

March 20, 2023

**BY E-MAIL AND FEDERAL EXPRESS**

Shumaker, Loop & Kendrick, LLP  
101 South Tryon Street, Suite 2200  
Charlotte, North Carolina 28280  
Attention: Patrick B. Horne, Esq.

Re: Purported Notice to the Secretary of the Nomination of Persons for Election as Directors at the 2023 Annual Meeting of Stockholders of Vinco Ventures, Inc.

Dear Mr. Horne:

I write on behalf of our client, Vinco Ventures, Inc. (the “*Company*”), in response to the letter, dated March 16, 2023 (collectively with the exhibits thereto, the “*Purported Notice*”), from your client, Austin L. Gilmore, purporting to serve as notice to the Company of Mr. Gilmore’s intention to nominate Shadwick J. Vick, Lorne Ross, and Christopher L. Muntz (each a “*Purported Nominee*” and collectively, the “*Purported Nominees*”) for election to the Company’s board of directors (the “*Board*”) at the Company’s 2023 annual meeting of stockholders (the “*Annual Meeting*”). Subsequently, on March 20, 2023, you notified the Company that Mr. Ross requested that Mr. Gilmore withdraw his nomination of Mr. Ross for election to the Board at the Annual Meeting.

The Company has reviewed the Purported Notice and has determined that it is defective because it failed to make certain disclosures required by Article II, Section 2.5 of the Company’s Second Amended and Restated Bylaws (the “*Bylaws*”). Article II, Section 2.5 of the Bylaws sets forth requirements for a stockholder to provide advance notice of its intention to nominate candidates to the Board and specifies, in detail, certain information that must be fully and accurately disclosed to satisfy these requirements (the “*Advance Notice Provisions*”). By the clear terms of the Bylaws, a stockholder must comply with the Advance Notice Provisions to nominate a candidate. Article II, Section 2.5 of the Bylaws further provides that “[t]he chairman of the meeting shall refuse to acknowledge the nomination of any person . . . not made in compliance with the [Advance Notice Provisions].” Advance notice provisions, such as those found in the Bylaws, are a common fixture in modern bylaws. Indeed, the Nevada Revised Statutes explicitly permits corporations to establish advance notice requirements for the nomination of director candidates.<sup>1</sup>

The Purported Notice does not constitute valid notice of nominations for the Annual Meeting because the Purported Notice failed to satisfy the requirements set forth in the Advance Notice Provisions

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<sup>1</sup> NRS § 78.060(e) (granting the Board the power “to make bylaws not inconsistent with the Constitution or laws of the United States, or of this State, for the management, regulation and government of its affairs and property, the transfer of its stock, the transaction of its business, and the calling and holding of meetings of its stockholders.”).

in a number of material ways, as set forth herein and in Appendix A hereto. Among such reasons, and by the clear terms of the Bylaws, “[f]or nominations ... to be *properly brought* before an annual meeting by a stockholder ..., *the stockholder of record* must have given timely notice thereof in writing to the secretary of the corporation...” (emphases added). However, as evidenced by the Company’s certified list of record holders, Mr. Gilmore was not a stockholder of record on March 16, 2023, the date that the Purported Notice was submitted) (the “*Notice Delivery Date*”). Pursuant to the Bylaws, a qualifying and complete stockholder’s notice of nomination must be delivered to the secretary of the Company on the tenth calendar day following the public announcement of the date of such meeting. As it relates to the Annual Meeting, the final date by which a qualifying and complete nomination notice must be delivered was March 19, 2023. The Purported Notice therefore is invalid, and the period during which stockholders may lawfully and timely submit nominations in connection with the Annual Meeting has passed. Due to the numerous material deficiencies and the expiration of the deadline for delivering notice of intention to nominate candidates for election as directors at the Annual Meeting (the “*Notice Deadline*”), Mr. Gilmore is therefore not eligible to nominate persons for election to the Board at the Annual Meeting.

As a matter of basic Nevada corporate law, record ownership is distinct from beneficial ownership in that a stockholder of record holds its shares directly with a company and appears, therefore, on the stock ledger of the company as the owner of record of shares of any class or series of the stock of the company. The term does not include a beneficial owner of shares who is not simultaneously the owner of record of such shares as indicated in the stock ledger.<sup>2</sup> The Company has confirmed that Mr. Gilmore does not appear on the Company’s stock ledger on both the Notice Delivery Date and the Notice Deadline. Compliance with the record ownership requirement is a foundational prerequisite to nominations because it serves as the sole confirmation of the status of a person that delivers a notice as a stockholder entitled to nomination rights.

