

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

Case No. 02-02535 CA

Division: CV-B

U-CAN-II, INC., a Florida corporation,)

Plaintiff,)

vs.)

RICHARD SETZER, SETZER)

INTERNATIONAL, INC., a South Carolina)
corporation; HAROLD GOOCH, JR.; GOOCH)

SUPPORT SYSTEMS, INC., a North Carolina)
corporation; GOOCH ENTERPRISES, INC.,)

a Florida corporation; BILLY S. (“BILL”))
CHILDERS; TNT, INC., a North Carolina)

corporation; THOMAS D. (“TIM”) FOLEY;)
T&C FOLEY, INC., a Florida corporation;)

STEVEN S. WOODS; G.F.I. INTERNATIONAL,)
INC., a Florida corporation; PRO NET GLOBAL)

ASSOCIATION, INC., a Delaware corporation;)
DON BRINDLEY; GLOBAL SUPPORT)

SERVICES, INC., a Delaware corporation;)
PRO NET GLOBAL I, INC., a Delaware)

corporation; JOHN DOE; RICHARD ROE;)
and other unknown conspirators,)

Defendants.)

_____)

FIRST-AMENDED COMPLAINT

Plaintiff U-Can-II, Inc. sues Defendants Richard Setzer; Setzer International, Inc.; Harold Gooch, Jr.; Gooch Support Systems, Inc.; Gooch Enterprises, Inc.; Billy S. (“Bill”) Childers; TNT, Inc.; Thomas D. (“Tim”) Foley; T&C Foley, Inc.; Steven S. Woods; G.F.I. International, Inc.; Pro

Net Global Association, Inc.; Don Brindley; Global Support Services, Inc.; Pro Net Global I, Inc.; John Doe; Richard Roe and other unknown conspirators, and alleges:

Introduction

1. This cause arises out of business relationships between Plaintiff U-Can-II and Defendants complementary to what may be commonly referred to as the Amway business. Amway is an international multi-level marketing firm based in Michigan. This dispute does not directly involve the purchase or sale of Amway products. Instead, it pertains to what may be referred to as the Amway-related "**tool and function business**" more particularly described below. (Note: Terms in bold type are defined below in the accompanying **Glossary of Terms** on page 74.) The tool and function business is not a part of Amway itself, but pertains to the promotion of Amway through the independent efforts of Amway distributors. The parties hereto are or were engaged in the tool and function business, which Defendants sought to monopolize.

2. Brig and Lita Hart (the "**Harts**") are the principals of a heretofore tremendously successful Amway distributorship, a non-party hereto. Plaintiff corporation, U-CAN-II, Inc., is owned by the Harts and facilitated the Harts' tool and function business. Over a period of 23 years, the Harts built a domestic and international network of over 200,000 independent downline distributors (the "**Hart Network**"), achieving the coveted "Double Diamond" status in Amway. The Hart Network represents one of the very largest networks or "legs" within the Amway multi-level marketing network. The Hart Network is extremely valuable to the Harts as a means of selling Amway's products. And, equally important, it serves as a huge ready market for the Plaintiff's participation within the tool and function business. This, too, was recognized by the Defendants.

3. The causes of action hereinafter set forth, arising out of a common series of transactions and occurrences, are based upon the Defendants and their co-conspirators conducting a wrongful and illicit scheme to misappropriate the Plaintiff's tool and function business. Of particular concern is the Defendants' ongoing efforts to illegally **boycott** the Harts. The Defendants' activities give rise to liability under various common law and statutory causes of action, including violation of the Florida antitrust laws due to Defendants' efforts to monopolize, control and manipulate the tool and function business. In substance, the Defendants' ruthless pursuit of the Plaintiff's tool and function business, and the interference with the Plaintiff's relationships and expectancies with its network of distributors, have deprived the Plaintiff of millions of dollars in revenue within the tool and function business. This case is intended to remedy and stop these wrongful actions.

Jurisdiction and Venue

4. Personal jurisdiction is proper in this Court, pursuant to F.S.A. § 48.193(1)(a), (b), (f), (g), in that each of the Defendants has (a) operated, conducted, engaged in or carried on a business or business venture in this State; (b) an office or agency in this State; (c) committed a tortious act within this State; (d) breached a contract in this State by failing to perform acts required by the contract to be performed in this State; and/or jurisdiction is proper in this Court, pursuant to F.S.A. § 48.193(2) in that each Defendant is engaged in substantial and not isolated activity within this State. Further, jurisdiction and venue are proper under F.S.A. § 542.30 in that the Florida antitrust violations arose here, at least in part. On knowledge and belief, the Defendants acted in concert with one another in furtherance of a joint enterprise or conspiracy, such that the acts of one Defendant constitute the acts of all other Defendants.

Parties

5. Non-parties **Brig and Lita Hart** are a married couple and citizens of the State of Florida. Plaintiff U-CAN-II, Inc. (“**U-CAN-II**”) is a Florida corporation with principal offices located in Lakeland, Florida. The Harts are the owners and principals of U-CAN-II, which is the operating entity for the tool and function business for the Harts and B&L Hart Enterprises, Inc. (“**Hart Enterprises**”), a Florida corporation owned by the Harts and an Amway distributorship located in Lakeland, Florida. Hart Enterprises is an Amway distributorship or independent business (“**IB**”), a non-party, and brings no claims herein. The Plaintiff, the Harts and Hart Enterprises are collectively referred to herein at times as the “**Hart Organization.**”

6. Defendant Richard Setzer (“**Setzer**”) is a resident of the State of South Carolina, residing at Route 5, Rock Road, Greer, South Carolina. Upon knowledge and belief, Setzer operates an Amway distributorship through a non-party corporation, but he is not himself an Amway distributorship/independent business. Setzer also conducts business through Defendant Setzer International, Inc. (“**Setzer International**”). Setzer International’s principal is Defendant Setzer. On knowledge and belief, Setzer International is organized and existing under the laws of the State of South Carolina, with its principal place of business at 3089 S. Highway 14, Greer, South Carolina. Setzer International is engaged in the business of purchasing and reselling business support materials for use by Amway distributors, and of organizing seminars, rallies and major functions attended by Amway distributors. Setzer International is not an Amway distributorship/independent business/independent business owner. On knowledge and belief, the acts and/or omissions of the co-conspirators and Defendant Setzer are/were the acts and/or omissions of Setzer International. Setzer and Setzer International conduct business in the State of Florida and are subject to suit in Florida.

Unless otherwise noted, reference to “**Defendant Setzer**” herein shall refer to all Setzer Defendants, including Setzer International, who are/were co-conspirators in the conspiracy hereinafter described.

7. Defendant Harold [Hal] Gooch, Jr. (“**Gooch**”), is a resident of the State of North Carolina, residing at Six Curtis Court, Thomasville, North Carolina. Upon knowledge and belief, Gooch operates an Amway distributorship through a nonparty corporation, but he is not an Amway distributorship/independent business. Gooch also conducts business through Defendants Gooch Support Systems, Inc. (“**Gooch Systems**”) and Gooch Enterprises, Inc. (“**Gooch Enterprises**”), and is president and co-owner of each; he is the principal of each company. Gooch Systems is organized and existing under the laws of the State of North Carolina, with their principal place of business at Six Curtis Court, Thomasville, North Carolina. Gooch Enterprises is a Florida profit corporation with its principal place of business at 2182 NW 91st Street, Miami, Miami-Dade County, Florida. On knowledge and belief, Gooch Systems is in the business of purchasing and reselling business support materials for use by Amway distributors, and Gooch Enterprises is in the business of organizing seminars, rallies and major functions attended by Amway distributors. Neither Gooch Systems nor Gooch Enterprises is an Amway distributorship/ independent business/independent business owner. Hal Gooch, Gooch Systems and Gooch Enterprises conduct, and have conducted, business in the State of Florida, and are subject to suit in Florida. The acts and/or omissions of Harold Gooch, Jr., as herein described, are those of Gooch Systems and Gooch Enterprises. Unless otherwise noted, reference to “**Defendant Gooch**” herein shall refer to all Gooch Defendants who are/were co-conspirators in the conspiracy hereinafter described.

8. Defendant Billy S. [Bill] Childers (“**Childers**”), is a resident of the State of Florida. Upon knowledge and belief, Childers operates an Amway distributorship through a nonparty corporation, but he is not himself an Amway distributorship/independent business. Childers also conducts business

through Defendant TNT, Inc. of Charlotte, North Carolina ("**TNT**"). TNT's principal is Defendant Childers. On knowledge and belief, TNT is organized and existing under the laws of the State of North Carolina, with its principal place of business at 1518 Providence Road, Charlotte, North Carolina. TNT is registered with the State of Florida as a foreign profit corporation. TNT maintains agents or other representatives in Monroe County and Palm Beach County. TNT is in the business of purchasing and reselling business support materials for use by Amway distributors, and of organizing seminars, rallies and major functions attended by Amway distributors. TNT is not an Amway distributorship/independent business/independent business owner. Childers and TNT conduct business in the State of Florida, and are subject to suit in Florida. The acts and/or omissions of William Childers, as herein described, are those of TNT. Unless otherwise noted, reference to "**Defendant Childers**" herein shall refer to all Childers Defendants, including TNT, who are/were co-conspirators in the conspiracy hereinafter described.

9. Defendant Thomas D. [Tim] Foley ("**Foley**"), is a resident of the State of Florida, residing at 11541 Lane Park Road, Tavares, Florida. Upon knowledge and belief, Foley operates an Amway distributorship through a nonparty corporation, but he is not himself an Amway distributorship/independent business. Foley also conducts business through Defendant T&C Foley, Inc. of Tavares, Florida ("**T&C**"). T&C's principal is Defendant Foley. On knowledge and belief, T&C is organized and existing under the laws of the State of Florida, with its principal place of business at 11541 Lane Park Road, Tavares, Lake County, Florida. T&C is in the business of purchasing and reselling business support materials for use by Amway distributors, and of organizing seminars, rallies and major functions attended by Amway distributors. T&C is not an Amway distributorship/independent business/independent business owner. On knowledge and belief, the acts and/or omissions of the co-conspirators and Defendant Foley are/were the acts and/or omissions of

T&C. Foley and T&C conduct business in the State of Florida, and are subject to suit in Florida. Unless otherwise noted, reference to "**Defendant Foley**" herein shall refer to all Foley Defendants, including T&C, who are/were co-conspirators in the conspiracy hereinafter described.

10. Defendant Steven S. Woods ("**Woods**"), is a resident of the State of Florida, residing at 3316 NE Sugarhill Avenue, Jensen Beach, Florida. Upon knowledge and belief, Woods operates an Amway distributorship through a nonparty corporation, but he is not himself an Amway distributorship/independent business. Woods also conducts business through Defendant G.F.I. International, Inc. of Jensen Beach, Florida ("**GFI**"). GFI's principal is Defendant Woods. On knowledge and belief, GFI is organized and existing under the laws of the State of Florida, with its principal place of business at 3316 NE Sugarhill Avenue, Jensen Beach, Martin County, Florida. GFI is in the business of purchasing and reselling business support materials for use by Amway distributors, and of organizing seminars, rallies and major functions attended by Amway distributors. GFI is not an Amway distributorship/independent business/independent business owner. On knowledge and belief, the acts and/or omissions of the co-conspirators and Defendant Woods are/were the acts and/or omissions of GFI. Woods and GFI conduct business in the State of Florida, and are subject to suit in Florida. Unless otherwise noted, reference to "**Defendant Woods**" herein shall refer to all Woods Defendants, including GFI, who are/were co-conspirators in the conspiracy hereinafter described.

11. Defendant Pro Net Global Association, Inc. ("**Pro Net**"), is a purported not-for-profit, non-stock Delaware corporation engaged generally in the business of facilitating the sale of business support materials or "tools" for use by Amway distributors, and of organizing seminars, rallies and major functions attended by Amway distributors nationwide. Pro Net's main offices are now located at Suite K, 5075 Cascade Road S.E., Grand Rapids, Michigan, but were previously located at 6851

Distribution Avenue South, Jacksonville, Florida. Pro Net is registered in the State of Florida as a foreign profit corporation with its principal address at 6851 Distribution Avenue South, Jacksonville, Duval County, Florida. On knowledge and belief, Robert Blanchard, an executive and manager of Pro Net, has conspired with the Defendants, and the acts and omissions of Blanchard are those of Pro Net. Pro Net does business throughout the United States. Defendants Gooch, Childers, Foley and Woods were/are "Founding Members" of Pro Net, and serve on the Pro Net board of directors and/or "steering committee." Pro Net is not an Amway distributorship/independent business/independent business owner. Pro Net is/was a co-conspirator in the conspiracy hereinafter described. The conspiracy controls Pro Net; it is the conspiracy's instrumentality.

12. Defendant Don Brindley ("**Brindley**"), is a resident of Florida, residing at 24700 Deer Trace, Ponte Vedra, Florida. Brindley is the principal of an Amway distributorship downline to the Harts, but Brindley is not an Amway distributor/independent business. Brindley is, and has been for several years now, active in respect to the Amway-related tool and function business, and serves as the principal of Defendant Global Support Services, Inc. On knowledge and belief, Brindley is or at least has been a member of the conspiracy hereinafter described.

13. Defendant Global Support Services, Inc. ("**Global**"), is a purported Delaware corporation engaged generally in the business of buying, manufacturing, supplying and/or selling business support materials or "tools" to Defendant Pro Net's members for use by other Amway distributors. Global's main offices are located at 6851 Distribution Avenue South, Jacksonville, Florida. Global is registered with the State of Florida as a foreign profit corporation with its principal place of business at 6811 Phillips Industrial Blvd., Jacksonville, Florida, and it maintains an office in Jacksonville, Duval County, Florida. Global works in tandem with Pro Net. Global is/was a co-conspirator in the conspiracy hereinafter described. Global's principal is Defendant Brindley. Brindley's acts and/or

omissions are/were Global's. Global is not an Amway distributorship/independent business/independent business owner.

