

Milo Steven Marsden (#4879)

marsden.steve@dorsey.com

Maryann Bauhs (#17196)

bauhs.maryann@dorsey.com

DORSEY & WHITNEY LLP

111 South Main Street, Suite 2100

Salt Lake City, UT 84111

Tel. (801) 933-7360

Eric Schwartz (*pro hac vice forthcoming*)

eschwartz@sidley.com

Renee Pesiri (*pro hac vice forthcoming*)

rpesiri@sidley.com

SIDLEY AUSTIN LLP

555 West Fifth Street, Suite 4000

Los Angeles, CA 90013

Tel. 213 896 6162

*Attorneys for Plaintiffs Maple Mountain Enterprises Inc.,
d/b/a Modere Enterprises, Inc., and Neways Holdings, L.P.*

If you do not respond to this document within applicable time limits, judgment could be entered against you as requested.

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

Maple Mountain Enterprises Inc., d/b/a Modere Enterprises, Inc., a Utah corporation, and Neways Holdings, L.P., a Cayman Islands limited partnership,

Plaintiffs,

vs.

JUSTIN PRINCE, and JPBG, LLC, a limited liability company,

Defendants.

COMPLAINT

Case No. _____

Judge: _____

Plaintiffs Maple Mountain Enterprises Inc., d/b/a Modere Enterprises, Inc., and Newways Holdings, L.P. (collectively, together with their predecessors and controlled affiliates, “Modere”), by and through their counsel of record, hereby allege, assert and complain against Defendants Justin Prince (“Prince”), Prince’s company, JPBG, LLC (“JPBG”), (collectively, “Defendants”) as follows:

INTRODUCTION

1. This case involves a deliberate effort by the Defendants to, under contract with Modere, to sabotage and cripple Modere’s business, solicit its salesforce, use Modere’s trade secret and proprietary information, and set up a business to compete with Modere.
2. Beginning around August 2023, if not earlier, while under contract and associated with Modere as a senior leader of the company, Prince (together with his company) violated their contractual obligations and fiduciary duties owed to Modere and disseminated to key Modere associates—independent contractor distributors titled “Social Marketers”—throughout the company highly confidential business information and misinformation regarding Modere’s debt obligations, its financial wherewithal, its future business outlook, the status of its CEO, and its commitment to improved technology and new products. The clear purpose of this information campaign was to destabilize Modere’s salesforce and to recruit Modere’s Social Marketers to leave Modere and start a new company headed by Defendants, which Defendants had already put in motion.
3. The damage that Defendants have done to Modere is irreparable. Defendants have caused significant damage to Modere’s reputation with its Social Marketers and customers. And they have failed to perform their duties, including attracting new

customers, even though they were being paid by Modere as they actively worked against the company.

4. Based upon the foregoing and more fully set forth herein, the Defendants have breached valid and enforceable provisions in their agreements with and fiduciary duties owed to Modere, including covenants and duties requiring confidentiality, loyalty, non-solicitation, non-disparagement, and non-competition. They should be enjoined from: competing with Modere for a six-month period; soliciting any of Modere’s clients, vendors, Social Marketers, and employees; disparaging Modere; and revealing or utilizing any of Modere’s trade secrets and confidential and proprietary information—all as they expressly agreed to do in their agreements with Modere.
5. The Defendants also should be jointly and severally held liable for damages that they have caused Modere by aiding and abetting and conspiring with Justin Serra (“Serra), for punitive damages, and for attorneys’ fees and costs incurred in this action as provided in Defendants’ agreements with Modere.

PARTIES

6. Plaintiff Maple Mountain Enterprises Inc., d/b/a Modere Enterprises, Inc., is a Nevada corporation with a principal place of business in Utah County, in the State of Utah.
7. Plaintiff Neways Holdings, L.P. is a limited partnership formed in the Cayman Islands organized for the purpose of overseeing investments related to Modere.
8. Plaintiffs are collectively referred to as “Modere” in this Complaint.

9. Defendant Prince is a natural person and, on information and belief, a citizen and resident of, and domiciled in, Utah. From August 2012 until October 12, 2023, Prince was a senior leader at Modere as a Social Marketer and distributor of Modere's products.
10. Defendant JPBG, LLC is a limited liability company associated with defendant Prince and, on information and belief, with its principal place of business in Utah.
11. Serra, a non-party to this action, is a natural person and, on information and belief, a citizen and resident of, and domiciled in, Utah.
- 12.

JURISDICTION, VENUE, DISCOVER TIER

13. Jurisdiction is proper in this Court pursuant to Utah Code Section 78A-5-102(2).
14. Venue is proper in this Court pursuant to Utah Code Sections 78B-3-304 and 78B-3-307(1) and (2).
15. This case falls under Tier 3 for standard discovery purposes under Rule 26(c)(5) of the Utah Rules of Civil Procedure.

GENERAL ALLEGATIONS

I. MODERE AND THE DEFENDANTS

16. Modere is an omnichannel, consumer products company founded in 2013 that develops and markets clean, health and wellness products through e-commerce and direct-to-consumer channels.
17. Modere offers a portfolio of clean lifestyle products, including beauty and personal care, nutrition, and household essentials that are formulated without the use of thousands of controversial chemicals and compounds.

