

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

EXCEL SPORTS MANAGEMENT, LLC

Plaintiff,

v.

ERIC EWAYS and KLUTCH SPORTS GROUP,
LLC,

Defendants.

Index No. ____

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Excel Sports Management, LLC (“Excel” or “Plaintiff”), by and through its attorneys, Sheppard, Mullin, Richter & Hampton, LLP, for their Complaint, allege against Defendants Eric Eways (“Eways”) and Klutch Sports Group, LLC (“Klutch”) (together, “Defendants”) as follows:

NATURE OF THE ACTION

1. This action is necessary to remedy the litany of harms and damages caused by the departure of Excel’s most senior executive responsible for sourcing and securing lucrative, brand-building off-court marketing deals for the roster of professional basketball players Excel represents in violation of his non-compete agreement and his confidentiality and fiduciary obligations to Excel at the inducement of, and with the assistance of, Klutch. The actions of Eways and Klutch, independently and/or together, give rise to claims for breach of contract, breach of the duty of loyalty and fiduciary duty, tortious interference with contract, tortious interference with economic relations, and unfair competition.

2. Excel and Klutch are fierce competitors in the niche sports management and marketing industry vying for the opportunity to represent professional athletes with regard to their on-court team contracts, as well as off-court marketing and other opportunities.

3. Excel has staked out its position as an industry and global leader in this field, providing best in class services to its athlete clients based upon 20 years' of investment in developing relationships with athletes and brand partners that provide opportunities for athletes, developing unique and confidential business and marketing strategies that provide it with a competitive advantage, and developing a sterling reputation that is the envy of the industry.

4. Excel hired Eways in January 2018 and developed him into a unique and valuable asset, entrusted with leading Excel's efforts to secure off-court marketing opportunities for its athlete clients, by sharing its relationships and confidential information with him, and otherwise allowing him to trade on Excel's name and its unparalleled roster of athletic talent. The role that Eways occupied is critical for a sports agency, as represented athletes expect their agencies to provide them with marketing opportunities, which are invaluable in satisfying represented athletes and attracting new athletes seeking representation.

5. In exchange for Excel's willingness to develop Eways into a senior executive with this scope of responsibility, Excel asked, and Eways agreed, to: (i) protect its confidential information and relationships; and (ii) not compete with Excel for a period of just eight months following the termination of his employment, which Excel believed would alleviate his ability to cause the harms described herein.

6. Klutch has been in the sports management and marketing industry for only half as long as Excel. While a competitor to Excel, its current roster of talent, suite of services, and operational capabilities are inferior to Excel's in every respect.

7. Rather than devote the time and resources to develop an unseasoned candidate, as Excel had done with Eways, Klutch elected to capitalize on Excel's investment in Eways, the relationships it employed him to develop, and the confidential information it provided to him to

allow him to succeed, by inducing Eways to breach his obligations to Excel by accepting competitive employment to provide similar, if not the same, services as he provided at Excel.

8. Thus, with Klutch's assistance, Eways has violated his reasonable and narrowly tailored non-compete agreement and confidentiality obligations and threatened a cavalcade of Excel's legitimate business interests, including, but not limited to: (i) its investment in the development of Eways' unique and specialized services; (ii) its brand partner relationships, and the critical off-court marketing opportunities they provide to Excel and its athlete clients; and (iii) its confidential business information that provides it with the competitive advantage that has allowed it to rise to the top of the industry.

9. Klutch would not have hired Eways but for his ability to assist it in bringing these harms to fruition. It is these harms that will allow it to gain an advantage it would not have otherwise had over Excel in the competition for athletic talent. New York law does not allow tortious and unfair conduct of this nature to occur without consequence, and Excel accordingly seeks the relief requested herein.

THE PARTIES

A. Excel Sports Management, LLC

10. Excel is the premiere sports management and marketing agency representing professional athletes, blue-chip brands, and marquee sports-related properties and venues. Excel is based in New York City, and has offices in Los Angeles, Miami and Chicago.

11. Excel is a limited liability company incorporated in Delaware with its principal place of business located at 1700 Broadway, New York, NY 10019. The members of Excel include citizens of New York, Connecticut and Florida.

B. Klutch Sports Group, LLC

12. Klutch is a sports management company providing representation to professional athletes and sports-related properties.

13. Klutch is a limited liability company incorporated in Delaware with its principal place of business located at 9336 Civic Center Drive, Beverly Hills, CA 90210. Upon information and belief, the members of Excel include citizens of Ohio and California.

C. Eric Eways

14. Eways was employed by Excel in its New York headquarters as its Vice President of Basketball Partnerships from on or about January 25, 2018 until his resignation on February 15, 2022. He commenced employment with Klutch thereafter in violation of his contractual and other obligations to Excel.

