



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

F.A.M.E. LLC d/b/a/ Falk Associates
Management Enterprises a/k/a/ FAME,

Plaintiff,

v.

EMTURN LLC AND EVAN TURNER,

Defendants.

C.A. No. _____ [CCLD]

COMPLAINT

Plaintiff, F.A.M.E. LLC d/b/a/ Falk Associates Management Enterprises a/k/a/ FAME (“Plaintiff”), located at 6116 Executive Blvd, Suite 680, North Bethesda, Maryland 20852, by and through its attorneys, Kane Kessler, P.C. and Smith, Katzenstein & Jenkins LLP, as for its complaint against Defendants EmTurn LLC (“EmTurn”) and Evan Turner (“Turner” and, together with EmTurn, the “Defendants”), respectfully alleges as follows:

NATURE OF THE ACTION

1. This action for breach of contract, unjust enrichment, and quantum meruit arises from the failure and refusal of Defendants to make payments to Plaintiff for the agreed price and reasonable value of services, rendered by Plaintiff on Defendants’ behalf pursuant to oral and written agreements between the parties.

2. In the Spring of 2010, Plaintiff and Defendants entered into an oral agreement whereby Plaintiff would serve as Turner's exclusive agent in connection with the negotiation and execution of Turner's contract with the National Basketball Association ("NBA") and with the negotiation and consummation of marketing and endorsement deals on behalf of Turner.

3. In order to effectuate and facilitate their agreement, Turner caused EmTurn to be formed as a Delaware limited liability loan-out company for Turner's endorsement and marketing services.

4. Beginning in May 2010, at the specific request of Turner, Plaintiff successfully procured and negotiated a lucrative marketing and endorsement agreement between Defendants and Li-Ning Sports Technology Development (HK) Co. Limited and Li-Ning Sports USA ("Li-Ning Sports"), which provided Defendants with guaranteed minimum compensation of \$15,000,000 over six years plus one million shares of Lin-Ning Sports that vested between 2011-2016.

5. Although Defendants have received the full benefit of the aforesaid services provided by Plaintiff and earned millions of dollars pursuant to the endorsement and marketing deal, they have breached their agreements with Plaintiff by failing and refusing to pay the full amount of the agreed compensation and the

reasonable value for the services performed by Plaintiff, despite repeated demands for payment.

THE PARTIES

6. Plaintiff is a Delaware limited liability company with its principal place of business located at 6116 Executive Blvd, Suite 680, North Bethesda, Maryland 20852.

7. Plaintiff is a sports marketing and management agency that was formed by veteran sports agent, David Falk (“Falk”), in or around 2007.

8. Falk, long recognized as one of the sports industry’s leading figures, has represented more than 100 NBA players, including many of the top players in the history of the NBA, such as Michael Jordan and Patrick Ewing, and he has negotiated record-breaking contracts for his clients. Over the past 40 years, Falk’s vision and innovative approach helped to shape the evolution of the business of sports. Falk is generally considered the most influential player agent in NBA history.

9. Turner was a professional basketball player, who played with several NBA teams between 2010 and 2020.

10. EmTurn is a Delaware limited liability company, which was established by Turner in July 2010 as a loan out company and is engaged solely in the business of providing the services of Turner.

11. At all times referred to herein, Turner owned, managed, supervised, and operated, EmTurn, and was its sole managing member and its agent and employee.

12. Upon information and belief, at all relevant times, Turner controlled and dominated the business of EmTurn and acted as its alter ego, as illustrated by the following:

(a) EmTurn was formed by Turner for the sole purpose of loaning out Turner's services in connection with endorsement and marketing agreements procured by Plaintiff, including the agreement with Li-Ning Sports.

(b) Turner regularly failed to observe corporate formalities with respect to EmTurn, to wit, EmTurn had no separate board meetings or other board action, had no separate bank accounts, except bank accounts controlled solely by Turner and Turner received Li-Ning Sports stock, which contractually was required to be issued and transferred to EmTurn.

(c) EmTurn had no operating agreement.

(d) EmTurn had no separate capitalization and was completely financed by Turner for no consideration with income generated solely through the services of Turner.

(e) EmTurn conducted no business of its own, and all business transactions entered into by EmTurn were directed and approved by Turner, who was also the sole agent and employee of EmTurn.

(f) Turner intermingled the money of EmTurn with his own personal funds and used the money of EmTurn to pay his personal expenses.

(g) Turner freely transferred money from EmTurn's bank accounts to his personal bank accounts without adequate consideration.

13. In addition, Turner defrauded EmTurn by diverting assets to which EmTurn was entitled to his personal account when he personally received a grant of 1,000,000 shares of Li-Ning Sports stock from Li-Ning Sports in his own name, which was contractually required to be issued and transferred to EmTurn.

14. Moreover, on September 3, 2010, Turner defrauded EmTurn, when he individually executed on his own behalf, rather than on behalf of EmTurn, an acceptance letter relating to the grant of 1,000,000 shares of Li-Ning Sports stock, which EmTurn contractually was entitled to receive, thereby diverting the stock from EmTurn to himself.

