiff GL has suffered damages as a result of this deception.

[6] As for the claim that AFG contacted the FBI, GL submitted a Freedom of Information Act request on April 20, 2024 to determine the veracity of that claim by AFG. The FBI responded on April 24, 2024, informing GL that there was ***no record of any report made by AFG or any of its related companies***.

G. *Beneath the Surface*. At all relevant times, Wright Brewer and AFG began to compete against BEN and develop their own AI engagement technology through stolen secrets

67. Furthermore, rather than acting as BEN's ally and reseller, as agreed to in the ERA, Defendant AFG immediately embarked on a path to compete against BEN and "slow-roll" any agreements with customers to aid the development of Defendant Brewer's own competing brand of AI customer service products.

68. As early as October 2023, Brewer explicitly declared in an internal meeting with executive leadership of Defendant AFG that AFG was, "going to war" and "had to own all of this" (referring to the intellectual property of BEN and its AI trade secrets). Around this point in time after both the hack had occurred and the term of the Reseller Agreement had begun, Defendant AFG continued to demand access to BEN's source code.

69. Defendant AFG was, in fact, creating new competing AI technology platforms known as "Symphonai," "Pathwai," and/or "DaidaX," and engaged in discussions with a different AI company and competitor to BEN, DriveCentric; AI-Driven Automotive Industry Software, to advance their new platform.

70. Upon information and belief, on March 7, 2024, Defendant Brewer convened a clandestine off-site executive meeting at 8343 Hilltop Road, Argyle, Texas ominously titled "AFG Executive Vision Meeting" to conspire with others to compete against BEN. During this meeting, Defendant Brewer unveiled a five-year plan centered on creating a new entity to compete against BEN, its new business partner, known as "Pathwai." Specifically, Pathwai (now DaidaX) was designed to compete against BEN in the automotive AI market. Brewer openly declared "war on" BEN as AFG's direct competition. This declaration came despite the fact that Defendant Brewer had already reaped significant personal financial gains from his BEN stock holdings. His

calculated betrayal laid bare his intent to undermine BEN even as he grossly enriched himself to BEN's detriment in the automotive market.

71. Defendant Ralph Wright Brewer, III, Chief Executive Officer of AFG, Jason DeLaporte (President of DAIDAX, f/k/a Pathwai Inc., and BEN Automotive Inc.) William "Bill" Bigley (Chief Financial Officer of AFG), Amanda Tettleton (Chief Accounting Officer of AFG), Keith Cooper (Chief Operations Officer of AFG), Dave Duggan (Chief Technology Officer of AFG), Travis Gates (Former Chief Compliance Officer of AFG) and Erick Roberts (Former Vice President of Software of AFG) were all in attendance.

72. According to witnesses at the meeting on March 7, 2024, Defendant AFG's President of now DAIDAX, Jason De Laporte, stated that AFG "*did not have the operational capacity to fulfill the exclusive reseller agreement*" with BEN and also planned to violate the exclusivity clauses within the Reseller Agreement. De Laporte continued on, stating, "*If we do the SET deal, because now I don't have to go to market, I don't have to sell, I don't have to do all these things*."

73. Defendant AFG's Chief Technology Officer Dave Duggan stated: "*if the technology were developed now and ready to go, they would all be signing up . . . We might be able to accelerate this actually because the technician assistant, BEN AI can do most of that without a ton of development on our side, because its feeding manuals*." This statement by Defendant AFG not only demonstrates AFG's utter lack of any intention to fulfill its commitment to BEN, but it further shows how wholly unprepared Defendant AFG was to move forward with any agreements with BEN.

74. Also, according to witnesses present at the March 7th meeting, Defendant Brewer blatantly admitted his intention to violate the exclusivity and non-compete provisions of the

exclusive reseller agreement with BEN even before receiving BEN stock. Specifically, Wright Brewer stated, "*to be quite frank [ ], the person we have to compete against (BEN), potentially on those ten companies, would be BEN Inc.*" Defendant Brewer exclaimed to the AFG team, "*Oh no we keep everything*," which was Defendant Brewer's strategy all along to compete against BEN, and to never provide BEN with any automotive dealer systems information for BEN AI Automotive.

75. Defendant AFG executives also outwardly acknowledged during this meeting that the ransomware attack and data breach in August of 2023 were concealed from BEN so AFG could fraudulently obtain BEN stock grants. Keith Cooper (AFG's COO) stated, "*we're just lucky*" that SET hasn't asked for any kind of notification since the data breach. Dave Duggan chimed in and acknowledged that Defendant AFG was still behind in meeting AFG's cyber security industry standards and regulatory compliance. He stated, "*I'm sorry, I'm looking at accelerate completion of SOC2 and FTC Safeguards compliance.*"

76. Finally, at the March 7th meeting, Defendant Brewer acknowledged that even eight months later, AFG still had no database or dealer systems information to launch any products for AFG, let alone data sets for BEN under AFG's contractual obligations. Defendant Brewer made this utter lack of functional data systems at AFG as of March 7, 2023 clear: "*So knowing the type of reports that their looking for, and knowing when we can put our database, finish our database with all the CareGard data, what does that look like*" and "*that depends on when the database is going to be completed.*"

77. Further evidence of AFG's direct competition against BEN in the automotive AI industry can be found through the Texas Secretary of State. On December 21, 2023, AFG formed a new wholly owned entity called "BEN Automotive, Inc.," which it registered with the State the

next day. This entity turned out to be the entity Defendants AFG and Brewer was using to compete with BEN, given that, on June 28, 2024, AFG amended BEN Automotive, Inc.'s registered name with the State to Pathwai, Inc. This name amendment was not disclosed to BEN or Plaintiff GL. After the departure of another employee, and in order to further conceal their fraudulent scheme, on October 28, 2024, AFG then filed another amended name with the Texas Secretary of State of Pathwai, Inc. to DaidaX, Inc. On February 12, 2025, Defendant AFG filed a change of DaidaX, Inc.'s registered office address to the same address as all his other sham entities: 1900 Champagne Blvd., Grapevine, TX 76051.

78. Neither Plaintiffs nor BEN were ever informed of these devious plans by Defendant Brewer and his entities to violate the exclusive Reseller Agreement and directly compete with BEN. Neither Plaintiffs nor BEN were ever told about Defendant AFG's relationship with another test dealership or Defendant AFG's intent not to meet its contractual requirements related to BEN's AI software. Additionally, neither Plaintiffs nor BEN were ever informed of Defendant Brewer or his AFG entities' October statements to "go to war" or create competing AI companies using BEN's intellectual property and trade secrets.

79. The existence of these overt plans at the time that Plaintiff Genuine Lifetime entered the Loan and Luck entered the Guaranty were absolutely material to their decisions to sign. Had Plaintiffs known for a moment that Defendant Brewer was planning to directly compete against BEN concurrently with his open, warm promises to become a collaborative stakeholder in BEN and resell its technology, then Plaintiff Genuine Lifetime would have never agreed to accept a loan of $4 million from Defendant AFG to invest directly in the tech company Defendant Brewer was conspiring to destroy.

H. ***Beneath the Surface*. Wright Brewer used the Exclusive Reseller agreement and Loan Agreement to make millions through insider trading.**

80. In addition to Defendant Brewer's undisclosed plans to compete against BEN, Brewer had other undisclosed plans to use his insider knowledge of Plaintiff Genuine Lifetime's loaned investment of $4 million and Defendants Brewer/AFG's own positions in AFG acquired in the fall of 2023.

81. Again, *before* BEN went public, by September 2023, BEN had allocated 1.75 million shares of its common stock to Defendant AFG in September 2023, subject to the completion of the merger with the DHCA SPAC, valued at $10 per share at the time of issuance. Those shares were subsequently transferred in March of 2024 to Defendant AFG. This initial allotment provided Defendant AFG with free trading stock valued at $17.5 million.

82. Shortly *after* BEN began publicly trading on or about March 15, 2024, BEN's stock price rose to $19 per share, significantly increasing the value of Defendant AFG's holdings to approximately $33.5 million, creating a personal financial windfall for Defendants Brewer and AFG.

83. Upon information and belief, in addition to the stock allotment, Defendant AFG also secured a warrant agreement as part of the Reseller Agreement. This warrant agreement granted Defendant AFG the right to purchase an additional one million shares of BEN stock at $10 per share, subject to performance benchmarks related to Defendant AFG's obligations and performance under the Reseller Agreement. At the time the stock price reached above $19, this warrant provided Defendant Brewer with an unrealized potential profit of approximately $9 million if exercised.

84. So, on March 15, 2024, Defendant Brewer's scheme had reached its apex. BEN's stock became publicly traded, instantly making Defendant Brewer and his family

multimillionaires. On information and belief, these sales began on or around March 15, 2024, when BEN AI stock was trading on the NASDAQ under the stock symbol BNAI and the stock traded as high as $19.75 a share on March 18, 2024. Witnesses observed Defendant Brewer in his office, pressuring his Goldman Sachs stockbroker, Sean Baird, to liquidate as much BEN stock as possible at the market's opening. On information and belief, Defendant Brewer acknowledged to the witness the sale of securities on Friday, March 15, 2024, the day BEN began trading on the NASDAQ. At this time, Defendant Brewer was an insider holding more than 5% of BEN's stock, and knowingly concealed from BEN, the public markets, and the SEC in direct violation of securities laws the sale of those securities and subsequent required 13d filings. This concealment was integral to Defendant Brewer's fraudulent scheme, allowing him to profit while evading disclosure obligations.

85. Defendant Brewer not only hid this planned, rapid sell off of BEN shares, he failed to file the required Rule 13 disclosure and all subsequent disclosures to the detriment of Plaintiff Genuine Lifetime, one of BEN's other investors and shareholders.

86. By May 15, 2024, hardly two months after going public, BNAI stock traded at a low of around $1.00, wiping out hundreds of millions of dollars in value to BEN and decimating Plaintiff Genuine Lifetime's acquired $4 million position in BEN through Defendant AFG's Loan. At the high on March 18, 2024, the value of each of Plaintiff Genuine Lifetime's BEN shares was $13.72 (excluding the intra-day high of $19.75), making its total position worth $6,768,528.76. However, by March 25, 2024, the value of that position tanked to $2,925,464.69, and continued to tumble down to only $517,999 by May 15, 2025. The public share price of BNAI stock has never remotely recovered, and as of the time of this position, Plaintiff Genuine Lifetime's position is still worth only approximately $187,466.54.

87. Upon information and belief, this dramatic sell-off and fall in the BEN share price was planned and known to Defendant Brewer at all times when he negotiated the Loan between Plaintiff Genuine Lifetime and Defendant AFG. Had Plaintiff Genuine Lifetime known that Defendant Brewer planned to compete with BEN and immediately sell-off almost all his BEN positions, his family member's BEN positions, or his entities' BEN positions, at the opening in March and April of 2024, which would dramatically impact the stock, harm its own position, harm BEN, and ultimately kill the parties' original goal of working together to implement BEN in the automotive market, then Plaintiff Genuine Lifetime would have never entered the Loan in the first place.

I. CareGard Breaches the Original Broker Agreement and Payments to Genuine Lifetime.

88. Amid all this betrayal in March of 2024, it is unsurprising that Defendant Brewer's original entity doing business with Plaintiff Genuine Lifetime, Defendant CareGard, also took action to harm Plaintiff Genuine Lifetime and tear up their original business agreements.

89. As previously discussed, Defendant CareGard was obligated to pay Plaintiff Genuine Lifetime a percentage of Earned Reserves as well as contract fees, as agreed to in the Original Broker Agreement and First Amended Broker Agreement. The terms of these agreements provided a monthly payment schedule, whereby all contract fees were due to be paid on or before the 15th business day of each calendar month and profit-sharing PAP payments due to Plaintiff Genuine Lifetime were due within one-hundred and twenty (120) days after each annual December 31st evaluation date.

90. However, on May 15, 2024, Defendant CareGard did not pay to Plaintiff Genuine Lifetime the monthly contract fees required by the Original Broker Agreement and First Amended

Broker Agreement. The last payment received was on April 15, 2024, for approximately $37,000 for the February 2024 earned fees.

91. Moreover, on April 29, 2024, the 120th day of FY 2024, when profit-sharing PAP payments were due, no payments were delivered or other accounting provided to Plaintiff Genuine Lifetime. Defendants Brewer, CareGard, and AFG had openly breached and repudiated those fundamental contracts.

92. Through its contacts with SET, Plaintiff Genuine Lifetime obtained a Defendant CareGard invoice for the month of March 2024 that shows that Defendant CareGard continues to provide and bill for brokered TPA services to SET. Accordingly, upon information and belief, Defendant CareGard to this day still receives fees and proceeds from Plaintiff Genuine Lifetime's brokered warranty contracts and owes valuable contract fees and profit-sharing payments to Plaintiff Genuine Lifetime.

93. As a direct result of Defendants CareGard and AFG's breach of the Original Broker Agreement and First Amended Broker Agreement, Plaintiff Genuine Lifetime has suffered damages in the amount of unpaid contract fees and profit-sharing payments from April 15, 2024, to the present.

94. Upon information and belief, the total amount of these fees exceeds $75,000.

J. *Beneath the Surface*. Alter Ego and Veil Piercing.

95. At all relevant times, Defendant Brewer has exercised complete control over all other Defendants named in this lawsuit ("**AFG Defendants**"), disregarding corporate formalities and using the entities as his alter ego to commit fraud and evade contractual obligations. Defendant Brewer's misconduct demonstrates personal liability under theories of fraud, securities violations, and piercing the corporate veil.

96. Defendant Brewer is the alter ego of AFG Defendants, including CareGard and AFG, and vice versa. Moreover, AFG Defendants are alter egos of one another.

97. Plaintiff Genuine Lifetime is informed and believes, and thereon alleges, that at all times mentioned in this complaint, that each of Defendants were the agent and employee of each of the other remaining Defendants, and in doing the things alleged in this counter-complaint, were acting within the course and scope of this agency and employment, and each has ratified and approved the acts of its agent.

98. Defendant Brewer's misuse of AFG Defendants demonstrates a clear need to pierce the corporate veil and hold him personally liable. Defendant Brewer disregarded corporate formalities, undercapitalized AFG Defendants, and used them as his alter ego to carry out fraudulent and retaliatory actions.

99. Defendant Brewer's actions show a consistent pattern of personal enrichment and bad faith conduct, which cannot be shielded by the corporate entities he controlled. Holding Brewer personally liable is essential to ensure accountability for the harm caused to Plaintiff Genuine Lifetime.

100. The harm caused by Defendant Brewer and AFG Defendants continue to affect Plaintiff Genuine Lifetime, requiring significant resources to address and mitigate. GL has suffered long-term financial and reputational damage, limiting its ability to pursue business opportunities and maintain trust with partners and clients.

101. This lawsuit seeks to hold Defendant Brewer and AFG Defendants accountable for their actions and secure the relief necessary to compensate Plaintiff Genuine Lifetime for the harm they have suffered.

IV. CAUSES OF ACTION

COUNT 1

Breach of Contract

(Genuine Lifetime against CareGard Warranty Services, Inc. and AFG Companies, Inc.)

102. Plaintiff realleges each and every allegation set forth above and incorporates them herein.

103. The stated governing law of the Original Broker Agreement and First Amended Broker Agreement is the law of the State of Texas.

104. To establish a breach of contract claim under Texas law, the Plaintiff must prove (1) the existence of a valid contact; (2) the plaintiff performed or tendered performance; (3) the defendant breached of the contract; and (4) the plaintiff sustained damages as a result of the breach.

105. On August 3, 2022, AFG entered into the Original Broker Agreement with Plaintiff Genuine Lifetime, which is a valid and enforceable agreement. On August 18, 2023, Plaintiff Genuine Lifetime, Defendant CareGard, and also Defendant AFG entered the First Amended Broker Agreement, which is also a valid and enforceable agreement.

106. Under the terms of the Original Broker Agreement and First Amended Broker Agreement, Defendants CareGard and AFG agreed to, among other things: (a) pay to Plaintiff Genuine Lifetime a fee for each contract issued to a brokered dealership, including SET and MBUSA, and (b) under the PAP, pay to Genuine Lifetime 75% of Earned Reserves from the brokered dealership warranty contracts, after CareGard retains the first 25%, so long as the Loss Ratio for the underwriting period fell below 75%.

107. After execution of these agreements, Plaintiff Genuine Lifetime performed its obligations and/or tendered performance.

108. However, on March 15, 2024, Defendants CareGard and AFG did not pay to Plaintiff Genuine Lifetime the monthly contract fees required by the Original Broker Agreement and First Amended Broker Agreement. And on April 29, 2024, the 120th day of FY2024, when profit-sharing payments for FY2023 were due, Defendants AFG and CareGard failed to deliver payment of the profit-sharing payments due to Plaintiff Genuine Lifetime. These acts constitute Defendants CareGard and AFG's breach of the Original Broker Agreement and First Amended Broker Agreement.

109. Upon information and belief, for every month after March 2024 to the present, Defendants CareGard and AFG have continued to receive income through its contracts through dealerships brokered by Plaintiff Genuine Lifetime, for which monthly contract fees are due to Plaintiff Genuine Lifetime.

110. Upon information and belief, for FY2023 and FY2024 the Loss Ratios for these same brokered contract remain below 75%, meaning that profit-sharing payments remain due and owing under the agreements as well.

111. Defendants CareGard and AFG's breaches were willful and deliberate, as evidenced by CEO Ralph Wright Brewer III's active concealment of the ransomware attack, concealment of his plans to compete against BEN, concealment of his scheme to sell-off his BEN positions and harm Plaintiff Genuine Lifetime, and fraudulent inducement of the Loan.

112. As a direct and proximate result of Defendants CareGard and AFG's breaches, Plaintiff Genuine Lifetime has suffered substantial financial harm.

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COUNT 2

Declaratory Judgment that the Loan is Void

(Plaintiffs against AFG Companies, Inc.)

113. Plaintiffs re-allege and incorporates by reference each and every allegation set forth above.

114. "[F]raud vitiates whatever it touches." *Morris v. House*, 32 Tex. 492, 495 (1870); *see also Bannum, Inc. v. Mees*, No. 07-12-00458-CV, 2014 WL 2918436, at *1 (Tex. App.—Amarillo June 24, 2014, no pet.) (mem. op.) (noting that void contract "is something that never occurred," and thus after contract at issue was rendered null and void, party could not sue for breach of contract because there was no contract susceptible to breach); *Pathfinder Oil & Gas, Inc. v. Great W. Drilling, Ltd.*, 574 S.W.3d 882, 890 (Tex. 2019) (stating one element of breach-of-contract claim is existence of valid contract).

115. Pursuant to Chapter 37 of the Texas Civil Practice & Remedies Code, Plaintiffs seek a declaration that Defendant AFG fraudulently induced Plaintiff Genuine Lifetime into entering the Loan on October 17, 2023, and Tyler Luck into entering the Guaranty simultaneously, and that the Loan is both void and unenforceable.

116. To establish a contract was fraudulently induced under Texas law, a plaintiff must prove that: (1) the defendant made a material misrepresentation; (2) the defendant knew at the time that the representation was false or lacked knowledge of its truth; (3) the defendant intended that the plaintiff should rely or act on the misrepresentation; (4) the plaintiff relied on the misrepresentation; and (5) the plaintiff's reliance on the misrepresentation caused injury. A "misrepresentation" can occur when the defendant falsely promises to perform a future act while having no present intent to perform it.

117. Fraud by Defendants CareGard and AFG that voids the subject Loan may also be proven through common law fraudulent concealment, which requires proof that (1) the defendant concealed from or failed to disclose certain facts to the plaintiff, (2) the defendant had a duty to disclose the facts to the plaintiff, (3) the facts were material, (4) the defendant knew the plaintiff was ignorant of the facts, and the plaintiff did not have an equal opportunity to discover the facts, (5) the defendant was deliberately silent when it had a duty to speak, (6) by failing to disclose the facts, the defendant intended to induce the plaintiff to take some action or refrain from acting, (7) the plaintiff relied on the defendant's nondisclosure, and (8) the plaintiff was injured as a result of acting without the knowledge of the undisclosed facts. A duty to disclose arises when the defendant creates a false impression by making a partial disclosure and when the defendant voluntarily discloses some information but fails to disclose the whole truth. A false impression arises when the defendant discloses some facts and conceals others knowing that the plaintiff is ignorant of the undisclosed facts and does not have an equal opportunity to discover the truth.

