

Kevin N. Anderson, 100
Sarah C. Vaughn, 14615
FABIAN VANCOTT
95 South State Street, Suite 2300
Salt Lake City, Utah 84111
Telephone: (801) 531-8900
Facsimile: (801) 596-2814
kanderson@fabianvancott.com
svaughn@fabianvancott.com

**IF YOU DO NOT RESPOND TO THIS
DOCUMENT WITHIN APPLICABLE
TIME LIMITS, JUDGMENT COULD
BE ENTERED AGAINST YOU AS
REQUESTED.**

Nate D. Ashcraft, 9497
Hansen Black Anderson Ashcraft
3051 West Maple Loop Drive, Suite 325
Lehi, Utah 84043
Telephone: (801) 922-5000
nashcraft@hbaa.law

Attorneys for Plaintiff Justin K. Prince

**IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH**

Justin K. Prince, an individual,

Plaintiff,

vs.

Modere, a business enterprise that is part of
Maple Mountain Enterprises, Inc., a Nevada
corporation; Maple Mountain Group, Inc., a
Utah corporation (formerly known as
Neways, Inc.), dba Neways, Inc.; James J.
Zenni Jr., an individual; George Russell, an
individual; Z Capital Partners, LLC, a
Delaware Limited Liability Company;
Z Capital Commercial Finance L.L.C.;
Z Capital Group, LLC, a Delaware limited
liability company; and John Does 1-99,

Defendants.

COMPLAINT

Civil No. _____

Judge _____

Discovery Tier 3

Plaintiff Justin K. Prince (“Justin”) hereby alleges and complains against the Modere Defendants, Z Capital Defendants, and John Does 1-99 as follows:

INTRODUCTION

1. Until recently, Justin was the largest distributor for a multi-level marketing business enterprise known as “Modere.”
2. Justin went from selling products out of a mall kiosk with no college education to becoming an equity holder/partner in the company and the number one earner at Modere, generating during his time there over \$2.5 billion dollars in total revenue and over 4 million customers.
3. Modere came under the control of a private equity investor, Z Capital. Revenues grew and Z Capital seized an opportunity to restructure its debt on the back of Modere, for the benefit of Z Capital and its partners.
4. The loan proceeds were not reinvested into Modere and Modere was straddled with excessive debt—and poorly management by its Board of Directors. Modere’s business began failing as sales declined, resulting in decreased commissions for Justin and other distributors.
5. In an effort to remain financially solvent, Modere wrongfully terminated its relationships with Justin, kept the commissions he earned, and usurped Justin’s vast network of nearly 60,000 downline marketers.
6. After George Russell, the Executive Chair of Modere’s Board, and a partner with Z Capital told Justin Modere was heading for bankruptcy and discussing how Justin should message to his downline planned commission cuts, layoffs, cost cutting and Modere’s CEO Asma Ishaq being stripped of her power, Modere has turned on Justin, engaging in a deceitful

campaign to defame him and malign his reputation. Modere operative have spread knowingly false statements about Justin to his downline and Modere employees.

PARTIES

7. Justin Prince is an individual who resides in Washington County, Utah.

8. Modere is an omnichannel, consumer products company that develops and markets clean health & wellness products through ecommerce and direct-to-consumer channels headquartered in Springville, Utah County, Utah. It is the business and brand name used by Defendant Maple Mountain Enterprises, Inc. and its affiliates.

9. Defendant Maple Mountain Enterprises, Inc., is a Nevada corporation registered to do business in Utah, and through its unnamed affiliates purports to operate collectively as “Modere.”

10. Defendant Maple Mountain Group, Inc. (formerly known as Neways, Inc.) dba Neways, Inc., is a Utah corporation with its principal place of business in Utah County, Utah. Together with Maple Mountain Enterprises, Maple Mountain Group, Inc. dba Neways Inc. purports to operate Modere.

11. James J. Zenni Jr., an individual working in New York is the founder, president, chief executive officer and member of the management committee of Z Capital. He also serves on the board of Modere.

12. George Russell, an individual working in New York is a partner and head of C-Suite Advisory of Z Capital. He also serves on the board of Modere as its Executive Chair.