14. Defendant Pro Net Global I, Inc. ("**Pro Net Profit**"), is a for-profit Delaware corporation. On knowledge and belief, Pro Net Profit works in tandem with Defendants Pro Net and Global, sells goods and/or services to Pro Net members, does business in many states including Florida, and is a co-conspirator in the conspiracy hereinafter described. Pro Net Profit's main offices are located at 6851 Distribution Avenue South, Jacksonville, Florida. Pro Net Profit is not an Amway distributorship/independent business. On information and belief, Pro Net Profit is controlled by Defendants Gooch, Childers, Foley and Woods, and owned by one or more of them and perhaps others, and is/was a co-conspirator.

15. On knowledge and belief, Defendants conspired among themselves and with other nonparty co-conspirators, as more particularly described below, to undermine and damage the Plaintiff. Accordingly, in the furtherance of this conspiracy or enterprise, the primary objectives being to monopolize, control and manipulate the tool and function business; ignore and circumvent the essential "line of sponsorship" in the BSMs business; to boycott the Plaintiff; to impair the Plaintiff's network; and to convert the Plaintiff's tool and function business to their own pecuniary benefit and advantage, the act or omission of one co-conspirator while active in the concerted activity constitutes the act or omission of all other co-conspirators, and vice versa. Not all participants in the conspiracy are known to the Plaintiff. For that reason, Plaintiff has designated John Doe and Richard Roe as representatives of other persons, unknown to Plaintiff at this time, who conspired with the other Defendants and non-party co-conspirators to accomplish the unlawful purposes of the conspiracy enterprise, as herein alleged.

General Allegations

The Amway Business and the Essential “Line of Sponsorship.”

16. Amway Corporation ("Amway") is a "multi-level marketing" business, selling consumer goods and products worldwide through a vast network of independent distributorships, many of them based in Florida. **Alticor** is the parent company of Amway, as well as **Quixtar**, Alticor's internet-based, multi-level marketing business implemented more recently as an alternative to Amway. Quixtar has become the company of choice for many distributors, instead of Amway, due to the adverse publicity and “negatives” being experienced by Amway. Regardless, for whatever reason, there is a movement of distributors away from Amway to Quixtar, and on knowledge and belief, the Quixtar business is essentially the same as Amway's, only the name is different. Alticor has simply “repackaged” Amway's business concepts in the entity known as Quixtar. Today, Amway is often referred to as Quixtar and, for the purposes of this cause, the terms are interchangeable. Moreover, a distributor's respective position within the Amway network of distributors is essentially the same as within Quixtar's network. In other words, the networks are identical within those “legs” opting for Quixtar after having been Amway.

17. The Amway/Quixtar marketing program, in connection with this multi-level marketing business, is one where any purchase or sale of Amway/Quixtar products by a distributorship financially benefits not only the Amway distributorship itself and Amway, but also those Amway/Quixtar distributorships that qualify and occupy levels within the Amway/Quixtar distributorship network between Amway/Quixtar and the selling distributorship. Those Amway/Quixtar distributorships that occupy positions in the Amway/Quixtar network below a given distributorship in each branch of the network are referred to as that distributorship's "**downline.**" Conversely, those distributorships that occupy positions in the network above a given distributorship

in each branch are called that distributorship's "**upline**." These respective positions are determined by the essential and important Amway/Quixtar concept of "**line of sponsorship**." As such, a distributorship's initial place in the Amway/Quixtar network is immediately below the distributorship who sponsors that distributorship into the network, subject to Amway's/Quixtar's approval, and immediately above those distributorships that the given distributorship sponsors as new Amway/Quixtar distributorships. New Amway/Quixtar distributors are instructed that respect and observance of the line of sponsorship is mandatory, that they should "edify" and "support" their upline distributors, and that their upline is there to teach and support them. In order to earn significant profits as an Amway/Quixtar distributorship, one must develop a sizable downline network by recruiting and sponsoring other distributors into the Amway/Quixtar business. By so doing, the upline distributorships stand to benefit. Accordingly, recognition and respect for the line of sponsorship in a multi-level marketing business like Amway/Quixtar is crucial to its success, if not survival.

18. Defendants Richard Setzer, Hal Gooch and Bill Childers are principals of Amway and/or Quixtar distributorships located near the apex of the Amway pyramid in what may be referred to as the "**Yager Group**," and are part of the upline for the Harts (herein the "**Upline Defendants**"). Defendants Steve Woods, Tim Foley and Don Brindley are principals of Amway distributorships and related tool businesses downline to the Harts in the Yager/Setzer/Gooch/ Childers line of sponsorship (herein the "**Downline Defendants**").

19. Amway/Quixtar considers its distributorships as independent contractors, an aspect that is continuously stressed and touted as an advantage and incentive for every distributorship. Accordingly, each distributorship constitutes an "Independent Business" or "IB," as designated by Amway/Quixtar. If the principal of an Amway distributorship is successful in developing their

independent business, that principal (distributorship) can reach various "**pin levels**" of achievement. The ascending "pin levels" were, until September 1999, **Direct** (four Direct levels: Silver, Gold, Profit Sharing and Founders), Ruby, Pearl, Emerald, Diamond, Executive Diamond, Double Diamond, Triple Diamond, Crown and Crown Ambassador, and thereafter Platinum, Ruby, Sapphire, Emerald, Diamond, Executive Diamond, Double Diamond, Triple Diamond, Crown and Crown Ambassador. Each pin level entitles the principal and/or distributor to corresponding benefits and privileges, which increase at each ascending level.

20. Prior to 1995, once an Amway distributor obtained the "Direct" level (the lowest pin level), the distributor could begin purchasing directly from Amway instead of through the distributor's upline. Hence, "**Direct**" referred to a distributor's right or advantage to purchase directly. In 1995, Amway initiated a new program called "Direct Fulfillment." Under this program, if a distributor's next upline "Direct" (now referred to as Platinum) would approve by "signing off," the distributor, however new, could order direct from Amway. The objective of "Direct Fulfillment" was to speed up the distribution process. A pin level Amway/Quixtar distributor does not share in the profits generated by the sale of Amway/Quixtar products from other "pin level" distributors in his/her downline, but does obtain monetary and other bonuses directly from Amway/Quixtar because of the increased volume generated by these "pin level" distributors in that distributorship's downline network.

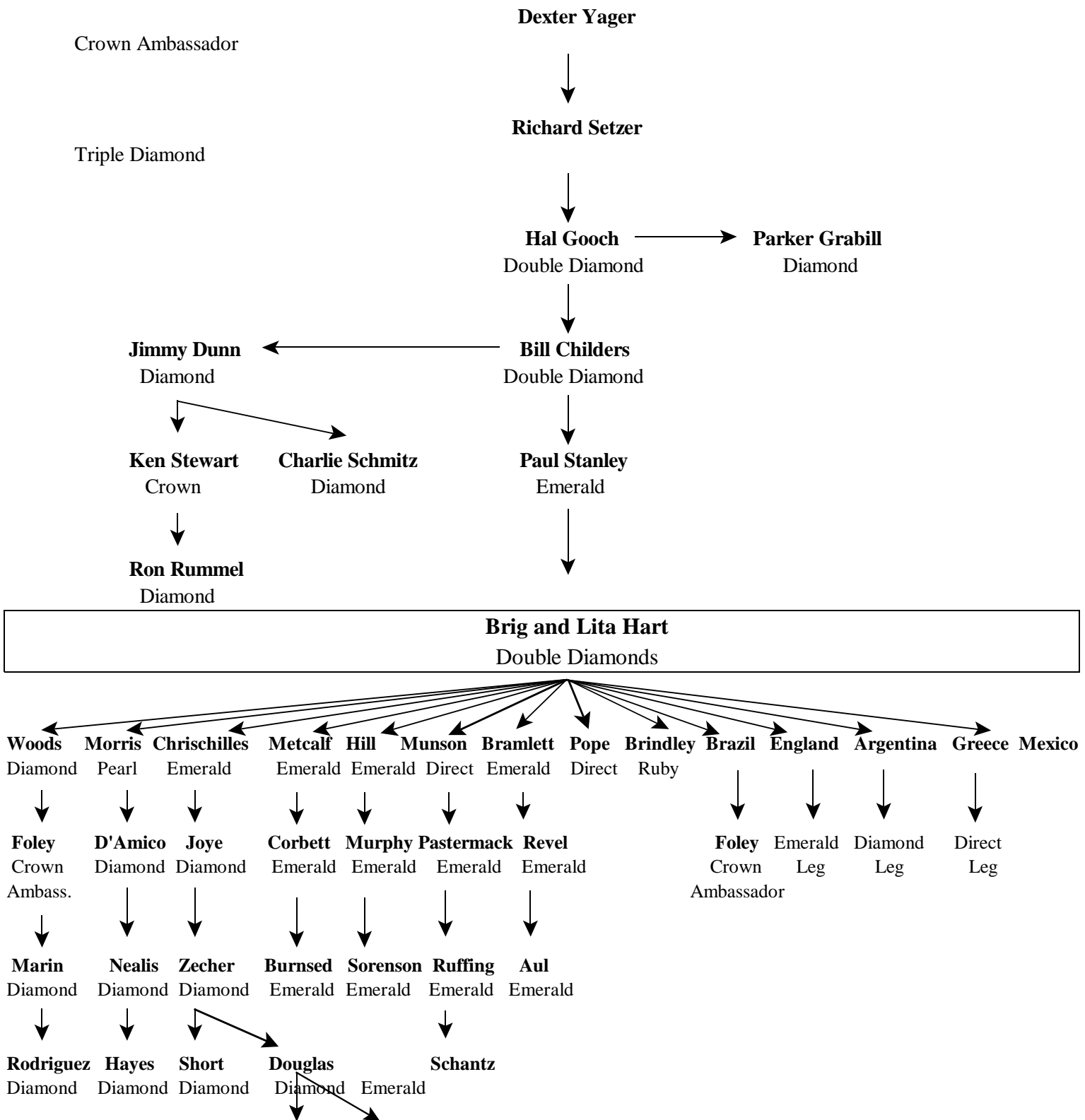
The Hart Organization's Line of Sponsorship:

21. Brig and Lita Hart and/or Hart Enterprises directly and personally sponsored approximately 60 Amway distributors, and through tireless efforts over many years, built a massive downline network numbering approximately 200,000 Amway distributors (the **Hart Network**). Included in

the Hart Network are/were approximately 80 other Diamond (or higher) distributors, 240 Emerald distributors, and thousands of Direct/Platinum distributors.

22. Hart Enterprises' line of sponsorship within the **Yager Group** included, in part, the following principals and, on knowledge and belief, the following respective highest pin levels for each:

**HART ORGANIZATION'S LINE OF SPONSORSHIP
WITHIN THE YAGER GROUP**



Terhune	Lewis
Diamond	Diamond

Development of the Amway-Related Tool and Function Business Known as the Business Support Materials ("BSMs") Industry.

23. The Hart Network of downline distributors served as a lucrative market for the sale of Amway-related instructional and motivational materials (audio and video tapes, books, electronic literature, etc.), known as "**Business Support Materials**" or "**BSMs**," or more commonly referred to as simply "**tools**"; and for instructional and motivational seminars, rallies, conventions and functions (hereinafter collectively "**functions**"). **The tools and functions businesses together comprise what may be referred to as the BSMs industry.**

24. For over 40 years, Amway has attracted prospective distributors into the Amway business with the "**Amway Dream**" of owning and operating an independent business, buying and selling Amway products, and thereafter becoming financially independent. As part of the "Amway Dream," Amway requires distributors to "train" and "motivate" the downline distributors in their line of sponsorship. Powerful distributors at the top of the Amway pyramid long ago developed the BSMs industry to accommodate Amway's requirement for training and motivation. Amway, by its acquiescence to, if not acceptance of, the BSMs industry, has sanctioned the use of BSMs within and by the Amway distributorship network. Within this framework, the Harts were extremely successful in building their own distributor network and selling tools and promoting functions within that network through U-Can-II.

25. Mirroring the Amway business, the attainment of a certain success level within the business entitled the distributor to participate in the profits of the tool and function business. Specifically, once a distributor attained the Direct pin level in Amway, the distributor's next upline Diamond would introduce him/her to the tool and function business and benefits would thereafter be

received by the new Direct distributor. Because the tool and function business was not part of Amway, it was customary for the distributor to operate his/her tool and function business through one or more different corporations, separate from the operating entity for the distributor's Amway business. It was indeed rare, if ever, that a distributor would run his/her tool and/or function business through his/her Amway IB. In fact, new qualifying distributors were advised by their upline not to do so. As such, the Amway business and the tool and function business operated in tandem, but separately.

26. Amway does not view the tool and function business to be a part of the Amway business.

The Promulgation of Rules Governing the BSMs Industry.

27. As might be expected, these powerful distributors at the top of Amway networks, having developed the BSMs industry, sought to control it. **First**, they secured control over the manufacture, sale and dissemination of the tools. Although Amway purportedly requires "content approval" of the tools, these items are/were non-Amway products. **Second**, they secured control of sponsoring and promoting major functions at which these very successful, high-profile distributors provided their own testimonials of success within Amway, all of which were calculated to motivate the distributors attending, fostering a sense of admiration and celebrity status for these powerful few. A "**major function**," as herein referenced, refers to the large, high-profile rallies or conventions normally held in large cities sponsored by a Diamond distributor. Pursuant to the course of dealing and business practices between the parties for years, only Diamonds were allowed to sponsor major functions. These major functions, typically attended by thousands of Amway distributors, became bigger and more elaborate the higher the Diamond distributor was within the Amway pyramid or the larger the Diamond's downline network. It was/is customary for the larger major functions to include well-

known celebrities and/or entertainers. The cost for an Amway distributor to attend these functions amounted to hundreds of dollars, if not more. Thus, these major functions generated huge profits for the Diamond sponsor and served to enhance the Diamond's "success profile" within Amway. Typically, each Diamond distributor would sponsor three major functions a year, and then a fourth where that Diamond would tie into a major function with his/her upline Diamonds. Further, video and audiotapes used as "tools" were made at these major functions, and reproduced and sold to hype the functions, as well as the Amway business. **Third**, these powerful distributors promulgated their own rules to govern this BSM industry since it involved non-Amway products. These rules (hereinafter at times referred to simply as the "**BSMs rules**"), were explained and then implemented in a course of dealing over years.