18. Modere is currently majority owned and controlled by affiliates of Z Capital.
19. Modere sells directly to consumers instead of in the retail channel. To reach customers, Modere relies on distributors called Social Marketers. A Social Marketer's primary focus is attracting, retaining, and growing customers. Social Marketers may also build teams and develop leaders as they enroll other Social Marketers. While Social Marketers are not Modere employees, they are a vital part of Modere's business model and help drive sales. As such, Modere enters into incentive and other agreements with these Social Marketers. Recognizing the time and money Modere invests in its products, business model, marketing materials, and employee/distributor base, and recognizing that its Social Marketers receive confidential, proprietary, and trade secret information about the company, Modere has put in place agreements that require Social Marketers to maintain strict confidentiality over Modere's information; not to solicit Modere's employees, contractors, Social Marketers, or vendors; exclusivity, meaning the distributor promises not to provide similar distribution services for a company similarly situated to Modere, including for six months following the end of the distributor's relationship with Modere; and a covenant not to compete with Modere, including for six months following the end of the distributor's relationship with Modere.
20. In or around August 2012, Prince started as a consultant for Modere. In that role, Prince assisted in establishing the Modere brand in the North American market.
21. In or around April 2013, Prince terminated his consulting agreement and signed an incentive agreement (the "Prince Incentive Agreement"), becoming a Modere social marketer, also known as a distributor, a role he held until his termination on October 12,

2023. As a Social Marketer, Prince was responsible for marketing and selling Modere's products, and for recruiting and training team members. As a senior company official in this role, Prince entered into various contracts with Modere throughout his tenure with the company, as described in Section II below, which contained confidentiality, non-solicitation, non-disparagement, and non-competition provisions. In the Prince Incentive Agreement, Prince agreed that any breach by Prince of his promises to Modere or agreements contained herein will result in irreparable and continuing damage to Modere for which there will be no adequate remedy at law, and Modere shall be entitled to injunctive relief and such other relief as may be proper (including monetary damages if appropriate).

22. Serra was hired by Modere in January 2013 as a top-level executive, the General Manager, of Modere's operations in North America. Over the course of his nearly eleven years with Modere, until October 12, 2023, Serra was promoted, becoming the Senior Vice President, Global Sales and Marketing in or around February 2018. In his roles, Serra was responsible for administrative, financial, executive, and managerial services to Modere, and he oversaw Modere's sales salesforce in all of North America, drove sales strategy, was privy to Modere's confidential and proprietary information and trade secrets, and managed Modere's vendors and distributors. As described further in Section III below, per the terms of Serra's employment agreement, Serra entered into several restrictive covenants, including a covenant not to disclose, not to compete, not to disparage Modere, and not to solicit/provide services. Per the agreement, following Serra's breach of any of those covenants, the company could terminate Serra for cause

and seek injunctive relief. As a Modere executive, Serra was also subject to applicable fiduciary duties in favor of Modere and its stakeholders.

23. As key leaders in Modere, Prince and Serra were both granted equity in the Modere partnership and became Limited Partners and Management Limited Partners of that partnership. Those agreements are described in Section IV below.

24. The agreements that Prince and Serra entered into with Modere, when referred to collectively in this Complaint, are called “Agreements.”

II. PRINCE ENTERS VARIOUS AGREEMENTS WITH MODERE CONTAINING NON-COMPETITION, NON-SOLICITATION, NON-DISPARAGEMENT, AND CONFIDENTIALITY PROVISIONS

25. In or around August 11, 2012, Prince signed a consulting agreement with Modere.

26. In or around April 2013, Prince terminated his consulting agreement and entered into the Prince Incentive Agreement and agreed to be duty-bound by the following key provisions. The Prince Incentive Agreement is attached at **Exhibit A**.

6. Confidentiality. Distributors agree that all information provided by Neways or obtained by it regarding Neways’ products, formulations, distributors, business practices or methods, or any related information, and all documents relating thereto, are confidential and proprietary of Neways (hereinafter “Trade Secrets”) and such Trade Secrets are disclosed for the express and sole purpose of enabling Distributors to perform their obligations pursuant to this Agreement and to successfully perform as a Neways distributor. Distributors also agree that the disclosure of Trade Secrets to anyone at any time or the use of Trade Secrets by them or their contacts or associates for any other reason than to perform their obligations under this Agreement without the prior written consent of Neways is strictly prohibited and such improper use shall be deemed a material breach of this Agreement by Distributors. In addition, the Distributors agree that the provisions of this Agreement constitutes Confidential Information that

belongs to the Company and that the contents of this Agreement may not be disclosed without prior written consent from the Company, except that Distributors may disclose the terms of this Agreement to their legal counsel.

Distributors and Neways hereby expressly agree that this provision shall survive the termination of this Agreement.

6(a). Trade Secrets. Distributors shall not release or cause to be released any Trade Secrets personally or by agent for any purpose except as expressly authorized by Neways in writing and for the purpose of performing their obligations under this Agreement. Distributors recognize that the Trade Secrets contain information that is inherently valuable and in many instances, irreplaceable, and hereby acknowledge and agree that due to the potential irreparable harm suffered by Neways as the result of any improper disclosure of Trade Secrets by Distributors whether individually or collectively, immediate injunctive relief is available to Neways against Distributor(s), in addition to any other remedies herein or provided by law. The Parties hereto further agree that the restrictions related to Trade Secrets as set forth in this Agreement are reasonable.

Distributors and Neways hereby expressly agree that this provision shall survive the termination of this Agreement.