118. Defendant AFG, led by Defendant Brewer, made deliberate and material misrepresentations and false promises to induce Genuine Lifetime into entering the Loan. First, Defendant AFG, through Defendant Brewer, specifically represented and promised that Defendant AFG and its subsidiaries had robust data security protocols in place and that its IT infrastructure was fully prepared to support BEN's proprietary technology. This representation and all other positive assertions of fact that Defendants AFG and CareGard made to Plaintiffs that it had secure databases and robust data security systems was false, misleading, and partial disclosure, as prior to making these allegations, Brewer and Defendants had suffered the Hack described in this Complaint and were engaging in an illegal coverup of the Hack. Defendants Brewer and AFG both knew about the Hack and the subsequent coverup at the times that these representations were

made, yet remained deliberately silent. Defendants AFG and CareGard knew that Plaintiffs were ignorant of the Hack and coverup and did not have an equal opportunity to discover the existence of the same. Plaintiffs relied to their detriment on Defendant AFG's misrepresentations and false promises about Defendants' supposedly secure data and systems as well as Defendant AFG's silence about the existence of the Hack and coverup when Plaintiffs entered the Loan and Guaranty. And obviously, the Hack was material to Plaintiff Genuine Lifetime, and Genuine Lifetime would not have entered the Loan had Defendant AFG properly disclosed the Hack and subsequent coverup.

119. Second, Defendant AFG entered the Reseller Agreement and promised to honor the obligations of anti-competition provisions stated therein, but Defendants AFG and Brewer had no intention of honoring those promises at the time they were made, as Defendant AFG made those promises only to obtain access to BEN's AI-Technology and compete against it, creating new competing AI technology platforms known as "Symphonai," "Pathwai," and/or "DaidaX," and possibly assisting competitor Drive Centric or others to advance a competing AI customer service platform. Defendant AFG made these false promises to both BEN and Plaintiffs, as these misrepresentations of working together with BEN and not competing against BEN were a material reason for why Plaintiff Genuine Lifetime transferred its 500,000 shares of BEN to Defendant Brewer and his family through the First Amended Broker Agreement. Defendant AFG reiterated these positive promises of collaboration with BEN and non-competition with BEN when Defendant Brewer faked interest in a BEN acquisition and when Defendant AFG pitched the Loan to Plaintiffs to "help" BEN with its funding needs. Ultimately, Defendant AFG made these false promises and misrepresentations to Plaintiffs with the intent that Plaintiffs would rely on them and to induce Plaintiff Genuine Lifetime into entering the Loan. In reliance on these false promises,

misrepresentations, and Defendants AFG and Brewer's concealment of the active plans to compete against BEN, Plaintiff Genuine Lifetime signed the Loan and Plaintiff Luck signed the Guaranty.

120. Finally, Defendant AFG falsely represented that it was loaning $4 million to Plaintiff Genuine Lifetime to invest in BEN to provide BEN financial funding for a successful launch in the automotive industry and to accommodate BEN's request for working capital. In truth, when Defendants AFG and Brewer made these representations, they simultaneously were planning a mass sell-off their own BEN shares purely to profit from the Loan as an insider and not for the purpose of supporting BEN. To the contrary, when Defendant AFG and Brewer made the representations of supporting BEN in connection with negotiating the Loan, they knew that their plans would devastate BEN , depress the stock, and harm Plaintiffs, ultimately killing the parties' original goal of working together to implement BEN in the automotive market. Had Plaintiffs known of these false promises, misrepresentation, and concealed plans of the sell-off, Plaintiffs would have never entered the Loan or the Guaranty in the first place.

121. All of these misrepresentations have proximately caused Plaintiffs to suffer injury, and all elements of fraudulent inducement of the Loan are proven by these alleged facts. Consequently, the Court should declare that Defendant AFG's fraud renders the Loan void and that Plaintiff Genuine Lifetime bears no obligation to Defendant AFG pursuant to its terms. Additionally, the Court should that Defendant AFG's fraud renders the Guaranty void and that Plaintiff Luck bears no obligation to Defendant AFG pursuant to its terms.

122. Pursuant to Texas Civil Practice and Remedies Code Section 37.009, 38.001, and any other applicable statute for which attorney's fees in this scenario are recoverable, Plaintiffs also hereby seek recovery of all reasonable and necessary attorney's fees incurred in order to obtain the aforesaid declaratory relief.

COUNT 3

Piercing the Corporate Veil (Alter Ego)

(All Plaintiffs against all Defendants)

123. Plaintiffs re-allege and incorporate by reference each and every allegation set forth above.

124. In Count One of this Complaint, Plaintiff Genuine Lifetime sues Defendants AFG and CareGard for breach of contract.

125. Moreover, upon information and belief, Defendants Brewer, Automotive Financial Group, Inc., AFG Technologies, LLC d/b/a Tronix, Southwest Colonial Reinsurance, Ltd., Prime Reserve Plus Inc., DeLaporte Learning Inc., DaidaX, Inc., formerly known as Pathwai, Inc. and Ben Automotive Inc., and CareGard Dealer Services, LLC ("**Alter Ego Defendants**") utilized Defendants CareGard and AFG to perpetrate a fraud on Plaintiffs and fraudulently induce them into entering the First Amended Broker Agreement, the Loan, and the Guaranty for the Alter Ego Defendants' benefit, such that the corporate veil should be pierced and all Defendants should be held liable for AFG and CareGard's breach of the Original Broker Agreement and the First Amended Broker Agreement.

126. Additionally, in Count Two of this Complaint, Plaintiffs sue Defendant AFG for declaratory judgment that the Loan and Guaranty are void.

127. Because Alter Ego Defendants and Defendant CareGard utilized AFG and CareGard to perpetrate a fraud on Plaintiffs and fraudulently induced them into entering into the Loan and Guaranty, and because this fraud by Alter Ego Defendants and Defendant CareGard forms the basis of the declaratory relief Plaintiff seeks from the Court, Alter Ego Defendants and

Defendant CareGard should likewise be liable for all reasonable and necessary attorney's fees incurred in order to obtain the aforesaid declaratory relief.

CONCLUSION

128. Plaintiffs seek judgment against Defendants, jointly and severally, for:

(a) Actual and consequential damages, including lost revenue, denied compensation, and mitigation costs;

(b) A declaration that the fraudulently induced Loan and Guaranty are void;

(c) Attorneys' fees and litigation costs;

(d) Pre- and post-judgment interest on all damages awarded; and

(e) Any additional relief the Court deems just and proper.

Respectfully submitted,

MCCATHERN, PLLC

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ATTORNEYS FOR PLAINTIFFS

EXHIBIT B-4

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DUE FIGLIE LLC AND SHAWN LUCAS. **Plaintiffs,**	§	
v.	§	**CIVIL ACTION NO. ____________**
RALPH WRIGHT BREWER III, and AFG COMPANIES, INC.,	§	**JURY TRIAL DEMAND**
Defendants.	§	

PLAINTIFFS' ORIGINAL COMPLAINT

Plaintiffs' Due Figlie LLC and Shawn Lucas ("Due Figlie") files this Original Complaint against Defendants Ralph Wright Brewer III and AFG Companies, Inc., (collectively, "Defendants") and respectfully shows the Court the following:

This case arises out of a complex and coordinated scheme of fraudulent misrepresentations, bad faith conduct, State and Federal whistleblower retaliation claims, fraudulent inducement, violations of the Securities Exchange Act of 1934 ("Exchange Act") including violations of failure to file a beneficial ownership reports during the relevant time, Section 13(d)(1), The Sarbanes Oxley Act ("SOX") anti-retaliation provision, defamation and breaches of oral and written contracts orchestrated by Defendant Ralph Wright Brewer III and the corporate entities under Defendants control. Defendants concealed a critical ransomware attack, misrepresented their operational readiness and data security compliance, fraudulently induced Due Figlie, defamed Due Figlie, failed to file proper beneficial reports pursuant to the Exchange Act, violated Sox anti-retaliation provision, and failed to fulfill their obligations under multiple agreements with Plaintiffs Due Figlie. Through this misconduct, Defendants unjustly enriched themselves, caused significant financial harm to Plaintiffs and others, and jeopardized Plaintiffs' business and personal relationships, reputation, and strategic initiatives. Plaintiffs now seek to hold Defendants accountable for their actions and recover damages for the harm caused.

I. PARTIES

3. Shawn Lucas is a resident of the State of California and serves as a member of Due Figlie LLC, collectively referred to hereafter as Due Figlie. Shawn Lucas is a Federal Whistleblower protected under Commission Rule 21F-17(a) of the Securities and Exchange Commission, FTC Whistleblower protected under the FTC Whistleblower Act of 2021, as well as and State Whistleblower protected under numerous State Whistleblower laws across the United States.

4. Due Figlie is a limited liability company in Wyoming, with its' principal offices in Jackson, Wyoming. Due Figlie is a consulting, advisement company for businesses and individuals in the automotive vertical and other industries. Due Figlie is an innovator of service contracts, lifetime limited warranties, B2B and B2C Software as a Service solution for automotive manufacturers, distributors, dealers, third-party companies and consumers. Due Figlie entered into multiple Consulting Agreements with CareGard Warranty Services Inc., ("CareGard") their holding company AFG Companies Inc, ("AFG Companies" "AFG" or "AFG Entities") and their subsidiaries as CareGard wished to expand new products and technology solutions into the automotive market.

5. Defendant Ralph Wright Brewer III ("Brewer") is an individual residing in Bartonville, Texas, and serves as the Chairman and CEO of CareGard Warranty Services, AFG Companies Inc. and its subsidiaries. Defendant Brewer is the architect of the fraudulent schemes, whistleblower retaliation, securities fraud under the Exchange Act, SOX Act anti-retaliation

provision, fraudulent inducement, defamation and bad faith actions described in this lawsuit, acting personally and through the Defendant AFG entities to misrepresent material facts, conceal a significant ransomware attack, and enrich himself at the expense of Due Figlie.

6. Defendant Brewer exercised complete control over the AFG entities, disregarding corporate formalities and using the entities as his alter ego to commit fraud and evade contractual obligations.

7. Defendant AFG Companies, Inc. is a Texas domestic for-profit corporation that played a key role in facilitating the misconduct alleged in this lawsuit with its principal place of business in Grapevine, Texas. It participated in misrepresenting AFG's compliance and performance during negotiations and actively benefited from the fraudulent actions described herein.

II. JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, as Plaintiff asserts claims arising under federal law, including violations of the Securities Exchange Act of 1934, Section 10(b) (15 U.S.C. § 78j(b)), and Rule 10b-5 promulgated thereunder. Defendants engaged in fraudulent conduct and deceptive practices in connection with the purchase or sale of securities, including stock and warrant agreements issued to Defendant Brewer and his affiliated entities.

9. This Court also has jurisdiction under 28 U.S.C. § 1332(a), as there is complete diversity of citizenship between Plaintiffs Due Figlie, Shawn Lucas, and the Defendants, and the amount in controversy exceeds $75,000, exclusive of interest and costs.

10. Plaintiff Due Figlie is a citizen of Wyoming, its members are California citizens and Plaintiff Shawn Lucas is a citizen of California, while the Defendants are citizens of Texas.

The corporate defendant, AFG Companies, Inc., is Texas corporation, and conducts business operations in Texas. Defendants Brewer is an individual residing in Texas.

11. Venue is proper in this District under Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1391(b). Many of the acts and transactions alleged in this Complaint, including the dissemination of materially false and misleading statements and omissions, occurred in substantial part in this District. Brewer also transacts business in this District.

12. This Court has personal jurisdiction over all Defendants because they reside, are incorporated, or conduct substantial business in Texas, including within the Northern District of Texas. Defendant Brewer resides in Texas and personally participated in the misconduct alleged herein. The corporate defendant Texas-based entities whose operations are in Texas and central to the Plaintiffs' claims in this case. By entering into agreements with Due Figlie, performing actions in furtherance of the fraudulent scheme, and breaching obligations in the Northern District of Texas, Defendants purposefully availed themselves of the jurisdiction of this Court.

III. FACTUAL BACKGROUND

A. Brewer's Scheme to Defraud Due Figlie and Shawn Lucas

13. Plaintiff Shawn Lucas introduced BEN AI to Defendants Brewer and AFG after meeting with Michael Lucas and Tyler Luck in San Diego County, California. Tyler Luck presented a demonstration on his mobile phone of the BEN AI Avatar to Shawn Lucas who thought this could revolutionize the automotive vertical. On May 11, 2023, Shawn Lucas after review of information and discussions with BEN AI followed up with Defendant Brewer on the opportunity with BEN AI and sent to Brewer via email the Confidential BEN AI power point and subsequently had a meeting that same day at 1:30 p.m. CST with Brewer.

14. On June 5, 2023, Brewer texted Shawn Lucas: "Does Chris (Chris Gaertner, now Chairman of BEN AI) have a vision to capitalize on providing F&I (Finance & Insurance) products to the (auto) industry using BEN?"

15. On June 21, 2023, Defendant Brewer with Shawn Lucas met with the DHC Acquisition corporate executive Chris Gaertner and advisor Richard Miller. Defendant Brewer stated:

> *"I'm leaning more to betting on the come, less cash for me and more shares of the parent company* (BEN AI). *First of all, I want to do a deal, number two, the big upside for me has always been the technology that's where the long-term money is in my opinion with the tech that I developed the Tronix platform, you guys will see the depth and amount of code that's created there. Adding AI to it or any type of AI would make it explode, but adding an avatar on the consumer side and dealer side would make it pop too. So, I am looking at the stock."*

16. On information and belief, Brewer was convinced that BEN AI was going to revolutionize the Third-Party Administrator ("TPA") industry for the automobile market from day one, and that the easiest way to market was through Brewer's control of CareGard, AFG Companies and its' subsidiaries. Brewer stated in numerous conversations with BEN AI, DHC Acquisition Corp and Shawn Lucas that BEN AI could reduce call center cost by up to eighty percent (80%).

17. Defendant Brewer further stated in that same conversation:

> *"I love that, because there's where my heart and soul is at guys, that SAAS (software as a service) model and what the dealers are going to be willing to pay for that, what the others TPA's are going to wanting to pay fees, licensing fees to issue there contracts through, its huge, it will make CareGard look like a little bitty baby compared to what that thing* (meaning BEN AI technology) *can do . . . .*"

18. Chris Gaertner, Chairman of BEN AI responded to Brewer by stating, *"We want to be aligned, and we want you to be highly, highly incentive if that's successful."*

19. Brewer responded to Miller by stating the following:

> *"Richard if I tell you I'm going to do something, I'm going to do it. For an example, SET (Southeast Toyota Distributors) love us, SET absolutely loves us and I envision doing a deal with Jim Moran & Associates to take Tronix, once we get the AI plugged in, to take Tronix to JM & Associates and JM&A Family companies ok and sell that platform to JM&A's four to five thousand dealerships and when they adopt that, Katie bar the door, that lines us up with a lot of other TPA's. JM&A is a huge private company one of the biggest private companies in the country. The main point I want to make before we get off is you get me to selling and I'm going to sell."*

20. Southeast Toyota Distributors ("SET"), JM Family Enterprises Inc., ("JM Family"), JM&A Group ("JM&A") and executives were introduced to Brewer and CareGard by Shawn Lucas the creator and founder of DealerLifetime.com, lifetime warranty products being issued by SET with CareGard Warranty Services as the TPA. Upon information and belief, at the March 7, 2024 "Vision Meeting" Brewer and Jason DaLaporte, President of DaidaX (F/K/A "Pathwai" and "BEN Automotive" subsidiaries of AFG Companies) said that SET, JM Family and JM&A were excited about BEN AI and held several meetings in late 2023 and early 2024 about investing up to forty-million dollars ($40M). In July of 2023, JM Family Enterprises invested in Skaivision a computer vision AI company and Kai Ramadan of Southeast Toyota Distributors joined Skaivision's board of directors.

21. On June 22, 2023, Shawn Lucas sent an email to Defendant Brewer, Roger Crabb and Margaret Ricchi of the law firm Scheef & Stone. Shawn Lucas' email stated the following:

Shawn Lucas <shawndlucas@gmail.com> Thu, Jun 22, 2023, 6:13 PM
to Mark, Roger, Wright, Margaret

Hello Roger,

We had a good evening on the earn out, so a few housekeeping redlines that Wright and I will discuss in the morning and send to Chris and Rich and then we are ready to sign if you and Margaret concur. The additional detail will come on the DA.

Looking forward to working with you two and the additional team members from Scheef & Stone.

22. On June 23, 2023, DHC Acquisition Corp and Defendant AFG Companies Inc., signed a Non-Binding Term Sheet for the acquisition of the Defendant Companies for $140 million. On information and belief, Brewer was elated about the signing of the new deal term sheet and reassured Plaintiff Shawn Lucas that he would honor his commitment and payments to Shawn Lucas and Due Figlie.

23. On June 30, 2023, Defendant Brewer texted Plaintiff Shawn Lucas:

> "We might need a legal tax guy to support Dave Kaseff (Dave Kaseff with Mark Nelson Advisory LLC and provided tax advice to Brewer and AFG). or replace DK? (Dave Kaseff). What about Mark firm (Mark Hill of Scheef & Stone). Btw, who gets Mark (Mark and his law firm Scheef & Stone) post merger?"

24. On Thursday, July 13, 2023, Shawn Lucas and Defendant Brewer discussed "Plan A"; which was the original acquisition/merger of AFG Companies, CareGard et al by BEN AI. Other possible "Plan B or C" were also discussed because it appeared AFG would not be able to complete their audited financials in time for a transaction. Defendant Brewer realized "Plan A" was dead due to not having audited financials and quickly pivoted when he realized BEN AI could not outright acquire AFG-CareGard. Defendant Brewer sent an email to Shawn Lucas about Brewer's pivot to the new plans "B and C":

WB Wright Brewer
To: Shawn Lucas

Reply Reply all Forward ···
Thu 7/13/2023 7:57 AM

I want to send to Chris asap…..

Thanks for the update and call yesterday.
There are three potential options or strategies to consider. It's crucial to me that AFG Cos doesn't hinder the progress of your SPAC in any way since our relationship is essential. Our team should remain united under one roof and continue with PLAN A. However, if that doesn't work out, going with PLAN B is possible. This plan involves two SPACs(like you suggested yesterday); one for BENAi technology and the other for AFG Companies, which includes Tronix. AFG SPAC would then have an exclusive license agreement with BENAi's technology and pay them a reasonable percentage of savings and per-contract fees (around 15-20%). After that, AFG Cos can go ahead and execute the rollup plan. Finally, if none of these options work out, we could always resort to PLAN C, which would be the same as PLAN B, except that AFG Cos wouldn't go public. Instead, they would enlist the help of Integrity Partners for capital and acquisition assistance for the rollup plan before potentially going public. If we decide to go with PLAN A, we must get the auditors working on it as soon as possible. We could always adjust the MOU for auditing fees, depending on which plan or plans we pursue. By the way, feel free to call me anytime today.

25. On a Friday, July 14, 2023, conference call with the BEN executives and advisors, Michael Zacharski, Richard Miller and Chairman Chris Gaertner, Co-founder Michael Lucas, Defendant Brewer and Plaintiff Shawn Lucas, Brewer stated,

> *"Why wouldn't we want to talk about the commercial relationship between AFG and BEN and work out the revenue and everyone keeps their own asset and let's talk about how we can co-exist together, and you all get what you want as far as revenue is concerned?"*

Chris Gaertner asked Brewer *"Wright, do you want to have an ownership position in BEN?"* Defendant Brewer responded: *"Of course I do, I would be a fool to say no."* Michael Zacharski said, *"Wright is saying, here is what I am solving for, I want to transform the TPA industry and by having the technology that helps me, makes total sense."*

26. Defendant Brewer then responded by saying:

> *"Let's just go back to day one* (the June 2023 acquisition and merger discussions*), that that the thought is, when we didn't split the baby and we (AFG and BEN) were all under one roof, that's a hell of a sale to a TPA, that's a hell of a sale, were going to use AI we are going to use the platform which you do not have, you do not have the Tronix, we are going to put the AI with Tronix and we are going to smash the market with this… roll up these four or five TPA's we are going to give you… $800M but were going to give you $400M worth of stock, ok, they'll do that deal, where as if I just go in with a plain jane IPO there going to say no we already looked at that and we are not interested, we already looked at that,"*

27. On July 18, 2023, at 8:22 p.m. Defendant Brewer sent an email to Plaintiff Shawn Lucas asking to *"Correct this crap asap and give AFG Companies and myself a complete release on this Tronix/1Basket new company-crap, it never happen or will. Now I know why I didn't sign the August 2022 update,"* – even though the only changes were the sixty-day termination notice, the previously agreed to agent fees and equity from the March 2022 agreement and the June 2022 agreement remained the same without any changes. Demonstrating that Defendants never intended

to honor the agent fees or equity due to Plaintiff Shawn Lucas and Due Figlie despite the tens of millions of dollars generated through those relationships for Defendant Brewer and AFG.

