

CAUSE NO. 017-352358-24

AFG COMPANIES, INC.

Plaintiff,

v.

GENUINE LIFETIME, LLC, AND
TYLER J. LUCK

Defendants.

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IN THE DISTRICT COURT

____ JUDICIAL DISTRICT

TARRANT COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

COMES NOW, Plaintiff AFG Companies, Inc. ("Plaintiff" or "AFG") and files this Original Petition against Defendants Genuine Lifetime, LLC, and Tyler J. Luck ("Defendants") and respectfully shows the Court the following:

I. DISCOVERY LEVEL AND RULE 47 STATEMENT

1. Plaintiff pleads for discovery under Level 3, pursuant to Texas Rule of Civil Procedure 190.4. Plaintiff seeks monetary relief over \$1,000,000 and non-monetary relief.

II. PARTIES

2. Plaintiff is a domestic for-profit corporation, incorporated in the State of Texas.

3. Defendant **Genuine Lifetime, LLC** ("Genuine Lifetime") is a foreign limited liability company that may be served with process through its registered agent, **Company Agent, LLC**, at **125 S King Street Ste 2A, PO Box 1045, Jackson, Wyoming 83001**, or wherever it may be found.

4. Defendant **Tyler J. Luck** ("Tyler Luck") is an individual who may be served at **145 E. Snow King, Jackson, WY 83001**, or wherever he may be found.

III. JURISDICTION AND VENUE

5. This Court has jurisdiction over the parties and subject matter herein as the amount in controversy is within the jurisdictional limits of the Court. Venue is proper in Tarrant County, Texas pursuant to Chapter 15 of the Texas Civil Practices & Remedies Code, as well as the subject Loan Agreement.

IV. STATEMENT OF FACTS

6. On October 17, 2023, Genuine Lifetime and AFG entered into a loan agreement (“Loan Agreement”), wherein AFG agreed to loan Genuine Lifetime the principal sum of \$4 million (“Loan”). The Loan Agreement included several material terms and conditions. This included, but was not limited to, Genuine Lifetime agreeing to pay an interest rate of ten percent (10%) per annum. The Loan Agreement also specified that Genuine Lifetime could use the proceeds of the Loan for only one purpose: to purchase shares of Brand Engagement Network, Inc. (“BEN Inc.”).

7. Under Section I of the Loan Agreement, interest on the Loan would be due and payable on a yearly basis, with the first interest payment due within thirty (30) days of the date from when BEN Inc. shares traded on the NASDAQ stock market. Similarly, the outstanding principal and all unpaid accrued interest on the Loan would be due and payable on or before the earlier of (i) the one-year anniversary of the date of the Loan Agreement or (ii) the thirtieth (30th) day following the date as of which the BEN Inc. shares traded on the NASDAQ stock market (“Maturity Date”).

8. Genuine Lifetime also agreed to pay a loan fee of (10%) of the \$4 million principal, or \$400,000. The fee was likewise due within thirty (30) days from the date as of which the BEN Inc. shares traded on the NASDAQ stock market.

9. If a subsequent Event of Default occurred, as defined in the Loan Agreement, the Loan Agreement provided that AFG may declare all amounts immediately due and payable.

10. In addition to all principal and interest due on the Loan, Genuine Lifetime further agreed to pay all reasonable costs and expenses incurred by AFG in collecting the payment obligations through any proceeding, as well as all reasonable attorney's fees and expenses incurred by AFG related to the enforcement of the Loan Agreement.

11. Moreover, Section II of the Loan Agreement titled "Collateral and Guaranty" further detailed that AFG and Genuine Lifetime would enter into a security agreement ("Security Agreement"), which they did the same day they entered into the Loan Agreement. To secure full and complete payment of the Loan, Genuine Lifetime executed and delivered the Security Agreement, granting AFG a lien on all Genuine Lifetime's assets.

12. The Security Agreement, dated October 17, 2023, named Genuine Lifetime, LLC as "Grantor" and AFG as "Secured Party." The Security Agreement also detailed that Grantor entered into a Loan Agreement in favor of Secured Party and that Grantor granted a lien and security interest on the following assets ("Collateral"): (a) all assets of Grantor; and (b) any and all proceeds and products of the foregoing, and any other tangible or intangible property received upon the sale or disposition of the foregoing.