7. Non-solicitation of Contractors/Employees/Distributors.

Distributors agree that during the term of this Agreement and after termination of this Agreement, Distributors shall not directly or indirectly take or encourage any action, the purpose or effect of which would be to circumvent, breach, interfere with or diminish the value or benefit of Neways' contractual relationship with any Neways vendors, contractors, employees or its distributors. Without limiting the generality of the foregoing, Distributors agree not to directly or indirectly contact, solicit, persuade, and/or encourage any of the aforementioned Neways relations in order to promote opportunities in marketing programs of any other direct sales or network marketing company other than Neways.

8. Exclusivity. Distributors agree that for as long as Distributors have a beneficial interest in a Neways distributorship and for a period of six (6) months thereafter, Distributors will not provide services similar to those contemplated in this Agreement or become a distributor or distributor equivalent or hold a beneficial

interest in a distributor or distributor equivalent position in any direct sales or multilevel marketing company, corporation, any other type of company or person other than Neways.

9. Covenant Not to Compete. As a material term of this Agreement and to protect Neways' goodwill, the Confidential Information, and/or the business of Neways and its Subsidiaries and Affiliates, and the Company's investment in the Distributors, Distributors agree that, during the "Covenant Period" (as defined below), Distributors shall not, within any geographical area in which the Company and any of its Subsidiaries and Affiliates engage in business or plan to engage in business, directly or indirectly, either individually or on behalf of or with any person or entity: (i) compete with or against the Company or any of its Subsidiaries or Affiliates or engage in any aspect of multilevel or network marketing in competition with the Company or any of its Subsidiaries or Affiliates; (ii) directly or indirectly own, manage, operate, control, be employed by, or provide management or consulting services to any person or entity (other than the Company or any of its Subsidiaries or Affiliates) that competes with, or is a competitor of, the Company or any of its Subsidiaries or Affiliates in a competing entity; (iii) render or provide any services to or for any competing entity; or (iv) discuss or otherwise deal with any client, vendor, or Independent Distributor of the Company or any of its Subsidiaries or Affiliates regarding the extent or nature of the present or future business of any client, vendor, or Independent Distributor of the Company or its Subsidiaries or Affiliates. For avoidance of doubt, it is understood that, notwithstanding anything herein to the contrary, manufacturers, distributors, marketers and retailers who operate outside of the multilevel or network marketing channel of distribution shall not be deemed to be competitive with the business of the Company or its Subsidiaries and Affiliates.

For purposes of this Agreement, "Covenant Period" means the period beginning on the Effective Date of this Agreement and continuing until the later of six (6) months after (x) the end of this Agreement or (y) termination of the Distributor Agreement or (z) the latest date on which Distributor(s) breaches any of the provisions of this Agreement or any restrictive covenants contained in the Distributor Agreements.

10. Governing Law and Jurisdiction. The Parties hereby agree that this Agreement and all transactions contemplated hereby, shall

be governed by, construed, and enforced in accordance with the laws of the State of Utah. In the event any dispute, claim, action or cause of action (hereinafter “Dispute(s)”) arises out of this Agreement, performance under this Agreement or the interpretation of this Agreement, Distributors hereby agrees and consents to the exclusive venue and jurisdiction of the courts of Utah County, State of Utah to determine any and all Dispute(s) that may arise through the performance of this Agreement.

17. Attorney’s Fees and Costs. In the event that a Party takes legal action in order to enforce the terms of this Agreement, the prevailing Party in the action shall be entitled to an award of reasonable attorney’s fees and costs.

27. In or around October and November 2015, Prince and Modere entered into consent agreements, binding Prince to adhere to Modere’s Policies and Procedures governing Social Marketers (“Modere’s Policies and Procedures”) which, in turn, strictly prohibit detrimental conduct, including conduct that is “injurious, disruptive, or harmful to the Company or to other Social Marketers[.]” These Policies and Procedures also prohibit solicitation of Modere’s Social Marketers and customers, prohibit disparaging Modere, and require Social Marketers to keep Modere’s confidential information secret. Modere’s Policies and Procedures are attached at **Exhibit B** (see Sections 4.9, 4.10, 5.3, and 5.4).

28. In or around November 2015, Prince entered into a mutual non-disparagement and non-solicitation agreement with fellow Modere Social Media Marketers (the “Prince Mutual Non-Disparagement and Non-Solicitation Agreement”) binding him to the following provision. The Prince Mutual Non-Disparagement and Non-Solicitation Agreement is

attached at **Exhibit C**, with the addresses of the other distributors, who are not parties to this action, redacted.

3. Mutual Non-Solicitation. The Parties agree that during the term of this Agreement and after termination of this Agreement, they shall not directly or indirectly take or encourage any action, the purpose or effect of which would be to circumvent, breach, interfere with or diminish the value or benefit of Modere’s contractual relationship with any Modere Social Marketers nor directly or indirectly take or encourage any action, the purpose or effect of which would be to circumvent, breach, interfere with or diminish the value or benefit of the Parties’ respective downline organizations that would be in violation of the Modere Social Marketer Policies and Procedures. Without limiting the generality of the foregoing, the Parties agree not to directly or indirectly contact, solicit, persuade, and/or encourage any of the aforementioned Modere relations in order to promote opportunities in marketing programs of any other direct sales or network marketing company other than Modere.

29. In or around January 2021, Prince entered into a mutual confidentiality agreement with Modere (the “Prince Mutual Confidentiality Agreement”) binding him to the following provisions. The Prince Mutual Confidentiality Agreement is attached at **Exhibit D**.