B. AFG Suffers Massive Cyber Intrusion

28. On August 4, 2023, an outside and unknown Threat Actor sent a "phishing" email that was not discovered until the ransomware cybersecurity data breach investigation. On information and belief, this phishing email was the gateway that was used to access privileged consumer and customer data of CareGard Warranty Services and its subsidiaries or affiliates.

29. On August 13, 2023, Integris IT has a ticket opened #7169954, for Amanda Tettleton, Chief Accounting Officer - "Ransomware has been detected at CRGD CareGard." CRGD is the CareGard Server that holds all CareGard information. According to numerous witnesses, and on information and belief, Defendant Brewer had reduced AFG's cyber security with Integris IT to monitoring in an effort to pinch pennies despite misrepresenting to employees, vendors, and third parties that AFG was compliant and following state and federal laws.

30. On August 13, 2023, at 6:34 p.m., Plaintiff Shawn Lucas received first contact from Amanda "Tettleton" Teichman (CAO) ("Amanda") about a ransomware data breach. Amanda was contacted by Integris (AFG's third party outside vendor and monitoring company). On information and belief, Booz Allen requested that Defendant AFG Companies preserve the firewall and VPN logs for forensic investigation. On information and belief, Defendant AFG Companies did not have an "Incident Response Plan" (IRP) in place at the time of the ransomware data breach (and still did not have one in place in February of 2024 and would not have one in place until July of 2024, per Jurgen Beck outside contractor with the title of CTO of AFG). On information and belief, Defendant AFG Companies and Brewer instructed Claims Manager Shaun Runels to reset the firewall logs. This resulted in AFG's firewall logs being lost and "wiped out"; thus, the digital

evidence of Blackcat's hacker exploits, unauthorized access, and compromise of AFG's customer information, data, network, servers, and computers systems were lost forever.

Darrel Phipps DP
8/14/2023 1:27 AM

Good morning,

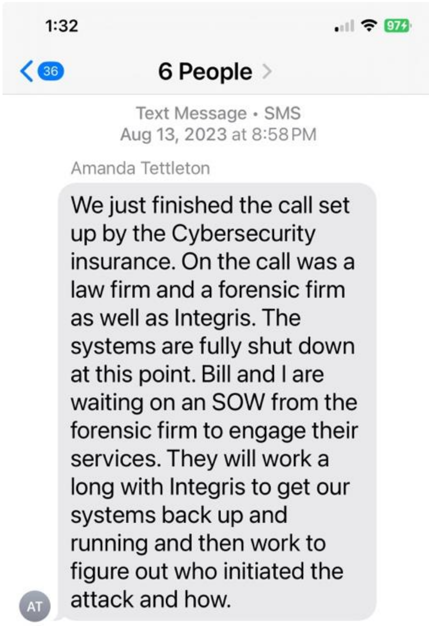
We have reviewed information from our SOC team. Their information indicates evidence of encryption on some workstation machines. It is reasonable to assume there will be some found on the server as well. In addition, we have reviewed the status of Azure Backups of the DC01 and RDS01 servers. They do not appear useful, as the most recent restore points are from May.

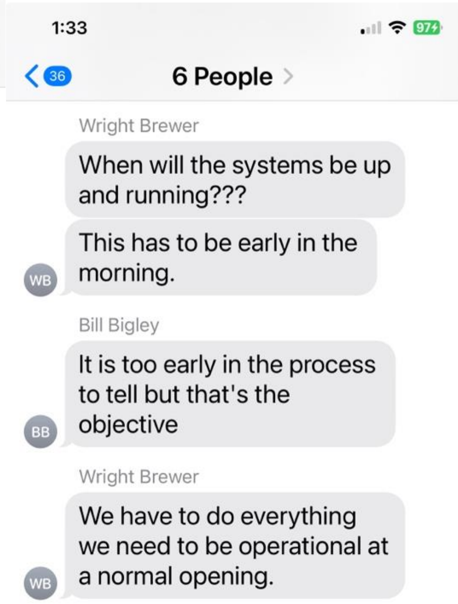
One of my technicians is working through password changes for email accounts. He will reply to this thread when that is complete.

I will coordinate more fully with my team in the morning.

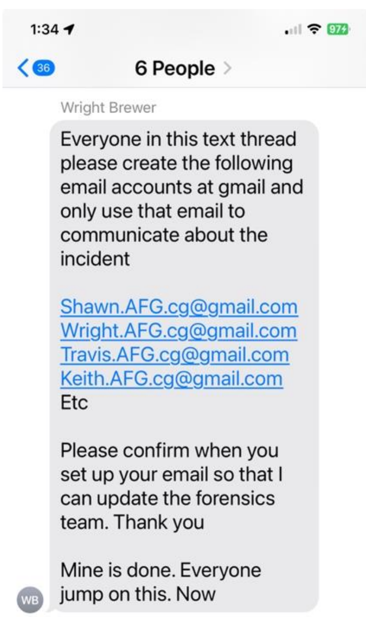
Darrel Phipps
Technical Operations Manager

31. On August 13, 2023, at 8:58 p.m., Plaintiff Shawn Lucas along with Defendant Ralph Wright Brewer III (CEO), Bill Bigley (CFO), Keith Cooper (COO), and Travis Gates (President of AFG Tech at the time) received a text from Amanda Tettleton (CAO), *"We just finished the call set up by the cybersecurity insurance. On the call was a law firm and a forensic firm as well as Integris. The systems are fully shut down at this point. Bill and I are waiting on an SOW from the forensic firm to engage their services. They will work along with Integris to get our systems back up and running and then work to figure out who initiated the attack and how."* Wright Brewer texted, *"When will the systems be up and running??? This has to be early in the morning."* Bill Bigley texted, *"It is too early in the process to tell but that's the objective."*



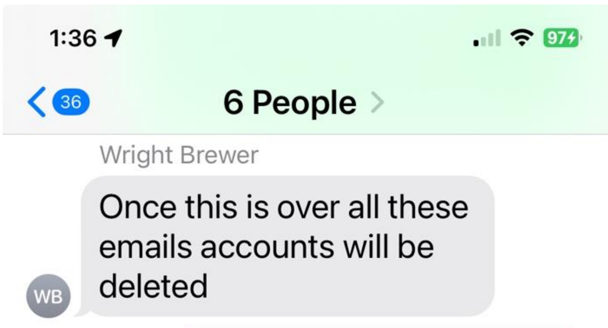


32. On August 14, 2023, Defendant Brewer texted the same group of people in the group chat to advise them to set up Gmail accounts.

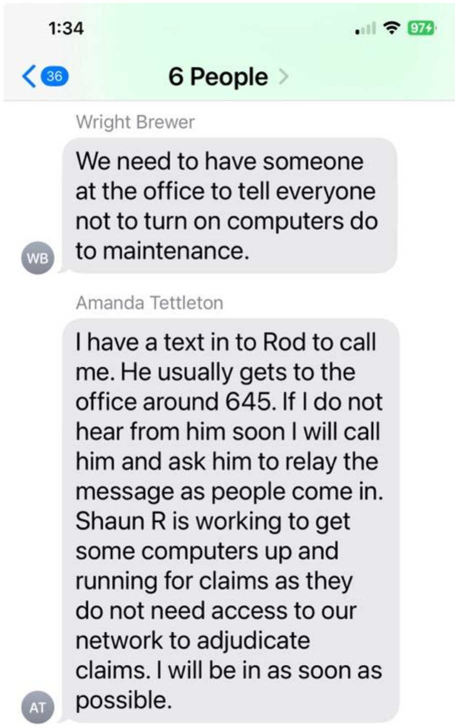


33. On August 14, 2023, at 5:16 a.m. a text was sent from Defendant Brewer, *"Once this is all over all these emails accounts will be deleted."* On information and belief, Defendant Brewer was intentionally and proactively destroying evidence and failed to preserve evidence in anticipation

of litigation for investigators, regulators, state, and Federal authorities, and actively advised his senior executives to destroy evidence.



34. On August 14, 2023, Defendant Brewer texted, *"We need to have someone at the office to tell everyone not to turn on computers do (sic "due") to maintenance."* This statement was incorrect. Amanda responds, *"…Shaun R is working to get some computers up and running for claims as they do not need access to our network to adjudicate claims. I will be in as soon as possible."* On information and belief, the CareGard network was compromised by outside threat actors and could not provide CareGard Warranty Services or claim adjudication for its customers and auto dealers.



35. On August 15, 2023, Defendant Wright Brewer forwarded to Plaintiff Shawn Lucas an email Brewer had received from ALPHV a/k/a "Blackcat," (the real Hackers and threat actor who compromised AFG's network) validating what sensitive PII and data Blackcat had unauthorized access and acquired from Defendant AFG Companies and CareGard's network and servers. Upon information and belief, Brewer verbally threatened individuals to not disclose the "ransomware demand" from Blackcat and would not allow Booz Allen (its outside incident response consultant), the Mullen Law Group (the incident response law firm hired by CowBell cyber insurance), third party consultants, nor any of his executives to communicate with the threat actors to determine the extent of the unauthorized access, compromise, and acquisition of AFG's "sensitive data" by Blackcat.

Fwd: Hello Inbox x

Wright Brewer wbrewer@afgusa.net via dkim.mimecast.org Tue, Aug 15, 2023, 6:41 AM
to me

Wright Brewer
CEO, President
CareGard Warranty Services, Inc
1900 Champagne Blvd.
Grapevine, TX 76051
(O) 817.552.4101
(E) wbrewer@afgusa.net

https://caregardservices.com/

From: alphv.alphv <alphv.alphv@proton.me>
Sent: Tuesday, August 15, 2023 7:49:20 AM
To: info <info@afgusa.net>
Subject: Hello

Important files on your network was ENCRYPTED and now they have "skmzxod" extension.
In order to recover your files you need to follow instructions below.

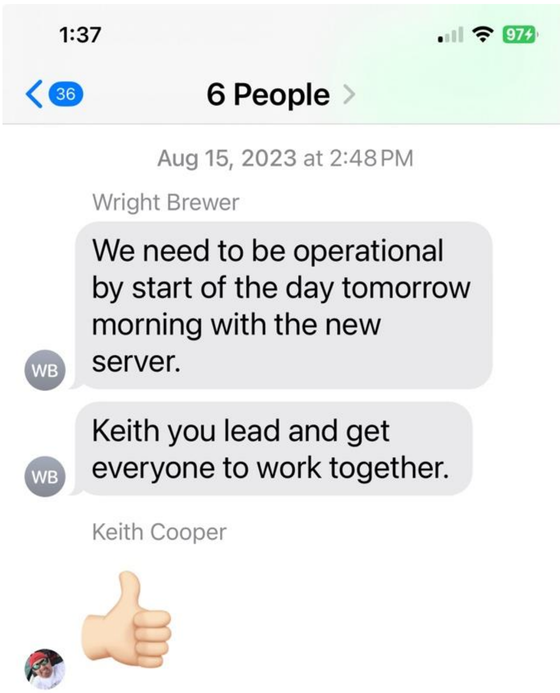
>> Sensitive Data

Sensitive data on your network was DOWNLOADED.
If you DON'T WANT your sensitive data to be PUBLISHED you have to act quickly.

Data includes:
- Employees personal data, CVs, DL, SSN.
- Complete network map including credentials for local and remote services.
- Private financial information including: clients data, bills, budgets, annual reports, bank statements.
- Manufacturing documents including: datagrams, schemas, drawings in solidworks format
- And more...

Samples are available on your User Panel.

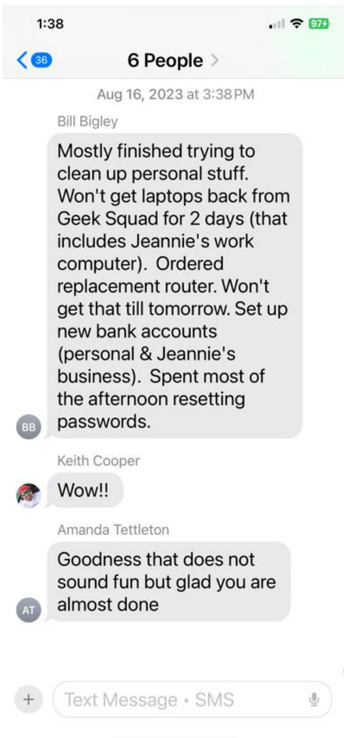
36. On August 15, 2023, Defendant Brewer texted that same group stating, "We need to be operational by start of day tomorrow morning with the new server. Keith (Cooper) you lead and get everyone to work together." Eleven days had passed since the believed initial setup from Blackcat was planted and two full days had passed since Blackcat's ransomware attack and compromise had devastated CareGard's operations.



37. On August 16, 2023, Integris IT opened ticket # 7180960, Integris – DFW: Opportunity Request Form for CareGard – High Urgency. This ticket was CareGard requesting that Travis Gates be an authorized individual to work with Integris IT on behalf of CareGard.

38. On August 16, 2023, Bill Bigley, CFO, texted the same group, "Mostly finished trying to clean up personal stuff. Won't get laptops back from Geek Squad for 2 days (that includes Jeannie's work computer). Ordered replacement router. Won't get that till tomorrow. Set up new bank accounts (personal & Jeannie's business). Spent most of the afternoon resetting passwords." Keith Cooper responded, "Wow." Amanda Tettleton (CAO) responded, "Goodness that does not

sound fun, but glad you are almost done." On information and belief, the CFO of CareGard and AFG Companies Bill Bigley CFO) had his personal computers and his portable hard drive hacked during the cyber attack.



39. On August 17, 2023, Integris IT opened ticket #7185880, New PC Setups (Post-Ransomware), 27 hours, Amanda Tettleton was the contact. Defendant Brewer demanded everybody get back online despite an ongoing ransomware data breach cyber security incident investigation. Upon information and belief, Integris IT could not get CareGard fully operational for a few days. Jurgen Beck, CTO of AFG Tech was then ordered to buy six to twelve computers from BestBuy to try and rebuild AFG's compromised network. Jurgen Beck, an outside consultant, worked with outside consultant Integris IT to try to get some computers.

40. Upon information and belief, Defendant Brewer forbid anyone from talking about the ransomware attack outside of the company and threatened termination if anyone disclosed the fact that AFG and CareGard had suffered a ransomware attack and that Blackcat had gained

unauthorized access to AFG's consumer data. Specifically, Defendant Brewer demanded the concealment of this fact from BEN AI.

41. On August 17, 2023, Plaintiff Shawn Lucas sent an email to Defendant Brewer, Amanda Tettleton, Keith Cooper and Travis Gates stating the "State, Federal & Customer Reporting Req" including the local FBI office notification, Foley & Lardner data breach chart by state including company requirements to dealers, agents, manufacturers, SET, etc…

State, Federal & Customer Reporting Req. Inbox ×

shawn AFG <shawn.afg.cg@gmail.com> Thu, Aug 17, 2023, 9:25 AM
to Wright, amanda, Keith, Travis

Good Morning Team,

There are several reporting requirements with respect to data breaches and ransomware:

1) Local FBI office notification. 972-559-5000 main phone number. The FBI has a field office at DFW airport. They usually visit the office and take a report, but being that the threat actors are in Russia per Booz Allen, the investigation would stop at the border based on experience. We still need to reach out to them today, now that we have a better idea of the damage and we have begun remediating the risk.

https://www.fbi.gov/contact-us/field-offices/dallas/news/press-releases/fbi-dallas-encourages-businesses-to-stay-vigilant-for-cyber-threats-partner-with-the-fbi

2) I have attached the Foley & Lardner (nationwide law firm) March 2023 data breach chart by state. I did a cursory review and it appears almost every state is very similar in their approach. I will defer to AFG counsel to validate and advise, but we might be in good shape here.

3) If employees, contractors, agents, customers and/or dealers information was exposed, such as first and last name in combination with one of the following, then we have a requirement; drivers license number; social security number; medical information or account number; debit or credit card numbers, username and passwords etc...then there is a reporting requirement to those individuals.

In addition, each state has a minimum threshold as to whether you need to report to the state Attorney General office. The Foley Lardner report has that detail, once we determine the number of people impacted, whether they qualify and how fast we have to report.

4) Customers - Dealers, Nissan, SET, Genuine Lifetime, MBUSA etc.....If information that exposes their customers was breached there is a requirement in most cases. We would have to look at every individual agreement to determine.

5) Partners/Pending Partners - Requirements vary, some written, some just being a good business partner per Wright. I think we have a lot of information now that we didn't have on Monday/Tuesday so we have a better picture - but still not the full picture. I'll defer to Wright and Keith on those notifications.

Any questions, send an email or call.

Thank you,

Shawn

One attachment • Scanned by Gmail

42. On August 18, 2023, Bill Bigley CFO, sent an email to Keith Cooper, Travis Gates, Amanda Tettleton, Defendant Brewer and Plaintiff Shawn Lucas, that said, “Travis, Great plan. Can you or Donny let me know what the TA (Threat Actor) got from my computer today? Bill.”

43. On August 18, 2023, there was an AFG Touchpoint Call, which included executives from AFG Companies, CareGard, Integris, Booz Allen and Mullen Law Group (“AFG Touchpoint Call”) for a total of 31 people invited.

44. On or around August 18. 2023, Plaintiff Shawn Lucas had a conversation with Mark Hill of Scheef & Stone (The law firm for Defendant Brewer and Defendant AFG Companies) about the ransomware attack and the Mullen Law Group taking the lead for CareGard.

45. On August 19, 2023, Defendant AFG Companies Inc., and Defendant Brewer signed Exclusive Reseller Agreement with Brand Engagement Network Inc. Defendant Brewer never disclosed the ongoing Ransomware, data breach, cyber security incident to anyone at BEN.

46. On August 21, 2023, Amanda Tettleton, CAO, sent an email to Defendant Brewer, Keith Cooper, Travis Gates, Bill Bigley and Plaintiff Shawn Lucas, stating, “Team, this meeting is to discuss if and when we will start communication with the TA (Threat Actor).” Again, Defendant Brewer continued to deny everyone from contacting the Threat Actor which impeded the investigation.

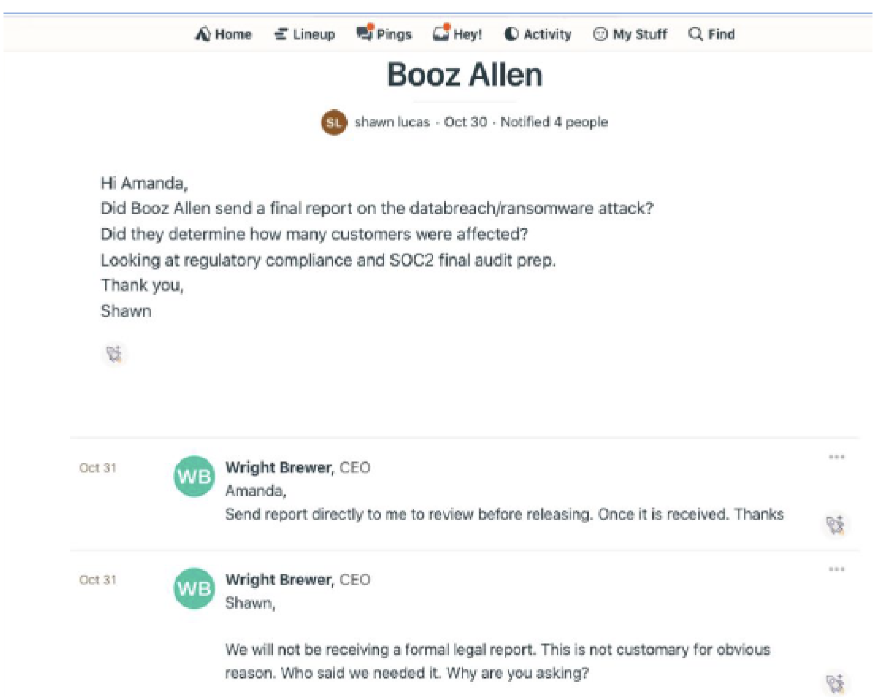
47. On August 21, 2023, there was another AFG Touchpoint call with the same thirty-one (31) people invited.