15. At all relevant times, Eways was a resident of the State of New Jersey.

JURISDICTION AND VENUE

16. Jurisdiction and venue is proper under CPLR §§ 301 and 302 because Excel's principal place of business is in New York, Eways and Klutch regularly transact and conduct business in New York and derive income from services and/or transaction in New York, and Eways and Klutch have committed tortious acts within New York.

17. Venue is proper in this Court pursuant to CPLR § 503 because Excel maintains its principal place of business in New York County and because a substantial part of the events giving rise to the within claims occurred in New York County.

FACTUAL ALLEGATIONS

A. Competition In The Sports Management And Marketing Industry

18. Excel represents professional athletes with regard to their team contracts and

various off-court endeavors, including sponsorship deals, endorsements, and other marketing opportunities. Excel also engages in brand marketing, in which Excel assists corporate clients with sponsorship and sports marketing investments, and sports properties, in which Excel forges partnerships between corporate brands and prominent sports teams, leagues and rightsholders through initiatives like jersey sponsorship, stadium naming rights, and event entitlements.

19. Excel is consistently ranked within the top three or four sports management agencies in the world by Forbes. However, Excel has almost universally been recognized as the top sports management agency with respect to basketball talent representation. Currently, Excel boasts a roster of more than 60 NBA star players, cumulatively including 3 NBA Rookie of the Year award-recipients, 61 All-Star appearances, and 53 NBA First-Round draft picks (the “NBA Talent”).

20. Klutch was founded by Rich Paul in or around 2012 on the strength of his relationship with, and representation of, NBA star LeBron James. Klutch was originally located in Cleveland Ohio, but has been headquartered in Los Angeles, California since 2019.

21. For most of its existence, Klutch focused its efforts on representation of professional basketball players, with a current roster of 16-20 NBA players. Recently, Klutch has expanded into other sports and also sought to expand its footprint beyond talent representation.

22. Excel and Klutch are direct competitors in the niche sports management and marketing industry.

B. The Role of Off-Court Marketing In The Sports Management And Marketing Industry

23. Excel does not just represent its athlete clients with respect to team contracts, but also with respect to lucrative, brand-building off-court marketing opportunities. These opportunities provide significant exposure and alternative income streams and are expected by

athletes from the sports management agencies with which they contract. An agency's failure to provide such opportunities may lead to an athlete's dissatisfaction with their agency and may prompt the athlete to seek alternative representation. This is particularly true for Excel's NBA Talent, as basketball stars tend to be some of the most visible professional athletes in the world.

24. These off-court opportunities have taken on an additional and critical new role since July 2021, when the NCAA suspended its long-standing amateurism policy prohibiting athletes profiting from their names, images, and likenesses ("NIL") and obtaining agency representation in connection therewith. Thus, off-court marketing is the sole avenue through which Excel and its competitors can capitalize on this emerging market.

25. Excel therefore views the off-court opportunities as a critical component of the suite of services it provides to its athlete clients and works tirelessly to succeed in this regard. These off-court opportunities are vital in recruiting new athlete clients to Excel as well as ensuring that its current athlete clients are satisfied and continue to choose Excel for all of their sports management needs.

C. Excel's Vice President Of Basketball Operations Is Entrusted With Sourcing And Securing Off-Court Marketing Opportunities

26. Off-court marketing opportunities are generally not sourced or negotiated by an athlete's on-court agent at Excel. Instead, the responsibility is entrusted to a highly skilled sales and marketing professional who, at Excel, is its Vice President of Basketball Partnerships.

27. The role demands an executive that has a variety of skills and talents to be effective, particularly in relationship development. The executive has to have a large network of contacts embedded within companies that have the budget for, and interest in, utilizing professional athletes for marketing purposes. The executive must also have the skills to expand that network through direct introductions, chance meetings at entertainment events, and aggressive cold-calling based

on targeted research to develop new relationships. These relationships are the source from which most off-court opportunities flow.

28. These relationships arm the executive with information concerning marketing campaigns, corporate purchasing trends, and corporate marketing budgets. At Excel, its Vice President of Basketball Partnerships is the repository for this information and therefore its most important asset in capitalizing on these opportunities.

29. With the relationship in hand, the executive must be able to discern the characteristics and traits of the corporate client as well the goal of the advertising campaign to “marry” an appropriate athlete to the brand and campaign based upon their personality, passions, or other intangibles.