Several additional deficiencies are a result of Mr. Gilmore’s failure to move shares into record name as of the Notice Delivery Date and the Notice Deadline. Pursuant to Article II, Section 2.5(c) of the Bylaws, a stockholder’s notice of nomination must set forth “as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made ... the class and number of shares of stock of the corporation which are owned of record by such stockholder and such beneficial owner as of the date of the notice ...” While Mr. Gilmore stated that he is the beneficial owner of 64,036.83 shares of the Company’s common stock, par value, \$0.001 per share (the “*Common Stock*”), Mr. Gilmore did not disclose any record ownership. As record ownership is required by the Bylaws in order to submit qualifying nominations, the absence of any disclosure by Mr. Gilmore related to record ownership compounds the materiality of this deficiency.

Moreover, the Purported Notice references a non-existent status of Common Stock ownership, describing that “[Mr. Gilmore] is a *beneficial holder of record* of Common Stock.” Yet, no such status or class of “beneficial holder of record” exists.

Further, the Purported Notice is required to include a “representation that the stockholder will notify the corporation in writing within five (5) business days after the record date for such meeting of the

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<sup>2</sup> NRS § 78.010(k).

class and number of shares of stock of the corporation owned of record by the stockholder and such beneficial owner as of the record date for the meeting.”<sup>3</sup> However, the Purported Notice states Mr. Gilmore will notify the Company of the “class and number of shares of stock ... [he owns] of record *or* beneficially ...” (emphasis added). Mr. Gilmore must provide such information for the class and number of shares that he owns of record *and*, separately, provide such information for the class and number of shares that he owns beneficially.

Pursuant to Article II, Section 2.5(c) of the Bylaws, a stockholder’s notice of nomination must also set forth “as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made ... the name and address of such stockholder, as they appear on the corporation’s books...” However, the Purported Notice gives the address of Mr. Gilmore’s attorney as Mr. Gilmore’s address. The Purported Notice does not provide Mr. Gilmore’s address as it appears on the Company’s books.

Because Mr. Gilmore failed to comply with the Bylaws in a myriad of different ways (as further described in **Appendix A**), including, but not limited to, his failure to be a stockholder of record by the Notice Delivery Date, the Purported Notice is incurably deficient and is therefore invalid. As the Notice Deadline has passed, no further attempts by Mr. Gilmore to submit a qualifying nomination notice can be timely. Accordingly, Mr. Gilmore has failed to submit a qualifying and timely nomination notice in connection with the Annual Meeting, and he will not be permitted to make director nominations at the Annual Meeting. In light of the Company’s rejection of the Purported Notice, please confirm if Mr. Gilmore will irrevocably withdraw the Purported Notice by the close of business on March 21, 2023. Any failure to withdraw will have no effect on Mr. Gilmore’s inability to submit nominations in connection with the Annual Meeting. However, it might allow Mr. Gilmore to avoid any adverse public reaction to the Company rejecting his deficient and invalid Purported Notice.

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Please address any correspondence to the Company’s counsel, Jolie Kahn, Esq., 12 E. 49th Street, 11th floor, New York, New York 10017. This letter is being sent on behalf of the Company, while expressly reserving, and without waiving, any and all rights and defenses that the Company may have with respect to this matter.

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<sup>3</sup> See Article II, Section 2.5(c) of the Bylaws, and Article II, Section 2.5(d)(i), which requires, in part, “a representation that the stockholder will notify the corporation in writing within five (5) business days after the record date for such meeting of the class and number of shares of stock of the corporation beneficially owned by such shareholder...as of the record date for the meeting.”

Very truly yours,

A handwritten signature in blue ink, appearing to read 'L. Elbaum', written in a cursive style.

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Lawrence S. Elbaum

cc: C. Patrick Gadson (pgadson@velaw.com)  
Jolie Kahn (joliekahnlaw@sbcglobal.net)