1. Definition of Confidential Information. “Confidential Information” as used in this Agreement shall mean any and all technical and non-technical information relating to the Project including, but not limited to, patent, copyright, trade secret, and proprietary information, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulae related to the current, future and proposed products and services of the Parties, and includes, without limitation, information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, customers, business forecasts, sales and merchandising, and marketing plans and information. “Confidential Information” also includes proprietary or confidential information of any third party, including affiliates

of either Party, who may disclose such information to the Parties in the course of the Parties' business as it relates to the Project.

2. Nondisclosure and Nonuse Obligation. Each of the Parties agree that such will not use, disseminate, or in any way disclose any Confidential Information of the other Party, to any person, firm or business, except to the extent necessary to perform the Project, provided that such third party agrees in writing to be bound by the terms of this Agreement. Furthermore, the existence of the Project, any business negotiations, discussions, consultations or agreements in progress between the Parties shall not be released to any form of public media without written approval of both Parties. Each of the Parties agree that such shall treat all Confidential Information with the same degree of care as such accords to its own Confidential Information, but in no case less than reasonable care. Each of the Parties which is not an individual agrees that such shall disclose Confidential Information of the other Party only to those employees who need to know such information, and certifies that such employees have previously agreed, either as a condition to employment or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those terms and conditions applicable under this Agreement. Each of the Parties shall immediately give notice to the other Party of any unauthorized use or disclosure of Discloser's Confidential Information. Each of the Parties agrees to assist the other Party in remedying any such unauthorized use or disclosure of Discloser's Confidential Information.

4. Ownership and Return of Confidential Information and Other Materials. All Confidential Information of each of the Parties and any Derivatives, as defined herein, thereof whether created by either Party, shall remain the property of the disclosing Party, and no license or other rights to such Confidential Information or Derivatives is granted or implied hereby. For purposes of this Agreement, "Derivatives" shall include, but not be limited to, any translation, abridgment, revision, adaptation, improvement, or any new material derived from the Confidential Information. All materials (including, without limitation, documents, drawings, models, apparatus, sketches, designs, lists and all other tangible media of expression) furnished, and which are designated in writing to be the property of a Party, shall remain the property of that Party. Upon request and no later than five (5) days after such request, the Parties shall promptly destroy or

deliver to the other Party, (a) all materials furnished by a disclosing Party, (b) all tangible media of expression in possession or control to the extent that such tangible media incorporate any Confidential Information, and (c) written certifications of compliance with Recipient's obligations under this agreement.

9. Term. This Agreement shall have a term of two (2) years. To the extent Confidential Information constitutes a trade secret under applicable law, the obligations with respect to the Confidential Information shall survive termination/expiration of this Agreement and shall remain in effect for so long as such information shall remain a trade secret under applicable law. To the extent such Confidential Information does not constitute a trade secret, Recipient's obligations with respect to the Confidential Information shall survive termination/expiration and shall remain in effect for the term of this Agreement and for three (3) years thereafter.

12. Governing Law. This Agreement shall be governed in all respects by the laws of the State of Utah, United States of America, except its choice of law provisions. Each of the Parties irrevocably consent to the exclusive jurisdiction of the courts located in the State of Utah, United States of America.

15. Injunctive Relief. A breach by either Party of any of the promises or agreements contained herein will result in irreparable and continuing damage to the other Party for which there will be no adequate remedy at law, and such other Party shall be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including monetary damages if appropriate).

III. SERRA SIGNS EMPLOYMENT AGREEMENT CONTAINING RESTRICTIVE COVENANTS

30. In or around January 2013, Serra entered into an employment agreement with Modere (the "Serra Employment Agreement") agreeing to the following duties, contractual obligations, and restrictive covenants. The Serra Employment Agreement is attached as **Exhibit E.**

2.2. General Duties. Executive will perform those duties, responsibilities, and functions that are appropriate and customary to the position of North American General Manager, including without limitation rendering such administrative, financial and other executive and managerial services to the Company and its Subsidiaries and Affiliates that are otherwise reasonably assigned to Executive by the Company.

2.3. Performance. Executive will at all times loyally and conscientiously perform all duties and discharge all responsibilities and obligations required of and from him to the best of Executive's ability and experience in a diligent, trustworthy, professional and efficient manner and to the reasonable satisfaction of the Company. During the Employment Period, Executive will be a full-time employee of the Company and will devote substantially all of his/her business time, energy, skill, and attention to the business of the Company, and the Company will be entitled to all of the benefits and profits arising from or incident to all such work, services, and advice of Executive rendered to the Company. During the Employment Period, Executive will comply with the policies and procedures of the Company and its Subsidiaries and Affiliates in all material respects.

2.4. Undivided Attention. During the Employment Period, Executive agrees not to perform services for any other business or entity unrelated to the Company or its Subsidiaries or Affiliates, whether as an employee, independent contractor, board member, or otherwise without the prior written consent of the Board, which shall not be unreasonably withheld; provided, however, that so long as such pursuit does not interfere with the services required to be rendered to the Company hereunder, is consistent with the Company's policies regarding conflicts of interest, including without limitation Section 2.5 of this Agreement, and does not in any way violate or infringe the covenants set forth in Section 5 below, nothing else in this Agreement shall prohibit Executive from (i) pursuing personal investment opportunities; or (ii) serving as an officer or director of or otherwise participate in solely educational, welfare, social, religious and civic organizations.