30. The executive must also have a deep understanding of the market for off-court opportunities for athletes, including: (i) the market value for sports talent; (ii) the cadence of endorsement sales; (iii) how to effectively target the right brands based on their marketing campaigns or other sports they sponsor; and (iv) how to balance brand investment parameters with athlete talent deliverables for the brand.

31. Because these opportunities are ultimately consummated by written contract, the executive must have exceptional negotiating skills and intimate familiarity with business terms, industry standards, and athlete preferences/requirements to secure the best deals for Excel’s NBA Talent, including the ability to negotiate: (i) marketing rights to talent; (ii) brand category exclusivity (or non-exclusivity) protections; (iii) payment structures; and (iv) at times, equity consideration and royalty provisions. Notably, each marketing opportunity reduced to contract is covered by a confidentiality provision that shields all of the details of the deal from public disclosure.

32. Excel's Vice President of Basketball Partnerships has the authority to structure deal parameters on most deals with input only from the NBA Talent's sports agent or marketing manager, and final approval from the NBA Talent. Excel's Vice President of Basketball Partnerships is thus its most senior position at Excel directly responsible for all off-court marketing opportunities presented to Excel's NBA Talent.

D. Eways Employment With Excel

33. In October 2017, Excel sought to recruit a new Vice President of Basketball Partnerships. This search proved challenging as experienced candidates are few and far between given the niche industry of professional athlete representation and the limited number of marketing opportunities for such athletes. There may be only 20-30 persons working in the United States in the basketball market with the expertise, seniority and professionalism Excel expects of its Vice President of Basketball Partnerships.

34. As a result, Excel broadened its search to candidates with only general sales and marketing experience in the sports industry, which led to the discovery of Eways as a potential candidate for the role.

35. At the time he was presented to Excel for the position, Eways had no previous experience in sourcing and negotiating off-court marketing opportunities for professional athletes. Although he had worked in marketing and sales in the sports industry and had exposure to corporate entities, Excel would be his first employment in the athlete representation industry.

36. Excel hired Eways as its Vice President of Basketball Partnerships based in New York in or around late January 2018. Notwithstanding his lack of experience, Excel believed its infrastructure, corporate relationship network, unique marketing strategies, and willingness to train

and invest in Eways, along with his non-talent sales experience, would allow him to develop and succeed at Excel.

E. Eways Employment Agreement And His Contractual Commitments To Excel

37. Eways executed an Employment Agreement dated January 25, 2018 as a condition of his employment memorializing the terms and conditions of his employment.

38. The initial term of Eways' employment was February 12, 2018 to December 31, 2019, but it was extended through December 31, 2021. Eways was paid a signing bonus, a substantial base salary, and incentive payments based upon his participation in a Sales Incentive Plan.

39. Eways' Employment Agreement described his responsibilities, in relevant part, as:

[L]eading basketball talent marketing sales, generating sales across other Company divisions, managing and training junior sales agents assigned to Employee, and any and all other general administrative and managerial tasks as directed by the Company.

40. The Employment Agreement further memorialized Eways' contractual commitments to Excel upon which his employment was conditioned. He agreed that:

[H]e owe[d] a fiduciary duty to act loyally for the Company's benefit in all matters relating to his employment with the Company [and that he would] devote all of his working time, attention, knowledge and skills to the Company's business interests...

41. Eways acknowledged his exposure to Excel's confidential information:

Employee understands that the nature of Employee's position gives the Employee access to and knowledge of Confidential Information and placed Employee in a position of trust and confidence with the Company. Employee understands and acknowledges that the intellectual and/or artistic services Employee provides to the Company are unique, special, or extraordinary because, among other things, ***the ability of Employee to establish, foster and maintain unique relationships with, and marketing and sales strategies for the benefit of, the Company's clients.*** Employee further understands and acknowledges that the Company's ability to reserve these for the exclusive knowledge and use of the Company is of great competitive importance and commercial value to the company and that the

improper use or disclosure by the Employee is likely to result in unfair or unlawful competitive activity.

42. Further, he acknowledged that Excel:

[The] Company has invested, and continues to invest, substantial time, money, and specialized knowledge into developing its resources, creating a client base, generating client and potential client lists, training its employees, *and improving its offerings in the talent representation and sports marketing industries*. Employee understands and acknowledges that as a result of these efforts, Company has created, and continues to use and create, Confidential Information. This Confidential Information provides Company with a competitive advantage over others in the marketplace. Employee further acknowledges and agrees that, during the course of Employee's employment with the company, Employee will be given access to and become acquainted with Company confidential information and trade secrets, including, without limitation, the following...business plans and strategies, contracts, contract terms, pricing policies, commission rates, pricing information, marketing recruiting and promotional strategies, client lists, contact details of clients, personnel lists, personnel data, organizational structure, compensation structure, and other similarly confidential or proprietary materials...