15. As a result of the aforesaid, EmTurn is the alter ego of Turner, has no independent existence, and was used to facilitate fraud or injustice.

JURISDICTION

16. This Court has subject matter jurisdiction over this matter since the amount in controversy exceeds \$1,000,000.

17. This Court has personal jurisdiction over Defendant EmTurn as it is a Delaware LLC and has personal jurisdiction over Defendant Turner (i) because Defendant EmTurn has no separate identity from Turner, and it is his alter ego; (ii) pursuant to 10 Del. C. § 3104 (c) because Turner formed EmTurn in Delaware for the sole purpose of engaging in and facilitating the transactions alleged herein and (iii) pursuant to 6 *Del. C.* § 18-109 (a) because the claim against Turner involves and relates to the business of EmTurn, which was managed solely by Turner.

BACKGROUND RELEVANT TO ALL CAUSES OF ACTION

18. On or around April 7, 2010, Turner announced that he would enter the 2010 NBA draft.

19. On or about May 6, 2010, Plaintiff and Turner entered into an oral agreement (the “Oral Agreement”) whereby Plaintiff would serve as Turner’s exclusive agent in connection with the negotiation of Turner’s NBA contract as well

as with the procurement and negotiation of marketing and endorsement opportunities for Turner (“Marketing Services”).

20. With respect to Marketing Services under the Oral Agreement, Turner agreed to pay Plaintiff a fee in the amount of 15% of all compensation received by Turner, and any loan out company established on his behalf, from marketing and endorsement leads generated by Plaintiff, or 20% of such compensation in the event that the compensation from those leads in the aggregate was greater than \$2,000,000 in any given year.

21. The Philadelphia 76ers selected Turner with the second pick in the 2010 NBA draft and signed him to a multi-million dollar contract, which was negotiated by Plaintiff.

22. On or about and after May 6, 2010, Plaintiff identified a potential marketing and endorsement opportunity between Defendants and Li-Ning Sports, a leading sports and apparel brand in China.

23. Plaintiff utilized his unique expertise and engaged in extensive discussions and negotiations with representatives of Li-Ning Sports.

24. As a result of the aforesaid negotiations, with the approval of Defendants, Plaintiff finalized and consummated on behalf of Defendants a six-year

endorsement agreement with Li-Ning Sports and Li-Ning Sports Technology Development (the “Li-Ning Contract”).

25. Turner signed the Li-Ning Contract on behalf of EmTurn on or about August 23, 2010.

26. Prior to executing the Li-Ning Contract, Turner caused EmTurn to be formed as a Delaware limited liability company and a loan-out company, whose sole purpose was to enter into the Li-Ning Contract and other endorsement and marketing contracts procured by Plaintiff pursuant to the Oral Agreement.

27. Upon its formation, EmTurn became a party to the Oral Agreement.

28. Paragraph 4(a) of the Li-Ning Contract provided, inter alia, that EmTurn was entitled to receive the following minimum guaranteed compensation:

- a. The First Contract Year: USD \$2,250,000.
- b. The Second Contract Year: USD \$2,250,000
- c. The Third Contract Year: USD \$2,500,000
- d. The Fourth Contract Year: USD \$2,500,000
- e. The Fifth Contract Year: USD \$2,750,000
- f. The Sixth Contract Year: USD \$2,750,000

29. In addition to the minimum guaranteed compensation, EmTurn was granted restricted shares of Li-Ning Sports stock (the “Stock”), as additional compensation in accordance with the below vesting schedule attached to the Li-Ning Contract as Exhibit C:

	Number of Shares	Grant Date	Vesting Date
Contract Year 1	100,000	August 23, 2010	July 1, 2011
Contract Year 2	120,000	August 23, 2010	July 1, 2012
Contract Year 3	170,000	August 23, 2010	July 1, 2013
Contract Year 4	170,000	August 23, 2010	July 1, 2014
Contract Year 5	220,000	August 23, 2010	July 1, 2015
Contract Year 6	220,000	August 23, 2010	July 1, 2016

30. Thereafter, the Oral Agreement between Plaintiff and EmTurn was confirmed in a written agreement dated August 31, 2010, between Plaintiff and EmTurn, which was signed by Turner on behalf of EmTurn on September 9, 2010 (the “Written Agreement”). The Oral Agreement remained in full force and effect.

31. The Written Agreement confirmed the understanding of Plaintiff and EmTurn that, inter alia, Plaintiff was entitled to its marketing fee “regardless of when [EmTurn] receives compensation” for any endorsement and marketing contracts procured and negotiated by Plaintiff.

32. On or about September 3, 2010 Turner knowingly and intentionally defrauded EmTurn when he diverted the Stock from EmTurn to himself by facilitating and permitting Li-Ning Sports to issue a certain grant letter from Li-Ning Sports to Turner, dated September 3, 2010, whereby Li-Ning Sports granted the Stock to Turner, not EmTurn (the “Stock Grant”).