28. These BSMs rules and course of dealing provided that only those distributors attaining an Amway pin level of Gold Direct or above were allowed to participate and primarily benefit from their downline network respecting the tool business, and only Emeralds or above received profits from functions. Thus, once an Amway distributor became a Direct, his/her entitlement to participate in the lucrative BSMs business reached fruition. Moreover, as the pin level thereafter increased, so did the prospective benefits from this business. Thus, the rules and course of dealing, along with a distributor's development of his/her downline, gave rise to business expectancies.

29. In respect to the "**tools**," these high-placed powerful distributors promulgated **rules** and implemented a **course of dealing** over more than 30 years which **required** distributor/ participants to purchase tools from their immediate upline distributor of the same, or higher, Amway pin level than themselves. Thus, for example, an Emerald distributor would buy his/her tools from the next upline Emerald or Diamond distributor, passing those lower-level distributors in between; a Diamond distributor would buy from the next upline Diamond, etc. The distributor acquiring the tools would

then sell them to his/her immediate downline distributors who, in turn, would sell them to his/her downline. These same powerful distributors would also set the prices for the tools, such that a Diamond distributor would pay less for the tools than an Emerald, and so forth on down the line, such that each participant received a "break," excepting the bottom-rung distributors, who were the primary ultimate consumers for the tools. The prices for the tools were supposed to be universal or the same for each distributor pin level. If a pin level distributor in the line of sponsorship was passed over (*e.g.*, an Emerald passed over for a lower Diamond to buy from a higher Diamond), the Emerald would be fairly compensated. In more recent years, volume has become a differentiating criteria for compensating one equal level distributor over another (*i.e.*, one Diamond over another Diamond), for tools. However, there was supposed to be uniformity and fairness in this practice. Accordingly, the rules for the tools were intended to be reasonably consistent with those for Amway products, which require recognition of and adherence to the line of sponsorship, but with certain privileges for Direct pin level and above distributors. This course of dealing respecting the tool business, on knowledge and belief, began in the 1970s or before.

30. The **rules and/or course of dealing pertaining to functions** also date back to the 1970s, if not earlier. Again, only Diamond distributors were allowed to sponsor major functions. All the while, the lower-level distributors were encouraged to support and attend these events. The rules and/or course of dealing governing major functions provided that such functions consist or be limited to the Amway distributors in the sponsoring Diamond's line of sponsorship. This meant there would be no "**cross-lining**," a concept of paramount importance within the Amway culture. As such, strict adherence to the lines of sponsorship was recognized within these rules and the course of dealings for BSMs. Accordingly, an Amway distributor wishing to attend a major function was expected and required to attend the function sponsored by his/her immediate upline Diamond. Diamond (or above)

and Emerald distributors received a "cut" from the gate at these major functions for each person attending the function from their downline network. Such distributors had an incentive, separate and apart from Amway's requirement to train and motivate, to "build the gate." A Diamond (or above) and Emerald distributor's downline network had intrinsic value to that distributor as a participant within the BSMs industry. A Diamond distributor (or above), having the right to organize and run their own major function, had the opportunity to garner significant profits from these major functions. Moreover, Diamonds (or above) received compensation from a function sponsor for appearing on stage and/or speaking. It was customary for Diamonds to speak at major functions, providing their personal testimony of achieving success within Amway.

31. The rules and long-standing course of dealing for both the tool and major function business further provided that, for instance, if an upline Diamond sold tools to the downline of another Diamond and/or had another Diamond's downline distributors attend its upline function, that Diamond would enter into a "**servicing agreement**" with the other Diamond to compensate that Diamond reasonably and fairly for the participation of that Diamond's downline distributors. Absent the consent of the downline Diamond and a servicing agreement, the upline Diamond would refrain from soliciting or involving the other Diamond's network. This provision for consent and servicing agreements (hereinafter the "**servicing agreement rule**") was intended to be consistent with Amway's practices. The intent of such was to negate an upline Diamond from abusing or failing to honor the essential line of sponsorship by "going around" or "boycotting" a downline Diamond or Emerald distributor to profit unfairly. The rules and course of dealing for the tool and function business were intended from the beginning to recognize and honor the essential line of sponsorship, just as in the Amway business. Otherwise, abuses lead to impairment and disintegration of the integrity of the network of distributors.

32. Essential to the BSMs industry rules, as in the Amway business, was the necessity for recognizing and respecting the lines of sponsorship. This meant, and the rules provided, that a distributor was not to solicit the business of another distributor unless he/she had sponsored that distributor in joining the Amway network.

33. Essential to the BSMs industry rules was making sure that Direct pin level distributors and above benefited through bonuses or other fair compensation for business transacted by that distributor's downline.

34. These **rules governing the tool and function business** became known and understood by participants within the Amway network by instruction from the top down, and were confirmed in a course of dealing over years. The general understanding and acceptance of this long-standing course of dealing by all participants in the BSMs industry constituted an **implied-in-fact or implied-in-law contract** between them.

Defendants' Recognition of the BSMs Rules and Course of Dealing:

35. The Upline Defendants for years espoused, instructed and promoted the aforesaid BSMs rules to their downline, including the Harts.

36. The Downline Defendants for years espoused, instructed and provided the aforesaid BSMs rules to their downline.

37. Richard Setzer has hereto represented to Emerald and Diamond distributors that respecting the line of sponsorship is essential. Richard Setzer agreed to honor the line of sponsorship respecting the sale and distribution of BSMs.

38. Richard Setzer represented and espoused to others the servicing agreement rule.

39. Hal Gooch has hereto represented to Emerald and Diamond distributors that respecting the line of sponsorship is essential. Hal Gooch agreed to honor the line of sponsorship respecting the sale and distribution of BSMs.

40. Hal Gooch represented and espoused to others the servicing agreement rule.

41. Bill Childers has hereto represented to Emerald and Diamond distributors that respecting the line of sponsorship is essential. Bill Childers agreed to honor the line of sponsorship respecting the sale and distribution of BSMs.

42. Bill Childers represented and espoused to others the servicing agreement rule.

43. Tim Foley has hereto represented to Emerald and Diamond distributors that respecting the line of sponsorship is essential. Tim Foley agreed to honor the line of sponsorship respecting the sale and distribution of BSMs.

44. Tim Foley represented and espoused to others the servicing agreement rule.

45. Steve Woods has hereto represented to Emerald and Diamond distributors that respecting the line of sponsorship is essential. Steve Woods agreed to honor the line of sponsorship respecting the sale and distribution of BSMs.

46. Steve Woods represented and espoused to others the servicing agreement rule.

The Promotion of the BSMs Industry.

47. The powerful distributors at the top of Amway, including but not limited to the Upline Defendants herein, also regularly represented or caused to be represented to the Harts and others that their success as Amway distributors and, in fact, the success of the entire Amway distributorship organization, was contingent upon the purchase of the tools distributed by the Upline Defendants and attendance at the major functions sponsored and/or supported by them, and that without such tools

and attendance at such functions, the Harts would be unable to build and maintain successful Amway distributorships. The Upline Defendants further represented or caused to be represented to the Harts that they should purchase only those tools produced and distributed by the Defendants.

48. The BSMs industry has grown so large and powerful that it has become an industry in itself, separate and distinct, yet inextricably connected with Amway. The income a Diamond Amway distributor can potentially derive from the BSMs industry is vastly superior to that income that can be derived from the sale of Amway products alone. Consequently, high-profile BSMs distributors at the top of the Amway pyramid, including the Upline Defendants and co-conspirators, have profited immensely from this BSMs industry.

49. On information and belief, the substantial part of the income of each Upline and Downline Defendant herein comes from the BSMs business.

Amway's Recognition of and Tacit Consent to the BSMs Industry.

50. Amway has acknowledged in the Amway Sales and Marketing Plan the independent nature of BSMs apart from Amway, as well as their utility and benefit:

To assist you with your own training and motivation, as well as training and motivating others, some distributors produce and distribute Business Support Materials and support services independently of Amway Corporation (independently-produced Business Support Materials or BSMs). These may include books, magazines, and other printed materials, audiotapes, videotapes, rallies, meetings and educational seminars. While these BSMs are not required by or produced by Amway Corporation, you may decide that they can play a useful role in building a profitable Amway business.

51. The Amway Sales and Marketing Plan also encourages distributors to purchase BSMs and to attend functions:

Merchandising products and sponsoring others is the way you build a truly successful business . . . You can also sponsor others as distributors and train them to merchandise products . . . As your business begins to grow, you will want to buy products and you may wish to acquire training aids. You will also want to attend motivational and business-building meetings. Typically, you may attend one distributor meeting a week.

52. Amway has recognized the applicability and necessity of the "lines of sponsorship" to the BSMs industry consistent with the course of business practices and dealings over years. Amway states that the failure to adhere to the line of sponsorship governing BSMs would constitute an "unwarranted and unreasonable interference in the business of other Amway distributors." However, Amway has not sought to enforce the rules governing BSMs; at least, not in any consistent or aggressive manner. Amway's more recent apparent ambivalence has made it easier for abuses within the BSMs industry to occur. The Defendants herein have taken Amway's ambivalence to manipulate the BSMs industry as hereinafter described to their own pecuniary benefit.

The Myths Created and Fostered by the Upline Defendants.

53. The Upline Defendants, in recent years, by and through their conduct and purported "leadership" as distributors at or near the top of the Amway pyramid, have created and fostered myths among the many lower Amway distributors. The **first myth** is that by working hard to build the Amway business, an Amway distributor can build his/her Amway network to a point where they can achieve the Amway dream or "riches" like those touted by the Upline Defendants. Very simply, one cannot achieve comparable "riches" by selling Amway products. It is only through the participation in the BSMs industry that ultimately can lead to the attainment of the "riches" like those of Upline Defendants. The **second myth** is that those engaged in the BSMs industry (Direct level and above), will be treated fairly with the BSMs rules, including the line of sponsorship and the servicing agreement rule, honored. The reality is that the Upline Defendants, as well as Defendants Foley and

Woods, with the “riches” at the top of the Amway pyramid control the destiny of those below them, and they control and manipulate the BSMs business in such a way that one cannot attain these “riches” unless they so elect. And few do attain these “riches,” regardless of the size of their downline.

54. Stated differently, without fair access to the BSMs industry through the fair and consistent application of the heretofore stated rules governing same, it is not possible for an Amway distributor to attain the “carrot” or “Amway dream” of riches and financial independence – at least nothing near the level of that of the Upline and Downline Defendants, which they espouse openly and often as being attainable by others, through hard work and commitment to selling Amway products. One objective of the conspiracy herein was and is to deny the “Amway dream” to qualifying distributors.

55. The Upline and Downline Defendants, with the aid of their co-conspirators, have tarnished, if not substantially impaired, the Amway business and the principles upon which it was built by those before them through their manipulation and circumvention of the long-standing rules governing the BSMs industry to ensure and enhance their own pecuniary benefit, to the inherent detriment of those distributors down line. Their actions have threatened the well-being of the Amway business they purport to serve and pretextually share with other distributors.

56. On knowledge and belief, the Upline and Downline Defendants take such a disproportionately large share of the tool and function business profit that little is left for the participating downline distributors. For example, on knowledge and belief, Defendant Childers endeavors to secure a 25-30% profit margin on his “cut” or “break” on tools.

57. On knowledge and belief, 85% or more of the income of the Upline and Downline Defendants is attributable to the tool and function business.

Amway Co-Founder's Early Concern for BSM Abuses.

58. The potential abuse of the BSMs industry was addressed by Amway co-founder Rich DeVos, in an audiotape produced by Amway for pin level distributors in 1983. DeVos stated:

. . . when your tape volume becomes so great in relationship to your regular business, if it is not used as a support for the Amway business, – will oftentimes be an illegal business – in fact, it could be called a pyramid – because, – does not get sold to the consumer. Which means that all the tape business does is take money out of the organization, and because the final person can't retail it, it never brings money into the organization. Now, I'm not arguing the value of it – we accept the fact that motivation is vital to this business. Good, honest motivation is important to the business. But, it must be motivation that builds the business – not become a business in itself. And some of you have made it a business in itself . . . And I am imploring all of you to do two things. Number one, clean up your act. And number two, if you know people who are continuing to do things improperly after all of this, then I want you to write us a note and just tell us who's doing it.

Directly Speaking, January 1983, Rich DeVos, Amway Cassette Series VA-2160, Side 'A.'

59. At that time, DeVos also addressed the necessity of honoring the "line of sponsorship" within the BSMs industry. DeVos asked distributors involved in the sale of BSMs to:

. . . unplug from any group, up or down, which is not in my line of sponsorship. You know, a lot of you, got your fingers dirty. You got your hands a little bit into somebody else's group, or you're dealing into somebody else's group that's not in your line of sponsorship, or you're getting stuff from somebody. I'm just asking you to unplug it. Tend to your own business. Stay in your own line. Deal only with people you sponsor. The other people who are not in your group – they are not your business, and if you are a believer in this Plan, then you'll believe in this principle. If it's okay for you to intrude somebody else's group, then it's okay for them to intrude yours. **If it's okay for you to intrude somebody else's group, then it's okay for somebody above you to go around you and intrude your distributors below you. You and I know you can't tolerate that.**

60. The Upline and Downline Defendants, and their co-conspirators, have engaged in the very conduct of which DeVos earlier warned.

The Hart Organization's Successful Business Operations.

61. The Hart Organization enjoyed an exceptional level of achievement in Amway. It represented one of the largest downline legs in the Yager Group.

62. From 1978 until today, Brig Hart, and later Brig and Lita Hart, expended substantial time, resources and effort into building Hart Enterprises and U-CAN-II, making Amway and/or the promotion of Amway their full-time job, and relying on their Amway and BSMs income as their primary means of support.

63. From 1987 until today, the Harts/Hart Enterprises repeatedly qualified at the prestigious "Diamond" pin level (or higher) each and every year. In 1992, the Harts/Hart Enterprises attained "Executive Diamond" status, and in 1993, "Double Diamond" status. As a "Double Diamond," the Harts achieved a pin equal to or higher than many of their upline, including Upline Defendants Childers, Gooch and Setzer at that time. The Hart leg in their downline is by far the largest. For example, the Hart leg within the Childers downline network is at least as large as all other Childers legs put together.