13. John Does 1-99 include persons not yet identified but are believed to be past or present officers, directors, attorneys, employees, or control persons of the actions of Modere who

knew of and/or participated in the acts alleged. Plaintiff intends to amend this Complaint to add such persons as defendants when their identities become known.

14. Z Capital Partners, LLC (“Z Capital”) is a Delaware Limited Liability Company with its principal place of business in Illinois. Modere is a portfolio company of Z Capital.

15. John Does 1-99 include persons not yet identified but are believed to be past or present officers, directors, attorneys, employees, or control persons of the actions of Z Capital with respect to Modere or who knew of and/or participated in the acts alleged below or who hold fiduciary duties to Modere distributors, including the Justin, or who were involved in the wrongful acts alleged below. Plaintiff intends to amend this Complaint to add such persons as defendants when their identities become known.

JURISDICTION AND VENUE

16. This Court has jurisdiction over this action pursuant to Utah Code § 78A-5-102 and § 78B-3-205(3).

17. Venue is proper in this district pursuant to Utah Code §§ 78B-3-304 and 307.

18. Plaintiffs designate this action as a Tier 3 action under Rule 26(c)(3) of the Utah Rules of Civil Procedure, estimating damages to be in excess of \$300,000.

GENERAL ALLEGATIONS

19. In August, 2012 Justin began working with then CEO and Chairman of the Neways Board to establish a new company and business model, from which Modere was ultimately born. Justin performed this work pursuant to a Consulting Agreement.

20. Justin was informed he would be an equity holder/partner in the company that became Modere and on November 5, 2012, Justin was granted 341,481.481481 shares of Class Y Units of Neways.

21. On April 1, 2013, Neways entered into an Incentive Agreement with Justin. (“Incentive Agreement”) and a one-year Distributor Agreement with Neways (“Distributor Agreement”).

22. In July 2013, Z Capital became the majority controlling shareholder of Neways.

23. In or around September 2013, Modere products were launched for the first time and in October 2013, Justin received his first commission payment from Modere.

24. From 2013 through 2019, Justin worked to transform Neways into Modere, establishing a downline of nearly 60,000 individuals or entities, making Justin Modere’s top marketer.

25. Modere utilized Justin’s status as the top marketer and engaging public speaker to train its distributors all over the world, including distributors from which Justin received no financial benefit.

26. By 2020, Modere sales resulted in strong revenues. In 2021, Modere continued to experience strong revenues, with 2021 being its biggest revenue year ever. Z Capital used the good financial situation to refinance its debt obligations.

27. Based upon information and belief, a majority of the loan proceeds were taken by Z Capital for its own benefit and the benefit of its partners and not reinvested into Modere. As a result, Modere was straddled with excessive debt.

28. This increased debt load for Modere as well as poor management of Modere by its Board of Directors, resulted in declines in sales, which resulted in decreased commissions for Justin and other distributors, and decreased revenue for Modere.

29. Modere’s concerns about its future business outlook reached a point of desperation by May 2023. During a meeting for Modere’s top ranked social marketers in Belize

from May 4-8, 2023, Modere's CEO Asma Ishaq pulled Justin aside and privately told Justin generally about Modere's debt servicing obligations, its financial wherewithal, and its ominous future business outlook. To help Modere remain profitable she threatened to cut all top marketers' (including Justin) compensation. Justin expressed his concern that this likely would lead to a decrease in sales revenue and only serve to further harm Modere and cause harm to those who depended on its financial viability, such as the social marketers.

30. By July 2023, Modere's financial situation further declined. Justin was later informed that the decline was so substantially that Z Capital had to put \$10 million of the money it took out of Modere back into the company so that Modere could make payroll, pay commissions, pay costs, and service the debt Z Capital had straddled it with. Justin was told the next financial cliff would be in October 2023.

31. On August 9, 2023, Modere summoned Justin to its Newport Beach office to meet with George Russell, the Executive Chair of its Board, and a partner with Z Capital. At that time, Mr. Russell was running Modere—and still is. During this meeting, Mr. Russell told Justin that Modere was heading for bankruptcy.

32. Mr. Russell explained to Justin that by September 1, 2023, Modere needed to cut commissions, layoff staff, and cut costs so that Modere could meet its expenses.