48. On August 21, 2023, Amanda Tettleton sent an email to Defendant Brewer, Bill Bigley, Keith Cooper, Travis Gates and Plaintiff Shawn Lucas stating, “The email activity they (Booz Allen and Integris) provided included emails that were not legitimate dating back to 8/4/23, nine days before Amanda notified Plaintiff Shawn Lucas of the ransomware attack.

49. On August 21, 2023, more than a week after the original notification from Integris IT of the ransomware data breach cyber-attack, CareGard continued to have network connection and disruption issues.

50. On September 13, 2023, Integris IT opened ticket #7279811 regarding folders still missing files on the CareGard customer data drive.

51. On October 30, 2023, Travis Gates (another former executive of AFG and State and Federal Whistleblower) informed Plaintiff Shawn Lucas that all the necessary hardware installations to protect AFG Companies and CareGard were finally completed. Shawn Lucas posted a message in the portal software called BaseCamp where Brewer wanted all communications to be regarding these projects. Plaintiff Shawn Lucas asked Amanda the following, *"Hi Amanda, Did Booz Allen send a final report on the databreach/ransomware attack? Did they determine how many customers were affected? Looking at regulatory compliance and SOC2 final audit prep. Thank you, Shawn."*



52. On October 31, 2023, Defendant Brewer responded, *"Amanda, send report directly to me to review before releasing. Once it is received. Thanks."* Defemdamt Brewer continued, *"Shawn, We will not be receiving a formal legal report. This is not customary for obvious reason. Who said we needed it. Why are you asking?"*

53. Shawn Lucas was following up to begin the SOC2 compliance audit again after months of it being "on hold" because of the ransomware data breach. On information and belief, Defendant Brewer continued to impede any advancement of regulatory compliance with state and federal law.

54. Upon information and belief, in early November of 2023, Defendant Brewer retaliated against Plaintiff Shawn Lucas by appointing Jason DeLaporte, President of BEN Auto, despite DeLaporte having little to no experience in the automotive software deployment within car dealerships and manufacturers. Defendant Brewer and DeLaporte had begun their plan to isolate Plaintiff Shawn Lucas from BEN AI Automotive and DealerLifetime strategy meetings due to his persistence that Defendant Brewer follow the law.

55. In a February 19, 2024, email from Jurgen Beck, CTO of AFG Technologies and one of the technical leads for compliance sent an email to Travis Gates, Amanda Tettleton, David Duggan, Keith Cooper, Bill Bigley and Plaintiff Shawn Lucas, stating, "9. Written Incident Response Plan – In progress" – demonstrating that Defendant AFG Companies and subsidiaries were not in compliance with FTC Safeguards.

Jurgen Beck <jbeck@afg.tech> Mon, Feb 19, 2024, 1:41 PM
to Travis, D, Amanda, me, Keith, William

Since we are discussing significant fundamentals of the InfoSec efforts under way, I am adding to the audience. Your questions are a good basis for an extended status update.

As for the overall timelines, see the attached document. Keep in mind that this is fluent. We're still putting the pieces together.

FTC Safeguards vs. SOC 2: The plan is to complete many of the SOC 2 controls, which play directly into the Safeguards compliance. It's a parallel effort since the clock on the SOC 2 audit(s) is also ticking.

1. Safeguards Team - Currently consists of Dave, Keith, Bill, Amanda, Jurgen, Sharon, vCISO (VioletX)
2. Written Risk Assessments - Working on an automated solution via Vanta - Expected ETA is within the SOC 2 Audit timeline
3. Written InfoSec Program - Will consist of content from the Vanta SOC 2 Prep and includes line items from the long Safeguards list not automatically covered there
4. InfoSec Training - Underway
5. Phishing Penetration Testing - Completed per your statement
6. Vendor Assessment and Agreements - Proposal to add Vendor Management to Vanta subscription currently before executives
7. Access Controls - Physical: Managed by IT company Integris - Software/Digital: Proposal to add Access Management to Vanta subscription currently before executives
8. Technical Requirements - SOC 2 tests and controls cover much of this and is currently being evaluated. Gap remediation proposal from the infrastructure management service provider is pending - Proposal ETA: 2/21/24 - Remediation ETA: Based on Service Provider proposed timeline, undetermined at the moment
9. Written Incident Response Plan - In progress
10. Written Annual Report to Board - Will be available when the SOC 2 audit prep in Vanta completes

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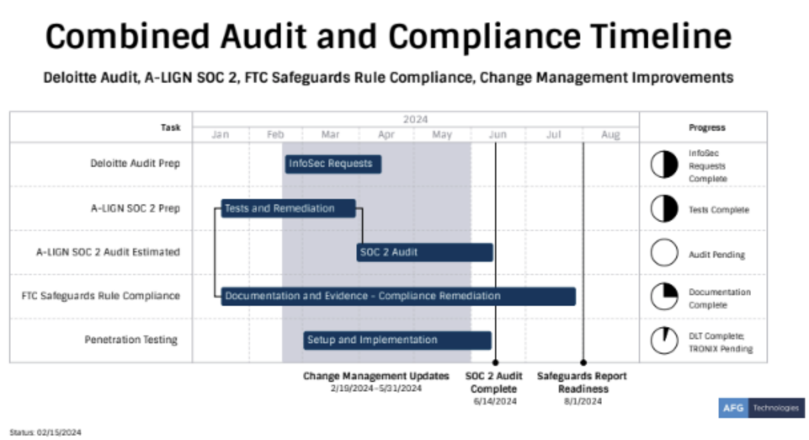
JURGEN BECK :: AFG Technologies

56. In a February 19, 2024, email, Jurgen provided a timeline that AFG Companies and subsidiaries would be FTC Safeguard compliant by August of 2024, a full one year after the FTC required companies be compliant. Upon information and belief, this delay was intentional because pushing the compliance beyond the actual ransomware data breach date of August 13, 2024, would not require a disclosure to the auditors.



57. On or about February 20, 2024, Defendant Brewer and Defendant AFG Companies held a meeting about investment into BEN Automotive AI Founders Club with executives from

Southeast Toyota Distributors, JM Family Enterprises and JM&A. The attendees were as follows; David Bliskey, Director of Fixed operations; Suzanne Clark, Director of Incentive and Analysis; Chris Harvey, Director of Training; Kevin Hull, Director of Strategic Planning; Jakub Konieczny, Director of Strategic Investees DSP; Taylor Burns Manager Lifetime Products; Shirley Johnson, Senior Manager Data Analytics. From AFG Companies the attendees were Defendant Brewer, CEO of CareGard and AFG Companies; Jason DeLaporte, President, Ben Automotive Inc.; Dave Duggan, President of AFG Technologies LLC; Keith Cooper, COO CareGard; Bill Bigley, CFO CareGard; and Amanda Tettleton, CAO CareGard. At the last minute Defendant AFG Companies and Defendant Brewer uninvited Chris Gaertner Chairman of BEN AI (Previously DHC Acquisition Corp) and Michael Zacharski, CEO of BEN AI.

58. In the March 7, 2024, "Vision Meeting" the following conversations took place on information and belief from numerous witnesses: Defendant Brewer said, "SET (Southeast Toyota Distributors) has an interest in partnering with us. Because of the trust factor we already built up through CareGard. They're interested in this technology, because they know what's coming. I talked to Dave Bliskey (SET's district fixed operations manager), again, yesterday morning, he says, we've got to do something because we got to have a strategy, we got to do something because we can't wake up two years, we got twenty-one different AI's. Which if that's the case, and they become our partner, that is the runway, that's the runway."

59. On information and belief, Defendant Brewer, says "Even without Toyota it's a big deal. In the end, you know, we build this thing into an enterprise value of five billion (dollars), what does that do for us, for all our business? So, we acquire competitors that that falls in line with the long term agenda or possibility that how Jim Moran JM Family thinks."

60. On information and belief, David Duggan said, "We are engaged with companies like SET (Southeast Toyota Distributors) and they want to invest. Getting to the five billion valuation looks like somewhere between ten and fifteen percent market penetration by 2029."

61. On information and belief, Jason DeLaporte says "What you're seeing here is what we put in front of the investment group at SET (Southeast Toyota Distributors owned by JM Family Enterprises). This is what we are shaping with them, so it has a little bit of a dealer slant."

62. On information and belief, David Duggan, says, "Henning (An auto dealer group in Washington State) is our first alpha site, here's all your data sources."

63. On information and belief, Jason DeLaporte says, "Because we got to figure this thing out and then we have to figure out how to scale it. Now all the sudden they've gone through Pathwai and they show up on our platform. We are not communicating this by the way, outside of this room. We are not communicating this, is we have to build this covertly, with no one knowing for a while. Ok, we have to do it that way or we lose, it's part of the strategic advantage." DeLaporte continues, "We don't have to use the assistants, the BEN AI assistants, we don't have to use those we can ride without it. No worries, you don't have to use it (meaning BEN AI.)" Upon information and belief, this is why Defendants AFG Companies and Defendant Brewer never completed Dealer Management System ("DMS") integration with The Reynolds & Reynolds Company, CDK Global, Cox Automotive/DealerTrack as well as other third party vendors in the automotive vertical, as they would've had to comply with their data licensing agreements.

64. On information and belief, Defendant Brewer says, "This proforma is relative to SET's investment, they're not investing into CareGard there investing into BEN Auto."

65. On information and belief, David Duggan says, “Service assistant is what the Canadians want, yeah, but again, they’re ready. So the Canadians are ready to be another Alpha site for us for the service assistant.”

66. On information and belief, Defendant Brewer says, “And that answers one of your other questions by the way, that we’re already got dealers in the system, yeah, that want to do something.” Jason DeLaporte says, “I’m actually slow rolling it, we have Lithia and a group of dealers out of North Carolina, Mile One, we have like 15 of these, and I’m trying not to go to fast.” David Duggan says, “If the technology were developed now and ready to go, they would all be signing up…BEN AI can do most of that without a ton of development on our side, because its feeding manuals.” Seven months after signing the Exclusive Reseller Agreement Defendant AFG Companies was not prepared to fulfill their obligations.

67. On information and belief, Jason DeLaporte says, “what’s attractive to somebody like SET is they can look at and do the math and go, we can deliver that we can actually deliver, it’s part of our pitch.” Defendant Brewer than says, “Oh they want to buy the whole thing they want to invest in the whole thing.”

68. On information and belief, Defendant Brewer then says, “There’s a reason why I want Jason to go through this with you guys (Meaning Amanda Tettleton, Keith Cooper, Jason DeLaporte, David Duggan, Erick Roberts, Travis Gates, Bill Bigley) the reason is I want y’all to see the upside as a team. And what does that mean to you individually? We’re working on a corporate stock performance plan for individual employees...and people in the executive group will be able to participate.” David Duggan says, “So, five Billion at 10% market penetration at a 15x multiple which is absolutely completely realistic for a software company.”

69. On information and belief, David Duggan says, "If we gave them (SET) 8% equity for forty million, they would get a 31% return in five years, which is a good number, it's a great number." Jason DeLaporte says, "It's insane, especially when your benefiting in the actual fruit." David Duggan says, "One of the considerations is if you get an SET to come on, it is significant risk reduction to the plan, because now we have a partner who has access to six thousands rooftops and is invested in making sure that we get it out there that it works and that we do it right."

70. On information and belief, Jason DeLaporte says, "The initial reviews they (SET) there main guy assigned to us (Jacob) came from Truist…he looked at our first valuation and said you do know what profit is on a technology company, right? He's been 100% engaged. They have fifty-eight billion dollars in cash." Defendant Brewer says, "The word I'm getting from Bliskey is, you know when we do these things we get extremely involved with every one of our companies that we partner with, what does that tell you? They coordinate, they coordinate things on board people, they get things, you know, yeah." Jason DeLaporte says, "We don't have any exclusivity in this right now…if they did decide to ask that, our terms would change because not only would we be locking ourselves out, we'd also be guaranteeing numbers. So, there is an advisor to the CEO…I sat down with Jacob and said I would identify the influencers involved…Jacob said there were five…we may not need to get the technology folks involved before we actually get an investment."

71. On information and belief, Jason DeLaporte says, "We will have bought and merged technologies and other companies into this will have ten companies we got two right now and they'll all be on this by the way". Defendant Brewer says, "To be quite frank with the person we are going to have to compete against, potentially…is BEN inc." Jason DeLaporte says, "but we have completely diversified our risk compared to what it was eight and half months ago,

because we were betting the whole enchilada on," Defendant Brewer responds, "Oh no, no, we keep everything, we keep everything, good thing huh, that's how we protect us."

72. On information and belief, Jason DeLaporte says, "So my sales and marketing budget goes way, way down, if we do the SET deal, because now I don't have to go market, I don't have to sell, I don't have to do all these things." Upon information and belief, Defendant AFG Companies was not going to market BEN AI globally, but just focus on five states in the Southeastern United States with SET doing the sales and marketing.

73. On information and belief, David Duggan, says, "So and with companies like SET, its credibility there because they're working with us." Upon information and belief, SET was interfering with the Exclusive Reseller Agreement between BEN AI and Defendant AFG Companies Inc. to the detriment of the investors and shareholders of BEN AI.

74. On information and belief, Jason DeLaporte says, "Currently CareGard is the cash cow, it's the only thing that's funding anything right now….we have to make sure we are not breaking that business."

75. On information and belief, David Duggan says, "Challenges, current tech is not sufficient to realize the vision for CWS (CareGard Warranty Services). Can we use other technology? Current CWS infrastructure is not scalable. What do we need to do to scale?...The infrastructure is not there, right now, everything collapses. Do we spend a year improving Tronix and adding all these new features and capabilities?" Upon information and belief, AFG Companies misrepresented to BEN AI their technology platform and capability when signing the Exclusive Reseller Agreement.

76. On information and belief, Defendant Brewer says, "We're changing AFG Tech into call center. It's no longer gonna be a profit center. No more built-in profit margins, and nothing like that. It is a true cost center."

77. On information and belief, Erick Roberts says, "With the employee transition, like AFG Tech, like doesn't even have any employees, they're all AFG Companies."

78. On information and belief, Amanda Tettleton, says "Technically their all Automotive Financial Group."

79. On information and belief, Bill Bigley says, "You gotta have Southwest Colonial, you got to have Automotive Financial Group, but within Automotive Financial Group, that could be the operating company, it's a TPA (third party administrator) ready."

C. Defendants Concealed Competition and Sale of BEN Stock

80. On August 19, 2023, BEN, a cutting-edge innovator in AI-powered customer engagement solutions, entered into an Exclusive Reseller Agreement with AFG. A true and correct copy of the Exclusive Reseller Agreement is attached hereto as **Exhibit B**. This agreement represented a strategic partnership designed to integrate BEN's proprietary AI technology into AFG's dealership systems. The collaboration aimed to revolutionize how dealerships utilize real-time data to enhance customer interactions and streamline their operations.

81. The Exclusive Reseller Agreement was a cornerstone of BEN's efforts to expand into the automotive sector, leveraging Defendant AFG's established presence and network within the industry. AFG was tasked with reselling BEN's AI technology as part of its product offerings to automobile manufacturers, distributors and franchise dealerships across the country and around the world. The success of this partnership was dependent on AFG's compliance with data security

standards and operational readiness, which Defendant AFG and its CEO, Defendant Ralph Wright Brewer III, explicitly represented as being fully in place. Upon information and belief, Defendant AFG Companies spent zero dollars and allocated zero resources outside of the USA and Canadian markets, completely ignoring Europe, China, Japan, Central America, South America, India and Russia to name a few.

82. Given Defendant AFG's exclusive reseller agreement with BEN, investors should have been informed of the recent ransomware attack, data breach, and all truthful details surrounding Defendant AFG's response. Instead, Defendants failed to disclose these material facts prior to the signing of the Reseller Agreement, harming BEN's shareholders.

83. Specifically, BEN allocated 1.75 million shares of its common stock to Defendant AFG in September 2023, subject to the completion of the merger, valued at $10 per share at the time of issuance. Those shares were subsequently transferred in March of 2024 to Defendant AFG. This initial allotment provided AFG with stock valued at $17.5 million. Shortly after BEN began publicly trading on or about March 15, 2024, BEN's stock price rose to $19 per share, significantly increasing the value of AFG's holdings to approximately $33.5 million, creating a personal financial windfall for Defendant Brewer and Defendant AFG.

84. Upon information and belief, in addition to the stock allotment, Defendant AFG also secured a warrant agreement as part of the Exclusive Reseller Agreement. This warrant agreement granted Defendant AFG the right to purchase an additional one million shares of BEN stock at $10 per share, subject to performance benchmarks related to AFG's obligations and performance under the Exclusive Reseller Agreement. At the time the stock price reached above $19, this warrant provided Defendant Brewer with an unrealized potential profit of approximately $9 million if exercised.

85. Upon information and belief, on March 7, 2024, Defendant Brewer convened a clandestine off-site executive meeting at 8343 Hilltop Road, Argyle, Texas ominously titled "AFG Executive Vision Meeting" to conspire with others to compete against BEN. During this meeting, Defendant Brewer unveiled a five-year plan centered on creating a new entity to compete against BEN, its new business partner, known as "Pathwai." Specifically, Pathwai (now DaidaX) was designed to compete against BEN in the automotive AI market. Brewer openly declared "war on" BEN as AFG's direct competition. This declaration came despite the fact that Defendant Brewer had already reaped significant personal financial gains from his BEN stock holdings. His calculated betrayal laid bare his intent to undermine BEN even as he grossly enriched himself to BEN's detriment in the automotive market.

86. Upon information and belief, by March 15, 2024, Defendant Brewer's scheme had reached its apex. BEN's stock became publicly traded, instantly making Defendant Brewer and his family multimillionaires. On information and belief, on or about March 19, 2024, Defendant Brewer wasted no time capitalizing on his ill-gotten gains. Witnesses observed Defendant Brewer in his office, pressuring his Goldman Sachs stockbroker, Sean Baird, to liquidate as much BEN stock as possible at the market's opening. On information and belief, Defendant Brewer acknowledged to the witness the sale of securities on Friday, March 15, 2024, the day BEN began trading on the NASDAQ. At this time, Brewer was an insider holding more than 5% of BEN's stock, and knowingly concealed from BEN, the public markets, and the SEC in direct violation of securities laws the sale of those securities and subsequent required 13d filings. This concealment was integral to Brewer's fraudulent scheme, allowing him to profit while evading disclosure obligations. Brewer not only hid this rapid sale of BEN shares, he failed to file the required Rule

13 disclosure and all subsequent disclosures to the detriment of Plaintiffs Due Figlie and Shawn Lucas as well as the other investors and shareholders of BEN AI.

87. Rule 13 requires that investors who obtain 5% beneficial ownership or more of a company's stock file a Schedule 13 with the SEC within 10 calendar days of passing the 5% threshold. As summarized below, Rule 13 and the Schedule 13 disclosure forms play a critical role in disseminating to investors material information about substantial share acquisitions and potential company acquisitions.

88. The default presumption for investors that hit the 5% beneficial ownership threshold is that they are active investors and must file a Schedule 13D that discloses the purpose of their acquisition. *See* Rule 13d-1(a). Yet Defendants AFG and Brewer never filed the required paperwork with the SEC.

89. On information and belief, these sales began on or around March 15, 2024, BEN AI stock was trading on the NASDAQ under the stock symbol BNAI and the stock traded as high as $19.75 a share on March 18, 2024, by May 24, 2024 BNAI stock traded at a low of around $1.10, wiping out hundreds of millions of dollars in value to BEN AI and decimating the investors and shareholders of BEN AI.

90. Upon information and belief, this dramatic fall in the BEN share price directly led Plaintiff to incur sizeable damages as they were led to invest in BEN stock in the belief that one of the largest shareholders were not actively depressing its value.

D. Plaintiffs' BEN Stock Ownership and Damages

91. On March 14, 2024, Due Figlie LLC held 361,934 shares of common stock in Brand Engagement Network Inc., NASDAQ: BNAI. On March 18, 2024, the value of those shares hit a high of approximately $7,148,196. Because of Defendants AFG Companies and Brewers

actions, by May 24, 2024, the value of those shares were worth $398,127, a loss of approximately $6,750,068. On or about May 28, 2024, Plaintiff Due Figlie committed to investing another $888,750.00 in Securities Purchase Agreement with Brand Engagement Network Inc., at $2.50 a share, receiving another 355,500 shares of BNAI common stock because of Defendant AFG's long term commitment of funding six million five hundred thousand dollars ($6.5 million) every March 13th up to a total of thirty-two million five hundred thousand dollars ($32.5 million) over the five years. Upon information and belief, Defendant Brewer and AFG, manipulated the stock price of BNAI to deflate the stock. Plaintiff Due Figlie LLC also holds hundreds of thousands of warrants in BEN AI.