64. The Hart Network included its vast United States network, as well as international networks based in Brazil, Mexico, England, Argentina and Greece.

65. By 1993, Brig Hart became one of the most popular speakers in all of Amway and the BSMs function circuit. Amway featured the Harts' success story in its official magazine *Amagram* on several occasions, including but not limited to, stories in 1987, August 1993 and September 1994.

66. Beginning in/about 1989, the Harts/U-CAN-II began conducting their own major functions with the consent of Hart Enterprises' upline, including Defendants Childers and Gooch. The Harts and U-CAN-II utilized Hart Enterprises' downline network in sponsoring, organizing and holding these major functions, which regularly drew thousands of Amway distributors in attendance, and in the case of their "Free Enterprise" functions held in conjunction with their upline, often over 20,000 distributors.

67. Amway statistics confirm the unique status held by the Harts. "Generally speaking, less than 10% work their Amway business as a full-time job and as their primary source of income over time. Naturally, because these people spend the most time and effort to build their own business and are the most committed to it over time, they typically make more money." (*Official Amway website*)

68. According to Amway statistics, about 3% of all American "direct" sellers earn more than \$50,000 per year. About .6% (six-tenths of 1%) make more than \$100,000 per year. (*Official Amway website*) Based upon Amway's statistics, the Harts and/or Hart Enterprises occupied the top six-tenths of one percentile (.6%) of all direct sellers in the United States.

69. The Harts and U-CAN-II, working in concert, participated in and were highly successful in developing their BSMs business. U-CAN-II purchased and resold independently-produced BSMs in accordance with the implied contract of the parties formed by instruction from the Upline Defendants and confirmed by years of business dealings with its upline, and also conducted functions in the same manner. The Harts were usually featured at these functions, and their popularity as speakers within Amway grew and grew.

70. All along, the line of sponsorship was recognized and honored by the Hart Organization respecting the BSMs rules, including servicing agreements, just as the Harts had been instructed and directed by their mentoring upline. For years, the Harts and/or U-CAN-II personally sold tools

directly to the distributors whom they had personally sponsored, pursuant to the course of dealings between the parties. Similarly, they purchased their tools in accordance with this course of dealing. Likewise during this time, the essential line of sponsorship and the rules pertaining to functions were recognized and honored by them in promoting and sponsoring functions.

71. The Harts were proponents of respecting the essential line of sponsorship and the rules within the BSMs industry.

72. On knowledge and belief, the Hart Organization's huge success ultimately led to the Upline Defendants' envy, greed and decision to seize it. The Hart Organization was capable of generating, and did so generate, over \$42 million over 18 months in tool business volume for the Foley network alone. In addition, the Hart Network generated on an ongoing basis tens of millions of dollars in functions volume.

The Conspiracy.

73. The exact date the conspiracy was formed is unknown to the Harts. By the 1990s, the conspiracy was very active and ultimately included all of the Defendants acting in concert, conspiring among themselves. On knowledge and belief, by 1996, Childers and Gooch led the efforts of the conspiracy as it embarked on new tactics. At one time or another, others joined in the concerted activity with one or more of the Defendants by engaging in conduct injurious to the Hart Organization. On knowledge and belief, these non-party co-conspirators included Dexter Yager, Angelo D'Amico, Barry Joye, Robert Blanchard, Parker Grabill, Ron Rummel, Paul Stanley, Hona Childers and others.

74. The objectives of this ongoing and evolving conspiracy were to monopolize, control and manipulate the BSMs business; boycott/blackball Plaintiff, the Harts and other BSMs distributors who

they viewed with disfavor; ignore and/or circumvent the essential line of sponsorship respecting the Plaintiff; to impair the Hart Network; and to convert the Plaintiff's tool and function business to their own pecuniary benefit and advantage, all in violation of the BSMs rules, the representations made to the Plaintiff, and Florida law.

75. The conspirators shared a community of interest in the pursuit and furtherance of the objectives of the conspiracy; they exercised joint control or right of control; they shared a joint proprietary interest in the conspiracy's objectives and the fruits thereof to some extent; and they profited from their efforts.

The Interference with and Conversion of the Hart Organization's Tool and Function Business in Violation of the BSMs Rules.

76. The Hart Organization began participating in the tool business in January 1980 upon attaining the Gold Direct pin level, and then the function business in August 1982 upon attaining the Emerald pin level. It was at that time, and over the course of the next few years, that Brig and Lita Hart were initially instructed on the foregoing BSMs rules by their upline, including Childers, Gooch and Yager. The Harts, in good faith, believed that the rules would apply equitably and uniformly to them, and continued to build their distributor organization in detrimental reliance thereon.

77. From this time, when the Harts began participating in the tool and function business, until the advent of ProNet in February 1998, on knowledge and belief, the substantial part of tools sold to the Hart Network in the United States came from Yager's company, Internet Services, Inc. ("**Internet**"), located in Charlotte, North Carolina.

- **The Boycott of the Harts by Childers Regarding the BSMs of the Foley Organization.**

78. For some time, contrary to the BSMs rules, the representations of the Upline Defendants, and the continuing protests of the Harts to the Upline Defendants, Defendant Childers has dealt directly with the Foley organization (instead of going through the Plaintiff/Harts), for BSMs.

79. Earlier, Defendant Childers paid the Plaintiff a nickel (and later a dime) for purportedly every audio cassette tape Childers sold to the Foley organization. Such compensation was unreasonable and unfair. And Defendant Childers paid the Harts nothing for other tools and functions, except that in December 1995, Childers paid the Harts a token lump sum for past functions for the Foley network. Although Childers continued to pay the Plaintiff/Harts for cassette tapes after December 1995, the sums were not reasonable or fair and, ultimately, Defendant Childers refused to pay the Harts anything for BSMs.

80. Upon the organization of Pro Net in 1998, the Plaintiff received from Global a payment equating to 20 cents for each audio cassette tape sold to the Woods and Foley organizations. These payments stopped in April 2001 when the conspiracy-engineered boycott of the Plaintiff/Harts became final and complete.

81. On knowledge and belief, Defendants Childers and Foley conspired to accomplish and perpetuate this boycott of the Harts regarding the Foley organization, and did so with the knowledge and acquiescence, if not support, of the Upline Defendants and Dexter Yager. At some point, perhaps by 1998, on knowledge and belief, all Defendants sanctioned and/or condoned the ongoing boycott of the Harts.

82. On knowledge and belief, Defendants Childers and Foley made significantly more money by cutting the Harts out of participation in the tool and function business of the Foley organization.

83. Defendants Childers and Foley owe Plaintiff an accounting and substantial monies for BSMs (tools and functions) regarding the Foley organization since December 12, 1995.

· **U-Can-II Loses Prematurely the Function Business of Downline Diamonds.**

84. Childers instructed, directed and explained to the Harts earlier, when they attained Diamond, that the BSMs course of dealing required that they refrain from sponsoring their own functions for two years upon attaining Diamond and during that period of time, continue supporting Childers' (their upline Diamond's) functions, meaning they would encourage their downline network to attend the Childers' functions. The Harts complied.

85. In or about 1993, D'Amico, Joye, Douglas, Terhune and Woods (*see* p. 14 above), became Diamonds. Three things then transpired which served to damage U-Can-II. First, contrary to Childers' earlier specific direction, these five new Diamonds, all within the Hart Network, were permitted to almost immediately (without waiting two years, as Childers had told the Harts), begin sponsoring their own functions, pulling their downline networks from attending the U-Can-II functions. The Harts protested to Childers to no avail. Respecting D'Amico's departure with his function business, Childers told Hart, "he's [D'Amico] off the deep end, and you're better off to just let him go." Second, instead of the Harts being asked to speak at these functions and U-Can-II being compensated therefor, as was the established course of dealing, these new downline Diamonds brought in Childers to speak, paying him and bypassing the Harts, whose protests to Childers once again were futile. Third, Childers quit paying U-Can-II for the downlines of these Diamonds attending Childers-sponsored functions. Childers should have precluded these actions, but didn't.

86. These events then led to other Hart downline Diamonds doing the same, with the knowledge, if not consent and encouragement, of the Upline Defendants. Childers in particular sought to first undermine U-Can-II and then take its function business for his own without fairly and equitably compensating the Harts. Childers effectively circumvented the Plaintiff's rights and

expectancies in later years that he himself gave rise and credence to in earlier years through his instruction of the Harts.

· **The Conversion of the D'Amico Tool Business in 1994.**

87. In or about 1994, Defendants Setzer, Gooch and Childers, and perhaps others, conspired with D'Amico for D'Amico to purchase his tools directly from Defendant Setzer, who, the Harts were told, was going to sell the tools for a lesser cost to D'Amico. Of course, Setzer and the other Upline Defendants and Yager were in a position to determine the cost of the tools sold to U-Can-II. On knowledge and belief, upon Setzer's return to the Yager Group respecting BSMs in the '90s, Yager pressured Gooch and Childers to "cut" Setzer back in (to receive profits on BSMs sold within the Yager Group). On knowledge and belief, to address this pressure from Yager without significantly reducing their profits, Gooch and Childers entered into an agreement on or about September 19, 1995, to allocate or give the D'Amico tool business to Setzer, eliminating the Harts/Plaintiff. In substance, they took profits from Plaintiff and arbitrarily gave it to Setzer.

88. When the Harts learned that D'Amico was dealing with Setzer for his tool business, they protested to Yager and Jody Victor, a member of the Amway Distributor Association's Board. A meeting to address the situation followed in Jacksonville.

89. In attendance for this Jacksonville meeting were the following: Bob Kerkstra of Amway, Jody Victor, Dexter Yager, Doyle Yager, Childers, Setzer, Brindley, D'Amico and the Harts. During the discussion which ensued, Kerkstra and Victor told the others that they could not participate in any discussion about "tools" since that is not Amway's business. However, Kerkstra and Victor reiterated the importance of adherence to the line of sponsorship. The Harts thereafter understood (from the discussion with Kerkstra and Victor present), that although D'Amico would be permitted to deal with Setzer on some matters, the tool revenue would be left as is, meaning

the tools would remain under the Harts' line of sponsorship. Immediately thereafter, the Harts were told that D'Amico's tool business was being pulled from them and given to Setzer which, of course, they vigorously protested. Nevertheless, D'Amico's tool business moved to Setzer. No one disclosed to the Harts the secret agreement between Gooch and Childers regarding the D'Amico tool business. Having lost the D'Amico function business earlier, this meant that U-Can-II had now lost all of the D'Amico organization's BSMs business.

90. Once again, this meant that the line of sponsorship was completely evaded and the Harts, contrary to the BSMs rules, were boycotted respecting the tool and function business of the D'Amico organization. The Harts, per the BSMs rules, should have sold all tools to D'Amico, or at a minimum, been reasonably reimbursed for same. The Harts should have participated in the function revenue as well, in accord with the BSMs rules. The Harts were eventually advised by Gooch, Childers and Yager that, in accord with the BSMs rules, Setzer would equitably compensate the Harts for "going around" the Harts respecting the D'Amico organization's tool business. On knowledge and belief, this statement was made only to temporarily appease the Harts without any real intention of compelling Setzer to pay. Regardless, Defendant Setzer refused to do so in any meaningful way. Setzer has paid no compensation to the Plaintiff. The BSMs rules and Florida law preclude this boycott of Plaintiff.

91. On knowledge and belief, Setzer paid and/or continues to pay Gooch, Childers and Yager for tools sold to the D'Amico organization because they fall within D'Amico's line of sponsorship. But, again, Setzer paid/pays the Plaintiff nothing despite the Harts' direct line of sponsorship to D'Amico. This tactic, as orchestrated by the Upline Defendants and other co-conspirators, was instrumental in paving the way for the loss of other downline Emeralds and Diamonds within the Hart

Organization respecting the BSMs business. The Harts had been effectively undermined by those in control.

- **The Conversion of the Hayes BSMs Business in 1995.**

92. Hayes (*see* p. 14), following D’Amico’s lead, began dealing directly with Defendant Childers for tools in 1995, boycotting U-Can-II. Still later, Hayes moved all of his tool and function business to D’Amico and Setzer. As with the D’Amico situation, the Harts again protested to no avail.

- **Manipulation of Prices Through BSM “Pay Scales.”**

93. On knowledge and belief, until 1998, the Upline Defendants herein, and co-conspirator Dexter Yager, were in control of the distribution and pricing of all tools. Together they controlled pricing through “pay scales” which set price entitlements and compensation vertically for the tools and functions.

94. As the Hart Organization grew to mammoth proportions in the early 1990s, the Upline and Downline Defendants conspired among themselves and with others to find ways to manipulate tool prices so as to disadvantage the Harts, to discredit the Harts, and to gradually and progressively take their tool and function business. The tactics included constantly changing the “pay scales” to whittle down the Harts’ take despite the Harts’ growing numbers. Paul Brown, working as an accountant for Defendant Childers at this time, prepared the “pay scales” and sent them to the Harts.

- **By 1996, the Hart Network Outgrew the BSM “Pay Scales.”**

95. By 1996, and for sometime prior thereto, the Hart Network had grown prolifically to the point where it went five Diamonds deep, something unprecedented within the Gooch/Childers line of sponsorship. The tool money being passed down to the Harts/Plaintiff by the Upline Defendants

only went three Diamonds deep. In other words, per the “pay scales,” there was only enough money actually flowing to the Plaintiff to pay (at the “pay scale” rates), three Diamonds – not five; the Hart Network had outgrown the “pay scales.” This obviously created problems for the Harts with their downline Diamonds. The Harts sought more money from Childers so that the Harts could pay all of their Diamonds the pay scale rates, but were told that there was no more money to be passed down, which simply made no sense.

· **August 1996: Meeting at Yager’s Internet Offices in Charlotte to Address the Inadequate “Pay Scales.”**

96. In 1996, several of the Hart downline Diamonds, including Joye, Douglas, Terhune and Woods, were telling the Harts that they wanted a bigger cut of the tool income because of their pin level. After Brig Hart addressed the subject with Childers and was told by Childers that he (Childers), didn’t have any more money to pass down, Brig Hart went to Doyle Yager (Dexter Yager’s son), who scheduled a meeting in August at the Yager Internet business offices in Charlotte.