## Appendix A

### **Additional Deficiencies in the Purported Notice**

1. Pursuant to Article II, Section 2.5(a) of the Bylaws, a stockholder's notice of nomination must set forth "as to each person whom the stockholder proposes to nominate for election or re-election as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "*Exchange Act*")," which includes Item 5(b)(1)(i) of Schedule 14A. Item 5(b)(1)(i) of Schedule 14A requires disclosure of the "business address of the participant." The Purported Notice included an address for each Purported Nominee; however, it was not stated as to whether such address is the "business address" of each Purported Nominee, as required by Item 5(b)(1)(i) of Schedule 14A.
2. Pursuant to Article II, Section 2.5(a) of the Bylaws, a stockholder's notice of nomination must set forth "as to each person whom the stockholder proposes to nominate for election or re-election as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the [Exchange Act]," which includes Item 5(b)(1)(ii) of Schedule 14A. Item 5(b)(1)(ii) of Schedule 14A requires the disclosure of each Purported Nominee's "present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment is carried on..."
  - a. The Purported Notice provided that Mr. Vick is "President and Chief Software Architect of LunaSoft, a sophisticated SaaS platform empowering SMBs." However, it failed to include the address of this organization.
  - b. The Purported Notice provided that Mr. Muntz is a "Contracting Officer and Team Lead for the Biomedical Advanced Research Development Authority ... within the Department of Health and Human Services." However, it failed to include the "principal business" and the address of this organization.
3. Pursuant to Article II, Section 2.5(a) of the Bylaws, a stockholder's notice of nomination must set forth "as to each person whom the stockholder proposes to nominate for election or re-election as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the [Exchange Act]," which includes Item 5(b)(1)(iii) of Schedule 14A. Item 5(b)(1)(iii) of Schedule 14A requires a statement "whether or not, during the past ten years, the participant has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case." The Purported Notice failed to include such information for each Purported Nominee.

4. Pursuant to Article II, Section 2.5(a) of the Bylaws, a stockholder's notice of nomination must set forth "as to each person whom the stockholder proposes to nominate for election or re-election as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the [Exchange Act]," which includes Item 5(b)(1)(v) of Schedule 14A. Item 5(b)(1)(v) of Schedule 14A requires a statement of "the amount of each class of securities of the registrant which the participant *owns of record but not beneficially*" (emphasis added).
  - a. The Purported Notice provided "Mr. Vick owns, directly or indirectly, *beneficially or of record*, 236,500 shares of Vinco Ventures, Inc. Common Stock at TD Ameritrade as of the date of this nomination and does not currently own any derivative instruments for Vinco Ventures, Inc." (emphasis added). This disclosure failed to confirm or otherwise state how many securities Mr. Vick owns *of record, but not beneficially*.
  - b. The Purported Notice provided "Mr. Muntz owns, directly or indirectly, *beneficially or of record*, 7,062 shares of Vinco Ventures, Inc. Common Stock at Robinhood and Webull and 127 options contracts with expiry on April 21, 2023--\$1 strike (derivative instruments) for Vinco Ventures, Inc. as of the date of this nomination" (emphasis added). This disclosure failed to confirm or otherwise state how many securities Mr. Muntz owns *of record, but not beneficially*.
5. Pursuant to Article II, Section 2.5(a) of the Bylaws, a stockholder's notice of nomination must set forth "as to each person whom the stockholder proposes to nominate for election or re-election as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the [Exchange Act]," which includes Item 5(b)(1)(vi) of Schedule 14A. Item 5(b)(1)(vi) of Schedule 14A requires disclosure "with respect to all securities of the registrant purchased or sold within the past two years, the dates on which they were purchased or sold and the amount purchased or sold on each such date." While the Purported Notice provided in Schedule C thereto a history of transactions with the Company, it failed to state which transactions were made by which Purported Nominee, if any. It also failed to state if these transactions were made by Mr. Gilmore or by the Purported Nominees.
6. Pursuant to Article II, Section 2.5(a) of the Bylaws, a stockholder's notice of nomination must set forth "as to each person whom the stockholder proposes to nominate for election or re-election as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the [Exchange Act]," which includes Item 5(b)(1)(vii) of Schedule 14A. Pursuant to Item 5(b)(1)(vii) of Schedule 14A, "[i]f any part of the purchase price or market value of any of the shares specified in [Item 5(b)(1)(vi) of Schedule 14A] is represented by funds borrowed or otherwise obtained for the purpose of acquiring or holding such securities, so state and indicate the amount of the indebtedness as of the latest practicable date. If such funds were borrowed or

obtained otherwise than pursuant to a margin account or bank loan in the regular course of business of a bank, broker or dealer, briefly describe the transaction, and state the names of the parties.” The Purported Notice failed to include such information for each Purported Nominee.