IV. CAUSES OF ACTION

COUNT I

For Violation Of Section 10(b) Of The Exchange Act And Rule 10b-5 Against All Defendants

1. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth in this Count.

2. During the relevant time period, Defendants Brewer and AFG carried out a plan, scheme, and course of conduct that was intended to: (i) deceive the investing public, including Plaintiffs as alleged in this Complaint; and (ii) cause Plaintiffs to buy BEN stock.

3. Defendants Brewer and AFG (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business that operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to avoid public scrutiny of his plans to sell BEN stock without reporting those transactions to other

investors or the public.

4. Defendants Brewer and AFG, directly and indirectly, by the use, means, or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal his sales of BEN in defiance of his statutory obligations, including under Rule 13.

5. Defendants Brewer and AFG omitted material facts required to be disclosed by statutory obligation, including under Rule 13, and made the materially misleading omissions and statements specified above, which he knew or recklessly disregarded to be false or misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. Namely, Defendants Brewer and AFG made materially false and misleading omissions each day of the relevant period by refusing to report his purchases or sales of BEN stock on a Schedule 13D form.

6. Defendants Brewer and AFG had actual knowledge of the misrepresentations and omissions of material fact set forth in this Complaint or recklessly disregarded the true facts that were available to him. Defendants Brewer and AFG engaged in this misconduct to conceal his sales of BEN stock from the investing public for as long as possible and to support the artificially higher prices of the Company's securities.

7. As a direct and proximate result of Defendants AFG and Brewer's wrongful conduct, Plaintiff suffered damages in connection with their respective sales of the Company's stock and/or trading of other securities.

8. By virtue of the foregoing, Defendant AFG and Brewer violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

COUNT II

For Violations Of Sections 10(b) And 20A Of The Exchange Act And Rule 10b-5 Promulgated Thereunder For Insider Trading Against All Defendants

9. This Count is asserted for violations of §20A of the Exchange Act, 15 U.S.C. § 78t(a) on behalf of Plaintiff who traded BEN securities contemporaneously with the sale of BEN stock by Defendants AFG and Brewer, while he was in possession of material, nonpublic information as alleged herein including concerning his ownership of BEN common stock and intentions for BEN.

10. Section 20A(a) of the Exchange Act provides that:

> Any person who violates any provision of the [Exchange Act] or the rules or regulations thereunder by purchasing or selling a security while in possession of material, nonpublic information shall be liable … to any person who, contemporaneously with the purchase or sale of securities that is the subject of such violation, has purchased securities of the same class.

11. As set forth herein, Brewer violated Exchange Act Section 10(b), Rule 10b-5 and Section 20(a) for the reasons stated in the above. Additionally, Defendants AFG and Brewer further violated Exchange Act Section 10(b), Rule 10b-5, and Rule 10b5-1 (17 C.F.R. § 240.10b5-1) by selling shares of BEN common stock while in possession of material, nonpublic information concerning his ownership of BEN common stock and intentions for BEN which he omitted to disclose, which information Defendants AFG and Brewer had a duty to disclose, and which Defendants AFG and Brewer failed to disclose in violation of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, as more fully alleged herein.

12. Defendants AFG and Brewer's purchases and sales occurred between March 1, 2024, and March 14, 2025.

13. Contemporaneously with Defendants AFG and Brewer's one million seven hundred fifty thousand (1.75 million) shares Defendant AFG received for the Exclusive Reseller

Agreement that did not allow AFG Companies to compete with BEN AI and Defendant AFG's initial purchase of BEN common stock pursuant to the subscription agreement dated September 7, 2023, Plaintiffs acquired or traded BEN securities on a national securities exchange, while Defendant AFG and Brewer was in possession of material, nonpublic information he had a duty to disclose, but failed to disclose, as alleged herein, including information concerning his ownership of BEN common stock and intentions for BEN.

14. Plaintiffs have been damaged as a result of the violations of the Exchange Act alleged herein.

15. This action was brought within five years after the date of the last transaction that is the subject of Defendant AFG and Brewer's violation of Section 20A, and, with respect to the underlying violations of Section 10(b) of the Exchange Act alleged in this Count and in Count One above, was brought within five years after the date of the last transaction that violated Section 20A of the Exchange Act by Defendants AFG and Brewer.

DAMAGES

Actual Damages

16. Plaintiffs have suffered significant actual damages as a direct result of the Defendants' breaches of security law:

Attorneys' Fees and Costs

17. Plaintiffs are entitled to recover their attorneys' fees and costs incurred in pursuing this action under applicable law and the terms of the Reseller and Consulting Agreements.

Pre- and Post-Judgment Interest

18. Plaintiffs seek pre-judgment and post-judgment interest on all damages awarded, as permitted by law, to fully compensate them for the harm suffered due to Defendants' actions.

PRAYER FOR RELIEF

Plaintiffs Shawn Lucas and Due Figlie seek judgment against Defendants, jointly and severally, for:

1. Awarding compensatory damages in favor of Plaintiffs against Defendants AFG and Brewer, for all damages sustained as a result of Defendants' wrongful conduct, in an amount to be proven at trial, including interest;
2. Awarding Plaintiff's reasonable costs and expenses incurred in this action, including attorneys' fees and expenses; and
3. Awarding such equitable, injunctive or other relief as the Court may deem just and proper.
4. Any additional relief the Court deems just and proper.

Respectfully submitted,

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**IN THE DISTRICT COURT OF THE NINTH JUDICIAL DISTRICT
STATE OF WYOMING, COUNTY OF TETON**

AFG Companies, Inc.,	
Plaintiff,	
v.	Case No. 2025-CV-______________
GENUINE LIFETIME LLC, a Wyoming Limited Liability Company; BRAND ENGAGEMENT NETWORK INC., a Wyoming for Profit Corporation, d/b/a/ BEN AI, d/b/a BEN, f/k/a BLOCKCHAIN EXCHANGE NETWORK INC.; OCTOBER 3RD HOLDINGS LLC, a Wyoming Limited Liability Company; MICHAEL LUCAS, individually; TYLER LUCK, Individually, DUE FIGLIE, LLC, a Wyoming Limited Liability Company, SHAWN LUCAS, individually,	
Defendants.	

COMPLAINT

EXHIBIT 1

COMES NOW, the Plaintiff, AFG Companies Inc. ("AFG"), by and through its Counsel, Walker Law LLP, and for its Complaint, states and alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. AFG is a company with its principal place of business in Grapevine, Texas. AFG provides alternatives to finance and insurance products with extensive experience in the automotive industry.

2. Genuine Lifetime is a Wyoming Limited Liability Company with its principal place in Jackson, Wyoming.

3. BEN AI is a Wyoming for Profit Corporation with principal place of business is located in Jackson, Wyoming.

4. October 3rd Holdings LLC ("October 3rd") is a Wyoming Limited Liability Company with its principal place of business in Cheyenne, Wyoming. Upon information and belief, October 3rd owns an approximate 58% interest in Genuine Lifetime. October 3rd is owned 50% by Tyler Luck and 50% by Michael Lucas.

5. Tyler Luck ("Luck") is a co-founder of BEN AI and serves on its board as well as its chief product officer. Luck is also the Managing Member of Genuine Lifetime. Luck is a resident of Jackson, Wyoming.

6. Michael Lucas is married to Luck, is also a co-founder of BEN AI, and is a consultant to BEN AI. Michael Lucas is a resident of Jackson, Wyoming.

7. Shawn Lucas was formerly a contractor for a subsidiary of AFG pursuant to a consulting agreement which commenced in late 2021. In his role with AFG, Shawn Lucas provided advisory services to assist AFG with corporate advice, strategy, general mentoring, technology, product development, and legal and financial matters.

8. Shawn and Michael Lucas are brothers. Upon information and belief, Shawn Lucas is the Managing Member of Due Figlie LLC, a Wyoming LLC ("Due Figlie"), which is an entity that owned or owns shares in BEN AI. Shawn Lucas formed Due Figlie in June of 2020 and serves as its Manager. Shawn Lucas has substantial personal contact with Wyoming through his management of Due Figlie.

9. Travis Gates ("Gates") was employed by AFG to oversee its subsidiary AFG Technologies. Gates worked in this role from approximately October of 2013 through February of 2024. Upon information and belief, Gates resides in an RV with his primary residence in Texas.

10. This Court has jurisdiction as the primary places of business for BEN AI, October 3rd, and Genuine Lifetime are all in Wyoming. Further, Luck and Michael Lucas are residents of Teton County, Wyoming. Finally, many of the Parties' relevant agreements require that any disputes arising therefrom be brought in the state of Wyoming and be controlled by Wyoming law.

11. Upon information and belief, the executive offices where the records relevant to this case would be stored are in Teton County, Wyoming.

12. The foregoing individuals have purposely availed themselves of Wyoming law and have had minimum contacts with Wyoming as they are either residents of Wyoming or have substantial investments in or activities with Wyoming companies, and those investments and activities are at issue in the above-captioned matter.

13. This dispute seeks injunctive relief and the amount in dispute exceeds the jurisdictional limits of this Court.

14. Venue is proper within this Court as a majority of the activities, decisions, and records relating to the above-captioned matter are located within Teton County.

FACTS COMMON TO PLAINTIFF'S CLAIMS FOR RELIEF

15. BEN AI has held itself out as an innovative AI platform provider designed to interface with emerging technologies, including blockchain, internet, and cloud computing.

16. BEN AI holds itself out as offering a suite of configured and customizable applications including natural language processing, anomaly detection, encryption, recommendation engines, sentiment analysis, image recognition, personalization, and real-time decision-making.

17. AFG was formed in 1997 due to a growing need in the automotive industry for superior alternatives to the finance and insurance ("F&I") products available to automotive companies including dealerships, agencies, automaker partners, and original equipment manufacturers ("OEM").

18. For years, AFG and its subsidiaries have supplied advanced products, offering solutions to small and large automotive companies relating to F&I processes, technologies, and other development services.

19. Today, AFG and its subsidiaries work with financial institutions, dealer groups, agencies, and individual dealerships throughout the country to provide not only the products and services above but also to develop custom software tailored to clients' automotive needs.

20. In approximately May 2023 AFG was introduced to BEN AI through Shawn Lucas who was working with his brother, Michael Lucas, in both Genuine Lifetime and BEN AI.

21. At that time, Shawn and Michael Lucas negotiated a letter of intent ("LOI") for the acquisition of AFG by DHC Acquisition Corp in the amount of $140 million dollars with additional incentives as part of BEN AI's pending merger with DHC.

22. The acquisition of AFG did not materialize and the Lucas brothers pivoted their strategy for AFG to make an investment of $32.5M over 5 years into BEN AI in exchange for exclusive rights to resell BEN AI's products in the Automotive field.

23. As part of those conversations, it was represented that BEN AI's technology was commercial market ready and they further asserted that their enabling patent portfolio had already been rigorously defined and tested, making it extraordinarily strong, referring to claimed successful litigation against Google.

24. Further, Michael Lucas together with one or more of the other Defendants represented that the following companies relied on BEN AI's technology: Facebook, Apple, Samsung, Tesla, NXP, flex, AT&T, Amazon, Intel, GE, Philips, Nokia, Siemens, Verizon, Google, Ivideon, somfy, Netgear, OCO, and Simplife.

25. Michael Lucas further represented that litigation against these companies for patent infringement provided a viable alternative approach to recover AFG's investment.

26. Neither Michael Lucas nor any of the other Defendants disclosed to AFG that Michael was sentenced to 18 months in prison in or around 2022 for tax crimes relating to employment withholdings.

27. Upon information and belief, Michael Lucas was ordered to pay approximately $4.9 million dollars in restitution for his tax related crimes. Had such information been disclosed regarding one of BEN AI's cofounders and apparent principals, it would have significantly affected AFG's decision to invest in the company.

28. On or about August 19, 2023, BEN AI entered into a five (5) year Exclusive Reseller Agreement with AFG ("Reseller Agreement").

29. Within the Reseller Agreement, BEN AI agreed to issue shares of common stock to AFG.

30. The Reseller Agreement contained an exclusivity clause requiring that BEN AI give AFG the exclusive right to use and resell BEN AI's services within the following fields: manufacturing, distributing, marketing, reselling and or repairing new and used motor vehicles, recreational vehicles, and power sports vehicles, and third party administrators that solely provide finance and insurance products, parts and service products, sales and marketing services, technology services, service contracts and/or warranties, in each instance for motor vehicles, recreation vehicles and power sports vehicles.

31. This product was given a working project name of "BEN Auto."

32. BEN AI further agreed to use commercially reasonable efforts to integrate their services into AFG's operations.

33. Pursuant to the Reseller Agreement, AFG could not begin offering BEN AI services until they were of a reasonably quality similar to other commercial offerings. BEN AI was required to provide support to these services at no additional charge.

34. The Reseller Agreement only permitted BEN AI to terminate the Reseller Agreement if AFG failed to make required payments within 30 days; upon a material breach with a thirty (30) day cure period; or if either party became insolvent. To be clear, Plaintiff does not seek to specifically enforce or declare any of the rights or interest in the Reseller Agreement as part of the above-captioned matter.

35. Shortly after securing the Reseller Agreement, on or about September 7, 2023, AFG entered into a first Subscription Agreement with BEN AI agreeing to purchase $6.5 million of BEN AI's common stock ("First Subscription Agreement").

36. On September 29, 2023, AFG entered into a Subscription Agreement for Common Stock with BEN AI ("Second Subscription Agreement").

37. As part of the Second Subscription Agreement, AFG agreed to purchase shares in BEN AI for one million dollars ($1,000,000), which would proportionally reduce the amount owed under the First Subscription Agreement.

38. On September 29, 2023, AFG purchased 456,621 shares of Stock in BEN AI for $2.19 per share for the agreed upon aggregate purchase price of $1.0 million.

39. As part of the First Subscription Agreement, AFG paid an additional $5,500,000 in March of 2024, fulfilling the full six million five-hundred thousand dollars ($6,500,000) commitment.

40. At or around the time AFG was entering into these agreements with BEN AI, Shawn Lucas was assigned a role as a business developer in relation to the BEN Auto project.

41. In addition to his role with the BEN Auto project, Shawn Lucas was also responsible for coordinating and managing the business relationships between AFG and Genuine Lifetime, Parts Protection, Southeast Toyota (SET), Auto Nation, Mercedes Benz, and BEN AI.

42. On or about August 10, 2023, Shawn Lucas sent an email inquiring whether AFG had a cybersecurity insurance policy.

43. On August 13, 2023—three (3) days later—AFG incurred an alleged ransomware attack.

44. However, after immediate, substantial, and expensive expert third-party investigation, it was determined there was no exfiltration (i.e. theft or unauthorized removal or movement) of any of AFG's electronic information, including its customer information.

45. AFG incurred approximately one million dollars ($1,000,000) in expenses in legal and cyber-attack response costs because of the ransomware attack, in addition to amounts paid by AFG's insurance provider.

46. A review of AFG's systems shows that Shawn Lucas took sixteen (16) screenshots of sensitive and confidential internal electronic communications regarding AFG's immediate response to the alleged ransomware attack.

47. During this same period, Travis Gates was President of AFG Technologies, Inc. and led AFG's internal response to the alleged ransomware attack.

48. In relation to the BEN Auto project, Gates oversaw all technology development.

49. In October of 2023, Shawn Lucas led a technology summit relating to BEN Auto. However, the summit did not go well and AFG removed Shawn Lucas from the project.

50. AFG canceled Shawn Lucas' consulting agreement in March of 2024.

51. On October 17, 2023, Genuine Lifetime and AFG entered into a Loan Agreement ("Loan Agreement").

52. Prior to entering into the Loan Agreement, Defendants represented to AFG, *inter alia*, that:

a. BEN AI's patent portfolio had been rigorously defined and tested, making it extraordinarily strong;

b. BEN AI had litigated against Google, with favorable federal construction in Markman and IPR proceedings; and

c. Companies that rely on BEN AI technology included: Facebook, Apple, Samsung, NXP, flex, Verizon, AT&T, Amazon, Intel, GE, Phillips, Nokia, Siemens, Google, ivideon, Netgear, SimpliSafe, somfy, and Coco.

53. As part of the Loan Agreement, Genuine Lifetime borrowed the sum of four million dollars ($4,000,000) at a 10% interest rate, per annum.

54. The Loan Agreement required that the $4,000,000 only be used for the purpose of purchasing shares of BEN AI.

55. The maturity date on the Loan Agreement was on or before the earlier of the one-year anniversary of the date of the Loan Agreement or the thirtieth (30th) day following the date as of which the BEN AI shares are traded on the NASDAQ stock market.

56. As part of the Loan Agreement, Genuine Lifetime agreed to pay all reasonable costs and expenses incurred in collecting the obligation and reasonable attorney's fees and expenses related to the Loan Agreement.

57. In return for the $4,000,000, October 3rd, the majority owner of Genuine Lifetime, agreed to execute a security agreement granting AFG a first priority lien on all assets of Genuine Lifetime.

58. Substantial restrictive covenants were set forth within the Loan Agreement to protect AFG's ability to collect under the Loan Agreement should Genuine Lifetime fail to fulfill its obligations.

59. The Loan Agreement required that any dispute thereunder be heard in Texas and apply Texas law.

60. After receiving AFG's $4,000,000, Genuine Lifetime LLC purchased 1,826,484 shares of Legacy Common Stock at $2.19 per share for an aggregate purchase price of approximately $4.0 million.

61. A prior lawsuit has been filed against Genuine Lifetime and Luck for defaulting on the Loan Agreement in Tarrant County, Texas. In that matter, AFG is seeking damages in excess of $4.8 million.

62. Luck, individually, also agreed to guarantee the complete payment of the loan and the performance of the Loan Agreement by executing a Personal Guaranty of Payment to AFG Companies Inc. ("Personal Guarantee").

63. Luck's guarantee expressly required that he irrevocably and unconditionally guarantee the prompt payment and performance of the guaranteed debt as set forth within the Loan Agreement. Luck agreed to be liable for all interest, fees, indemnities, and other costs and expenses relating to or arising out of the guaranteed debt.

64. Also on October 17, 2023, Luck and AFG entered into a valid and binding Lock-Up Agreement ("Lock-Up Agreement") relating to the BEN AI shares to be acquired by Genuine Lifetime.

65. Within the Lock-Up Agreement, Luck generally agreed that he would not directly or indirectly convey any of the BEN AI stock owned by Genuine Lifetime so long as amounts were owed to AFG pursuant to the Loan Agreement.

66. The Lock-Up Agreement again requires that any action in relation thereto be brought in the Federal District Court of Wyoming or the Wyoming State District Court in Teton County.

67. Also on October 17, 2023, Genuine Lifetime and AFG entered into a valid and binding Security Agreement ("Security Agreement").

68. The Security Agreement is unambiguous and sets forth the duties and obligations of AFG and Genuine Lifetime.

69. As Grantor under the Security Agreement, Genuine Lifetime agreed to grant a lien on certain collateral which included all of Genuine Lifetime's assets and any proceeds and products of any of Genuine Lifetime's assets and any tangible or intangible property received upon the sale or disposition of any of its assets (the "Collateral").

70. As set forth above, the primary asset of Genuine Lifetime to be secured under the Security Agreement was the Collateral (i.e. the $4,000,000 in shares it was to acquire in BEN AI).

71. The Security Agreement expressly states that Genuine Lifetime was irrevocably, until all obligations were paid, designating AFG its attorney-in-fact with full authority to "take any action and to execute on any instrument which the Secured Party may deem necessary or advisable."

72. The Security Agreement also stated that it shall be exclusively construed and enforced in accordance with the laws of the state of Wyoming, with any proceeding in relation to the Security Agreement being brought in a Court of the State of Wyoming or the Federal District Court for the state of Wyoming.

73. Over the following months, representations were made about the pending deliverables from BEN AI on the BEN Auto project – none of which were ever actually provided.

74. For example, in October of 2023, BEN AI represented to AFG, through Paul Chang, that their technology is closer to ready than we think and that each use case was one to two weeks from a turnaround time.