2.5. Conflict of Interest. Executive will not become involved in a situation which reasonably might create or appear to create a conflict of interest, including but not limited to being connected directly or indirectly with any business (as owner, officer, director, manager, participant, licensee, consultant, shareholder, or the

recipient of wages) which is involved with any aspect of Executive's duties or which is in direct or indirect competition with the Company or any of its Subsidiaries or Affiliates unless such conflict of interest is approved and attached hereto at Schedule A. Executive will report immediately to the Board any circumstances or situations arising in the future that might involve Executive or appear to involve Executive in a conflict of interest, including without limitation the reporting of gifts, entertainment, or any other personal favors given to or received from anyone with whom the Company has or is likely to have any business dealings which go beyond common courtesies usually associated with accepted business practices.

5.3. Covenant Not to Disclose. As a material term of this Agreement and to protect the goodwill, the Confidential Information, and the business of the Company and its Subsidiaries and Affiliates, Executive shall not, either during or after Executive's employment or association with the Company and without the express, prior written consent of the Company: (i) ever directly or indirectly, intentionally or unintentionally, reveal, disclose, furnish, make accessible, or disseminate any of the Confidential Information of the Company or any of its Subsidiaries or Affiliates, except only as may be expressly required in performing services for the Company or any of its Subsidiaries or Affiliates; or (ii) ever use or exploit any of the foregoing Confidential Information for the personal or financial gain or benefit of Executive or of any other individual, firm, corporation, or entity or for any other purpose. Notwithstanding the foregoing, Executive and/or the Company may disclose this Agreement to any subsequent employer of Executive, and Executive hereby consents that the Company may provide a copy of some or all of this Agreement to any such subsequent employer.

5.4. Covenant Not to Compete. As a material term of this Agreement and to protect the goodwill, the Confidential Information, and/or the business of the Company and its Subsidiaries and Affiliates, and the Company's investment in the training and education of Executive, Executive agrees that, during the "Covenant Period" (as defined below), Executive shall not, within any geographical area in which the Company and any of its Subsidiaries and Affiliates engage in business or plan to engage in business, directly or indirectly, either individually or on behalf of or with any person or entity: (i) compete with or against the

Company or any of its Subsidiaries or Affiliates or engage in any aspect of Protected Industries in competition with the Company or any of its Subsidiaries or Affiliates; (ii) directly or indirectly own, manage, operate, control, be employed by, or provide management or consulting services to any person or entity (other than the Company or any of its Subsidiaries or Affiliates) that competes with, or is a competitor of, the Company or any of its Subsidiaries or Affiliates in the Protected Industry (“Competing Entity”); (iii) render or provide any services to or for any Competing Entity; or (iv) discuss or otherwise deal with any client, vendor, or Independent Distributor of the Company or any of its Subsidiaries or Affiliates regarding the extent or nature of the present or future business of any client, vendor, or Independent Distributor of the Company or its Subsidiaries or Affiliates. For avoidance of doubt, it is understood that, notwithstanding anything herein to the contrary, manufacturers, distributors, marketers and retailers who operate outside of the multilevel or network marketing channel of distribution shall not be deemed to be competitive with the business of the Company or its Subsidiaries and Affiliates.

5.4.1. For purposes of this Agreement, “Covenant Period” means the period beginning on the Effective Date of this Agreement and continuing until the later of six (6) months after (y) the end of the Employment Period or (z) the latest date on which Executive breaches any of the provisions of Sections 5.3, 5.4, or 5.5 of this Agreement.

5.5. Covenant Not to Provide Services / Solicit. Executive acknowledges the character of the Company’s business, as well as that of its Subsidiaries and Affiliates, and the substantial amount of time, money and effort that the Company and its Subsidiaries and Affiliates have spent and will spend in recruitment of clients, customers, accounts and/or Independent Distributors. As a material term of this Agreement and to protect the goodwill, the Confidential Information, and the business of the Company and its Subsidiaries and Affiliates, Executive covenants that, during the Covenant Period, as defined in Section 5.4.1, Executive shall not, directly or indirectly, (a) provide services of any kind or character to any individual or entity that was a customer, client, account, or Independent Distributor of the Company or any of its Subsidiaries or Affiliates at the time Executive’s employment or association with the Company terminated or during the six (6) month period immediately preceding such termination, (b) solicit or otherwise

attempt to sell any Protected Products to any individual or entity that was a current or former customer, client, account, and/or Independent Distributor of the Company or any of its Subsidiaries or Affiliates at the time Executive's employment or affiliation with the Company terminated or during the six (6) month period immediately preceding such termination, (c) solicit or otherwise attempt to sell any Protected Products to any individual or entity that was a prospective customer, client, account, or Independent Distributor of the Company or its Subsidiaries or Affiliates whose business Executive solicited as a representative of or on behalf of the Company or any Subsidiaries or Affiliates within the six (6) months immediately preceding the termination of Executive's employment or association with the Company or whose identity Executive learned of as a consequence of his employment or association with the Company, (d) solicit or otherwise deal or attempt to deal with any clients, vendors, accounts, or Independent Distributors of the Company or any of its Subsidiaries or Affiliates in any manner designed to (or that reasonably could) divert business from the Company or its Subsidiaries or Affiliates, (e) solicit or otherwise induce or attempt to induce any employee of the Company or any of its Subsidiaries or Affiliates to terminate the employee's employment with the Company or any of its Subsidiaries or Affiliates, and/or (f) induce or attempt to induce any customer, supplier, licensee, licensor, franchisee, distributor, or other business relation of the Company or any Subsidiary or Affiliate to cease doing business with the Company or such Subsidiary or Affiliate, or in any way interfere or attempt to interfere with the relationship between any such customer, supplier, licensee, distributor or business relation and the Company or its Subsidiary or Affiliate.