43. To protect Excel's confidential information, Eways agreed he would not:

[D]uring the course of employment or at any time following the termination (voluntary or otherwise) of Employee's employment relationship with the Company, either directly or indirectly, or by action in concert with others, either for Employee's own benefit or for the benefit of any other person or ...disclose, disseminate or publish any Confidential Information...in any manner without the prior written consent of the Company[.]

44. Eways also agreed to restrictions on his ability to solicit Excel's professional athlete

clients as follows:

For a period of eight (8) months following the termination (voluntary or otherwise) of Employee's employment relationship with the Company, Employee shall not directly or indirectly, or by action in concert with others, either for Employee's own benefit or for the benefit of any other person or entity, represent as a client or provide services to, or solicit to represent as a client or provide services to....any person or entity that (i) was a client of the company within the twelve (12) month period preceding the termination of Employee's employment with the Company and with whom Employee, or other employees of the Company reporting to or working with Employee, had dealings while Employee was employed with the Company, or (ii) was a prospective client of the Company who was actively solicited by the company within the twelve (12) month period preceding the termination of Employee's employment with the Company and Employee participated in such solicitation.

45. And finally, Eways agreed to a non-compete provision providing as follows:

For a period of eight (8) months following the termination (voluntary or otherwise) of Employee's employment relationship with the Company, Employee will not directly or indirectly, perform services in the [United States] in the nature of services performed for the Company on behalf of...any Primary Competitor.

Id. at Ex. B, ¶ (c).

46. "Primary Competitor" is defined to include only those agencies that Excel determined constitute competitors positioned to unfairly compete with it through the exploitation of Excel's confidential information and relationships. One of those agencies was Klutch.

47. The non-compete restriction was crafted to narrowly protect Excel from the specific harms it believed Eways could inflict on its legitimate business interests by virtue of his senior position. Eways agreed that his actual or threatened breach(es) of his contractual obligations to Excel would effect irreparable harm on Excel and that Excel would be entitled to a temporary restraining order and preliminary and permanent injunctive relief.

48. Each of Eways' contractual commitments were designed to survive termination of Eways' employment or the expiration of the Employment Agreement.

49. The Employment Agreement and surviving contractual commitments are controlled by New York law.

F. Excel's Investment In Training And Developing Eways To Provide Unique And Specialized Services

50. Given Eways' lack of experience, Excel devoted extensive time and resources into his development and essentially provided him with its own playbook on off-court marketing that provided it with success in competing with other agencies for marketing opportunities for its NBA Talent.

51. To begin, Excel immediately integrated Eways' into its team of NBPA-certified player agents, who represent Excel's NBA Talent with respect to team contracts, and marketing managers, who, among other things, support Excel's NBA Talent by managing their commitments under marketing deals. His immersion within Excel's basketball function was supplemented by periodic and ongoing internal and external trainings designed to convert his general sales skills into an expertise in talent sales.

52. Excel hired additional personnel to directly support Eways in any capacity he deemed necessary.

53. Excel invested heavily in publicizing and promoting Eways to the basketball community at large including paying for him to attend high-profile events, conferences, and key meetings, for the purpose of allowing him to develop relationships with corporate sponsors in those markets.

G. Eways' Exposure To Excel's Confidential Information And Relationships

i. Off-Court Marketing Business

54. Excel introduced Eways to its existing brand partners that Excel knew were predisposed to allocating marketing budgets towards endorsements with professional athletes. Eways did not have any pre-existing relationships with brand partners developed for the purpose of providing professional athletes for marketing campaigns.

55. Excel maintains a detailed electronic profile on each of these brand partners that contains, among other information: (i) all points of contact within the relationship, including personal details on each of those points of contact; (ii) all historical deals and deal terms; (iii) information about proposed marketing campaigns and the "story" a given brand partner likes to

tell through advertising; and (iv) relevant information learned by any Excel employee concerning the brand partner.

56. Excel also paved the way for Eways to have an audience with numerous new brand partners. Eways' association with Excel provided him with a significant advantage in developing relationships as companies knew that Excel boasted a roster of some of the most marketable talent in professional basketball.

57. The relationships Excel supported him in developing allowed him to serve as the repository of critical brand partner information, such as campaigns, budgets, and preferences, to be used strategically by Excel for its benefit and that of its NBA Talent.

58. Excel also granted Eways access to intimate and confidential details on its NBA Talent, which allowed him to paint a portrait of how they might be pitched for marketing purposes, as well information concerning their historical deals, which allowed him to assess viable opportunities and develop negotiation strategies.