13. As required under Section 3 of the Security Agreement, a UCC-1 financing statement was filed with the Wyoming Secretary of State, perfecting a security interest in the above Collateral shortly after the signing of the Security Agreement.

14. Section 9 of the Security Agreement also granted AFG certain "Remedies" in the Event of Default as defined by the Loan Agreement. In particular, Section 9 of the Security Agreement specified that upon the occurrence of an Event of Default, the Secured Party may (i)

reduce its claim to judgment, foreclose, or otherwise enforce its security interest, or (ii) after notification, sell or otherwise dispose of all or any part of the Collateral.

15. Further yet, the Loan Agreement also contemplated the signing of a personal guaranty. That is, the Loan Agreement specified that AFG and Defendant Tyler Luck enter into a Personal Guaranty of Payment to AFG Companies, Inc. (“Personal Guaranty”), wherein Tyler Luck acknowledged that he, as a member of October 3rd and director of Genuine Lifetime, would receive a direct benefit of the Loan and performance of the terms of the Loan Agreement by executing a Personal Guaranty of “Payment” to AFG—i.e., the \$4 million principal plus interest payable to AFG as detailed in the Loan Agreement.

16. AFG and Tyler Luck—in his individual capacity and on behalf of himself—executed the Personal Guaranty on October 17, 2023.

17. Section 1.02 of the Personal Guaranty defines the “Guaranteed Debt” as the outstanding principal amount of the Loan Agreement and all accrued but unpaid interest thereon, and all costs, expenses, and fees, including but not limited to court costs and attorneys’ fees, owed under the Loan Agreement.

18. Sections 1.01 and 1.03 of the Loan Personal Guaranty further clarify that if any part of the obligations under the Loan Agreement are not paid when due, Tyler Luck would be unconditionally liable for the Guaranteed Debt and would immediately, upon demand by AFG, pay the amount due on the Guaranteed Debt to AFG.

19. The Loan Agreement specifies scenarios considered an “Event of Default.” Three relevant scenarios addressed herein, are: (i) when Genuine Lifetime failed to pay any principal of the Loan when it became due and payable, (ii) when Genuine Lifetime failed to pay any interest on the Loan payable under the Loan Agreement, and/or (iii) when Tyler Luck failed to observe or perform any covenant, condition, or agreement laid out in the Personal Guaranty.

20. Genuine Lifetime purchased its BEN Inc. shares with the proceeds of the Loan on March 14, 2024. The following day, the shares began trading on the NASDAQ Stock Market. Accordingly, the Maturity Date under the Loan Agreement was April 14, 2024, or thirty (30) days from March 15, 2024, when BEN Inc. shares traded for the first time on the NASDAQ stock market. In any event, AFG received no payment from Genuine Lifetime nor Tyler Luck—Guarantor—on or before the Maturity Date.

21. Still, to date, neither Genuine Lifetime nor Tyler Luck has made payment to AFG, even though it has been over two weeks since the entire Guaranteed Debt became due and payable, including the principal, the loan fee, and all unpaid interest.

22. The refusal to pay pursuant to the terms of the Loan Agreement is clearly an Event of Default under the Loan Agreement. This breach, in turn, has triggered the remedies available under Section 9 of the Security Agreement, which gives AFG the right to reduce its claim to judgment on the Loan and to enforce its security interest on all Collateral. Similarly, Tyler Luck has also breached the Personal Guaranty, which required that the Guarantor—in the event the obligations due under the Loan Agreement were not satisfied by Genuine Lifetime—“immediately upon demand by AFG . . . pay in lawful money. . . the amount due on the Guaranteed Debt to AFG.”

23. Accordingly, Plaintiff files this lawsuit against Defendants for breach of contract on all three agreements related to the October 17, 2023 Loan: the Loan Agreement, the Security Agreement, and the Personal Guaranty.

24. As a final point, Genuine Lifetime is also bound to a Lock-Up Agreement, pursuant to which Genuine Lifetime along with any of its affiliates or related entities—including October 3rd Holdings, LLC, specifically named in the Lock-Up Agreement—have agreed to not offer, sell,

contract to sell, lend, hypothecate, pledge or otherwise dispose of their BEN Inc. shares until the Loan, the loan fee, and any unpaid interest has been paid to AFG.