5.8. Remedies. The Company and Executive intend that the Executive's covenants are separate and independent of any covenants of the Company contained herein or otherwise, and any breach by the Company shall not justify or excuse any breach by Executive. In the event of an actual or threatened breach of any of the provisions of Sections 5.3, 5.4, 5.5 or 5.6, Executive specifically acknowledges that the Company and/or its Subsidiaries and Affiliates will incur incalculable and irreparable damage for which the Company and/or such Subsidiary or Affiliate has no adequate remedy at law. Therefore, Executive acknowledges that the Company its Subsidiaries and Affiliates shall be entitled to specific performance and/or ex parte injunctive

relief, both preliminary and permanent, immediately and permanently restraining Executive from such continuing or threatened breach. Executive hereby expressly waives any and all right to prior notice or to security in connection with temporary and permanent injunctive relief on behalf of the Company and any Subsidiary or Affiliate. Executive shall also remain liable for any damages sustained by reason of any actual or threatened breach by Executive of any of the provisions of Section 6 of this Agreement. The exercise of one or more of the rights or remedies provided by this Agreement or otherwise shall not preclude the exercise of any other rights also provided.

7.4. Nondisparagement. As a material term to this Agreement, Executive and Company mutually covenant that both during the Employment Period and following the termination of Executive's employment with the Company, neither party shall make any materially disparaging statements or communications (whether or not Executive or Company deems such comments to be true and accurate) regarding the other party or their Subsidiaries or Affiliates, or regarding any officers, directors, or employees of the Company or any of its Subsidiaries or Affiliates. For purposes of this Section 7.4, remarks of the Company shall only include remarks made by the Company's officers and directors.

7.7. Governing Law and Exclusive Venue. This Agreement shall be governed by the laws of the State of Utah without regard to any conflict of law provisions and disregarding, for that purpose, any law of such state that would require the application of the law of another jurisdiction. All claims or disputes arising hereunder shall be subject to the exclusive and mandatory jurisdiction of the state or federal courts in Salt Lake City, State of Utah, and each party hereby submits himself or itself to the personal jurisdiction of such state and/or federal courts in the State of Utah. Each of the parties hereto expressly agrees that service of any process, summons, notice, or document by U.S. Registered mail to such party's respective address set forth above shall be effective service of process for any action, suit, or proceeding in Utah with respect to any matters to which the party has submitted to jurisdiction in this Section 8.6 [sic]. Each of the parties hereto irrevocably and unconditionally waives any objection to the laying of venue of any action, suit, or proceeding arising out of this Agreement, any related document, or the transactions contemplated hereby and thereby in the state and federal district courts situated in Salt Lake

City, Utah, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

7.9. Corporate Opportunity. Executive shall submit to the Company all business, commercial and investment opportunities, or offers presented to Executive or of which Executive becomes aware at any time during the Employment Period which relate to the business of developing, manufacturing and/or distributing personal care and nutritional health products, including, but not limited to, dietary supplements, cosmetics, skin care products, aromatherapy oils, hair treatments and oral care products (“Corporate Opportunities”). Unless approved in advance and in writing by the Company, Executive shall not accept or pursue, directly or indirectly, any Corporate Opportunities on Executive’s own behalf.

7.16. Attorney’s Fees. Notwithstanding any Utah statutory or common law to the contrary, in the event of any action at law or in equity between the parties, whether relating to this Agreement or to Executive’s employment with the Company or the termination thereof, each party shall pay its own attorney’s fees and costs incurred in prosecuting or defending any such action and hereby waives any right to seek attorney’s fees from the other party hereto.

7.18. Waiver of Trial by Jury. The Company and Executive hereby irrevocably waive any and all constitutional, statutory, and other rights to a trial by jury in any and all actions or proceedings arising from or in any [sic] related to this Agreement or to Executive’s employment with the Company, including without limitation claims for breach of express or implied contract, discrimination, termination in violation of public policy, whistleblowing, defamation, and emotional distress.

31. Serra affirmed the Serra Employment Agreement, including the above terms, in or around February 2018 in an agreement amending the Serra Employment Agreement. The amendment agreement is attached as **Exhibit F**.

32. Serra was also bound by the obligations set forth in the Employee Handbook, which specified that the occurrence of any of the following behaviors warranted immediate termination without warning: insubordination; dishonesty; “[a]ny action that is extreme in nature and is obviously detrimental to Modere’s efforts to operate profitably”; “[d]isclosure of confidential or proprietary Modere information; working for a competing business while a Modere employee; breach of confidentiality of personnel information”; “[g]ossip and/or spreading rumors; engaging in behavior designed to create discord and lack of harmony; interfering with another employee on the job; restricting work output or encouraging others to do the same”; and engaging in Outside Employment. A portion of the Modere Employee Handbook is attached as **Exhibit J**.