59. Eways was also privy to Excel's most sensitive marketing strategies and initiatives as the most senior executive responsible for off-court basketball marketing. Indeed, as recently as November 2021, Eways attended Excel's annual basketball summit where Excel disclosed its strategic roadmap for the continued growth and expansion of Excel's presence in basketball.

60. Excel's unique and specialized marketing processes, strategies, and "know-how" is perhaps its biggest competitive advantage in the industry. Many of Excel's competitors are fairly young entrants into the industry. Excel, in contrast, was founded by successful industry agents who have worked tirelessly over the last 20 years to outperform competitors by installing critical business processes and deploying novel marketing strategies. Excel's business model, and its constituent components, are a differentiator among its competitors.

61. Excel takes reasonable measures to protect the secrecy of much of the information outlined above. These measures including maintaining IT security and infrastructure; ensuring compliance with documented security policies and protocols focused on protecting data from being accessed by unauthorized users, both inside and outside Excel; utilizing unique user IDs and strong passwords; and requiring all employees to sign confidentiality agreements, which notify employees that the disclosure of confidential information is strictly prohibited.

62. Collectively, Excel's investments, its relationships, its stature and roster of NBA Talent, and its confidential information and unique marketing approach, armed Eways with the tools to succeed in a field with which he had limited direct experience before joining Excel and developed him into a successful and valuable asset for Excel in growing corporate relationships that translated into marketing opportunities for Excel's NBA Talent.

ii. NIL Business

63. The NIL business is a new and fertile opportunity for agencies to establish relationships with student-athletes before they become professional through the provision of representation for the purposes of marketing opportunities.

64. Excel directed Eways to assume responsibility for working with Excel's analytics division to develop a proprietary analytical tool for purposes of identifying and recruiting potential NIL athletes. Eways also developed Excel's recruiting pitches for student-athletes focused on the marketing opportunities Excel could present. In short, Eways served as a key member of Excel's leadership team in creating the blueprint for Excel's success in this highly competitive and emerging business.

iii. Properties Business

65. Although Eways did not have direct responsibility for Excel's Properties business, he was regularly exposed to Excel's confidential information in this space during twice-weekly sales meetings.

66. For example, Eways was exposed to the status of ongoing or potential projects, the identities of brand partners that expressed an interest in participating in a properties partnership, the budgets and specific types of projects such brand partners expressed an interest, and deal terms and structures, the latter of which were always memorialized with confidentiality clauses. Eways also learned of Excel's pricing structures through which it generates revenue from the sports properties it represents.

H. Eways' Performance And Conduct Leading Up To The Resignation Of His Employment

67. Armed with Excel's confidential information, equipped with the training and tools bestowed on him, buttressed by Excel's NBA Talent, and capitalizing on Excel's corporate relationships, Eways performed well for the bulk of his tenure at Excel, securing millions of dollars in off-court marketing opportunities for Excel's NBA Talent.

68. However, his performance declined in the months leading to his resignation of employment. Specifically, the value of marketing opportunities he secured for Excel's NBA Talent fell 78% from the same three-month period a year prior.

69. In November 2021, Eways verbally agreed to a further two-year extension of his Employment Agreement through December 2023. Despite being presented with a written extension memorializing the verbal agreement, he never signed it.

70. On February 15, 2022, Eways emailed Excel's President and Chief Business Officer to inform them of his resignation, effective immediately. That same day, Excel sent Eways a letter reminding him of his post-employment obligations to Excel.

71. On or about February 17, Excel learned that Eways accepted employment with Klutch and, according to his LinkedIn profile, he began as its Head of Marketing as of March 2022. Upon information and belief, his duties and responsibilities with Klutch are coextensive with, or greater than, his duties and responsibilities at Excel and including oversight of off-court marketing opportunities for professional athletes.

72. On or about February 24, Excel, through counsel, notified Klutch of Eways' post-employment obligations to Excel. On February 28, Klutch acknowledged receipt and stated that it nevertheless intended to continue Eways' employment.

I. Eways' And Klutch's Conduct Constitutes Unfair Competition That Unlawfully And Irreparably Harms Excel

73. By virtue of his employment with Klutch, Eways has wrongfully violated his reasonable non-compete agreement which is narrowly tailored to protect Excel's legitimate business interests.

74. By virtue of his employment with Klutch, Eways has wrongfully violated his duty of loyalty and fiduciary duty to Excel.

75. By virtue of his employment with Klutch, Eways has wrongfully redirected brand partner relationships and goodwill, to which he was introduced and permitted to develop for the benefit of Excel, to Klutch, harming Excel's legitimate business interests.