33. Mr. Russell also told Justin that Modere's CEO Asma Ishaq had been stripped of her power and would just be "an ambassador" for Modere on social media. Mr. Russell told Justin no one reported to Ms. Ishaq.

34. Mr. Russell discussed how Justin should message these cuts to his downline distributors, telling Justin to be honest and authentic with his downline.

35. Once again, Justin expressed his concern that this likely would kill the company – by leading to a decrease in sales revenue and would only serve to further harm Modere and cause harm to those who depended on its financial viability, such as the social marketers.

36. On August 22, 2023, Modere again summoned Justin to a meeting, this time in Las Vegas. Mr. Russell indicated that Z Capital was in negotiations to restructure the debt payment it foisted upon Modere. Mr. Russell further indicated that Z Capital refused to put additional money into Modere. Mr. Russell then requested Justin work to develop ideas for creating new growth and driving company revenue upward.

37. While Justin undertook this effort, Modere’s Board and management actively began gutting the company, laying off nearly 30% of its employees as of August 28, 2023.

38. One Board member, Brad Oates, told Justin that Modere’s attorneys had put pressure on him to have an investment banker begin the process of selling the business, but because the company’s cash situation was so tight it could not afford to hire the banker and that doing so would bankrupt the company.

39. On October 12, 2023, without prior warning or discussion, and contrary to its policies and procedures, Modere caused its attorney, Eric B. Schwartz with Sidley Austin LLP, to send a letter to Justin terminating his relationships with Modere effective immediately.

40. This termination came the day before Modere was to pay Justin nearly \$300,000 in both monthly and quarterly commissions.

41. The termination letter made vague assertions with no detail that Justin had disseminated confidential business information and “misinformation” to “key employees. The termination letter ignored Justin’s efforts to help and falsely accused him of trying to destabilize Modere’s workforce and recruit them to leave Modere and start a new company with him.

42. All of the assertions in the termination letter are false.

43. Despite Justin's performance under the Distributor Agreement(s) and/or other applicable agreements, including the development of a nearly 60,000 person downline and sale of Modere products and services, Modere has failed to timely pay Justin the full commissions, bonuses and other compensation earned by Justin.

44. After Modere purported to terminate its relationship with Justin, Modere, its directors and officers, and some of its distributors and social marketers, began publishing false statements regarding Justin.

45. During a Zoom meeting attended by nearly 200 distributors, social marketers, and other individuals, Modere told everyone attending the virtual meeting that Justin had committed serious, egregious breaches against Modere, and was colluding with third parties to undercut Modere's business, hurting not only Modere's business, but also Justin's business, Justin's downlines' business, and the business of those in attendance (the "Defamatory Statements").

FIRST CAUSE OF ACTION

(Failure to Pay Commissions, Utah Code § 34-44-101 et seq.)

46. Plaintiff incorporates by this reference the allegations set forth above as if fully set forth herein.

47. At all times applicable hereto, Justin and Modere were in a business relationship within the meaning of Utah Code § 34-44-102.

48. The business relationship(s) was governed by agreements in place at the time the commissions, bonuses and/or other compensation were earned, which agreements were executed by Modere and Justin.

49. During the business relationship(s), Modere was a principal and Justin was a sales representative within the meaning of Utah Code § 34-44-102.

50. All commissions owed to Justin under the agreement(s) were due on October 15, 2023 but, because that date was a Sunday, were to have been paid on Friday, October 13, 2023.

51. Justin's business relationship with Modere terminated, at the latest, on October 12, 2023.

52. To date, Modere has failed to pay Justin all commissions, bonuses and/or other compensation due and owing under the agreement(s).

53. As such, Modere has violated Utah Code § 34-44-101 *et seq.*, and pursuant to Utah Code § 34-44-301 Modere is liable to Justin for three times the amount of the unpaid commissions, bonuses and/or other compensation.

54. Justin is also entitled to his costs and expenses, including reasonable attorney's fees, pursuant to Utah Code § 34-44-301.

SECOND CAUSE OF ACTION
(Breach of Contract – In the Alternative)

55. Plaintiff incorporates by this reference the allegations set forth above as if fully set forth herein.

56. Justin and Modere entered into the subject Distributor Agreements(s) and/or other applicable agreements.

57. To the extent that the agreement(s) are not rescinded (e.g., by bad faith or fraud), the agreement(s) constitutes a binding contract.