V. CAUSES OF ACTION

COUNT 1 – BREACH OF CONTRACT (LOAN AGREEMENT)

25. AFG incorporates by reference each of the allegations in the preceding paragraphs of the Petition as if they were set forth in their entirety herein.

26. Genuine Lifetime and AFG entered into a valid, enforceable contract in the form of the October 17, 2023 Loan Agreement. As part of the Loan Agreement, AFG agreed to loan Genuine Lifetime \$4 million, the principal, at an agreed interest rate of ten percent (10%) per annum.

27. As part of the Loan Agreement, Genuine Lifetime agreed to pay back the Loan in full within thirty (30) days from the date as of which BEN Inc. shares began trading on the NASDAQ Market. Genuine Lifetime purchased its BEN Inc. shares on March 14, 2024. The following day, the shares began trading on the NASDAQ Stock Market. Accordingly, the Maturity Date under the Loan Agreement became April 14, 2024, or thirty (30) days from March 15, 2024, when BEN Inc. shares traded for the first time on the NASDAQ stock market. In any event, AFG received no payment from Genuine Lifetime nor Tyler Luck—Guarantor—on the Maturity Date.

28. Genuine Lifetime also agreed to pay a loan fee of (10%) of the entire \$4 million principal, or \$400,000. The fee was likewise due within thirty (30) days from the date as of which the BEN Inc. shares first traded on the NASDAQ stock market.

29. Although payment to AFG is past due under the Loan Agreement, neither Genuine Lifetime nor Tyler Luck made payment, despite their contractual obligation to do so. Genuine Lifetime thus breached the Loan Agreement: It failed to do precisely what it had promised to do under the Loan Agreement. It did not pay the \$4 million principal, the loan fee, or the interest

due. In these respects, Genuine Lifetime wholly breached the Loan Agreement, which caused AFG damages.

COUNT 2 – BREACH OF CONTRACT (SECURITY AGREEMENT)

30. AFG incorporates by reference each of the allegations in the preceding paragraphs of the Petition as if they were set forth in their entirety herein.

31. Genuine Lifetime and AFG entered into a valid, enforceable contract in the form of the October 17, 2023 Loan Agreement. As part of the Loan Agreement, AFG agreed to loan Genuine Lifetime \$4 million, the loan fee, and the principal, at an agreed interest rate of ten percent (10%) per annum.

32. As part of the Loan Agreement, Genuine Lifetime agreed to pay back the Loan in full within thirty (30) days from the date as of which the BEN Inc. shares began trading on the NASDAQ Market. Genuine Lifetime purchased its BEN Inc. shares on March 14, 2024. The following day, the shares began trading on the NASDAQ Stock Market. Accordingly, the Maturity Date under the Loan Agreement became April 14, 2024, or thirty (30) days from March 15, 2024, when BEN Inc. shares traded for the first time on the NASDAQ stock market. In any event, AFG received no payment from Genuine Lifetime nor Tyler Luck—Guarantor—on the Maturity Date.

33. Genuine Lifetime also agreed to pay a loan fee of (10%) of the entire \$4 million principal, or \$400,000. The fee was likewise due within thirty (30) days from the date which BEN Inc. shares traded on the NASDAQ stock market.

34. Section II of the Loan Agreement titled “Collateral and Guaranty” specifies that AFG and Genuine Lifetime also entered into a Security Agreement on October 17, 2023.

35. The Security Agreement, dated October 17, 2023, named Genuine Lifetime as “Grantor” and AFG as “Secured Party.” The Security Agreement further specified that Grantor entered into a Loan Agreement in favor of Secured Party and that Grantor granted a lien and

security interest on the following assets (“Collateral”): (a) all assets of Grantor; and (b) any and all proceeds and products of the foregoing, and any other tangible or intangible property received upon the sale or disposition of the foregoing.