97. Those in attendance at this meeting included: Dexter Yager, Jeff Yager, Doyle Yager, Gooch, Childers, Paul Brown and Brig Hart.

98. During this meeting, Childers reluctantly conceded that he was making an approximate 30% profit on his cut of the tools that were being sold to the Hart Network. Hart believed Childers’ “cut” to be exorbitant. Hart pleaded for fairness and sought additional monies for his downline Diamonds.

99. Brig Hart left this meeting without a resolution of the problem confronting his organization, a problem totally within the control of the Upline Defendants and Dexter Yager.

· **The Interference with and Loss of the Tool Business of Five Hart Downline Diamonds (Joye, Zecher, Douglas, Terhune and Short) in 1997.**

100. In early 1997, Brig Hart was contacted by Barry Joye, a downline Diamond within the Hart Organization. Joye told Brig Hart that Setzer had sent D'Amico to speak to him [Joye] about tool pricing. Joye told Brig Hart that Setzer could offer him [Joye] a better price than the Harts. Joye also told Hart that Setzer himself had spoken with him, and Setzer wanted his tool business and could give him a better price break than the Harts. Joye then told Hart he wanted a larger "tool cut." Again, based upon the Upline Defendants' control of tool prices, they could set the prices to ensure that the Harts could not offer their downline [Joye] the favorable tool prices that the Upline Defendants could. The Harts could not satisfy Joye. D'Amico's and Hayes' avoidance of the line of sponsorship, with the blessing of the Harts' upline, signaled that U-Can-II was vulnerable. Joye and others then went around U-Can-II to Childers, who should have deferred, but he didn't.

101. Joye and four other Hart Organization downline Diamonds [Frank Zecher, Marshall Douglas, John Terhune and Bo Short], left U-Can-II and started dealing directly with Childers for their tools. The further erosion of U-Can-II's BSMs business precipitated by D'Amico's and Hayes' leaving had reached fruition. Childers had the power and control to effectively engineer the boycott of the Harts, in clear and flagrant violation of the BSMs rules. By "squeezing" the Harts, the Harts' upline could pick off the Harts' downline Diamonds, and they did. Once started by D'Amico's leaving, the gates opened, paving the way for others to avert the essential line of sponsorship.

· **April 1997: The Prior Litigation.**

102. When the Harts realized the abuses were escalating and that unless something was done, their tool and function business would be gone, on April 8, 1997, the Harts, Plaintiff U-Can-II and B&L Hart Enterprises, Inc. filed an action in the United States District Court, Middle District Florida,

Jacksonville Division, the same being Case No. 97-349-CIV-J-20B, against most of the Defendants herein, challenging the tool and function business abuses and violations taking place. The Upline Defendants, particularly Gooch, thereafter assured the Harts they would work to restore the BSMs rules and remedy the abuses if the Harts would dismiss their suit. The Harts once again relied on these representations and their suit was dismissed without prejudice.

103. It was at this point in time, with the court challenge brought by the Harts, that the Upline and Downline Defendants recognized the need for a new approach in order for them to control the Hart Organization and for them to prevent a mass exodus within the tool and function business from which they profited immensely and which they sought to control. Gooch and Childers urged the Harts to dismiss their suit and promised to embark on a new, fair approach to the BSMs business, which promise was renewed at an Atlanta meeting in July 1997. Regardless, on knowledge and belief, a concerted effort was undertaken by the conspiracy beginning later in 1997, after the Harts had dismissed their suit, to seize the Harts' remaining tool and function business.

· **August 1997: Childers Decide to Lock in their "Cut."**

104. On knowledge and belief, during a meeting at a hotel in Boca Raton, Florida, in August 1997, involving Hona Childers, Bill Childers and Paul Brown, at the insistence of Hona Childers, the Childers decided not to allow any more BSMs money (beyond that currently being passed down), to flow to their downline, which included the Harts/Plaintiff. Thus, the Childers sought to lock in their then-present "cut" and refused to share any further tool profits.

The New Approach: Defendants' Use of Pro Net to Further the Objectives of the Conspiracy.

105. In 1997, with Gooch taking the lead, the conspiracy conceived a new plan to control the BSMs business within the Gooch line of sponsorship, which included the Hart Network.

· **September 1997 Meeting in Orlando.**

106. After the July 1997 Atlanta meeting, Brig Hart was invited to a meeting in Orlando. This meeting took place on September 30, 1997. Attending were Gooch, Childers, Foley, Woods, Ken Stewart, Brindley, Paul Brown, Brig Hart and Mark Wells, who worked for the Harts.

107. Hart and Wells were told that the others had arduously worked on a “new approach” and/or “new system” that would hopefully satisfy the Harts’ concerns respecting the tool and function business.

108. The “new approach,” as outlined and presented at that time, entailed contracting with the **Hayde Group**, an independent consulting firm, to develop a system for sharing profits that was fair, just and equitable to all concerned which would honor the line of sponsorship and pay on all tools and functions.

109. Additionally, this group led by Gooch at this meeting at that time, told Brig Hart and Mark Wells that Setzer had violated the rules in soliciting D’Amico and others.

· **Deal Struck in 1997 with Yager, Internet and Setzer Respecting BSMs.**

110. In 1997, Gooch and Childers and perhaps others, including Woods and Foley, struck a deal with Yager and Setzer respecting BSMs which paved the way for them to embark on their new plan to control and distribute BSMs within the Yager Group through Pro Net. In other words, before Pro Net could be brought to fruition, Yager (Internet) and Setzer, at the top of the distributorship pyramid, had to be dealt with.

111. On knowledge and belief, Yager still receives compensation for BSMs from one or more of the Defendants.

112. On knowledge and belief, Setzer still receives compensation for BSMs from one or more of the Defendants.

· **February 1998: Gooch Incorporates Pro Net.**

113. Gooch incorporated Pro Net in February 1998 as a not-for-profit trade association and, on knowledge and belief, has served as its Chief Executive Officer since that time. Childers served and/or serves as President of Pro Net, Woods as Vice President, and Foley as Treasurer. These individuals, along with Ken Stewart, comprised Pro Net's original board of directors, as well as what was referred to as the Pro Net "steering committee."

114. The Harts were not involved or consulted respecting the organization of Pro Net despite the size of their network. Further, two members of their downline were founding members of Pro Net, as well as members of the board of directors and steering committee. Clearly, the conspirators controlling Pro Net sought to make the Harts "outsiders."

115. On knowledge and belief, contrary to the presentation to Hart and Wells in Orlando in September 1997, Gooch, Childers, Woods, Foley and Brindley did not follow the recommendations of the Hayde Group because those recommendations benefited the Harts.

116. The conspirators next sought to bring (indeed force) all Amway Diamond pin level distributors and higher within the Gooch line of sponsorship into the Pro Net membership, such that Pro Net could control and direct the tool and function business. The conspirators also arranged to place all decision making and control within the hands of the Pro Net steering committee which, at that time, became the nexus of power and direction of and for the conspiracy.

117. The conspiracy's plan was to move the tool and function business into Pro Net, subject to their control and manipulation. If a distributor balked at joining Pro Net, then the distributor

risked the loss of their BSMs business which was significant and, in most cases, took years to build. Hence, it was not practical for a distributor to fight this new plan; the distributor was under duress.

118. Contemporaneously with the formation of Pro Net, Defendant Global was created to supply BSMs to Pro Net for sale to its members and, ultimately, their downline distributors. On information and belief, Global, at least for some time, did not supply BSMs to any other Amway-related organization other than Pro Net. On information and belief, Global's contract for supplying tools to Pro Net is or was with Defendants Gooch, Childers, Woods and Foley, and not with Pro Net, and served to foster control of the tool supply. Defendant Don Brindley and non-party Paul Brown served as officers and/or directors of Global, until Paul Brown was ousted in 2001. At inception, Global and Pro Net shared the same offices, and Pro Net used Global employees to perform its day-to-day operations. Brindley and Brown participated in Pro Net meetings, and responded to directions from Gooch and the Pro Net board and steering committee.

119. Pro Net is not under the control of or part of Amway.

120. Pro Net purportedly functions as a trade association comprised of members who are distributors of Amway products at the Amway Diamond level or above. Pro Net's purported purpose is to promote the common business interests of member companies and businesses engaged in distributing BSMs products or services. Pro Net purportedly provides information to its members which is helpful in developing the Amway business of its members.

121. But, in reality, Pro Net has operated for the benefit of the conspiracy, not its membership.

122. On knowledge and belief, Pro Net was calculated by the Defendants and co-conspirators herein as a means and/or instrumentality to seize the remaining tool and function business held by the Hart Organization. Pro Net was intended to facilitate gaining direct access to the Hart Organization

so that, contrary to the essential line of sponsorship rules, the conspirators could deal with Harts' downline directly for tools. In substance, Pro Net facilitated the intended continuing boycott of the Plaintiff/Harts.

123. Paul Brown was instructed by the conspirators to contact Diamonds and advise them that if they did not sign a Pro Net application, they would be stripped of all tool and function revenue.

124. The Harts were not receptive to becoming Pro Net members, but Lita Hart, in Brig Hart's absence, was placed under duress and coerced into signing a Pro Net membership upon threat of the Upline Defendants and/or Pro Net taking all of the Harts' remaining tool business if she did not sign. On knowledge and belief, similar coercive tactics were taken with other distributors within the Yager Group.

125. On knowledge and belief, meetings were held among the conspirators and others, to determine ways to unfairly criticize and undermine the Harts with the express objective of seizing all of their tool and function business. The conspirators were intent on orchestrating the demise of the Harts' BSMs business.

126. The tactics used by the conspiracy to further their objectives are now legend, and began with criticism or attacks on the personal character of the targeted distributor – in this instance, Brig and Lita Hart. The attacks were unfounded and centered around their alleged “religious fervor” and/or a lack of commitment to the Amway business. The Harts were instructed by their upline not to be so spiritually fervent from the stage at functions. When the Harts inquired as to what rule they were breaking, the response was always “none.”

127. The Defendants' motive in making these unfounded attacks upon the Plaintiff, and in particular, the Harts, was to undermine and alienate the Harts from their downline and gain control of their BSMs business, while damaging the Harts' Amway business, ultimately resulting in downline

BSMs distributors leaving the Hart Organization's respective line of sponsorship, quitting Amway and/or turning to other BSMs sponsors. In substance, the Defendants sought to disrupt and erode the Hart Network to their ultimate benefit.

128. On knowledge and belief, similar tactics, but for differing purported reasons, were taken by some of the Defendants acting in concert with others respecting Ken Stewart and Charlie Schmitz with the designed purpose of seizing Stewart's and Schmitz' tool and function business.

129. Pro Net postures itself publicly to recognize and honor the essential line of sponsorship within the tool and function business, as established by and through the Amway distributor network. For example, "Pro Net's Policy and Procedure on Line of Sponsorship or Existing Line of Affiliation," used by Paul Brown in soliciting Pro Net members, provides in part:

It is the policy of Pro Net that distributors within the Pro Net system shall adhere to, work within, and honor their line of sponsorship No change in line of sponsorship will be made without the approval of the Steering Committee.

130. However, Pro Net, under the leadership of Gooch, the control of the Pro Net steering committee and the support of the conspiracy, has served to violate the BSMs rules and create absolute chaos within the essential line of sponsorship. As a result, many Diamond distributors and initial members of Pro Net have left Pro Net to set up their own BSMs business outside of the lines of sponsorship.

131. Pro Net has solicited and sold BSMs to any willing Amway distributor, disregarding the essential line of sponsorship. Pro Net's website virtually invites Amway distributors to circumvent their line of sponsorship for BSMs while giving purely pretextual observance to the importance of the lines of sponsorship:

What are the Principals? [sic]

Teamwork – ProNet leaders began with an attitude in which teamwork is a priority.

Doubt and confusion are our enemies. We design a strategy and environment where all active participants subscribe to the same philosophy of network building. The foundational basis is **core**.

The tools of teamwork are:

Counseling

Edification

No Cross-lining (respect for line-of-sponsorship)

...

Your line of sponsorship works together- Yes, your immediate sponsor should help you as they have the most direct benefit as you succeed, but what if they are distracted, or lack commitment, or are at a distance, or are very new and inexperienced? The concept of a system has provided you with an entire team of people who will be available to assist and train you for maximum results.

132. The conspiracy, through Pro Net, has been quick to point out to a distributor a “lack of commitment,” “distance,” or “inexperience” of his/her sponsor, then they drive the “wedge,” and the line of sponsorship is averted and the long-standing rules, to assure fairness and order, contravened. And, of course, the rules being avoided, members of the conspiracy have stood to profit. That was the plan. That was the scheme. Pro Net was the instrumentality.

133. Pro Net also postures itself publicly to supposedly operate for the benefit of its “members,” the same being Amway Diamond distributors. Yet, Pro Net in reality seeks to promote and preserve, over the interest of its “regular members,” the interest of its “founding members,” the same being the aforementioned Defendants and co-conspirators who seek to control the BSMs industry within the Yager Group.

134. In signing up Pro Net members, two different application forms were used – one for “regular” members, and one for “founding” members – and the “regular” members were not told up front that they would have no vote in the Association, according to Paul Brown.

135. On knowledge and belief, since its inception, Pro Net has not conducted and operated as a valid corporate entity in accordance with its bylaws; board of directors’ meetings have not been properly convened; and the purported actions of the corporation are and were ultra vires acts. In substance, the corporate entity known as Pro Net is and was a legal nullity – a sham. In effect, Pro Net has served as the puppet or instrumentality of the Defendants and co-conspirators herein to further the objectives of the conspiracy for the personal gain and profit of the co-conspirators. Any notion that Pro Net exists or existed for the universal benefit of its Diamond members is unfounded and purely pretextual.

136. The Pro Net member meetings, attended by Diamond members, afforded the conspirators the opportunity to undermine and discredit the Harts with their downline. On knowledge and belief, this was done on numerous occasions. In fact, members of their downline reported to the Harts that it was being done and quite unfairly.