75. Also in the months following execution of the Reseller Agreement, BEN AI has gone through major leadership changes, including at its highest levels.

76. In November of 2023, BEN AI represented to AFG, through Michael Zacharski, that BEN AI would be showcasing their ability to integrate IBM's technology including WatsonX and DB2.

77. That same month, BEN AI encouraged Travis Gates to resign from AFG for incentives they promised to provide him upon BEN AI going public.

78. In March of 2024, BEN AI took its business public.

79. That same month, a letter was sent directly to the majority of AFG's customers falsely alleging that AFG experienced a data breach. Upon information and belief, Shawn Lucas was directly assisting with the preparation of the letter.

80. Included in the email were the screenshots taken by Shawn Lucas, proprietary company information that only he could have created.

81. Gates resigned from AFG shortly thereafter, wiping his laptop and deleting all emails from May of 2023 through September of 2023.

82. A short time later, upon information and belief, Gates received some form of incentive from BEN AI for leaving AFG.

83. Despite these issues and AFG's substantial concerns with the lack of deliverables, in January of 2024, AFG was dedicated to the Reseller Agreement and set the following expectations that:

a. A Joint Development Team would be collocated at AFG's facility in Grapevine, Texas;

b. Development must be collocated to succeed;

c. BEN AI would relocate their key South Korean developers to Texas; and

d. BEN AI's employees would work with AFG's teams to purposely design a collaborative workspace, with AFG paying for the cost of that workspace;

84. In approximately Spring of 2024, AFG was informed by both the Chairman of the Board, an additional Board member, and the CEO, Michael Zacharski, of BEN AI, a now public company, that Michael Lucas disparaged Wright Brewer and AFG to BEN AI's Board of Directors.

85. In April of 2024, Genuine Lifetime defaulted on the Loan Agreement.

86. A very short time later, Luck, Gates, Shawn Lucas, and Michael Lucas incited BEN AI to begin investigating AFG for the cyberattack that occurred mere days after Shawn Lucas inquired whether AFG had cyber insurance and while Gates and Shawn Lucas were overseeing much of AFG's information technology systems.

87. Despite its many representations and duties under the Reseller Agreement, BEN AI has failed to provide AFG any deliverables.

88. None of the promised deliverables have worked as represented or were never completed, and it has become clear BEN AI always lacked the capacity to perform its obligations under the Reseller Agreement.

89. Despite BEN AI's representations, IBM never integrated with the BEN AI products, the consequences of which were never directly disclosed to AFG regarding the commercial readiness of BEN AI's technology.

90. BEN AI continued to not make any progress on the project throughout March and April of 2024.

91. By May of 2024, BEN AI also had still not sent any developers to Grapevine, Texas as promised.

92. BEN AI subsequently hired and sent two new developers to Grapevine, Texas, but removed them approximately one month later with no progress on the project.

93. AFG eventually required that BEN AI provide a working demo that met the promised specifications by July 3, 2024 as proof of concept and viable product.

94. BEN AI did not, and still has not, provided any proof of concept or of a viable working product.

95. Upon information and belief, Genuine Lifetime, Luck, and BEN AI are intentionally engaging in actions to sell the BEN AI stock that is securing AFG's substantial payment to Genuine Lifetime for the purchase of that stock, in violation of the foregoing agreements.

96. Further, upon information and belief, BEN AI and its principals have engaged in stock splitting or similar release of new stock, intentionally diluting AFG's investments.

97. Despite its own substantial material failures, on January 17, 2025, BEN AI sent AFG a letter indicating that it was terminating the Reseller Agreement.

98. BEN AI did not provide 30 days to cure any alleged problems or concerns.

99. The reason BEN AI gave for terminating the Reseller Agreement was the cyberattack aimed at AFG's systems occurring mere days after Shawn Lucas inquired whether AFG had cyber insurance.

FIRST CAUSE OF ACTION AGAINST DEFENDANTS GENUINE LIFETIME AND OCTOBER 3RD HOLDINGS: -BREACH LOCK-UP AGREEMENT, and SECURITY AGREEMENT-

100. Plaintiff, AFG, incorporates herein by this reference paragraphs 1 through 99 of this Complaint as if set forth fully herein.

101. The Lock-Up Agreement constitutes a binding contract between AFG and Luck, both individually and in his role as Managing Member of Genuine Lifetime.

102. The Security Agreement constitutes a binding contract between AFG and Genuine Lifetime and October 3rd Holdings.

103. Genuine Lifetime failed to pay the amount required under the Loan Agreement prior to or by its Maturity Date.

104. Genuine Lifetime has therefore defaulted on the Loan Agreement.

105. Upon information and belief, Luck and Genuine Lifetime have failed to comply with the terms of the Lock-Up Agreement and are allowing Genuine Lifetime's assets to be sold, including shares it owns in BEN AI.

106. Despite requests, Genuine Lifetime and October 3rd Holdings are refusing to turn over Genuine Lifetime's assets as is required by the Security Agreement, and Luck has refused to pay the debt he personally guaranteed.

107. As a result of the foregoing breaches by Genuine Lifetime, Luck, and October 3rd, Plaintiff has incurred damages, including the approximate $4.8 million on the defaulted Security Agreement in addition to those harms caused by the breaches to the Lock-Up agreement.

108. Plaintiff, AFG, is further entitled to all fees and costs associated with executing on the defaulted Security Agreement and Personal Guarantee.

SECOND CAUSE OF ACTION AGAINST DEFENDANTS GENUINE LIFETIME, TYLER LUCK, AND OCTOBER 3RD HOLDINGS: -BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING-

109. Plaintiff, AFG, incorporates herein by this reference paragraphs 1 through 108 of this Complaint as if set forth fully herein.

110. The implied covenant of good faith and fair dealing requires that no party commit an act that would injure the rights of the other party to receive the benefit of their agreement.

111. Plaintiff AFG complied with the provisions of the Personal Guarantee, Security Agreement, and Lock-Up Agreement.

112. AFG paid Genuine Lifetime $4,000,000 in relation to the Security Agreement, Personal Guarantee, and Lock-Up Agreement, which required repayment of the principal amount plus interest accrued by the maturity date.

113. As set forth above, Genuine Lifetime, Tyler Luck, and October 3rd Holdings have breached the covenant of good faith and fair dealing by undertaking activities and actions to undermine AFG and impair its ability to timely and reasonably collect on the Personal Guarantee and Security Agreement.

114. Upon information and belief, Genuine Lifetime, Luck, and/or October 3rd are actively trying to sell the BEN AI stock held by Genuine Lifetime that is secured by the Security Agreement.

115. Upon information and belief, Genuine Lifetime, Luck, and/or October 3rd are conspiring with each other to impede AFG's ability to be paid any of its $4,000,000 investment.

116. As a result of the breach of the covenant of good faith and fair dealing, Plaintiff AFG has not yet received any benefits under the various agreements relating to its substantial payment to Genuine Lifetime.

117. Plaintiff AFG has suffered substantial harm through Defendant's unlawful actions and it is entitled to a judgment of no less than the full collateralized debt owed by Genuine Lifetime in the amount of $4.8 million dollars and all additional costs and attorney fees incurred in protecting its rights in the Personal Guarantee, Security Agreement, and Lock-Up Agreement.

THIRD CAUSE OF ACTION AGAINST DEFENDANTS
GENUINE LIFETIME AND OCTOBER 3RD HOLDINGS:
-UCC FORECLOSURE ON COLLATERAL OF BEN AI STOCK-

118. Plaintiff, AFG, incorporates herein by this reference paragraphs 1 through 117 of this Complaint as if set forth fully herein.

119. Pursuant to W.S. § 34.1-9-601, after default a secured party has the right to reduce a claim to judgment, foreclose, or otherwise enforce a security interest by any available judicial procedure.

120. At the time of the filing of this Complaint, stock in BEN AI is trading at approximately 63 cents ($0.63) per share.

121. Genuine Lifetime purchased 1,826,484 shares of BEN AI stock and has pledged those shares as security under the Security Agreement. Genuine Lifetime further pledged all its assets as security in relation to AFG's $4,000,000 loan.

122. Given that it appears the secured shares in BEN AI are worth substantially less than the $4,000,000 owed by Genuine Lifetime, AFG requests that the Collateral be sold with all proceeds paid to AFG pursuant to the Security Agreement, with AFG expressly retaining and reserving any rights it may have against Genuine Lifetime, Tyler Luck, and October 3rd Holdings for any deficiency.

FOURTH CAUSE OF ACTION AGAINST DEFENDANTS
GENUINE LIFETIME, OCTOBER 3rd HOLDINGS,
MICHAEL LUCAS, SHAWN LUCAS, TYLER LUCK, and DUE FIGLIE:
-UNJUST ENRICHMENT-

123. Plaintiff, AFG, incorporates herein by this reference paragraphs 1 through 122 of this Complaint as if set forth fully herein.

124. Michael Lucas, Luck, Shawn Lucas, Genuine Lifetime, October 3rd, and Due Figlie stood to gain a substantial benefit from AFG's investment in BEN AI.

125. Michael Lucas and Luck are BEN AI's cofounders, and each owns a 50% interest in October 3rd Holdings. October 3rd owns 58% of Genuine Lifetime. Genuine Lifetime received $4,000,000 to acquire BEN AI stock.

126. Due Figlie is known to be owned by Shawn and/or Michael Lucas, and is primarily managed by Shawn Lucas. Upon information and belief, Due Figlie has a substantial financial stake in BEN AI and benefitted from AFG's substantial direct investments into BEN AI as well as from AFG's loan to Genuine Lifetime.

127. Michael Lucas and Luck both benefited from AFG's substantial loan to Genuine Lifetime as that allowed it to capitalize BEN AI, the company they founded. Without that investment, Michael Lucas, Shawn Lucas, and Luck's direct and indirect interests in BEN AI, October 3rd, Due Figlie, and Genuine Lifetime would have been worth substantially less.

128. AFG's investments into Genuine Lifetime and BEN AI, in conjunction with the Reseller Agreement, provided BEN AI with the foundation it needed to go public with an increased offering price.

129. Michael Lucas, Luck, Genuine Lifetime, and October 3rd accepted the various agreements that would infuse capital into the companies while giving AFG the exclusive Reseller Agreement that would allow AFG to profit from the development of BEN Auto.

130. Under the Reseller Agreement, AFG expected to be able to get paid from the development of BEN Auto, something that the foregoing entities prevented. AFG further expected to be paid back for its substantial loan of $4,000,000 pursuant to the Personal Guarantee and Security Agreement.

131. AFG would not have signed any of the foregoing agreements in isolation, and it was through the agreements, in tandem, that AFG anticipated it would be paid for its services and invesements.

132. It would be inequitable for Michael Lucas, Luck, Genuine Lifetime, and October 3rd to conspire to terminate the Reseller Agreement while directly benefiting from their overlapping dealings with AFG, knowing AFG's primary benefit from its investment would come from being able to later co-develop and sell BEN Auto's products.

133. BEN AI would be unjustly enriched if it were allowed to receive all the benefits of AFG's agreements and substantial investments while failing to perform on its primary obligation to AFG.

134. AFG has incurred substantial harm including the loss of all anticipated future payments from BEN Auto, in amounts to be proven at trial.

FIFTH CAUSE OF ACTION AGAINST DEFENDANTS LUCK, SHAWN LUCAS, DUE FIGLIE, and MICHAEL LUCAS: -TORTIOUS INTERFERENCE WITH A CONTRACT-

135. Plaintiff, AFG, incorporates herein by this reference paragraphs 1 through 134 of this Complaint as if set forth fully herein.

136. Plaintiff AFG has valuable, valid, and enforceable contractual relationships with BEN AI, Genuine Lifetime, and October 3rd Holdings.

137. Luck, Gates, Shawn Lucas, and Michael Lucas were all individually aware of the substantial business dealings between AFG, its affiliates, and BEN AI and Genuine Lifetime.

138. Gates and Shawn Lucas had particularized knowledge of AFG's business dealings and procedures as they worked for AFG at the time it began its business dealings with BEN AI.

139. Shawn Lucas solicited AFG for investment in BEN AI without disclosing his personal interests in Due Figlie, a company with substantial interests in the future success of BEN AI, and he prioritized the success of BEN AI over his duties to AFG.

140. Michael Lucas, a co-founder of BEN AI, is brothers with Shawn Lucas and, upon information and belief, used that relationship to gather information from AFG that could be used to harm and interfere with its business dealings with BEN AI, including the Reseller Agreement.

141. Upon information and belief, Gates and Shawn Lucas were made promises by Luck and/or Michael Lucas if they would interfere with AFG's relationship with BEN AI.

142. Upon information and belief, Shawn Lucas, Luck and Gates all participated in providing confidential and proprietary AFG communications to Luck and Michael Lucas for the purpose of using that information to compel BEN AI to terminate the Reseller Agreement.

143. Michael Lucas has personally made disparaging remarks to BEN AI's board about AFG despite being one of the primary individuals conspiring to encourage AFG's investments and using his brother Shawn Lucas's role within AFG to secure the investment.

144. BEN AI has now terminated the exclusive Reseller Agreement, preventing AFG from receiving any of the expected benefits under the Reseller Agreement.

145. The termination of the Reseller Agreement is the direct result of the unlawful, deceitful, and defamatory actions of Luck, Due Figlie, and Michael Lucas, including through their conspiring with Shawn Lucas and Gates.

146. Upon information and belief, Luck, Shawn Lucas, and Michael Lucas have also influenced and encouraged Genuine Lifetime to not honor its Securities Agreement.

147. Plaintiff AFG has incurred substantial damage as a result of Defendants' unlawful interference with AFG's contractual relationships as will be proven at trial.

SIXTH CAUSE OF ACTION AGAINST DEFENDANTS GENUINE LIFETIME, OCTOBER 3RD, TYLER LUCK, SHAWN LUCAS DUE FIGLIE and MICHAEL LUCAS: -CIVIL CONSPIRACY TO COMMIT FRAUD-

148. Plaintiff, AFG, incorporates herein by this reference paragraphs 1 through 147 of this Complaint as if set forth fully herein.

149. As set forth above, Michael Lucas, Luck and the entities they oversee, either directly or indirectly (i.e. Genuine Lifetime and October 3rd) have conspired to undertake unlawful actions to compel Plaintiff AFG to make substantial investments into BEN AI and Genuine Lifetime, while knowing that they would not be able to provide any of their promised deliverables or repay the money they voluntarily sought to capitalize their companies.

150. It is unlikely that BEN AI could have completed its public offering or a merger without AFG's substantial investment and support.

151. Upon information and belief, when Genuine Lifetime entered into the Security Agreement, it already knew that it would not repay the loan from AFG and began a plot to find a way out of honoring its substantial obligations to the detriment of AFG.

152. The goal of the Defendants was always to take AFG's money for Defendants' personal gain without giving anything of value in return.

153. Michael Lucas, Shawn Lucas, and Luck knew that AFG was relying on the Reseller Agreement as the primary means by which it could recoup and eventually make a profit on its investments.

154. Shawn Lucas used his role within AFG, ignoring his conflicting loyalties, to share information with Luck, Michael Lucas, Due Figlie, Gates, and BEN AI to the detriment of AFG. Shawn Lucas further conspired with Gates to use their roles within AFG to undermine AFG's

interests in the Reseller Agreement. Upon information and belief, this was all done under the direction of Michael Lucas and Luck.

155. Michael Lucas and Luck also knew that they had overstated BEN AI's ability to deliver a functioning BEN Auto product, and that its patents were being significantly devaluated by other similar products.

156. Michael Lucas also know that his status as having been convicted of tax crimes would dramatically affect AFG's willingness to invest, and for that reason the Defendants intentionally concealed his background.

157. Shawn Lucas and Due Figlie also intentionally failed to disclose the conflict of interest and personal stake they had in the success of BEN AI at the same time they were working with Michael Lucas and Luck to solicit investment from AFG.

158. BEN AI knew its developers could not meet AFG's timeline or expectations for a functional product.

159. Shawn Lucas conspired with Gates to use their roles with AFG to interfere with AFG's ability to benefit from the Reseller Agreement, including the sharing of proprietary information.

160. Nevertheless, while BEN AI was still bound under the exclusive Reseller Agreement, upon information and belief, Luck and others he conspired with began developing, or attempting to develop, a distinct automotive and insurance related product in violation of the Reseller Agreement, knowing their actions undermined BEN AI's contractual obligations to AFG.

161. As set forth above, Shawn Lucas and Gates were also intentionally used by Luck and Michael Lucas, while they worked directly with AFG, to take advantage of a targeted cyberattack as a preplanned and pretextual reason for terminating the Reseller Agreement. Shawn

Lucas and Gates cooperated with the other Defendants to undermine the Parties overlapping agreements and the overarching plan to develop BEN Auto.

162. Upon information and belief, Shawn Lucas and Gates, upon the direction of Luck and Michael Lucas, conspired to destroy all of Gate's emails from at and around the time of the conspiracy.

163. Upon information and belief, while under the direction of Luck and Michael Lucas, Shawn Lucas and Gates used their knowledge of the AFG infrastructure and confidential and proprietary information to undermine AFG's interests while simultaneously working directly with and for AFG.

164. Shawn Lucas being the brother of Michael Lucas and brother-in-law to Luck, while also working with AFG, was uniquely situated to further a plan to seek substantial investment from AFG while simultaneously planning with the others to find an exit strategy from the Reseller Agreement.

165. Luck and Michael Lucas further interfered with AFG's operations by compelling Gates, an individual with substantial responsibility over AFG's technologies, to leave AFG during critical times in a further attempt to interfere with the BEN Auto project. Shawn Lucas was also subsequently terminated.

166. Luck, Shawn Lucas, and Michael Lucas further conspired to defame AFG through the spreading of lies relating to the cyber-attack that occurred three days after Shawn Lucas inquired as to cyber-insurance, and then encouraged BEN AI to use these lies to breach the Reseller Agreement.

167. Upon information and belief, prior to terminating the Reseller Agreement, Luck, Michael Lucas, and their co-conspirators had been actively working with other providers in the

automotive and/or insurance industries to develop products specifically related to those protected by the Reseller Agreement while BEN AI was still unarguably bound by that agreement.

168. The only reason given for the termination of the Reseller Agreement was the targeted cyberattack that occurred days after Shawn Lucas inquired about cyber-insurance, with no evidence of exfiltration – using surreptitious screenshots taken by Shawn Lucas to support their claim.

169. The cyberattack is merely a pretextual reason, as AFG informed BEN AI that its systems meet or exceed industry standards for cybersecurity and that during the targeted attack there was no proof that any information was ever any exfiltration of data.

170. As a proximate cause of the co-conspirators' joint actions and plan, AFG was fraudulently induced into foregoing other investment opportunities and investing millions of dollars into BEN AI and Genuine Lifetime, when Defendants knew there would never be any return on that investment.

171. Rather, all Defendants directly benefited from the conspired plan to defraud AFG.

172. AFG has suffered substantial damages in the amount of its investments into the Defendants' scheme, as well as all its costs and attorneys' fees necessary to protect its interests, along with all its substantial costs in addressing the targeted cyber-attack believed to have been orchestrated or facilitated as part of the conspiracy.

173. Further, AFG should be awarded punitive damages from Genuine Lifetime, October 3rd, Tyler Luck, Shawn Lucas, Due Figlie, and Michael Lucas, jointly and severally, for their intentional, targeted, and planned attack to defraud AFG out of millions of dollars.

SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS GENUINE LIFETIME, OCTOBER 3RD, TYLER LUCK, SHAWN LUCAS, DUE FIGLIE, and MICHAEL LUCAS:
-FRAUD AND CONSTRUCTIVE FRAUD-

174. Plaintiff, AFG, incorporates herein by this reference paragraphs 1 through 173 of this Complaint as if set forth fully herein.

175. As more fully set forth above, Defendants all employed a joint scheme to defraud Plaintiff AFG of its substantial monetary investment into Genuine Lifetime and BEN AI.

176. BEN AI, Genuine Lifetime, and October 3rd held out Luck and Michael Lucas as their reliable and trustworthy agents.

177. As set forth above, Luck and Michael Lucas made various representations regarding BEN AI that were either not true or that were so overstated as to make the context in which they were made misleading, including the companies that BEN AI contracted with and what was possible with their products.

178. Defendants intentionally withheld relevant information regarding Michael Lucas's background relating to crimes involving honesty of character, resulting in an order of restitution of approximately $4.9 million dollars.