76. By virtue of his employment with Klutch, Excel's NBA Talent will lose off-court marketing opportunities, and Excel will lose resultant commissions, the number and value of which cannot be calculated, harming Excel's legitimate business interest.

77. By virtue of his employment with Klutch, Eways has denied Excel the value of his unique and specialized services, including the brand partner relationships Excel supported him in establishing, which he developed only because of Excel's investment of time and resources in him and in which Excel as a legitimate business interest.

78. By virtue of his employment with Klutch, Eways will wrongfully and inevitably disclose non-public and confidential information that Excel took reasonable steps to protect from the view of the public and its competitors, including but not limited to: (i) marketing plans and strategies; (ii) brand partner information, preferences, and historical deal terms; (iii) personal and confidential information concerning Excel's NBA Talent; (iv) its analytical tool and the data used to develop the same, supporting Excel's NIL business; and (v) pricing, deal terms, and brand partner information for use in Excel's Properties business, which individually or collectively, will harm Excel's legitimate business interest in keeping this information protected from competitors.

79. Klutch tortiously interfered with Excel's contractual rights by inducing and aiding and abetting Eways to breach his Employment Agreement and/or employing and/or continuing to employ Eways despite being on notice of Eways' contractual and other post-employment obligations to Excel, contributing to the harms to Excel's legitimate business interests identified above.

80. Klutch has also wrongfully capitalized on the investment Excel made in Eways, wrongfully taken the brand partner relationships belonging to Excel, wrongfully taken off-court marketing opportunities belonging to Excel and its NBA Talent, and wrongfully taken the confidential information entrusted to Eways, all for the purpose of unfairly competing with Excel.

COUNT I**BREACH OF CONTRACT
(Against Eways)**

81. Excel incorporates by reference and realleges the allegations contained in Paragraphs 1 through 80 above as if fully set forth herein.

82. Eways entered into a valid, binding and enforceable Employment Agreement with Excel that required him to protect and not disclose Excel's confidential information and which required him not to work for a selection of competing sports marketing agencies for a period of eight months.

83. These restrictions survived the termination of the Employment Agreement and the termination of Eways' employment.

84. The restrictions on Eways' ability to disclose confidential information or to accept employment with one of the identified sports marketing agencies, including Klutch, are reasonable in scope and duration, narrowly tailored to protect Excel's legitimate business interests, and due not impose an undue burdens on Eways.

85. Excel performed all of its obligations under the Employment Agreement.

86. Eways breached his obligations under the Employment Agreement by accepting competitive employment with Klutch in violation of the non-compete provision, and has breached or will breach his confidentiality obligations by having disclosed, or inevitably disclosing, Klutch's confidential information.

87. Eways' breach of his contractual duties will directly and proximately cause Excel to suffer irreparable damage and injury, as outlined above, and it will be impossible to ascertain with any degree of certainty the exact amount in money damages that will be caused to Excel and that Excel will continue to suffer by Eways' continued acts.

88. Excel has also incurred incidental and consequential damages that were reasonably within the anticipation of Excel and Eways when he entered into the Employment Agreement.

89. Excel's damages cannot be adequately compensated through remedies at law alone, thereby requiring equitable relief in addition to compensatory and punitive relief.

COUNT II

BREACH OF FIDUCIARY DUTY AND DUTY OF LOYALTY (Against Eways)

90. Excel incorporates by reference and realleges the allegations contained in Paragraphs 1 through 89 above as if fully set forth herein.

91. By virtue of Eways' contractual and employment relationship with Excel, Excel reposed trust and confidence in Eways to provide services, and to refrain from acting in any manner contrary to Excel's interests.

92. Eways undertook such trust and confidence.

93. By reason of the foregoing, Eways owed Excel a fiduciary duty and duty of loyalty to act in good faith and in Excel's best interests. Eways owed these duties to Excel independent of any contractual obligations to the Company.

94. Such fiduciary duty and duty of loyalty owed by Eways to Excel existed throughout his employment with Excel and survived the termination of that employment.

95. Eways breached his fiduciary duty and duty of loyalty to Excel by engaging in the wrongful activity as described herein including, but not limited to, absconding with Excel's brand partner relationships, attending a highly sensitive sales meeting at a time when he was preparing to depart for Klutch, and joining Klutch with an intention (or a necessity) to disclose Excel's confidential business information.

96. Eways' actions were and are willful and malicious and without legal justification or excuse.

97. Eways' breach of his fiduciary duty and duty of loyalty has and will continue to directly and proximately cause substantial damage to Excel and its business, including damage to its reputation.