58. Justin has performed his obligations under the agreement(s).

59. Pursuant to the agreement(s), Modere was required to compensate Justin for the commissions, bonuses and/or other remuneration earned by Justin.

60. Modere has failed to pay Justin all commissions, bonuses and/or other compensation due and owing to Justin, and Modere's conduct constitutes a material breach of contract.

61. As a direct and proximate result of Modere's breach of contract, Justin has suffered and will continue to suffer damages in an amount to be more fully proven at trial, together with pre-judgment and post-judgment interest at the highest legal rate, plus attorney's fees and costs, to the extent provided by contract and/or by law.

THIRD CAUSE OF ACTION
***(Breach of the Implied Covenant of Good Faith and Fair Dealing
Claim – In the Alternative)***

62. Plaintiff incorporates by this reference the allegations set forth above as if fully set forth herein.

63. As a matter of law, an implied covenant of good faith and fair dealing inheres in the applicable agreement(s) and requires Modere to not act in a way which denies Justin the benefit of his bargain.

64. Modere breached the implied covenant of good faith and fair dealing by, among other things, failing to pay Justin all commissions, bonuses and/or other compensation now due and owing to Justin.

65. As a direct and proximate result of Modere's breach of the implied covenant of good faith and fair dealing, Justin has suffered and will continue to suffer damages in an amount to be more fully proven at trial, plus ongoing pre-judgment and post-judgment interest at the highest legal rate, plus attorney's fees and costs, to the extent provided by contract and/or by law.

FOURTH CAUSE OF ACTION
(Interference with Existing Economic Relations)

66. Plaintiff incorporates by this reference the allegations set forth above as if fully set forth herein.

67. Justin has existing and potential economic relationships with roughly 60,000 individuals or entities in his downline.

68. Modere intentionally interfered with Justin's economic relations by terminating his Social Marketer agreement and usurping Justin's downline.

69. Modere further interfered with Justin's economic relations by the Defamatory Statements.

70. Modere's actions were done for an improper purpose and by improper means.

71. Justin has not committed any wrongdoing or otherwise done anything to merit the termination of the Distributor Agreement and the loss of his downline.

72. Modere's predominate purpose in terminating Justin's Agreement(s) was to improperly withhold the payment of Justin's commission and bonuses in order to improperly shore up Modere's financial situation.

73. As a direct and proximate result of Modere's intentional interference with economic relations, Justin has suffered and will continue to suffer damages in an amount to be more fully proven at trial, plus ongoing pre-judgment and post-judgment interest at the highest legal rate, plus attorney's fees and costs, to the extent provided by contract and/or by law.

FIFTH CLAIM FOR RELIEF
(Unjust Enrichment – In the Alternative)

74. Plaintiff incorporates by this reference the allegations set forth above as if fully set forth herein.

75. In the event that the trier of fact in this case fails to identify the existence of an express, enforceable, and binding contract between Justin and Modere, Justin hereby asserts an alternative claim for Quasi Contract, Unjust Enrichment and/or Quantum Meruit.

76. Justin conferred a benefit on Modere by developing and maintaining a downline of sales and revenue for Modere.

77. Justin conferred a benefit on Modere by developing and maintaining training videos, available for the use and betterment of both Justin's downline as well as Modere's social marketers as a whole.

78. Modere knew of and appreciated the benefit and, therefore, provided commissions and bonuses to Justin.

79. Now that Justin has developed and maintained the downline for over 10 years, it would be inequitable for Modere to both keep the downline and retain the sales, commissions, and bonuses that result from it.

80. Modere is being unjustly enriched by retaining a well-developed revenue stream without paying commissions to Justin.

81. As a direct and proximate result of Modere's conduct, Justin has suffered and will continue to suffer damages in an amount to be more fully proven at trial, plus ongoing pre-judgment and post-judgment interest at the highest legal rate, plus attorney's fees and costs, to the extent provided by law.

SIXTH CAUSE OF ACTION

(Defamation—Libel and Slander Per Se – Modere and John Does 1-99)

82. Plaintiff incorporates by this reference the allegations set forth above as if fully set forth herein.

83. Upon information and belief, Modere's officers, directors, and/or management published the Defamatory Statements to Modere distributors and others.