179. Defendants further used Shawn Lucas and Gates as their "insiders" to conspire within AFG to further their own ends, without disclosing the personal stake Shawn Lucas had, individually and through Due Figlie, in the success of BEN AI.

180. Prior to Plaintiff's investment, AFG was assured an exclusive Reseller Agreement of BEN AI's product in the automotive field. That Reseller Agreement imposed numerous obligations on BEN AI relating to its cooperation in providing a market-ready product.

181. Defendants knew Plaintiff was unaware of their close relationships and loyalties to each other.

182. All Defendants knew that Plaintiff AFG was unaware of Michael Lucas's substantial legal issues.

183. Gates and Shawn Lucas specifically knew that AFG was unaware of their loyalty to BEN AI and the other Defendants during those times in which they were employed by AFG.

184. Gates and Shawn Lucas agreed to accept specific responsibilities in relation to the BEN Auto project, knowing that AFG was unaware of their undisclosed communications and personal dealings with Ben AI, Michael Lucas, Luck, Genuine Lifetime, Due Figlie, and October 3rd.

185. Gates and Shawn Lucas conspired to delete any incriminating emails from AFG's systems at times when they were at least partially responsible for those systems.

186. BEN AI, Michael Lucas, Luck, and Genuine Lifetime had substantial information regarding their inability to meet the obligations under their various agreements with AFG at the time they entered into those agreements.

187. Despite AFG's substantial investment in BEN AI directly and indirectly through Genuine Lifetime, Defendants have intentionally interfered with AFG's ability to receive any benefit from those dealings.

188. Upon information and belief, it was always Defendants' intentions to take as much financially from AFG as they could, and as soon as AFG demanded proof of concept or some form of deliverable market ready product that could be resold, BEN AI terminated the Reseller Agreement.

189. Gates and Shawn Lucas were directly involved in overseeing AFG's cybersecurity at the time of the ransomware attack, which BEN AI is now using as the reason for terminating the Reseller Agreement.

190. Upon information and belief, Defendants were directly involved in the cyberattack on AFG, and they then used that scheme to disparage Plaintiff to its clients.

191. Upon information and belief, substantial sums have been paid either directly or indirectly to Gates, Shawn Lucas, Luck, and Michael Lucas for their involvement in encouraging Plaintiff to invest in BEN AI.

192. Upon further discovery Plaintiff believes the evidence will show that rather than using AFG's substantial investment to actively develop a working product, Gates, Shawn Lucas, Luck, and Michael Lucas, as well as BEN AI's owners, indirectly received a large portion of those funds as salaries, bonuses, and payoffs, beyond industry standards.

193. Further, upon information and belief, Luck was actively working to find other developers in the automotive and insurance industries for BEN AI at a time when he knew that BEN AI was bound under the Reseller Agreement.

194. BEN AI's non-existent deliverables under the Reseller Agreement make clear that there was never any intention to assist AFG in developing BEN Auto or developing a product that could be resold.

195. AFG relied on Defendants, and their representations, in deciding to enter into the various agreements set forth above.

196. AFG's reliance on the truthfulness and completeness of Defendants' disclosures induced it to invest millions of dollars into BEN AI.

197. Plaintiff, AFG, has suffered substantial damages in the amount of its investments into the Defendants' scheme, as well as all its costs and attorneys' fees necessary to protect its interests, along with all its substantial costs in addressing the targeted cyber-attack believed to have been orchestrated or facilitated as part of the Defendants' conspiracy.

198. Further, AFG should be awarded punitive damages from Defendants, jointly and severally, for their intentional, targeted, and planned attack to defraud AFG out of millions of dollars.

EIGHTH CAUSE OF ACTION AGAINST DEFENDANTS GENUINE LIFETIME, LUCK, BEN AI, OCTOBER 3RD HOLDINGS, and MICHAEL LUCAS: -SECURITIES FRAUD PURSUANT TO W.S. § 17-4-501-

199. Plaintiff, AFG, incorporates herein by this reference paragraphs 1 through 197 of this Complaint as if set forth fully herein.

200. It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

i. to employ a device, scheme or artifice to defraud;

ii. to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

iii. to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit on another person.

201. As set forth above, Defendants gave numerous untrue statements about their ability to deliver a functioning product as part of the BEN Auto project.

202. As set forth above, Defendants withheld critical information from Plaintiff AFG that they knew would materially impact its willingness to invest in BEN AI.

203. As set forth above, Luck, BEN AI, Genuine Lifetime, and October 3rd orchestrated a plan for Plaintiff AFG to loan Genuine Lifetime, a company in which October 3rd was the majority controlling member, $4,000,000. Upon information and belief, Michael Lucas and Luck are the individuals who oversaw and directed October 3rd and therefore Genuine Lifetime.

204. Genuine Lifetime was to exclusively use those funds to acquire stock in BEN AI, which would then be pledged as collateral under the Security Agreement.

205. In making this investment, all Parties were aware that AFG was relying on the overlapping agreements that would make AFG the exclusive reseller of BEN AI's products in the automotive and insurance industries.

206. All the Parties were similarly aware that the Reseller Agreement was being offered to AFG in return for its substantial investment and contributions.

207. Upon information and belief, the Defendants intentionally manipulated the market price using its fraudulent scheme against the Plaintiff, wherein Genuine Lifetime agreed to use AFG's money to acquire BEN AI stock while never intending to pay AFG back under the related Securities Agreement.

208. Defendants intentional use and manipulation of Genuine Lifetime's acquisition of stock was purposely fraudulent as Genuine Lifetime currently has ownership of stock it did not pay for, while AFG has expended $4,000,000 for the stock Genuine Lifetime refuses to assign over.

209. Without this fraudulent investment scheme, the price of the stock AFG directly purchased in BEN AI through its subscription agreement would have been substantially lower.

210. Upon information and belief, Genuine Lifetime's purchase of BEN AI stock at an unsupportable and inflated value was intentional as to limit the amount of control and ownership AFG would be given in BEN AI.

211. Additionally, it was never disclosed that Michael and Shawn Lucas's company, Due Figlie LLC, had a substantial interest in BEN AI while Shawn Lucas was still employed by AFG.

This was a substantial conflict of interest in light of Shawn Lucas's involvement in directing AFG's activities in relation to the BEN Auto project.

212. BEN AI further made misrepresentations throughout its business dealings with AFG to conceal its own inability to meet its deliverables, and it used Gates and Shawn Lucas to create a pretextual alleged problem to try and justify an early termination of the Reseller Agreement.

213. Further, it was never disclosed to AFG that Defendants were planning to orchestrate a stock split or issuance of new stock, after AFG's investment, that would dilute the shares and dramatically reduce the value of its investment. Upon information and belief, this was always part of the Defendants' plan to defraud AFG for their own personal gain.

214. Upon information and belief, other substantial misleading statements were made in BEN AI's SEC filings.

215. Upon information and belief, Michael Lucas's tax crimes were never disclosed to the SEC, despite the fact that, upon information and belief, he indirectly owned substantial shares in BEN AI through various business entities.

216. The Defendants further engaged in acts, practices, and courses of business that operated as a fraud and deceit upon Plaintiff, including what appear to be inaccurate or incomplete representations as to the products that its technology was capable of providing; the value of its patents in light of competitive products on the marketplace, information regarding their personal relationships and loyalties that created conflicts of interest; and ultimately BEN AI's termination of the Reseller Agreement, knowing that would cut off Plaintiff's ability to recover anywhere close to what it invested in Ben AI and Genuine Lifetime.

217. The Defendants further omitted material information in their business dealings with AFG, including their personal relationships and loyalties as well as their logistical problems, including the many problems they were having with hiring South Korean engineers with the related language barriers and substantial difference in time zone.

218. BEN AI has further failed to communicate and inform Plaintiff of substantial transactions and sales of shares within the Company subsequent to Plaintiff's investment, in further violation of its obligations to Plaintiff.

219. Pursuant to W.S. § 17-4-509, Plaintiff AFG is entitled to a return of the consideration it paid directly for shares in BEN AI, as well as those sums paid to Genine Lifetime, plus interest at six percent (6%) per year from the date of purchase plus reasonable attorney fees.

NINTH CAUSE OF ACTION AGAINST DEFENDANTS BEN AI, GENUINE LIFETIME, TRAVIS LUCK, AND OCTOBER 3RD HOLDINGS: -INJUNCTIVE RELIEF-

220. Plaintiff, AFG, incorporates herein by this reference paragraphs 1 through 219 of this Complaint as if set forth fully herein.

221. Pending the resolution of the above-captioned matter, Genuine Lifetime, Luck, and October 3rd Holdings must be constrained from selling the Collateral of Ben AI Stock held by Genuine Lifetime pursuant to the terms of the Security Agreement.

222. Further, pursuant to W.S. §§ 1-28-101 et. seq. this Court should enjoin the Defendant Companies from selling or otherwise distributing any of the Companies' assets outside the course and scope of its ordinary business activities pending the resolution of this litigation in light of the substantial amounts in dispute and the egregious and fraudulent behavior of the Defendants.

223. Plaintiff BEN AI should further be restrained from any stock splits or other actions that would devalue or dilute Plaintiff's shares in BEN AI.

224. Plaintiff AFG also requests the Court order that Defendants stop spreading information regarding AFG's information technology systems, which allegations are untrue and defamatory.

TENTH CAUSE OF ACTION AGAINST DEFENDANTS
BEN AI, TRAVIS LUCK, SHAWN LUCAS, AND MICHAEL LUCAS:
-BUSINESS DEFAMATION and BUSINESS DEFAMATION PER SE-

225. Plaintiff, AFG, incorporates herein by this reference paragraphs 1 through 224 of this Complaint as if set forth fully herein.

226. On or about January 17, 2025, BEN AI released a statement out of its Jackson, Wyoming office stating that AFG concealed a ransomware attack on its network shortly before the Reseller Agreement was executed.

227. The statement further explains that its customer data and/or systems were not impacted, implying that AFG's customer data and systems were impacted.

228. BEN AI further states that it has "zero tolerance" for actions that undermine trust, tying the statement to AFG's data security and their reason for terminating the AFG Reseller Agreement.

229. Upon information and belief, Defendants have made other statements indicating that AFG failed to protect its customers' information.

230. BEN AI's statements appear to be repeated from allegations made by Luck, Shawn Lucas, and Michael Lucas.

231. Upon information and belief, BEN AI, Luck, Shawn Lucas, and Michael Lucas have made similar statements directly to numerous individuals and businesses, with the intended purpose of discouraging those that receive the information from doing business with AFG.

232. These statements were made at a time when BEN AI, Shawn Lucas, Luck, and Michael Lucas had been informed and all knew that despite the alleged “cyber-attack” there was no exfiltration of AFG’s customer or company data.

233. AFG spent over one million dollars to investigate the alleged attack and to ensure that its systems were always safe. If anything, the alleged attack was a successful test of AFG’s cyber-security systems, processes, and response protocols, demonstrating that AFG’s security meets or exceeds industry standards.

234. Upon information and belief, Shawn Lucas, and those with which he was conspiring, were directly involved in the cyber-attack as it occurred only three days after he inquired whether AFG had cyber-insurance. The allegations are akin to “victim-blaming” by the individual suspected of the attack.

235. Allegations of insufficient security protections within AFG are extremely detrimental to operations within a business field that relies heavily on information security. Further, such allegations imply that AFG is out of compliance with Federal and or state regulations for the protection of such data.

236. The statements by BEN AI, Shawn Lucas, Michael Lucas, and Luck were knowingly false, and were shared with actual malice. BEN AI knew it had to find some pretextual reason for unlawfully breaching the Reseller Agreement, and these defamatory statements are the foundation of that conspiracy.

237. Plaintiff has incurred substantial damage to its business reputation because of the intentionally false statements that were made about what was actually a successful test proving the opposite of what is implied by Defendant's statements and publications.

DAMAGES

238. Plaintiff AFG is entitled to more than $4.8 million in damages on the defaulted Security Agreement.

239. Plaintiff is entitled to more than $6 million in damages as a result of the Defendant's targeted fraudulent scheme to encourage AFG to invest in BEN AI in conjunction with a Reseller Agreement while Defendants knew BEN AI could and would not meet the terms of that agreement.

240. Plaintiff is entitled to the $1,000,000 or more that it incurred as a direct result of the cyber-attack that occurred three days after Shawn Lucas inquired whether AFG had cyber-insurance. This is the same attack that Defendants are now using as pretext for why BEN AI should not be required to meet its obligations.

241. Plaintiff is entitled to Damages for the Definition of its business, and specifically its information technology systems, which are critically important in the automotive and insurance fields.

242. Plaintiff is entitled to punitive damages for Defendants' willful and intentionally harmful actions, including their securities fraud and related conspiracy to commit fraud as well as its defamation.

243. Plaintiff is entitled to all its attorney fees and costs in pursuing this matter.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff AFG prays that the Court enter an Order and Judgment against Defendants for, in addition to all previous requests for relief:

1. All of Plaintiff's attorneys' fees and costs sustained because of Genuine Lifetime's default under the Securities Agreement.

2. An immediate foreclosure on all assets of Genuine Lifetime, including all of its stock holdings in BEN AI as required under the Securities Agreement.

3. An injunction which prohibits Genuine Lifetime from selling any of its assets, as all of its assets are subject to the Securities Agreement.

4. That all Plaintiff's investment in BEN AI be immediately returned, plus 6% interest, as a result of Defendants' Securities Fraud.

5. Punitive damages relating to Defendants intentional scheme to defraud Plaintiff.

6. Such other relief as this Court may deem just and equitable.

DATED this 21st day of January, 2025.

/s/ Robert J. Walker
Robert J. Walker (7-4715)
Walker Law, LLP
114 East 7th Avenue, Suite 200
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ATTORNEY FOR PLAINTIFF

EXHIBIT B-6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
NEW YORK DIVISION

BRAND ENGAGEMENT NETWORK, INC.	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. _1:25-cv-02245**
	§	
AFG COMPANIES, INC.,	§	
	§	
	§	
	§	
	§	
	§	
Defendants.	§	

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Brand Engagement Network, Inc. ("**BEN**") files this Original Complaint against Defendant AFG Companies, Inc., (collectively, "**Defendant or AFG**") and respectfully shows the Court the following:

This case arises out of a simple failure to comply with contract terms. Defendant signed a Subscription Agreement on September 7, 2023 in which it agreed to purchase securities on an installment basis from BEN. One installment payment was due on March 13, 2025, and this payment was not made. As a result, AFG is in breach of the Subscription Agreement.

I. PARTIES

1. BEN is a publicly traded corporation incorporated in Delaware with its principal offices in Jackson, Wyoming and Seoul, Republic of Korea. BEN is an innovator in AI-powered customer engagement solutions, providing advanced technology designed to enhance data

utilization, improve customer interactions, and drive operational efficiency. BEN entered into the Subscription Agreement with AFG.

2. Defendant Automotive Financial Group, Inc. ("**AFG**") is a Texas domestic for-profit corporation with its principal place of business in Grapevine, Texas. AFG was the primary counterparty to the Subscription Agreement and failed to fulfill its contractual obligations by failing to make the required March 13, 2025 payment. Defendant AFG Companies, Inc. is a Texas domestic for-profit corporation with its principal place of business in Grapevine, Texas. AFG was the primary counterparty to the Subscription Agreement and failed to fulfill its contractual obligations by failing to make the March 13, 2025, subscription payment.

II. JURISDICTION AND VENUE

3. This Court also has jurisdiction under 28 U.S.C. § 1332(a), as there is complete diversity of citizenship between Plaintiff BEN and Defendants, and the amount in controversy exceeds $75,000, exclusive of interest and costs.

4. Plaintiff BEN is a citizen of Delaware and Wyoming, while the Defendant AFG is a Texas entity.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because the Subscription Agreement expressly designates New York County, New York, as the exclusive forum for resolving disputes. Defendant AFG expressly consented to jurisdiction in this Court and waived any objections to venue under Subscription Agreement, ¶ 10(m).

6. AFG is a Texas-based entity whose operations are central to the claims in this case. By entering into the Subscription Agreements with BEN, Defendant AFG purposefully availed itself of the jurisdiction of this Court.

III. FACTUAL BACKGROUND

B. <u>The Subscription Agreement</u>

7. On September, 7, 2023, BEN, a cutting-edge innovator in AI-powered customer engagement solutions, entered into a Subscription Agreement with AFG (the "**<u>Agreement</u>**"). A true and correct copy of the Agreement is attached hereto as **Exhibit "A"**. The Agreement was a cornerstone of BEN's efforts to expand into the automotive sector, leveraging AFG's established presence and network within the industry. AFG was tasked with purchasing the requisite number of shares on the assigned dates consistent with the Agreement.

8. Under the terms of the Subscription Agreement, Plaintiff Brand Engagement Network Inc. ("BEN") undertook several binding obligations to facilitate the sale of equity to AFG as part of a structured private placement transaction. These obligations included issuing shares, ensuring the proper assignment of contractual rights, complying with securities laws, and facilitating the registration of AFG's shares. BEN has fully complied with all of its contractual obligations, whereas AFG has materially breached its own obligations under the Agreement.

9. BEN agreed to issue and deliver to AFG Initial Shares of its common stock, which would automatically convert into PubCo Common Stock upon the Business Combination Closing (Subscription Agreement, ¶ 1(a)(i)). These shares were to be delivered in book-entry form, free and clear of any liens or restrictions, other than those arising under applicable securities laws (Subscription Agreement, ¶ 2(d)). BEN complied with this obligation by preparing the necessary documentation and ensuring that AFG's shares were properly reserved for issuance upon the successful closing of the Business Combination.

10. BEN committed to ensuring that PubCo would establish a share reserve with its transfer agent, specifically reserving the necessary shares for future installment purchases by AFG

(Subscription Agreement, ¶ 2(d)). BEN complied with this obligation by facilitating the proper corporate actions to secure these reserved shares upon the Business Combination Closing.

11. As a fiduciary to its shareholders, BEN retained the right to enforce the Subscription Agreement and take all necessary actions to compel AFG's performance, ensuring that it upheld its payment obligations (Subscription Agreement, ¶ 3(c)(ii)). This obligation included seeking legal remedies in the event of a material breach by AFG, such as its failure to make the required installment payment due on March 13, 2025. BEN has acted in full compliance with this provision by seeking enforcement through the legal system.

12. Under the terms of the Subscription Agreement, Defendant AFG Companies Inc. undertook several material obligations in exchange for its right to acquire shares in Brand Engagement Network Inc. and, subsequently, the newly formed PubCo upon the completion of the Business Combination. The Agreement set forth clear and enforceable duties on AFG, including, but not limited to, the payment of agreed-upon purchase prices for Initial and Installment Shares, compliance with agreed funding deadlines, and adherence to the terms of share issuance and assignment provisions.

13. AFG expressly agreed to purchase and pay for 650,000 Initial Shares of BEN's common stock at an aggregate purchase price of $6.5 million (Subscription Agreement, ¶ 1(a)(i)). AFG was required to wire these funds into an escrow account at least two (2) business days prior to the Scheduled Business Combination Closing Date (Subscription Agreement, ¶ 2(c)). Upon successful closing, the Initial Shares were to be converted into PubCo Common Stock and delivered to AFG in book-entry form, free and clear of any liens or restrictions other than those arising under federal and state securities laws (Subscription Agreement, ¶ 2(d)).

14. In addition to the Initial Shares, AFG agreed to purchase additional shares of PubCo Common Stock in four annual installments, with a total purchase obligation of $26.0 million over a four-year period (Subscription Agreement, ¶ 1(a)(ii)). Each installment was to be calculated based on the Market Price, with a minimum price floor of $2.11 per share (Subscription Agreement, ¶ 2(b)). AFG was required to make each installment payment at least one (1) business day prior to each Installment Offering Closing Date (Subscription Agreement, ¶ 2(e)).

15. The Agreement provided that, upon completion of the Business Combination, BEN would assign its rights and obligations to PubCo, and AFG explicitly agreed to accept and honor this assignment (Subscription Agreement, ¶ 1(b)). AFG's obligations under the Agreement were not subject to revocation or reconsideration following the Business Combination Closing, and it remained bound by the contractual commitment to make installment payments to PubCo as originally agreed.

16. The Agreement did not condition AFG's payment obligations on any speculative event or subjective determination. Rather, AFG committed to funding its payment obligations in full, without condition or offset, in accordance with the deadlines outlined in the Agreement (Subscription Agreement, ¶ 2(c), 2(e)). The Agreement explicitly stated that failure to fund any installment payment constituted a material breach (Subscription Agreement, ¶ 3(c)(ii)).