7. Pursuant to Article II, Section 2.5(a) of the Bylaws, a stockholder’s notice of nomination must set forth “as to each person whom the stockholder proposes to nominate for election or re-election as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the [Exchange Act],” which includes Item 5(b)(1)(viii) of Schedule 14A. Item 5(b)(1)(viii) of Schedule 14A requires a statement “whether or not the participant is, or was within the past year, a party to any contract, arrangements or understandings with any person with respect to any securities of the registrant, including, but not limited to joint ventures, loan or option arrangements, puts or calls, guarantees against loss or guarantees of profit, division of losses or profits, or the giving or withholding of proxies. If so, name the parties to such contracts, arrangements or understandings and give the details thereof.” The Purported Notice failed to include such information for each Purported Nominee.
8. Pursuant to Article II, Section 2.5(a) of the Bylaws, a stockholder’s notice of nomination must set forth “as to each person whom the stockholder proposes to nominate for election or re-election as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the [Exchange Act],” which includes Item 5(b)(1)(ix) of Schedule 14A. Item 5(b)(1)(ix) of Schedule 14A requires disclosure of “the amount of securities of the registrant owned beneficially, directly or indirectly, by each of the participant’s associates and the name and address of each such associate.” The Purported Notice failed to include such information for each Purported Nominee’s associates.
9. Pursuant to Article II, Section 2.5(a) of the Bylaws, a stockholder’s notice of nomination must set forth “as to each person whom the stockholder proposes to nominate for election or re-election as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the [Exchange Act],” which includes Item 5(b)(1)(x) of Schedule 14A. Item 5(b)(1)(x) of Schedule 14A requires disclosure of “the amount of each class of securities of any parent or subsidiary of the registrant which the participant owns beneficially, directly or indirectly.” The Purported Notice failed to include such information for each Purported Nominee.
10. Pursuant to Article II, Section 2.5(a) of the Bylaws, a stockholder’s notice of nomination must set forth “as to each person whom the stockholder proposes to nominate for election or re-election as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the [Exchange Act],” which includes Item 7(a) of Schedule 14A. Item 7(a) of Schedule 14A requires disclosure of the information required by Item 103(c)(2) of Regulation S-K. Item 103(c)(2) of Regulation S-K requires, in relevant part, disclosure of material proceedings to which

any Purported Nominee is a party adverse to the Company or any of its subsidiaries or has a material interest adverse to the Company or any of its subsidiaries. The Purported Notice failed to include such information.

11. Pursuant to Article II, Section 2.5(a) of the Bylaws, a stockholder's notice of nomination must set forth "as to each person whom the stockholder proposes to nominate for election or re-election as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the [Exchange Act]," which includes Item 7(b) of Schedule 14A. Item 7(b) of Schedule 14A requires disclosure of the information required by Item 401 of Regulation S-K.
  - a. Item 401(e)(1) of Regulation S-K requires the brief description of each Purported Nominee's "business experience during the past five years" [and] the name and principal business of any corporation or other organization in which such occupations and employment were carried on." While the Purported Notice provided a biography for each Purported Nominee, each biography did not comply with Item 401(e)(1) of Regulation S-K. For example, Mr. Vick's biography did not include the dates of his respective business experience, which makes it unclear whether the experience "during the past five years" has been provided. Mr. Muntz's biography provided his business experience for the past five years, but it failed to provide the "principal business" of such corporations and organizations.
  - b. Item 401(e)(1) of Regulation S-K also requires a brief discussion of the "specific experience, qualifications, attributes or skills that led to the conclusion that the person should serve as a director for the registrant at the time that the disclosure is made, in light of the registrant's business and structure." The Purported Notice failed to include such information for each Purported Nominee.
12. Pursuant to Article II, Section 2.5(a) of the Bylaws, a stockholder's notice of nomination must set forth "as to each person whom the stockholder proposes to nominate for election or re-election as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the [Exchange Act]," which includes Item 7(b) of Schedule 14A. Item 7(b) of Schedule 14A requires disclosure of information set out in Item 407 of Regulation S-K. Item 407(a)(1) of Regulation S-K requires identification of "each nominee for director ... that is independent under the independence standards applicable to the registrant." The Purported Notice failed to identify whether the Purported Nominees are independent under the independence standards applicable to the Company.
13. Pursuant to Article II, Section 2.5(a) of the Bylaws, a stockholder's notice of nomination must set forth for each Purported Nominee "such person's written consent to being named in the corporation's proxy statement as a nominee and to serving as a director if elected." Each Purported Nominee provided a consent to "being named in a proxy statement and other proxy materials filed



with the United States Securities and Exchange Commission as a nominee for election to the Board” (emphasis added). However, pursuant to Rule 14a-4 of the Exchange Act, to be a “bona fide nominee,” each Purported Nominee must consent to “being named in a proxy statement *relating to the registrant’s next annual meeting of shareholders at which directors are to be elected ... and to serve if elected*” (emphasis added). Each Purported Nominee’s consent failed to provide that such Purported Nominee consents to being named in a proxy statement *related to the Company’s 2023 Annual Meeting*, as required by Rule 14a-4 of the Exchange Act.