84. Modere and John Does 1-99 published Defamatory Statements verbally and in writing in social media and, upon information and belief, in email communications.

85. The published Defamatory Statements are false.

86. The published Defamatory Statements are not justified by any absolute or qualified privilege.

87. Modere and John Does 1-99 (upon information and belief, the John Does comprise certain members of Modere's ownership, management and distributors), published Defamatory Statements with malice and intent to harm Justin.

88. Justin has been damaged by the publication of the Defamatory Statements in an amount to be determined at trial, including all direct and consequential damages, punitive damages, and all other relief allowed by law and/or equity.

89. Justin is also entitled to a temporary restraining order and preliminary injunction order prohibiting Modere and John Does 1-99 from continued publication of the Defamatory Statements.

SEVENTH CAUSE OF ACTION
(Breach of Fiduciary Duty – Modere Directors and Z Capital)

90. Plaintiff incorporates by this reference the allegations set forth above as if fully set forth herein.

91. The Modere Directors and Z Capital (the "Fiduciaries"), owe Modere and its partners, including Justin, fiduciary obligations of trust, loyalty, good faith, and due care, and were and are required to: (a) act in furtherance of the best interests of Modere; (b) maximize

Modere value; (c) heed the expressed views of Modere's partners; and (d) refrain from abusing their positions of control.

92. The Fiduciaries were to use their utmost ability to control and manage Modere in a fair, just, honest, and equitable manner. The Fiduciaries were and are required to act in furtherance of the best interests of Modere and not in furtherance of their personal interest or benefit.

93. To comply with their fiduciary duties, the Fiduciaries are prohibited from taking any action that would:

- a. adversely affect the value provided to Modere's partners and shareholders;
- b. provide themselves and other insiders with preferential treatment at the expense of, or separate from, the Modere's partners and shareholders;
- c. divide loyalties owed to Modere's partners and shareholders;
- d. unjustly enrich themselves at the expense or to the detriment of Modere's partners and shareholders;
- e. loot the assets of Modere; and
- f. usurp any of Modere's partners' and shareholders' corporate opportunities.

94. The Fiduciaries violated their fiduciary duties of care and loyalty owed to the Modere and its partners and shareholders in ways that include, without limitation:

- a. adversely affecting the value of Modere's Class Y Units;
- b. subjecting Modere to a \$150 million debt, effectively limiting Modere's ability to continue its business model;
- c. usurping Justin's downline and corporate opportunities.

95. As a direct and proximate result of the Fiduciaries' breaches, Justin has suffered and will continue to suffer damages in an amount to be more fully proven at trial, plus ongoing pre-judgment and post-judgment interest at the highest legal rate, plus attorney's fees and costs, to the extent provided by law.

EIGHTH CAUSE OF ACTION
(Declaratory Judgment)

96. Plaintiff incorporates by this reference the allegations set forth above as if fully set forth herein.

97. An actual controversy has arisen and now exists between the parties concerning their contractual rights and obligations under the Agreement(s).

98. A judicial determination is necessary and appropriate under the circumstances for Justin and Modere to ascertain their respective contractual and legal rights and obligations under the Agreements(s).

99. Justin respectfully requests a declaration that:

- a. To the extent the agreement(s) contain a non-compete provision, those provisions are violative of Utah law pursuant to Utah Code § 34-44-104; and
- b. The restrictive covenants of the agreement(s), such as the non-compete provision and non-solicitation provisions, are not supported by consideration, were obtained by Modere through unconscionable means, are not necessary to protect the goodwill of Modere's business, and are not reasonable in their restrictions as to time and area.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

- A. For entry of Judgment against Defendants;
- B. For damages in an amount to be proven at trial, but not less than \$300,000;
- C. For an order declaring that the agreement(s) restrictive covenants are void;
- D. For an award of attorneys' fees to the extent permitted by law and equity; and
- E. For such other and further relief as the Court deems just and equitable.

DATED this 17th day of October, 2023.

/s/ Kevin N. Anderson _____

Kevin N. Anderson, Esq.

Sarah C. Vaughn, Esq.

FABIAN VANCOTT

Nate D. Ashcraft, Esq.

Hansen Black Anderson Ashcraft

Attorneys for Plaintiff Justin K. Prince