33. As an executive of Modere, Serra also owed Modere and its stakeholders fiduciary duties to Modere.

IV. PRINCE AND SERRA ENTER INTO PARTNERSHIP WITH MODERE

34. In or around September 2007, leaders and investors in Modere entered into a partnership, Neways Holdings, L.P., to purchase, hold, dispose of, or otherwise deal with investments related to Modere. A copy of the partnership agreement is attached as **Exhibit G** with redactions of highly confidential capital structure information.

35. In or around November 2012, Prince was granted equity in the Modere partnership, and Prince elected to become a Limited Partner and Management Limited Partner of that partnership. Prince’s Management Incentive Unit Subscription Agreement for Class Y Units in Neways Holdings, L.P. is attached as **Exhibit H**.

36. In or around September 2013, Serra was granted equity in the Modere partnership, and Serra elected to become a Limited Partner and Management Limited Partner of that partnership. Serra's Management Incentive Unit Subscription Agreement for Class Y Units in Neways Holdings, L.P. is attached as **Exhibit I**.
37. Under the partnership agreement, Serra and Prince owed certain obligations to Modere, including to maintain strict confidentiality of all non-public information received by them based on their status as a partner relating to the partnership.
38. Upon their termination from Modere, Serra and Prince's unvested units automatically expired and were forfeited and their remaining units were subject to repurchase.

V. DEFENDANTS BREACH THEIR AGREEMENTS WITH AND DUTIES OWED TO MODERE

A. Serra's and Prince's Coordinated Effort to Disparage Modere, Destabilize Its Salesforce, and Recruit Salesforce to Start a Competing Business

39. On or around August 30, 2023, Defendants and Serra convened a meeting of Modere's advisory committee, via Zoom. The advisory committee is comprised of Modere's most successful Social Marketers and drivers of business to the company.
40. During that meeting, Serra made disparaging statements about Modere, including by claiming that its owners at affiliates of Z Capital over-leveraged the company and were not sufficiently investing in the company, that Modere was not sufficiently investing in new products and technology, and that Modere's CEO did not have actual power to run the company. Serra also alluded to starting a new company, which he would join after sitting out for a period of six months.

41. After the initial August 30, 2023 meeting ended, a new Zoom line was opened, and a second meeting was held with most of the advisory committee, minus three members. Serra did not attend the second August 30 meeting.
42. During this second meeting, one of Modere's top Social Marketers, Prince, complained about Z Capital, reiterated the accusation that Modere's CEO does not have any power, and claimed that the advisory committee members were going to need another option. Prince proposed that the advisory committee members begin preparing to start a new, competing company to Modere.
43. The two August 30, 2023 meetings led by Serra and Prince caused uncertainty and stress for the Social Marketers at Modere. The combination of bad financial news and criticisms of Modere and its owners from top company agents, together with a plan for starting a competing company, has caused some Modere Social Marketers to start exploring alternative options.
44. Since the August 30, 2023 meetings, revenue is down at Modere due to the distraction caused by Serra and Prince.
45. In addition to the Zoom calls addressed above, Serra and Prince have continued to discuss purported concerns with Modere, and a competing business, directly with Social Marketers.
46. During those calls, Defendants confirmed that they were looking at other options, and actively lining up Modere Social Marketers to leave with them.
47. Serra and Prince's comments have created substantial harmful instability among the salesforce at Modere, which salesforce is critical to selling Modere's products and creating revenue. In turn, these actions are causing substantial harm to Modere's goodwill with its customers and its ability to help them.

B. Modere Terminates Serra and Prince and Issues Cease and Desist Letters

48. On October 12, 2023, Modere terminated Serra and ended all relationships with Prince and JPBG.

49. In its termination letters, Modere advised Serra and Prince of their wrongful actions described above, reminded them of their contractual and legal obligations described above, and demanded: (1) that each of them “cease and desist your actions that are in breach of your obligations to Modere” (2) that each “return to Modere all communications and materials (in any recorded form, electronic or otherwise) that are within your possession or control relating in any way to the business of Modere”; and (3) that each “provide a written response to [the cease and desist] letter within five calendar days, in which you provide written assurance that you understand your obligations to Modere and will abide by those obligations.” The cease and desist letters are attached as **Exhibits K, L.**

C. Serra and Prince Continue to Communicate With Salesforce Post-Termination

50. After receiving the termination and cease and desist letters on October 12, 2023, Serra and Prince continued to communicate with Modere’s Social Marketers about the circumstances of their termination.

51. On October 15, 2023, Modere also learned that Serra and Prince intend to make an announcement on October 16, 2023 about their new, competing company, which, on information and belief, focuses on beauty and brain health formulas. On information and belief, Defendants are attempting to incentivize Modere’s Social Marketers to leave Modere and join Serra and Prince new, competing company with equity options.

52. Such conduct exacerbated the harm caused by Serra and Prince and was injurious, disruptive, and harmful to Modere, its business, its salesforce, its customers, and its goodwill, as such communications created further uncertainty and concern among Modere's salesforce.
53. On October 15, 2023, Modere, through counsel, emailed Serra and Prince with "further notice to refrain from further communicating with Modere or anyone affiliated with it." Related to the alleged announcement, Modere further reminded Serra and Prince "of [their] many contractual and legal obligations to Modere, as outlined in [Modere's counsel's] October 12 letter to [Serra and Prince]."
54. As of this filing, Serra and Prince have yet to return Modere's confidential information or to confirm that they will abide by their contractual obligations.