14. Pursuant to Article II, Section 2.5(d)(ii) of the Bylaws, a stockholder’s notice of nomination must set forth “as to the stockholder giving the notice ... a description of any agreement, arrangement or understanding with respect to the nomination or other business between or among such stockholder or beneficial owner or control person and any other person, including without limitation any agreements that would be required to be disclosed pursuant to Item 5 or Item 6 of Exchange Act Schedule 13D (regardless of whether the requirement to file a Schedule 13D is applicable to the stockholder, beneficial owner or control person) and a representation that the stockholder will notify the corporation in writing within five (5) business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting.” The Purported Notice failed to include such information.
15. Pursuant to Article II, Section 2.5(d)(iii) of the Bylaws, a stockholder’s notice of nomination must set forth “as to the stockholder giving the notice ... a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder’s notice by, or on behalf of, such stockholder or beneficial owner and by any control person or any other person acting in concert with any of the foregoing, the effect or intent of which is to mitigate loss, manage risk or benefit from changes in the share price of any class of the corporation’s stock, or maintain, increase or decrease the voting power of the stockholder or beneficial owner with respect to shares of stock of the corporation, and a representation that the stockholder will notify the corporation in writing within five business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting.” The Purported Notice failed to include such information.
16. Pursuant to Article II, Section 2.5(d)(iv) of the Bylaws, a stockholder’s notice of nomination must set forth “as to the stockholder giving the notice ... a representation whether the stockholder or the beneficial owner, if any, and any control person will engage in a solicitation with respect to the nomination or business and, if so, the name of each participant (as defined in Item 4 of Schedule 14A under the Exchange Act) in such solicitation and whether such person intends or is part of a group which intends to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the corporation’s outstanding stock required to approve or adopt the business to be proposed (in person or by proxy) by the stockholder.” The Purported Notice failed to include such information.

17. Pursuant to Article II, Section 2.5(e) of the Bylaws, a stockholder's notice of nomination must include "a certification that the stockholder giving the notice and the beneficial owner(s), if any, on whose behalf the nomination is made ..., has or have complied with *all applicable federal, state and other legal requirements* in connection with such stockholder's and/or each such beneficial owner's acquisition of shares of capital stock or other securities of the corporation and/or such stockholder's and/or each such beneficial owner's acts or omissions as a stockholder of the corporation, including, without limitation, in connection with such nomination or proposal" (emphasis added). The Purported Notice provided that Mr. Gilmore has "complied with all *relevant securities laws ...*" not "*all applicable federal, state and other legal requirements,*" which is not limited to securities laws, as required by Article II, Section 2.5(e) of the Bylaws (emphases added). Further, the Purported Notice provided that this is "in connection with [Mr. Gilmore's] ownership of the Company's stock." Article II, Section 2.5(e) more broadly requires this certification to be "in connection with the "acquisition of shares... and/or acts or omissions as a stockholder of the corporation, including, without limitation, in connection with such nomination or proposal."
18. The Purported Notice failed to satisfy Rule 14a-19 of the Exchange Act. Pursuant to Rule 14a-19, "[n]o person may solicit proxies in support of director nominees other than the registrant's nominees unless such person ... provides notice to the registrant in accordance with [Rule 14a-19(b)]." Pursuant to Rule 14a-19(b) of the Exchange Act, Mr. Gilmore is required to provide notice to the Company by March 19, 2023.<sup>4</sup> While Mr. Gilmore delivered the Purported Notice on March 16, 2023, it did not comply with Rule 14a-19(b) of the Exchange Act. Such notice must "[i]nclude a statement that such person intends to solicit the holders of shares representing at least 67% of the voting power of shares entitled to vote on the election of directors in support of director nominees other than the registrant's nominees." The Purported Notice failed to include such a statement.

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<sup>4</sup> Under Rule 14a-19(b)(1) of the Exchange Act, such stockholder must provide notice "by the later of 60 calendar days prior to the date of the annual meeting or the 10<sup>th</sup> calendar day following the day on which public announcement of the date of the annual meeting is first made by the registrant."