33. Turner defrauded EmTurn when he knowingly and intentionally diverted the Stock from EmTurn to himself by signing an “Acceptance Notice,” also dated September 3, 2010, whereby Turner accepted the Stock Grant in his individual capacity, rather than on behalf of EmTurn.

34. EmTurn was paid the full amount of the minimum guaranteed compensation under the Li-Ning Contract totaling \$15,000,000.

35. On each occasion that EmTurn received compensation pursuant to the Li-Ning Contract, Plaintiff provided EmTurn with an invoice for the Marketing Services which were rendered (the “Invoices”), and those Invoices were paid by EmTurn in accordance with the Oral and Written Agreements.

36. Defendants never objected to any of the Invoices.

37. Upon information and belief, on or about and during September 2021, Turner sold a portion of the Stock and individually received the sum of \$10,000,000, which lawfully was an asset of EmTurn.

38. Pursuant to the Oral and Written Agreements, Plaintiff was entitled to receive a fee in the amount of 20% of the sum realized by Defendants from the sale of the Stock or the sum of \$2,000,000.

39. On or about July 15, 2022, Plaintiff furnished an invoice to EmTurn, c/o Turner for the sum of \$2,000,000 (the “\$2,000,000 Invoice”).

40. Turner failed and refused to pay the \$2,000,000 Invoice.

41. As the sole managing member of EmTurn, Turner failed to permit EmTurn to pay the \$2,000,000 Invoice.

42. Defendants have failed and refused to pay the aforesaid \$2,000,000 Invoice, despite the repeated demands of Plaintiff.

FIRST CAUSE OF ACTION

(Breach of Oral Agreement against Defendants)

43. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 42 above with the same force and effect, as if fully set forth herein.

44. Plaintiff fully performed all of its obligations pursuant to the terms of the Oral Agreement.

45. Defendants have failed to pay the \$2,000,000 Invoice, despite the fact that Plaintiff performed all of its obligations and despite due demand therefor.

46. Defendants' failure to make payment to Plaintiff as aforesaid, is a material breach of the Oral Agreement by Defendants.

47. By reason of the foregoing, Plaintiff is entitled to recover from Defendants the amount of \$2,000,000, plus interest and costs.

SECOND CAUSE OF ACTION
(Breach of Written Agreement against EmTurn)

48. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 47 above with the same force and effect, as if fully set forth herein.

49. Plaintiff fully performed all of its obligations pursuant to the terms of the Written Agreement.

50. EmTurn has failed to pay the \$2,000,000 Invoice, despite the fact that Plaintiff performed all of its obligations and despite due demand therefor.

51. EmTurn and Plaintiff agreed and understood that the Written Agreement applied to the Li-Ning Contract.

52. EmTurn's and Plaintiff's course of conduct after execution of the Written Agreement, including but not limited to EmTurn's payment of the Invoices, demonstrates that they agreed that the Written Agreement would and did apply to the Li-Ning Contract.

53. EmTurn's failure to make payment to Plaintiff as aforesaid, is a material breach of the Written Agreement.

54. By reason of the foregoing, Plaintiff is entitled to recover from EmTurn the amount of \$2,000,000, plus interest and costs.

THIRD CAUSE OF ACTION
(Quantum Meruit against Defendants)

55. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 54 above with the same force and effect as if fully set forth herein.

56. Defendants have benefitted as a result of receiving the Marketing Services rendered by Plaintiff on Defendants' behalf.

57. Defendants have not paid the agreed price or reasonable value of the Marketing Services rendered by Plaintiff, and Defendants are therefore indebted to Plaintiff in an amount to be determined at trial, but in any event not less than \$2,000,000, plus interest and costs.

58. By reason of the foregoing, Plaintiff is entitled to recover from Defendants an amount to be determined at trial, but in any event not less than \$2,000,000, plus interest and costs.

FOURTH CAUSE OF ACTION
(Unjust Enrichment against Defendants)

59. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 58 above with the same force and effect as if fully set forth herein.

60. Defendants have been unjustly enriched in an amount to be determined at trial, but in any event not less than \$2,000,000 plus interest and Plaintiff has been impoverished for at least that amount.

61. Defendants are without justification for being unjustly enriched.

62. As a result of the foregoing, Plaintiff has been damaged in an amount to be determined at trial but in any event not less than \$2,000,000, plus interest and costs.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

A. On the First Cause of Action, judgment in favor of Plaintiff against Defendants, jointly and severally, in the amount of \$2,000,000 plus interest and costs.

B. On the Second Cause of Action, judgment in favor of Plaintiff against EmTurn in the amount of \$2,000,000 plus interest and costs.

C. On the Third Cause of Action, judgment in favor of Plaintiff against Defendants, jointly and severally, in an amount to be determined at trial, but in any event not less than \$2,000,000 plus interest and costs.

D. On the Fourth Cause of Action, judgment in favor of Plaintiff against Defendants, jointly and severally, in an amount to be determined at trial, but in any event not less than \$2,000,000 plus interest and costs.

E. On all causes of action, the costs and disbursements of this action, together with such other, further and different relief as to the Court seems just, proper and equitable.

Dated: December 1, 2022

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