FIRST CAUSE OF ACTION

(Breach of Contracts by Defendants Prince and JPBG)

55. Modere incorporates by reference the allegations of paragraphs 1 through [54] above.
56. As described in Section II above, Prince and JPBG and Modere entered into several binding contracts.
57. Modere has complied with all of its obligations under those contracts or was excused from performance.
58. Prince and JPBG have breached these contracts by engaging in one or more of the activities set forth above, including but not limited to:
- a. Making disparaging comments about Modere's ownership and CEO;
 - b. Starting a company in direct competition with Modere;

- c. Spreading confidential company information;
 - d. Using Modere's confidential, proprietary, and trade secret information to compete with Modere;
 - e. Attempting to convince Social Marketers to leave Modere;
 - f. Suggesting and encouraging Social Marketers to leave Modere;
 - g. Encouraging or approving other Modere employees and Social Marketers making disparaging remarks about Modere;
 - h. Setting up a group meeting designed to allow sensitive communications that in turn were designed to sow discontent and dissent and perpetuate a false narrative about Modere's future;
 - i. Not correcting misimpressions about the misstatements others have made about Modere;
 - j. Actively assisting others in plotting their resignation from Modere; and
 - k. Engaging in other acts stated above.
59. As a direct and proximate result of Prince and JPBG's breaches, Modere has suffered and is suffering economic loss and other general and specific damages, including but not limited to damage to business reputation, lost profits, lost revenue, lost business opportunities, and loss of salesforce, among other things, all in an amount to be determined at trial. Those damages include lost revenues, lost agent productivity time, and lost profits that would have been earned had Modere continued to grow during the period of Prince's concerted effort to work against Modere.
60. Modere is entitled to the issuance of a temporary restraining order, preliminary injunction and permanent injunction as set forth herein and under the Prince Mutual Confidentiality Agreement.

61. Modere will suffer irreparable harm unless injunctive relief is granted which prohibits Prince and JPBG from violating the agreements entered into with Modere. The manner in which Modere will suffer irreparable injury is more fully described in the motion for temporary restraining order and preliminary injunction that it will be filing contemporaneously with this Complaint.
62. The threatened injury of Prince and JPBG assisting Modere's competitors or any other person or entity to compete with Modere or to solicit clients and employees and agents outweighs any damage to Prince or JPBG, especially since Prince and JPBG were aware of the non-competition obligations and were advised of those provisions, yet have proceeded to go into business in competition with Modere and solicit Modere Social Marketers.
63. The order or injunction will not be adverse to the public interest because there is a public interest in enforcing contracts and to not reward deliberate and knowing violations of those agreements.
64. There is a substantial likelihood that Modere will prevail on the merits of its claims against Prince, JPBG, and Serra with respect to enforcing Agreements, including the non-competition, non-solicitation, and non-disparagement provisions of the Agreements.
65. Based upon Prince and JPBG's breaches, relief should be granted to Modere as set forth in the Prayer for Relief.
66. The Prince Mutual Confidentiality Agreement expressly permits injunctive relief to remedy breaches of the disclosure and use of Modere's confidential information.

67. The Prince Incentive Agreement entitles Modere to attorneys' fees and costs for Prince and JPBG's breaches.
68. As a direct and proximate result of Defendants' breaches of contract, Modere has suffered and is suffering economic loss and other general and specific damages, including but not limited to damage to business reputation, lost profits, lost revenue, lost business opportunities, and loss of salesforce, among other things, all in an amount to be determined at trial. Those damages include lost revenues, lost agent productivity time, and lost profits that would have been earned had Modere continued to grow during the period of Defendants' and Serra's concerted effort to work against Modere.
69. Based upon Defendants' breaches, relief should be granted to Modere as set forth in the Prayer for Relief.

PRAYER FOR RELIEF

WHEREFORE, Modere prays that the Court enter judgment against Defendants and award the following relief:

- A. An award of general, specific, consequential, and/or compensatory damages in an amount to be proven at trial, including but not limited to lost profits, plus interest as provided by law;
- B. A Court order, a temporary restraining order, or preliminary or permanent injunction enjoining Defendants from violating the Agreements, including without limitation:

1. Stopping Defendants from directly or indirectly competing with Modere for a period of six months from October 12, 2023, in the geographic areas in which Modere operates;
 2. Enjoining them from contacting, soliciting, or hiring any of Modere's employees and/or agents, directly or indirectly, per the terms of their agreements with Modere;
 3. Preventing them from soliciting Modere's customers per the terms of their agreements with Modere;
 4. Enjoining them from disparaging Modere;
 5. Requiring them to remove themselves from any and all Modere's social media accounts or groups;
 6. Preventing them from using or disclosing Modere's confidential information; and
 7. Requiring them to return Modere's confidential information.
- D.** Exemplary damages under Utah Code § 13-24-4(a) or other applicable law;
- E.** For restitution and disgorgement according to proof;
- F.** An award of punitive and exemplary damages;
- G.** For prejudgment interest at the maximum legal rate;
- H.** Attorneys' fees and costs including without limitation pursuant to statute and the Agreements; and
- I.** Such other or further relief that the Court deems just and proper.

DATED this 16th day of October, 2023.

DORSEY & WHITNEY LLP

By: /s/ Maryann Bauhs
Milo Steven Marsden
Maryann Bauhs
*Attorneys for Plaintiffs Mountain Enterprises
Inc., d/b/a Modere Enterprises, Inc., and
Neways Holdings, L.P.*