17. AFG expressly agreed that the Subscription Agreement would be governed by the laws of the State of New York (Subscription Agreement, ¶ 10(m)). AFG also consented to jurisdiction in New York courts and waived its right to contest venue, acknowledging that New York County, New York, was the designated forum for dispute resolution (Subscription Agreement, ¶ 10(m)).

18. The Agreement was supported by mutual consideration: BEN acted in good faith throughout the partnership, fulfilling all conditions precedent and cooperating with AFG to implement the Agreement.

19. At all times relevant to this action, BEN has fully performed all of its obligations under the Subscription Agreement. BEN has issued shares, provided proper notice, assigned contractual rights to PubCo, complied with SEC regulations, and facilitated share registration. In contrast, AFG has materially breached the Agreement by failing to make its required installment payment of $6.5 million on March 13, 2025, in direct violation of the payment terms (Subscription Agreement, ¶ 2(e), 3(c)(ii)). As a result of AFG's breach, BEN has suffered significant financial harm and business disruption, and is entitled to legal and equitable relief.

20. Plaintiff BEN has fully satisfied all contractual obligations imposed under the Subscription Agreement, whereas Defendant AFG has materially failed to perform. By refusing to make its contractually mandated installment payment, AFG has disrupted the financial structure and strategic planning of PubCo and has failed to meet its legally binding financial commitments. Accordingly, BEN is entitled to recover all outstanding amounts due under the Agreement, plus interest, attorneys' fees, and any consequential damages resulting from AFG's breach.

C. The Agreement is a Valid Contract

21. Plaintiff Brand Engagement Network Inc. ("BEN") and Defendant AFG Companies Inc. ("AFG") entered into a valid and legally enforceable contract titled the Subscription Agreement, dated September 7, 2023 (the "Agreement"). This Agreement was executed by Michael Zacharski, Chief Executive Officer of BEN, and Ralph Wright Brewer III, Chief Executive Officer of AFG, on behalf of their respective corporate entities. The execution of

this Agreement constituted a mutual and binding commitment by both parties, with clearly delineated obligations, consideration, and remedies for nonperformance.

22. The Agreement clearly set forth the material terms of the transaction, establishing that AFG agreed to purchase, and BEN agreed to sell, Initial Shares of the Company for $6.5 million, which would convert into 650,000 shares of the newly formed entity, PubCo, following a business combination. The Agreement further obligated AFG to purchase an additional $26 million worth of Installment Shares over the course of four consecutive years in four equal installments. Each Installment Share purchase was explicitly tied to the Market Price, which was defined in the Agreement and subject to a minimum floor price of $2.11 per share. These clear and definite terms remove any ambiguity regarding the enforceability of the Agreement.

23. The Agreement was supported by adequate and bargained-for consideration on both sides. AFG agreed to provide substantial monetary payments totaling $32.5 million in exchange for shares in BEN and, ultimately, the newly formed PubCo following the business combination. In return, BEN committed to issuing shares at a pre-determined Market Price, capping the maximum purchase price per share at $10 and offering additional protections for AFG, including registration rights under Section 6 of the Agreement, ensuring that AFG's shares could be sold on the open market in compliance with U.S. securities laws. Under New York law, mutual promises constitute sufficient consideration to create a binding contract. There was no lack of mutuality, as both parties made reciprocal commitments, and the obligations imposed upon AFG were definite, fixed, and legally binding.

24. At all times relevant to this dispute, the Agreement was valid, enforceable, and not subject to any lawful defense to performance. There was no claim of fraud, duress, mistake, or unconscionability that would serve as a basis for voiding the contract. The Agreement was

executed at arm's length between sophisticated business entities, further reinforcing its enforceability.

D. <u>BEN Has Performed Its Obligations Under the Agreement</u>

25. Plaintiff Brand Engagement Network Inc. has fully performed its obligations under the Subscription Agreement with AFG. The Agreement set forth a clear and enforceable exchange of obligations, requiring BEN to issue shares, assign contractual rights to PubCo, facilitate the registration process, and provide proper notice of the Business Combination Closing. At all times relevant to this dispute, BEN has fulfilled each of these obligations in accordance with the terms of the Agreement, whereas AFG has materially breached its own obligations by failing to make its required installment payment on March 13, 2025.

26. Issuance and Delivery of Initial Shares – BEN was required to issue and deliver to AFG 650,000 Initial Shares of its common stock, which were set to automatically convert into PubCo Common Stock upon the Business Combination Closing (Subscription Agreement, ¶ 1(a)(i), 2(d)). BEN has fully performed this obligation by ensuring that the Initial Shares were properly reserved, issued, and converted into PubCo Common Stock as required. The shares were delivered to AFG free and clear of any liens or restrictions, except for those imposed by applicable federal and state securities laws.

27. The Agreement provided that BEN would assign its rights and obligations under the Subscription Agreement to PubCo, which would assume responsibility for issuing Installment Shares and receiving future installment payments (Subscription Agreement, ¶ 1(b), 3(d)(ii)). BEN executed the Assignment to PubCo as required and ensured that PubCo was fully prepared to accept installment payments from AFG.

28. BEN was obligated to reserve Installment Shares for issuance to AFG following the Business Combination Closing (Subscription Agreement, ¶ 2(d)). To fulfill this obligation, BEN caused PubCo to establish a share reserve with its transfer agent, ensuring that the necessary shares were available for AFG's future installment purchases.

29. BEN facilitated the establishment of the Escrow Account to accept AFG's payment for the Initial Shares. Upon successful closing, BEN instructed the Escrow Agent to release the funds in accordance with the Agreement, ensuring that AFG's purchase funds were properly processed and accounted for (Subscription Agreement, ¶ 2(c)).

30. BEN repeatedly sought to ensure AFG's compliance with its payment obligations under the Agreement. BEN provided multiple opportunities for AFG to fulfill its contractual obligations, including timely reminders of installment payment deadlines and assistance with payment processing. Despite BEN's full performance, AFG has failed to make the required installment payment due on March 13, 2025, thereby breaching the Agreement.

31. At all relevant times, BEN has fully and faithfully performed all contractual obligations imposed under the Subscription Agreement. There is no contractual provision, condition precedent, or regulatory issue that would excuse AFG's nonperformance. BEN has met all conditions necessary for AFG's payment obligation to become due and enforceable.

32. BEN has complied with every requirement set forth in the Subscription Agreement, whereas AFG has materially breached the Agreement by failing to remit the required installment payment. BEN is therefore entitled to legal and equitable relief, including monetary damages for the outstanding balance, pre-judgment interest, attorneys' fees, and any additional costs incurred as a direct result of AFG's breach.

E. <u>AFG Has Breached Its Obligation Under The Agreement</u>

33. Defendant AFG Companies Inc. ("AFG") has materially breached its obligations under the Subscription Agreement dated September 7, 2023, by failing to make the required installment payment of $6.5 million due on March 13, 2025. The Subscription Agreement imposed clear, unconditional, and enforceable financial obligations on AFG, including its irrevocable commitment to purchase Initial Shares and subsequent Installment Shares in accordance with the agreed-upon schedule. AFG's failure to fulfill this payment obligation constitutes a fundamental breach, entitling Plaintiff Brand Engagement Network Inc. ("BEN") to damages and other appropriate relief.

34. Under the Subscription Agreement, AFG was contractually obligated to purchase Installment Shares in four equal annual installments of $6.5 million each, with payments due on each of the first four anniversaries of the Business Combination Closing (Subscription Agreement, ¶ 2(b), 2(e)). The March 13, 2025, installment payment was a clear and non-contingent contractual obligation, yet AFG failed to make this required payment despite having been provided with all necessary notice and payment instructions.

35. The Subscription Agreement did not condition AFG's installment payments on any external events, regulatory approvals, or subjective determinations (Subscription Agreement, ¶ 2(b)). AFG had an absolute obligation to remit payment on the scheduled due date, and its failure to do so was without legal justification or contractual basis. New York contract law recognizes that where a party fails to perform a clear contractual obligation, it constitutes a material breach.

36. AFG's nonpayment was not due to any impossibility, frustration of purpose, or failure by BEN to perform its obligations. Instead, AFG's breach was a willful and unilateral failure to meet a financial obligation that was clearly delineated in the Subscription Agreement.

Under New York law, a party's unjustified refusal to make a required contractual payment constitutes a material breach warranting damages.

37. In addition to breaching the express terms of the Subscription Agreement, AFG has also breached the implied covenant of good faith and fair dealing, which is inherent in all New York contracts. This covenant requires that neither party do anything that will have the effect of destroying or injuring the right of the other party to receive the benefits of the contract. AFG's failure to make its required payment has directly undermined the purpose of the Agreement, depriving BEN of the expected consideration and disrupting its financial planning and business strategy.

38. AFG was given ample notice of its upcoming payment obligations and was provided with clear instructions for wiring funds to PubCo prior to the installment payment due date. Despite these efforts, AFG failed to make the required payment and did not request an extension or modification of terms, further evidencing bad faith and willful nonperformance. New York law recognizes that a party's failure to cure a material breach after notice further supports a finding of liability.

39. Under New York law, a breach is material when it goes to the root of the agreement and defeats the purpose of the contract. AFG's failure to remit a required contractual payment is a fundamental breach, as the Subscription Agreement was premised on AFG's commitment to purchase shares in exchange for financial consideration. The absence of this payment directly frustrates the purpose of the transaction and substantially impairs the value of the Agreement to BEN. AFG cannot assert impossibility of performance as a defense because the Subscription Agreement was an unconditional financial commitment, not contingent on market conditions or

external approvals. New York law holds that financial inability to pay is not a defense to contractual nonperformance

40. AFG's failure to make the required installment payment was not inadvertent but a willful and deliberate breach designed to avoid its financial obligations under the Agreement. AFG had full knowledge of its payment obligations, was provided multiple notices, and made no effort to cure its default. A willful breach of contract, made in bad faith, further entitles BEN to damages for reputational harm and business disruption

41. As a result of AFG's failure to make its installment payment, BEN and PubCo have suffered substantial financial harm, including: a. Loss of anticipated investment capital, disrupting financial planning and corporate initiatives. b. Impacts on stockholder confidence, as AFG's failure to honor its commitment raises concerns among other investors. c. Potential damage to market perception and PubCo's ability to secure additional financing.

42. By failing to make the required payment of $6.5 million due on March 13, 2025, AFG has materially breached the Agreement. The obligation to make this installment payment was a core contractual obligation that was not contingent on any external factors, stockholder approvals, or market conditions. There was no express or implied condition precedent that would excuse AFG's performance. The failure to make this payment, despite the unambiguous language of the Agreement, constitutes a clear and direct breach under New York contract law. Accordingly, BEN is entitled to recover full damages, interest, attorneys' fees, and any other relief the Court deems appropriate.

F. <u>Damages Suffered BY BEN as a Result of AFG's Breach</u>

43. As a direct and proximate result of AFG's material breach of the Subscription Agreement, Plaintiff Brand Engagement Network Inc. ("BEN") has suffered significant financial

harm, including loss of expected capital contributions, reputational damage, impaired business operations, and increased legal costs. Under New York law, a non-breaching party is entitled to recover all reasonably foreseeable damages caused by the breach, including direct, consequential, and incidental damages.

44. AFG was contractually obligated to remit an installment payment of $6.5 million on March 13, 2025, in exchange for its purchase of Installment Shares (Subscription Agreement, ¶ 2(b), 2(e)). AFG's failure to make this payment constitutes a fundamental breach, depriving BEN of a significant and expected capital infusion.

45. Under New York law, the measure of damages for a breach of contract is the amount necessary to place the non-breaching party in the position it would have been in had the contract been fully performed. Here, the unpaid $6.5 million installment payment represents a direct financial loss to BEN, and BEN is entitled to recover the full amount of the missed payment, plus interest and applicable costs.

46. BEN is entitled to prejudgment interest at a statutory rate of 9% per annum from the date the installment payment became due. Interest should be calculated from March 13, 2025, until the date of final judgment, ensuring that BEN is compensated for the time value of the money it was wrongfully denied. Additionally, BEN is entitled to post-judgment interest, ensuring that interest continues to accrue until AFG satisfies the judgment in full.

47. AFG's failure to make the required payment has directly disrupted BEN's business operations, preventing it from utilizing the anticipated funds for strategic initiatives, expansion, and investment opportunities. Under New York law, consequential damages are recoverable where they were foreseeable and within the contemplation of the parties at the time of contracting

48. The Subscription Agreement was structured to ensure predictable and reliable capital infusions, allowing BEN to execute its business strategy and finance operations (Subscription Agreement, ¶ 2(b), 2(e)). By breaching its payment obligation, AFG has: a. Disrupted BEN's financial planning, requiring it to seek alternative funding sources. b. Forced BEN to delay or abandon planned business initiatives due to lack of expected capital. c. Harmed BEN's ability to attract additional investors, as AFG's default raises concerns about contractual reliability.

49. These foreseeable business disruptions entitle BEN to recover additional consequential damages, in an amount to be determined at trial, for lost investment opportunities, increased financing costs, and operational setbacks caused by AFG's nonpayment.

50. AFG's breach has also damaged BEN's reputation in the investment community, creating uncertainty regarding its capital structure and financial stability. Investors and stakeholders rely on the timely fulfillment of contractual commitments to assess a company's financial health and credibility. AFG's failure to remit its scheduled payment has: a. Raised doubts among other investors about BEN's ability to enforce financial commitments, affecting future fundraising efforts. b. Caused uncertainty in the marketplace, impacting BEN's stock value and investor confidence. c. Weakened BEN's negotiating position with other potential investors or business partners.

51. Under New York law, a party may recover damages for harm to its business reputation if such harm was a foreseeable consequence of the breach. Given that BEN operates in a market that heavily relies on investor confidence, the reputational harm caused by AFG's default is both substantial and compensable.

52. As a result of AFG's material breach, BEN has been forced to incur significant legal fees and litigation costs to enforce its contractual rights. Under New York law, a party may recover attorneys' fees where the contract explicitly provides for such recovery.

53. The Subscription Agreement includes provisions requiring AFG to comply with its financial obligations, and AFG's willful nonpayment has necessitated costly legal action to compel enforcement. Accordingly, BEN seeks reimbursement for all reasonable attorneys' fees, court costs, and expenses incurred in prosecuting this action.

54. AFG's material breach has caused significant and measurable harm to BEN, entitling BEN to recover direct monetary damages, interest, consequential damages, and attorneys' fees. Because the Subscription Agreement contained unambiguous payment obligations, and because BEN has fully performed its contractual duties, there is no valid defense to AFG's nonpayment. Accordingly, BEN seeks full damages, interest, costs, and any additional relief this Court deems appropriate.

IV. CAUSES OF ACTION

COUNT 1
Breach of Contract

55. Plaintiff realleges each and every allegation set forth above and incorporates them herein.

56. To establish a breach of contract claim under Texas law, the Plaintiff must prove 1) the existence of a valid contact; 2) Plaintiff's performance or tendered performance; 3) Defendants breach of the contract; and 4) damages sustained as a result of the breach.

57. Plaintiff Brand Engagement Network Inc. ("BEN") and Defendant AFG Companies Inc. ("AFG") entered into a valid and legally enforceable contract titled the Subscription Agreement, dated September 7, 2023 (the "Agreement"). This Agreement was executed by Michael Zacharski, Chief Executive Officer of BEN, and Ralph Wright Brewer III, Chief Executive Officer of AFG, on behalf of their respective corporate entities. The execution of this Agreement constituted a mutual and binding commitment by both parties, with clearly delineated obligations, consideration, and remedies for nonperformance.

58. Under well-established New York contract law, a breach of contract claim requires proof of (1) the existence of a valid contract, (2) Plaintiff's performance, (3) Defendant's breach, and (4) damages resulting from the breach. The Agreement at issue here meets all elements of an enforceable contract. The formation of the contract adhered to fundamental contractual principles, including offer, acceptance, mutual assent, and consideration .

59. On September 7, 2023, BEN and Defendant AFG Companies Inc. ("AFG") entered into a valid and enforceable Subscription Agreement (the "Agreement"), whereby AFG agreed to purchase Initial Shares and Installment Shares of BEN's stock in exchange for financial

consideration totaling $32.5 million over a defined payment schedule.

60. The Agreement required AFG to make four equal installment payments of $6.5 million each, with the first installment payment due on March 13, 2025, in exchange for additional Installment Shares (Subscription Agreement, ¶ 2(b), 2(e)).

61. The Agreement imposed a clear and unconditional obligation on AFG to remit this payment without contingency, and BEN fully performed all conditions precedent required to trigger AFG's payment obligation (Subscription Agreement, ¶ 3(d)(ii)).

62. Despite its contractual obligation, AFG failed to make the required installment payment of $6.5 million on March 13, 2025, in direct violation of the Agreement.

63. AFG's failure to pay constitutes a material breach of the Agreement, depriving BEN of the expected financial consideration and directly frustrating the purpose of the contract.

64. As a direct and proximate result of AFG's breach, BEN has suffered significant financial damages, including but not limited to: a. $6.5 million in unpaid contractually obligated funds, b. Prejudgment interest at the statutory rate of 9% per annum from March 13, 2025, c. Consequential damages, including disruption to BEN's financial planning and loss of investment opportunities, d. Reputational harm impacting BEN's standing with investors and business partners, and e. Attorneys' fees and costs incurred in enforcing the Agreement.

65. AFG's breach was willful and without legal justification, as there were no conditions, contingencies, or defenses that would excuse its failure to pay the required installment.

66. Under New York law, a party is liable for breach of contract when it fails to perform a clear, enforceable obligation without legal excuse, and monetary damages are recoverable to place the non-breaching party in the position it would have been had the contract been fully performed.

67. Accordingly, BEN seeks judgment against AFG for breach of contract

V. DAMAGES

Actual Damages

68. BEN has suffered significant actual damages as a direct result of the Defendants' breach of contract.

Pre- and Post-Judgment Interest

69. BEN seek pre-judgment and post-judgment interest on all damages awarded, as permitted by law, to fully compensate them for the harm suffered due to Defendants' actions.

Consequential Damages

70. The misconduct of AFG entities has caused Consequential damages, including but not limited to financial harm, lost investment opportunities, and reputational damages harm to BEN.

Attorneys' Fees and Costs

71. BEN is entitled to recover their attorneys' fees and costs incurred in pursuing this action under applicable law and the terms of the Reseller and Consulting Agreements.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Brand Engagement Network Inc. respectfully requests that this Court enter judgment against Defendant AFG Companies Inc., and award Plaintiff:

1. Actual and consequential damages, including lost revenue, denied compensation, and mitigation costs;
2. Prejudgment interest at the statutory rate of 9% per annum from March 13, 2025;
3. Post-judgment interest;
4. Consequential damages, including but not limited to financial harm, lost investment opportunities, and reputational damages;
5. Attorneys' fees and litigation costs;
6. Attorneys' fees and litigation costs incurred in enforcing the Agreement; and
7. Any additional relief the Court deems just and proper.

Respectfully submitted,

/s/ Eric N. Whitney

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ATTORNEYS FOR PLAINTIFF

EXHIBIT B-7

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

GENUINE LIFETIME LLC, ET AL.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	**Civil Action No. 4:25-CV-00471-O**
	§	
RALPH WRIGHT BREWER III, ET AL.,	§	
	§	
	§	
Defendants.	§	

ORDER

The above-numbered case is hereby transferred to the docket of the Honorable Judge Karen Gren Scholer, as it is related to *Brand Engagement Network Inc v. Brewer, III et al*, Civil Action No. 3:25-cv-00114-S, and shall henceforth carry the suffix letter "S."

SO ORDERED on this **15th day** of **May, 2025.**

Reed O'Connor
UNITED STATES DISTRICT JUDGE

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Jeana Burke on behalf of Shauna Wright
Bar No. 24052054
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Envelope ID: 106575944
Filing Code Description: Answer/Response
Filing Description: AUTOMOTIVE FINANCIAL GROUP, INC.???S REPLY IN SUPPORT OF MOTION TO CONSOLIDATE
Status as of 10/8/2025 8:23 AM CST

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Jeana Burke on behalf of Shauna Wright
Bar No. 24052054
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Envelope ID: 106575944
Filing Code Description: Answer/Response
Filing Description: AUTOMOTIVE FINANCIAL GROUP, INC.???S REPLY IN SUPPORT OF MOTION TO CONSOLIDATE
Status as of 10/8/2025 8:23 AM CST

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