36. Section 9 of the Security Agreement granted AFG certain “Remedies” in the Event of Default as defined by the Loan Agreement. Namely, under Section 9 of the Security Agreement, upon the occurrence of an Event of Default, the Secured Party would have the right to reduce its claim for the amount due and owing to judgment or to otherwise enforce its security interest.

37. Although payment to AFG is past due under the Loan Agreement, neither Genuine Lifetime nor Tyler Luck made payment despite their contractual obligation to do so. Because Genuine Lifetime wholly defaulted on the Loan Agreement, AFG files this suit to collect judgment against Genuine Lifetime in light of the remedies afforded to AFG under the Security Agreement.

COUNT 3 – BREACH OF CONTRACT (PERSONAL GUARANTY)

38. AFG incorporates by reference each of the allegations in the preceding paragraphs of the Petition as if they were set forth in their entirety herein.

39. Genuine Lifetime and AFG entered into a valid, enforceable contract in the form of the October 17, 2023 Loan Agreement. As part of the Loan Agreement, AFG agreed to loan Genuine Lifetime \$4 million, at an agreed interest rate of ten percent (10%) per annum plus a loan fee.

40. Tyler Luck, a member of October 3rd Holdings, LLC and a director of Genuine Lifetime, personally and unconditionally guaranteed Genuine Lifetime’s obligations to AFG under the Loan Agreement, meaning AFG could collect against Tyler Luck alone for the total amount of the Loan Agreement and all unpaid interest thereon in the Event of Default as defined under the Loan Agreement. Indeed, Tyler Luck, in his individual capacity and on behalf of himself alone, entered into a Personal Guaranty agreement with AFG, guaranteeing the Loan.

41. As part of the Loan Agreement, Genuine Lifetime agreed to pay back the Loan in full within thirty (30) days from the date as of which the BEN Inc. shares began trading on the NASDAQ Market. Genuine Lifetime purchased its BEN Inc. shares on March 14, 2024. The following day, the shares began trading on the NASDAQ Stock Market. Accordingly, the Maturity Date under the Loan Agreement became April 14, 2024, or thirty (30) days from March 15, 2024, when BEN Inc. shares traded for the first time on the NASDAQ stock market. In any event, AFG received no payment from Genuine Lifetime nor Tyler Luck—Guarantor—on the Maturity Date.

42. Genuine Lifetime also agreed to pay a loan fee of (10%) of the entire \$4 million principal, or \$400,000. The fee was likewise due within thirty (30) days from the date as of which the BEN Inc. shares traded on the NASDAQ stock market.

43. Although payment to AFG is past due under the Loan Agreement, neither Genuine Lifetime nor Tyler Luck made payment, despite their contractual obligation to do so under the Loan Agreement and the Personal Guaranty, respectively. Genuine Lifetime and Tyler Luck thus breached both Agreements, which caused AFG Damages.

VI. CONDITIONS PRECEDENT

44. All conditions precedent to AFG's right to bring the above causes of action, and for recovery requested herein, have been performed or otherwise already occurred.

VII. ATTORNEYS FEES

45. AFG seeks the recovery its reasonable attorney's fees pursuant to the subject Loan Agreement, Guaranty and/or Texas Civil Practice and Remedies Code § 38.001(b)(8).

VIII. CONCLUSION

46. **WHEREFORE, PREMISES CONSIDERED**, Plaintiff AFG Companies, Inc. requests Defendants Genuine Lifetime, LLC and Tyler J. Luck, be cited to appear and answer, and further pray that it be awarded judgment against Defendants, jointly and severally, for all of the following:

- (1) Compensatory and actual damages in an amount to be determined at trial;
- (2) Foreclosure of Defendants' assets and interests, as requested herein;
- (3) Attorneys' fees of Plaintiff incurred in this action;
- (4) The costs of Plaintiff incurred in this action;
- (5) Prejudgment and post-judgment interest to the extent permitted by law; and
- (6) All other relief, at law or in equity, to which AFG proves itself justly entitled.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

Automated Certificate of eService

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Melissa Diaz on behalf of Mark Hill
Bar No. 24034868
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Envelope ID: 87228741
Filing Code Description: Petition
Filing Description: Plaintiff's Original Petition
Status as of 4/30/2024 4:15 PM CST

Associated Case Party: AFG COMPANIES, INC.

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