· **The Pro Net Board’s Conflicts of Interest, Self-Dealing and Breach of Fiduciary Duties.**

137. Each of the Pro Net directors and members of the Pro Net steering committee owed a fiduciary duty to each member of Pro Net, as well as each distributor company purchasing BSMs through Pro Net.

138. Gooch and his fellow board co-conspirators formulated the Pro Net compensation plan and, in so doing, directed and/or approved and/or acquiesced to the compensation each of them was to receive from tools and functions, when their participation in such decision constituted a flagrant conflict of interest, inherent self-dealing, and a breach of their fiduciary duties to the membership.

139. For example, Defendant Gooch received initially 18 cents for every cassette tape purchased through Pro Net. This compensation was paid to him periodically by Global. On knowledge and belief, Defendant Gooch's "cut" increased to at least 20 cents per cassette tape later. All the while, this information was not disclosed to "regular" Pro Net members.

140. In substance, these Defendants (that constituted the Pro Net board and steering committee), set their own compensation for tools and functions without input from Pro Net "regular" members, and then conveniently didn't disclose that information to the Pro Net membership.

141. The compensation taken by these Defendants for tools and functions was unfair, exorbitant and legally unauthorized by and through Pro Net for various reasons, including the inherent self-dealing, conflicts of interest and violations of Delaware and Florida law.

142. The machinations undertaken by the conspiracy respecting tool orders by Pro Net members are quite revealing. An order once submitted through Pro Net would be filled by Global, which shipped the tool to the recipient. Global then invoiced, in many if not all cases, a member of the conspiracy, such as Defendant Childers or TNT, who ultimately remitted payment to Global, who at some point remitted payment to Defendant Gooch. The ultimate tape consumer would remit payment upline until Childers received payment.

143. A cassette tape typically cost about 40 cents, but was sold to the ultimate consumer for \$6.00 or more.

The Final Boycotting of the Harts.

· **April 1998 Hart Meeting with the Pro Net Steering Committee in Orlando – the Loss of the Woods Organization Tool Business.**

144. Soon after Pro Net was organized and operating, Brindley and Gooch called Brig Hart and asked him to meet with the Pro Net steering committee in Orlando so that a new tool compensation plan could be presented to him. This meeting took place in April 1998, and the following participated: Gooch, Childers, Foley, Woods, Brindley, Paul Brown, Brig Hart and Mark Wells.

145. The tone and direction of this meeting were decidedly different than the previous Orlando meeting in September 1997. Gooch led the discussion. Brown drew the compensation plan out on a board.

146. Hart and Wells were told the following:

(a) Woods would henceforth deal directly with Childers for tools, leaving U-Can-II, although Woods was a part of the Hart Network;

(b) U-Can-II, having now lost the Woods and Foley tool and function business, would receive a 20-cent increase on audio cassette tapes for their remaining downline (already depleted); and

(c) U-Can-II would receive an additional dime (from 10 cents to 20 cents) on audio cassette tapes sold by Childers to the Foley network.

147. Brig Hart told the group “no,” that he would not agree to their proposal, that it violated the BSMs rules and course of dealing, and that it wasn’t fair.

148. Whereupon, Gooch stopped the meeting, and he and Brindley took Hart into a separate room. Gooch told Hart, “You’re either going to accept this or lose everything – either way, Woods is gone.” When they returned to the group meeting, Hart again said “no.” The meeting terminated.

149. Thereafter, Woods dealt directly with Childers for tools, thus boycotting U-Can-II, completely contrary to the BSMs rules. For a period of time, Childers paid U-Can-II for tools sold to Woods but, ultimately, no compensation was paid to U-Can-II by Childers for the Woods network’s tool business. And, of course, Childers, having taken the Woods function business earlier, had now succeeded in taking everything from U-Can-II.

150. The Harts, having bucked the Pro Net steering committee at the April 1998 Jacksonville meeting, soon found themselves in increasing disfavor.

• **August 1999: One-Year Suspension of the Harts at Midnight Meeting at Uwharrie Point, North Carolina.**

151. In August 1999, at a Pro Net Diamond meeting at Hal Gooch’s home in Uwharrie Point, North Carolina, the Harts were summoned to a meeting at midnight by Defendant Brindley where they were confronted by members of the Pro Net steering committee and others with unfounded charges calculated to undermine the Harts with their downline Diamonds. At this meeting, the Harts were accused of violating a rule of Pro Net by printing a piece of literature (a tool) and selling it without Pro Net’s approval. The Pro Net rule focused upon the conspiracy’s attempt to control all tools and functions by requiring advance approval of the content of same through the Pro Net steering committee, as well as Amway. Yet, one or more Pro Net steering committee members openly and flagrantly violated that same rule without repercussion. The alleged violation by the Harts

involved a small pamphlet put together by the Harts for their downline for which the Harts received \$1,300 in reimbursement. As a result of this purported “rule violation,” the Harts were told by the Pro Net steering committee that they were suspended from attending Pro Net functions for one year. This suspension, a separate boycott in and by itself, was calculated to deny the Harts any opportunity to refute the ongoing and concerted efforts of the conspiracy to discredit them and take their downline. With the suspension in effect, the stage was set for the final unfettered interference with the Hart Network by the conspirators.

152. The Harts vigorously protested this suspension, and told the Pro Net steering committee that such action made it virtually impossible for the Harts to provide leadership and direction for their remaining network.

153. The hypocrisy and illegal intent of the Pro Net steering committee’s action in August 1999 in sanctioning the Harts for the purported “rule violation” is at least partially evidenced by and through Defendant Foley rolling out about that same time, without the knowledge or advance consent of the Pro Net steering committee (excepting himself, of course), a website and internet service provider (ISP). On knowledge and belief, Jeff Starkweather and a technician of Family Connect, Inc. built the ISP for Foley which subsequently was sold by Foley to his downline at functions for hundreds of thousands of dollars. The Foley website and ISP was/is a “tool.” On knowledge and belief, Foley did not seek permission or approval of same from Pro Net. His profiting from the “tool” dwarfed any reward realized by the Harts from their “unapproved pamphlet.” Yet, Foley was not sanctioned.

· **February 2000 Pro Net Function in Indianapolis.**

154. At the Pro Net-sponsored Extravaganza 2000 Free Enterprise function held on February 4-6, 2000, in the RCA Dome in Indianapolis (when the Harts were “suspended” from

attending), Defendant Gooch and co-conspirator Paul Stanley sought to undermine the Harts before numerous of their downline Emeralds, who were concerned that the Harts were absent from this high-profile function. Stanley sought out the Hart Emeralds for a meeting with Gooch. Gooch spoke to these Hart Emeralds and represented the following, in part:

- (a) that the Harts had taken themselves out of circulation;
- (b) that he (Gooch) was not sure what the future held for the Harts, and he was not sure that the Harts would any longer be involved with Amway;
- (c) that his suggestion to them, under the circumstances, was that they (the Hart Emeralds) “plug in with us” (the Gooch group); and
- (d) that Paul Stanley would be supervising the affiliation of the Hart Emeralds into the Gooch group.

The representations made about the Harts by Gooch to the Hart Emeralds in February 2000 were untrue, and calculated to lure or entice them to begin dealing directly with Defendant Gooch respecting their tool and function business. Gooch didn't tell the Emeralds that the Pro Net steering committee, which he led, suspended the Harts at his house in August. Instead, he did all he could to infer to the Hart Emeralds that the Harts had abandoned them. This effort by Gooch and Stanley constituted unabridged solicitation of and tortious interference with the Hart Emeralds, contrary to the BSMs rules. And such was made possible by Gooch engineering the suspension of the Harts from the Pro Net functions for one year beginning August 1999.

· **February 2000 Pro Net Function in New York.**

155. Gooch and Stanley didn't stop their solicitation, tortious interference, and undermining efforts after Indianapolis. They continued. For example, during a subsequent Emerald-Diamond function in New York on February 24-25, 2000, Paul Stanley again arranged a meeting between Hart Emeralds and Hal and Susan Gooch. This meeting took place between 2:30-4:00 a.m. one morning.

Of course, the Harts were not present – they were under “suspension.” Stanley introduced Gooch, who made the following comments:

- (a) that the Harts had decided to become inactive in the Amway business for a while;
- (b) that the Harts’ future in Amway was uncertain;
- (c) that the Harts were focused on other agendas and, because of this, the Gooches were willing to help and do what they could to “fill that void in leadership”;
- (d) that they (the Hart Emeralds) “should plug into the Gooch group”; and
- (e) that they (the Hart Emeralds) should not disseminate to their downline messages from the Harts because Paul Stanley would coordinate all messages from the Gooch group directly.

156. Once again, the representations made by Gooch in New York about the Harts were untrue and/or inherently misleading. The meeting constituted yet one more effort to undermine the Harts while “suspended,” and to solicit and seize their downline tool and function business. Stanley worked in concert with Gooch in pursuing this activity. Moreover, they sought to do all they could to cut off the Harts from their downline. This was malicious, outrageous conduct.

157. Following this Pro Net function in New York, the Metcalfs, Hills, Nealis, Pasternacks, Kalbs, Auls, Chrischilles, Sorrensens and Murphys, who were all downline Emeralds or above within the Hart Network, left U-Can-II with their tool and function business.

158. Although suspended by Pro Net from functions, the Harts endeavored throughout to remain active in the Amway business, attending Amway-sponsored meetings, and maintaining their Double Diamond status. While their tool and function business was being actively solicited and converted by the Defendants, the Harts’ Amway business remained intact and functioning, despite Gooch’s ongoing representations to the contrary.

· **Pro Net Accomplishes the Total Boycott of Plaintiff.**

159. On knowledge and belief, throughout this time, the Pro Net steering committee, with Gooch in the lead, repeatedly instructed Paul Brown to rework the “pay scales” for tools to the advantage of the Defendants and to the inherent disadvantage of U-Can-II; ultimately, Brown was instructed to “cut him [Hart] out” completely.

160. As time passed, monies from the function business due U-Can-II stopped, and monies from the tool business dwindled as the conspiracy continued to whittle away at taking and/or destroying U-Can-II’s business and business expectancies regarding the tool and function business.

161. By September 2001, all monies due U-Can-II arising out of the tool and function business of its downline ceased. The conspiracy had succeeded in engineering a total boycott or severance of U-Can-II respecting the tool and function business.

The Role of Defendant Pro Net Global I, Inc. (herein “Pro Net Profit”).

162. On knowledge and belief, when the conspirators involved with Pro Net realized the problems with trying to funnel profits into the not-for-profit Pro Net, the same being profits they wanted to access, Pro Net Profit was formed.

· **The Secret Formation of Pro Net Profit.**

163. On knowledge and belief, Pro Net Profit was formed in October 1998 by Defendants Gooch, Childers, Woods and Foley to further the objectives of the conspiracy, and the fact of its existence was kept from Pro Net members, other than the co-conspirators.

164. The Harts did not learn of the existence of Pro Net Profit until the fall of 2001.

165. On knowledge and belief, Pro Net Profit is controlled and/or directed by Gooch, Childers, Woods and Foley.

166. On knowledge and belief, Pro Net Profit was formed by Gooch, Childers, Woods and Foley to derive profit from Pro Net members and their downlines since Pro Net was a not-for-profit association.

167. On knowledge and belief, Defendant Gooch, upon inquiry by Pro Net members, emphatically denied the existence of Pro Net Profit after it was incorporated.

168. On knowledge and belief, the existence of Pro Net Profit was not disclosed to Pro Net members (other than the co-conspirators), until members of the conspiracy were repeatedly pressed by Pro Net members about whether such an entity existed.

· **The Amway “Amvox” Voice-Mail Messaging System.**

169. Amway promotes and sells to its distributors the “Amvox” telephone messaging system for use in promoting Amway and building the Amway network. Amvox is also used by Amway distributors, including the Defendants at one point in time, to promote and facilitate the BSMs business. Amvox is set up to recognize through implementation the essential lines of sponsorship. Stated differently, Amvox helps facilitate the lines of sponsorship.

170. The Amvox system was the voice-mail messaging system used by most, if not virtually all, distributors for years.

171. On knowledge and belief, in 1999, Pro Net Profit began offering a competing system to distributors within the Yager Group.

· **The Pro Net Profit “EasyTel” System.**

172. On knowledge and belief, Pro Net Profit has sold goods and/or services to Pro Net members.

173. On knowledge and belief, Pro Net Profit has secured income and profit by and through the sale of goods and/or services to Pro Net members, contrary to the interests of the members and contrary to the representations as to the intended purpose of Pro Net.

174. On knowledge and belief, Pro Net Profit has sold or offered to sell to Pro Net members, in complete disregard of the lines of sponsorship, “**Genie**” or “**EasyTel**,” a voice-mail messaging system, offered as a substitute for Amway’s Amvox system. This new system is actively marketed at Pro Net functions. Further, on knowledge and belief, profits flow to Pro Net Profit instead of Pro Net members.

175. On knowledge and belief, the EasyTel voice-mail system was first marketed to Pro Net members from the stage during Pro Net’s Diamond Touch function in October 2000.

176. Unlike Amvox, the EasyTel system is not set up to respect or facilitate the essential lines of sponsorship. Thus, when a distributor switches to EasyTel from Amvox, the lines of sponsorship are not preserved within the new system.

177. On knowledge and belief, Defendants Gooch, Childers, Foley and Woods intended that EasyTel replace Amvox, and in so doing, the customary Amvox communication system would be interrupted, thereby circumventing an Amway distributor’s reliance upon his upline for information. The result is then the inherent disruption of the essential line of sponsorship.

178. On knowledge and belief, Pacific Telcom, Inc. (“**Pac Tel**”), the manufacturer of “**Genie**,” gave Defendant Gooch (ProNet’s President and Director), 600,000 shares of stock in exchange for Pro Net and/or Pro Net Profit’s agreement to market “**Genie**” actively to Pro Net members; and Defendant Gooch, on stage at a Pro Net function, represented that these shares would be divided among Pro Net Diamond members, which has not occurred.

179. On knowledge and belief, non-party co-conspirator Robert Blanchard was given 100,000 shares of stock as a result of Pro Net agreeing to market EasyTel.