98. Eways' breach of his fiduciary duty and duty of loyalty has and will continue to directly and proximately cause Excel to suffer great and irreparable damage and injury, and it will be impossible to ascertain with any degree of certainty the exact amount in money damages that will be caused to Excel. Excel will continue to suffer by Eways' continued acts.

COUNT III

TORTIOUS INTERFERENCE WITH CONTRACT (Against Klutch)

99. Excel incorporates by reference and realleges the allegations contained in Paragraphs 1 through 98 above as if fully set forth herein.

100. The Employment Agreement executed by Eways constitutes a valid and enforceable contract and Eways' contractual commitments which survive the termination of the Employment Agreement and his employment with Excel are reasonable in geographic and temporal scope, narrowly tailored to protect Excel's legitimate business interests, and do not impose an undue burden on Eways.

101. Excel has a contractual and business expectancy that Eways would abide by the restrictions in the Agreement.

102. Upon information and belief, Klutch was aware of the restrictive covenants contained in the Employment Agreement executed by Eways, and the attendant contractual and business expectancies between Excel and Eways.

103. Upon information and belief, despite Klutch's awareness of Excel's contractual and business expectations, Klutch intentionally and without justification sought to interfere with those expectancies and aid and abet Eways' breach of his Employment Agreement with Excel.

104. Upon information and belief, Klutch encouraged and solicited Eways to leave Excel and join Klutch in breach of his post-employment obligations.

105. Upon information and belief, Klutch also encouraged and solicited Eways to take, disclose, and use on Klutch's behalf Excel's business relationships, trade secrets and other confidential and proprietary information.

106. Upon information and belief, Klutch's acts of tortious interference with Excel's contractual relationship with Eways is without justification and was unlawfully motivated by Klutch's desire to misappropriate Excel's business relationships, trade secrets and other confidential and proprietary information.

107. Whether Klutch knew of Eways' contractual commitments at the time it recruited him or not, Klutch has since been put on notice, has acknowledge the same, and has committed to employing Eways in breach of those contractual commitments.

108. Klutch's actions were a significant factor in causing and now perpetuating Eways' breach of his contractual commitments to Excel.

109. Klutch's acts of tortious interference with Excel's contract with Eways has and will continue to directly and proximately cause Excel to suffer great and irreparable damage and injury, and it will be impossible to ascertain with any degree of certainty the exact amount in money damages that will be caused to Excel and that Excel will continue to suffer by the continued acts of Klutch.

COUNT IV**TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE
(Against Klutch and Eways)**

110. Excel incorporates by reference and realleges the allegations contained in Paragraphs 1 through 109 above as if fully set forth herein.

111. Until the events giving rise to this action, Excel had maintained valid business relationships, or the expectancy of business relationships, with brand partners by implementing the strategies and business plans it developed at its own great cost and expense. Excel had the reasonable expectation that these relationships and prospective relationships would continue and would not be unjustifiably disrupted.

112. Upon information and belief, Klutch induced Eways to join Klutch so Eways could provide Klutch with Excel's business relationships, trade secrets, and confidential and proprietary information to lure away Excel's brand partners and usurp marketing opportunities for its benefit.

113. The provision of Excel's valuable business relationships, trade secrets, and confidential and proprietary information to Klutch is detrimental to Excel's business because it allows a direct competitor to improperly benefit from the time and expense invested by Excel in the creation of such business relationships, trade secrets, and confidential and proprietary information to create brand partner deals and relationships for its athlete clients and expand its market share.

114. As a result of Defendants' intentional tortious acts, Excel's brand partner relationships and business expectancies have been and will continue to be damaged.

115. Defendants' acts of tortious interference with Excel's prospective economic relations will directly and proximately cause substantial damage to Excel and its business.

116. Defendants' acts of tortious interference with Excel's prospective economic relations will directly and proximately cause Excel to suffer great and irreparable damage and injury, and it will be impossible to ascertain with any degree of certainty the exact amount in money damages that will be caused to Excel and that Excel will continue to suffer by the continued acts of Defendants.

COUNT V

UNFAIR COMPETITION (Against Klutch and Eways)

117. Excel incorporates by reference and realleges the allegations contained in Paragraphs 1 through 116 above as if fully set forth herein.

118. During his employment with Excel, Eways had access to Excel's trade secrets and confidential and proprietary information.

119. In addition to his regular exposure to Excel's marketing strategies and information, brand partner relationships and information, and NBA Talent information, Eways also: (i) assisted with the development of an analytical to support Excel's NIL business; (ii) had access to brand partner and pricing information used in Excel's Properties business; and (iii) attended Excel's Annual Sales and Marketing Summit in November 2021, where Excel shared its business plans and marketing strategies for the off-court marketing and NIL business.