· **The Pro Net Profit Website.**

180. On knowledge and belief, Pro Net Profit purchased the aforesaid Foley website from Defendant Foley for \$400,000.

181. On knowledge and belief, Pro Net Profit charged Pro Net members \$120 for access to a website known as the “**Pro Net Global Website.**”

182. On knowledge and belief, the website acquired by Pro Net Profit from Foley became the “Pro Net Global Website.”

183. On knowledge and belief, payments by Pro Net members to participate in or have access to the “Pro Net Global Website” approximated or exceeded \$3 million.

184. The “Pro Net Global Website” is a BSM, a “tool,” to which the BSMs rules apply.

185. On knowledge and belief, Pro Net members were led to believe that the “Pro Net Global Website” was owned and operated by Pro Net, not Pro Net Profit, such that those monies for website access would go to Pro Net or Pro Net members.

186. On knowledge and belief, Pro Net Profit was set up by conspirators herein to take advantage of sales of BSMs to Pro Net members, including the marketing and use of the Pro Net Global Website.

187. On knowledge and belief, payments by ProNet members for access to the “Pro Net Global Website” were taken as income by Pro Net Profit.

188. On knowledge and belief, Pro Net did not approve, or legally approve, Pro Net Profit’s use and/or ownership of the website. If any such purported approval was given, such act was an ultra

vires act by the conspirators herein acting by and out of their own pecuniary interests, and constituted a flagrant violation of their fiduciary duties.

189. On knowledge and belief, based upon representations made by Pro Net to its members, profits on BSMs were to flow to the Pro Net pin level members, not to Pro Net Profit.

190. On knowledge and belief, Pro Net Profit has profited on the sale of BSMs to Pro Net members, and Pro Net Profit has not passed on those profits to Pro Net pin level members, with the possible exception of those who were active members in the conspiracy.

191. On knowledge and belief, aside from the co-conspirators, no Pro Net pin level member has ever received any share of profits/monies from Pro Net Profit.

192. On knowledge and belief, the conspiracy sought to and has funneled all profits on the sale of BSMs to Pro Net Profit or other co-conspirators.

· **“Secret Pots.”**

193. On knowledge and belief, Defendants Gooch, Childers, Woods and Foley established “secret pots” or accounts which contained funds and/or profits from the sale of literature and videotapes to Pro Net members and/or distributors. On knowledge and belief, these “pots” were supposed to be shared with Emerald and Diamond distributors in accord with the BSMs rules, but were not.

B&L Hart de Brazil & Pro Net de Brazil.

194. As part of its international network, the Harts/Hart Enterprises founded B&L Hart de Brazil (hereinafter "**Hart Brazil**"), a Brazilian corporation, in 1993. Hart Brazil soon became the most successful international Amway networks in the Yager Group, if not all of Amway, constituting over 100,000 distributors.

195. To further the growth of Hart Brazil, the Harts, Defendant Foley, and a third party created Pro Net de Brazil (hereinafter "**Pro Net Brazil**"), a Brazilian corporation, in 1993 to supply the Hart Brazil distributors with BSMs, including tools and functions. Pro Net Brazil preceded Defendants Pro Net and Pro Net Profit by years, and have no affiliation to one another.

196. In an effort to help oversee the tremendous growth of Pro Net Brazil, which was generating millions of dollars per year, the Harts and Defendant Foley engaged Defendant Brindley in/about 1993-1994 to assist them in its management. Pro Net Brazil soon opened a large business office and a distribution warehouse to facilitate the dissemination of BSMs to Hart Brazil's downline distributor network.

197. Within approximately two years, Pro Net Brazil generated at least as much BSMs income for the Hart Organization as had U-CAN-II in the United States. Pro Net Brazil was very profitable and growing.

198. As Hart Brazil and Pro Net Brazil continued to flourish, Defendants Gooch and Childers became envious and sought to inject themselves into Pro Net Brazil's tremendous BSMs success, even though they did not participate in its formation or growth. On knowledge and belief, Foley and Brindley orchestrated bringing in Childers and Gooch so that they too could participate in the BSMs profits being realized.

199. During this period of unparalleled growth by Hart Brazil, Brindley and Foley became allied, and on knowledge and belief, soon began collaborating with Gooch and Childers as to how they could seize control of the Hart Brazilian network, including Pro Net Brazil. On knowledge and belief, Brindley referred to the BSMs business as a "chess game."

200. Thereafter, Defendant Foley began allowing Childers to speak at the Brazil functions, thus providing them the opportunity to exert their influence over the entire Hart Brazilian network.

At the direction of Foley and Brindley, Childers was paid exorbitant fees to attend and speak at these functions. During this time, Foley and Childers hyped Childers as the “real” U.S. leader of the Hart Brazilian network.

201. Over time, Brindley began repeatedly misrepresenting to the Harts that Hart Brazil and Pro Net Brazil were losing money, and were no longer viable businesses. Yet, in reality, both continued to operate and profit.

202. Ultimately, Brindley told the Harts that he [Brindley] and Foley had formed a separate corporation and had transferred all of Pro Net Brazil's assets into it, and thus, placed the same under their exclusive ownership and control. This was done without the prior knowledge of the Harts, who, having been led to believe that their Brazilian operations were in trouble, did not object. To induce the Harts into sanctioning this move, Brindley represented to the Harts that if they signed a document closing the Harts’ Brazilian ventures, the Harts would receive at least some remaining share of the profits from Brindley and Foley. Otherwise, Brindley told them, they would receive nothing.

203. Having seized control of Pro Net Brazil’s operations, Brindley and Foley controlled the BSMs operation, and not surprisingly, the Harts’ BSMs monies diminished. Eventually, Brindley and Foley completely eliminated all Pro Net Brazil income to the Hart Organization. In substance, they had succeeded in taking the Brazilian BSMs operation away from the Harts.

204. Upon knowledge and belief, Foley, and perhaps others involved in the conspiracy, transferred millions of dollars in profits from the Brazil BSMs business which belonged to Pro Net Brazil into the United States. Foley and Brindley have refused to account to the Harts for the assets of Pro Net Brazil which they seized.

Inapplicability of Arbitration.

205. Plaintiff has not knowingly, voluntarily and intelligently given its assent to any arbitration provision.

206. Plaintiff has not knowingly, voluntarily and intelligently waived its constitutional right to a jury trial.

207. Defendants have waived arbitration by filing an answer and counterclaim before filing a motion to compel arbitration, which acts are inconsistent with arbitration.

208. Defendants Rick Setzer; Setzer International, Inc.; Harold Gooch; Gooch Support Systems; Billy S. Childers; TNT of Charlotte, Inc.; Tim Foley; and Foley & Co., Inc. have contractually waived arbitration, pursuant to the May 28, 1997 Conciliation and Mediation Agreement, in which said Defendants agreed that U-Can-II has “an express right to refile [its action against Defendants] at any time”

• **The Pro Net Arbitration Provision.**

209. Pro Net, the Pro Net founders and board (excluding Ken Stewart and his company), including Gooch and Childers, incorporated a written arbitration clause into the Terms and Conditions of Pro Net “regular” membership, on knowledge and belief, so that if their tactics were ever challenged, as they anticipated, they could “influence” the process and deny them access to the courts in their locale and force the complainant to arbitration, making the pursuit of a claim onerous and expensive.

210. Pro Net, Pro Net founders and board (excluding Ken Stewart and his company), **endeavored to fraudulently induce prospective Pro Net “regular” members into accepting an arbitration clause** by promising (1) a new and equitable compensation plan as proposed by the Hayde Group; and (2) respect for the essential line of sponsorship, when there was never an intent

to honor those promises, and such promises were ultimately not honored. There is and was a **complete failure of any legal consideration** to support any purported arbitration agreement.

211. The prospective Pro Net members were also subjected to **economic coercion/ duress**, negating any voluntary assent to the purported arbitration provision, by being told that their refusal (to agree) would result in the loss of their tool and function business profits. As such, the demand for an arbitration provision and/or Pro Net membership agreement constituted an **illegal tying arrangement**. As an illegal contract, the Pro Net arbitration provision is void *ab initio*.

212. Pro Net in reality is/was a **sham**, in that it is/was not operated in accordance of law, directors were not properly and duly elected, the bylaws respecting meetings and governance were not followed, and the interests of the “regular” members were ignored because Pro Net existed to benefit the self-pecuniary interests of the “founding” members (excluding Ken Stewart and his tool company). Pro Net was the vehicle by which these founding Pro Net members, who constituted the board of directors and who were the only members eligible to serve as officers and directors because they had the only voting rights in Pro Net, controlled and manipulated the tool and function business within the Gooch line of sponsorship. Pro Net’s operations, and any purported agreements pertaining to Pro Net, violate the antitrust laws. Accordingly, any purported Pro Net arbitration provision is **null and void**.

213. The purported Pro Net arbitration provision applies to disputes between “members” of Pro Net, as well as disputes between Pro Net and any of its “members.” **Plaintiff is not a Pro Net member** for the reasons stated herein.

214. According to the Terms and Conditions of Pro Net “regular” membership, the “Membership Application will not be deemed accepted unless and until accepted by the Association

in writing.” There is **no “writing”** accepting any application of Plaintiff or any of the Defendants. Accordingly, the condition precedent to membership in Pro Net was never satisfied.

215. Lita Hart’s signature on Plaintiff’s application for membership in Pro Net was procured under duress and economic coercion. Brig Hart and Plaintiff U-Can-II opposed arbitration.

216. Defendants **Setzer** and **Setzer International, Inc.** were **not eligible** to be and were not, in fact, members of Pro Net. Thus, disputes between Plaintiff and Defendants Setzer and Setzer International, Inc. are not within the scope of the purported Pro Net Arbitration Agreement, and the Setzer Defendants have **no right to enforce the same**.

217. **Global** was **not eligible** for membership and was not in fact a member of Pro Net. Thus, disputes between Plaintiff and Global are not within the scope of the purported Pro Net Arbitration Agreement, and Global has **no right to enforce the same**.

218. Defendant **Pro Net Global I, Inc.**, was **not eligible** for membership and was not in fact a member of Pro Net. Thus, disputes between Plaintiff and Pro Net Global I, are not within the scope of the purported Pro Net Arbitration Agreement, and Pro Net Global I has **no right to enforce the same**.

219. Defendant **Don Brindley** was **not eligible** for membership and was not in fact a member of Pro Net. Thus, disputes between Plaintiff and Don Brindley are not within the scope of the purported Pro Net Arbitration Agreement, and Don Brindley has **no right to enforce the same**.

220. Interestingly, Pro Net’s Bylaws provide that **only “companies or businesses” that engage in the sale of Amway products are eligible for membership in Pro Net**. Under the express eligibility requirements of Pro Net, Plaintiff U-Can-II is not a “company or business that engages in the sale of Amway products” and, therefore, is ineligible for membership in Pro Net. As

a result, Plaintiff is not subject to arbitration under the Pro Net arbitration provision. Further, Defendants Rick Setzer, Hal Gooch, Bill Childers, Tim Foley, Steve Woods and Don Brindley are not “companies or businesses” that engage in the sale of Amway products and are, therefore, ineligible for membership in Pro Net. As a result, they have no standing to enforce the Pro Net arbitration provision and claims against them are not within the scope of the provision. Defendants Setzer International, Inc.; Gooch Support Systems, Inc.; Gooch Enterprises, Inc.; TNT, Inc. of Charlotte, NC; T&C Foley, Inc.; G.F.I. International, Inc.; Global Support Services, Inc.; and Pro Net Global I, Inc. do not engage in the sale of Amway products and are, therefore, ineligible for membership in Pro Net. Still further, those Defendants who are or were “founding” members of Pro Net, if any, were not subject or partners to any purported Pro Net arbitration provision. On knowledge and belief, none of the Defendants are parties to any purported Pro Net arbitration provision. As a result, Defendants have **no standing to enforce** the purported Pro Net arbitration provision, and Plaintiff’s claims against Defendants are not within the scope of any Pro Net arbitration provision.

· **The Amway Distributors’ Purported Arbitration Provision.**

221. Effective January 1, 1998, **Amway unilaterally amended** its Rules of Conduct to provide for purported mandatory arbitration.

222. The scope of Amway’s purported arbitration provision is set forth in Rule 11.5 of its Rules of Conduct:

11.5 Arbitration: IBOs shall give notice in writing of any **claim or dispute arising out of or relating to their Independent Business or the Independent Business Ownership Plan or Rules of Conduct**, to the other party or parties, specifying the basis for any claim and the amount claimed or relief sought. They must then try in good faith to resolve the dispute using the Dispute Resolution procedures herein.

In the event that the parties are unable to resolve the disputes within 90 days or after the above-outlined Conciliation Process is complete, whichever is later, the parties are required to submit any remaining **claim(s) arising out of or relating to their Independent Business, the Independent Business Ownership Plan or the Rules of Conduct** (including any claim against another IBO or any such IBO's officers, directors, agents or employees or against the Corporation or any of its officers, directors, agents or employees) to binding arbitration in accordance with the Arbitration Rules as stated below. . . .

Amway Business Compendium, p. F-35. In other words, the Amway distributors' purported arbitration provision **applies only to disputes between "IBOs" that arise out of or relate to their Amway or Quixtar business, the Independent Business Ownership Plan or Amway's Rules of Conduct.**

223. An "IBO" or "Independent Business Owner" is defined as "the individual(s) operating an IB pursuant to a contractual relationship with either Amway Corporation and/or Quixtar, Inc., unless otherwise specified." Amway Rules of Conduct, Rule 2.3.

224. An "IB" or "Independent Business" is defined as "an IBO entity operated as either an Amway or Quixtar business, unless otherwise specified." Amway Rules of Conduct, Rule 2.2.

225. U-Can-II has never been an Amway distributor or IB, and never signed any writing agreeing to abide by Amway's Rules of Conduct. **U-Can-II never assented to any purported arbitration clause.**

226. Neither Defendants Setzer International, Inc.; Gooch Support Systems, Inc.; Gooch Enterprises, Inc.; TNT, Inc. of Charlotte, NC; T&C Foley, Inc.; G.F.I. International, Inc.; Global Support Services, Inc.; nor Pro Net Global I, Inc. sell Amway or Quixtar produced products or services. Accordingly, they are not entities operated as an Amway or Quixtar business, nor are they individuals operating an IB. *As a result, they have **no standing** to enforce Amway's Rules*

of Conduct nor are disputes against these non-IBOs within the scope of the Amway distributors' purported arbitration provision.