120. Upon information and belief, Eways' job responsibilities at Klutch are substantially similar to those he performed for Excel such that he will not be able to fulfill his responsibilities at Klutch without disclosing or using Excel's trade secrets and confidential and proprietary information. Such inevitable disclosure to Klutch further violates Eways' duty to refrain from divulging Excel's trade secrets and confidential and proprietary information.

121. Upon information and belief, Eways and Klutch intend to and will utilize Excel's trade secrets and confidential and proprietary information to usurp Excel's marketing opportunities, to persuade Excel's NBA Talent to contract with Klutch for representation, and to anticipate Excel's business plans and strategies, replicate its services, and unfairly compete against Excel in the sports management and marketing industry. In doing so, Defendants have exploited commercial advantages belonging to Excel and have acted in bad faith.

122. Defendants' acts of unfair competition will directly and proximately cause substantial damage to Excel and its business.

123. Defendants' acts of unfair competition will directly and proximately cause Excel to suffer great and irreparable damage and injury, and it will be impossible to ascertain with any degree of certainty the exact amount in money damages that will be caused to Excel and that Excel will continue to suffer by the continued acts of Defendants.

COUNT VI

INJUNCTIVE RELIEF (Against Klutch and Eways)

124. Excel incorporates by reference and realleges the allegations contained in Paragraphs 1 through 123 above as if fully set forth herein.

125. As set forth above, Eways is in breach of the Employment Agreement by virtue of accepting employment with Klutch and performing similar, if not the same, duties as his role with Excel, including sourcing and securing off-court marketing opportunities through brand partners for the benefit of Klutch, and in other particulars to be adduced through further investigation, discovery, or at trial.

126. As a direct and proximate result of Eways' breach of contract, and Klutch's inducement of the same, Excel's business has been damaged.

127. Because of the nature of Defendants' conduct, there is a strong likelihood that Excel will succeed on the merits of each of its claims if this case proceeds to trial.

128. Because of the nature of Defendants' conduct and the substantial similarity between Eway's current work for Klutch and his work at Excel, Defendants' conduct irreparably harms Excel's business interests in that it creates a substantial likelihood of imminent injury to its goodwill with brand partner relationships, to business opportunities with the same, and to its business through the disclosure of its confidential information that it took reasonable steps to protect from disclosure.

129. Immediate injunctive relief is therefore necessary to protect Excel's interests during the pendency of this action including: (i) preventing Eways from breaching, or continuing to breach, his obligations under the Employment Agreement; (ii) preventing Klutch from inducing and/or aiding and abetting Eways' breach of his Employment Agreement; (iii) preventing Klutch from using Excel's confidential information; and (iv) prohibiting Defendants from unfairly competing with Excel.

WHEREFORE, Excel respectfully prays the Court that:

1. The Court enter a temporary restraining order enjoining:
 - (a) Klutch from employing or otherwise engaging Eways for the full duration of the non-compete period set forth in his Employment Agreement;
 - (b) Eways from violating his Employment Agreement, including, but not limited to, the confidentiality and non-compete obligations contained therein;
 - (c) Defendants and their agents, servants, employees, officers, attorneys, successors, licensees, partners, and assigns, and all other persons acting in concert with them:

(i) from all misappropriation, disclosure, or use of Excel's trade secrets and confidential and proprietary information;

(ii) from all further violation of or tortious interference with Excel's agreements with Eways and/or its prospective economic relations; and

(iii) from engaging in any unfair competition.

2. The Court enter a subsequent preliminary injunction enjoining Defendants from engaging in conduct in violation of the Employment Agreement and unfairly competing with Excel until such time as this case can be decided on its merits;

3. The Court find Eways' conduct in violation of the Employment Agreement and the contractual obligations owed by him to Excel;

4. The Court enter a judgment permanently enjoining Eways from violating the non-compete provision for eight (8) months from the date of such Order plus such additional time during which Eways was in breach of the Employment Agreement;

5. The Court enters a Judgment enjoining Defendants from unfairly competing with Excel;

6. The Court award damages in an amount to be determined at trial for Eways' breach of contract;

7. The Court award damages in an amount to be determined at trial for Eways breach of his duty of loyalty and fiduciary duty;

8. The Court award damages in an amount to be determined at trial for Klutch's tortious interference with Excel's contractual rights;

9. The Court award damages in an amount to be determined at trial for Defendants' tortious interference with economic relations;

10. The Court award Excel all attorneys' fees, costs and disbursements incurred by it in this action, together with pre-judgment and post-judgment interest; and

11. The Court award such other and further relief as the Court deems just and proper.

ComDated: New York, New York
March 7, 2022

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