227. Amway's Rules of Conduct apply only to Amway distributors/distributorships, *i.e.*, persons engaged in the sale of Amway products and services. **Amway's Rules of Conduct do not apply to the sale of non-Amway produced products and services, such as BSMs.** *See* Amway Rules of Conduct, Rule 1 (which provides that the Rules of Conduct are designed to govern the "development and maintenance of an Independent Business ("IB")" Plaintiff's allegations in this lawsuit, which relate to the sale of non-Amway produced products and services, are **not within the scope of the Amway distributors' purported arbitration provision.** Amway/Quixtar has specifically advised its distributors: "BSMs are not part of the Independent Business Owners Plan."

228. The separation of the BSMs business from the Amway business was recently addressed at a "town meeting" sponsored by "Pro Net/Quixtar" held in Overland Park, Kansas, on November 3, 2002. Randy Epema, a Quixtar representative, was asked why Quixtar was not regulating Pro Net. Mr. Epema stated, "That is a separate end of the business – there is a corporate end and a systems end," meaning that Amway does not attempt to regulate or control the "systems end" or the BSMs end of the business. Amway also stated in August 2000 that "BSMs are not part of the IBO Plan." The reasoning is made abundantly clear in the Amway "Antitrust Primer" attached hereto as **Exhibit A** and incorporated herein by reference. The Primer provides the following:

- **Producers and resellers of BSM should not ask Amway to enforce their agreements about BSM distribution and sales.** It would be a mistake for distributors to try to invoke Amway's rule against cross-line solicitation to solve problems in the BSM business. Amway is not the supplier of BSM resold in independent "systems"; it is a competitor, selling its own books, tapes and functions. Distributors who ask Amway to enforce lines of sponsorship in non-Amway BSM "systems" are in effect asking their competitor to help them allocate customers. If Amway complied with such a request, it would expose

the requesting distributor as well as Amway to serious antitrust risks.
(underlining emphasis added)

229. Contemporaneously with the amendment of its Rules of Conduct to include mandatory purported arbitration effective January 1, 1998, Amway and the IBOAI Board promulgated the Business Support Materials Arbitration Agreement (“BSMAA”) which expressly governs disputes concerning the sale of BSMs and which is purely voluntary. The BSMAA was promulgated because Amway and the IBOAI Board recognized that Amway’s Rules of Conduct did not govern the sale of non-Amway produced BSMs. In fact, Amway has recognized that if it were to regulate the sale of such BSMs, it would constitute an antitrust violation. **Plaintiff never assented to or ever signed a BSMAA.**

230. In its Rules of Conduct, Amway reserved the right to amend its Rules – or even rescind them altogether – at its whim and without notice to distributors. Rule 1 of Amway’s Rules of Conduct provides:

From time to time, the contents of these documents are changed. The Corporation will, prior to final action, submit to the IBOAI Board for discussion evaluation and recommendation changes within these documents which may materially affect IBOs including, but not limited to, changes to the IBO Plan, IBO agreements and modifications to the Rules of Conduct for IBOs; provided, however, the Corporation is not required to present matters subject to any governmental order, regulation or law.

. . . *Final decision-making authority with respect to these matters rests with the Corporation.* Upon final notification by the corporation with respect to those changes presented to the IBOAI Board, such changes will be communicated to all IBOs in a timely manner in official Corporation literature and shall become effective upon

publication. In order to preserve the goals and purposes of the IBO Plan, *the Corporation reserves to itself the sole right to adopt, amend, modify, supplement or rescind any or all of these Rules*, as necessary with respect to cases of Rules enforcement. In the event the Corporation deprives an IBO of a substantial and material property right through such adoption, amendment, modification, supplementation or rescission, such IBO shall have the right to bring such matter to the attention of the IBOAI Board for further discussion, evaluation and recommendation.

Rule 1 (emphasis added).

231. This right to amend, including the right to rescind the Rules, renders the purported arbitration contract **illusory**.

232. The Amway distributors' purported arbitration provision is **unconscionable** for numerous reasons, including the following:

(a) The Amway distributors' purported arbitration provision is a **contract of adhesion**. Amway *unilaterally* amended its Rules of Conduct to attempt to require mandatory arbitration – the distributor presumably having no choice whatsoever. Amway did not give reasonable or due notice to distributors of this change in its Rules. Amway distributors had **no opportunity to negotiate**, had **no opportunity to opt out** of the arbitration provision, and were **given no option but to accept** the arbitration provision or immediately terminate their Amway businesses, which in many cases, had taken years to build. This tactic by Amway constituted **extortion** and/or the negating of any voluntary assent by the distributor, as the Amway distributor was placed under **economic coercion/ duress** (*i.e.*,

agree to arbitration or forfeit your distributorship without compensation, no matter how valuable). This tactic also constituted an **illegal tying arrangement**. Further, Amway required distributors to renew their distributorships before it provided them with a copy of the actual arbitration rules. When the rules were circulated, they were hidden in the voluminous Business Compendium.

(b) There is and was a **complete failure of any legal consideration** to support any purported arbitration agreement.

(c) The Rules create an arbitrator selection process that **ensures that any arbitrator selected will be biased**. Only those arbitrators who have been *trained by Amway* are eligible to serve as arbitrators under the Amway Rules of Conduct. *See* Amway Rules of Conduct, Rule 11.5.15. Amway and the IBOAI Board also *vote* on whether or not to retain an arbitrator on the roster of neutrals. *See* Amway Rules of Conduct, Rule 11.5.14. This vote must be *unanimous*. *Id.* Thus, the IBOAI's vote in favor of an arbitrator is nullified by the single negative vote of Amway. Further, Defendants Gooch and Childers, and some of their co-conspirators, serve as members of the IBOAI Board. The "deck is stacked" against the distributor. **This is not bona fide, fair and good-faith arbitration.**

(d) The Amway distributors' purported arbitration provision is **one-sided** in that Amway requires its IBOs to arbitrate their disputes, but reserves for itself the right to seek relief in a judicial forum.

(e) The Amway distributors' purported arbitration provision imposes **exorbitant fees** that effectively prevent Amway distributors from seeking relief in an arbitrable forum. The fees include \$2,900 for the first day of the hearing (up to 8 hours, plus 3 hours of pre-

or post-hearing time – including time to prepare the award). Rule 11.5.56. After that, time is billed in half-day increments (4 hours plus 1.5 of pre- or post-hearing time) at \$1,450 per increment. *Id.* Additional pre- or post-hearing time is billed in 1 hour increments at \$300 per hour. *Id.* Given the number of parties and the complexity of this case, the fees alone in this case will be exorbitant. In addition, Plaintiff may be liable for the arbitrator's and case administrator's travel expenses, as well as Plaintiff's own expenses or it and its counsel to travel to Washington, DC (the situs of the arbitration), for the arbitration hearing. Accordingly, the provision is **onerous**, as well as **prohibitively expensive**.

233. The Amway distributors' arbitration provision is void and unenforceable because Amway breached its obligations of good faith and fair dealing by promulgating an illusory and unconscionable arbitration provision.

234. **U-Can-II** is not bound by any arbitration agreement purportedly entered into by Brig and Lita Hart and/or B&L Hart Enterprises, Inc.:

(a) **U-Can-II is not the alter-ego of the Harts and/or B&L Hart Enterprises, Inc.** U-Can-II has its own assets, separate bank accounts and records, and pays its own expenses; is not inadequately capitalized; does business with corporations; and complies with corporate formalities. Further, Defendants make no allegations of fraud or bad faith as is required to pierce the corporate veil.

(b) **U-Can-II is not the agent of the Harts and/or B&L Hart Enterprises, Inc.,** particularly with respect to the Amway Distributor Agreement. U-Can-II has no actual or apparent authority to act on the Harts or B&L Hart Enterprises, Inc.'s behalf or bind them to any contract.

(c) U-Can-II is **not seeking to enforce the Amway Rules of Conduct or Amway Distributor Agreement** and, therefore, is **not a third-party beneficiary** of the Amway distributors' purported arbitration provision and is **not estopped** from denying arbitration.

235. Each of the foregoing allegations contained in ¶¶ 1 through 234 above are incorporated in each count hereinafter set forth by reference.

Liability

COUNT I

Tortious Interference with Contract

For Count I of its Complaint against all Defendants, Plaintiff further states and alleges as follows:

236. Plaintiff, along with other distributors in Plaintiff's downline who participated in the tool and function business, were parties to the implied-in-fact or implied-in-law contract(s) governing the BSMs industry, including the recognition of the essential line of sponsorship, as above addressed and further addressed in ¶¶ 253 and 263 below.

237. Defendants, and each of them, had knowledge of the implied contract(s) governing the BSMs industry, as well as the business relationships and expectancies enjoyed by Plaintiff with its downline distributors.

238. Defendants intentionally and without justification interfered with Plaintiff's implied contract(s), causing the breach of the contract(s).

239. As a direct and proximate result of Defendants' intentional interference, Plaintiff has sustained damages, including but not limited to, lost profits from the tools and functions, which

damages substantially exceed the minimum jurisdictional amount for this cause to be brought before this Court.

240. The conduct of the Defendants, as herein described, was outrageous because of their malice, willfulness, evil motive or reckless indifference to the rights of others. Plaintiff will seek leave, pursuant to § 768.72, Florida Statutes, to recover punitive damages.

COUNT II
Tortious Interference with Advantageous Business Relationships

For Count II of its Complaint against all Defendants, Plaintiff further states and alleges as follows:

241. Plaintiff enjoyed and was the beneficiary of advantageous business relationships or expectancies with those downline distributors within the Hart Network. Plaintiff reasonably expected that its downline distributors would be a source of business, or serve as an exclusive customer base, for Plaintiff's tool and function business.

242. Defendants, and each of them, had knowledge of the business relationships and expectancies enjoyed by the Plaintiff.

243. Defendants intentionally and without justification interfered with Plaintiff's well-established business relationships and expectancies, causing the breach of the relationships and loss of the expectancies.

244. As a direct and proximate result of the Defendants' intentional interference, Plaintiff has sustained damages, including, but not limited to, lost profits from tools and functions, which damages substantially exceed the minimum jurisdictional amount for this cause to be brought before this Court.

245. The conduct of the Defendants, as herein described, was outrageous because of their malice, willfulness, evil motive or reckless indifference to the rights of others. Plaintiff will seek leave, pursuant to § 768.72, Florida Statutes, to recover punitive damages.

COUNT III

Breach of Fiduciary Duty

For Count III of its Complaint against Defendants Gooch, Childers, Foley and Woods, Plaintiff further states and alleges as follows:

246. Defendants Gooch, Childers, Foley and Woods were at all times mentioned herein following the incorporation of Pro Net, members of the Pro Net board of directors and Pro Net steering committee. Plaintiff reposed trust and confidence in Gooch, Childers, Foley and Woods, who accepted that trust and confidence. In such capacity, and because of their superior position and knowledge to that of Plaintiff and other participants within the BSMs industry, these Defendants, and each of them, owed a fiduciary duty to every Pro Net member, as well as every business or entity that engaged in the tool and function business through Pro Net, as directed and controlled by these Defendants. These Defendants owed the Plaintiff, as a participant in the tool and function business within the Gooch/Childers line of sponsorship, a fiduciary duty of due care and with loyalty regarding the tool and function business as administered and controlled by Pro Net, including the duties to deal with Plaintiff in good faith, to treat Plaintiff equitably and in good conscience, to make full disclosure to Plaintiff of all material facts concerning Plaintiff, to act honestly and in Plaintiff's best interest, and to refrain from self-dealing..

247. Defendants breached their fiduciary duty owed to Plaintiff by engaging in self-dealing and other conduct injurious to Plaintiff, including but not limited to, the following:

(a) Defendants established pay scales setting forth the compensation that those distributors dealing with Pro Net would receive for the sale of BSMs, which inequitably and unfairly inured to the Defendants' benefit and to the detriment of Plaintiff and other BSMs distributors.

(b) These Defendants set their own compensation for tools to be paid to them by Global or otherwise.

(c) These Defendants sought to secure unfair and exorbitant profits from the marketing and sale of tools and functions under the auspices of Pro Net, which were paid to them to the ultimate detriment of other Pro Net members, as well as those distributors participating in the tool and function business through Pro Net.

(d) These Defendants sought to perpetuate themselves in total control of Pro Net by re-electing themselves to the Pro Net board of directors (and indirectly to the Pro Net steering committee), contrary to the specific provisions of Delaware law.

(e) These Defendants withheld knowledge from Pro Net members and other distributors participating through Pro Net that one or more of them had directed and incorporated Pro Net Profit for these Defendants' own pecuniary benefit, and to the disadvantage and injury of Pro Net members and other distributors participating in the BSMs business through Pro Net.

(f) Upon knowledge and belief, these Defendants have taken monies from tools and functions (including but not limited to, the aforesaid "secret pots"), that belong to other

Pro Net members and those distributors participating in the tool and function business through Pro Net.

(g) These Defendants suspended the Harts from Pro Net functions in order to benefit themselves.

(h) These Defendants orchestrated boycotts of Plaintiff in direct violation of the BSMs rules contravening the essential line of sponsorship which Pro Net represented would be honored.

(i) These Defendants, while pretending to make decisions for the benefit of the Pro Net members and participants, made decisions and operated Pro Net for their unique pecuniary benefit while disadvantaging Plaintiff and others.

248. As a direct and proximate result of these Defendants' breaches of their fiduciary duty, Plaintiff has sustained damages, including but not limited to, lost profits from tools and functions, which damages substantially exceed the minimum jurisdictional amount for matters to be brought before this Court.

249. Defendants' aforesaid breach of their fiduciary duty, under the circumstances and events as described, was intentional and willful, and one calculated to injure and damage the Plaintiff. As such, Defendants' conduct rose to the level of an independent, intentional tort. Defendants' conduct is and was outrageous, and clearly demonstrates malice, willfulness, evil motive or reckless indifference to the rights of others. Plaintiff will seek leave, pursuant to § 768.72, Florida Statutes, to recover punitive damages.

COUNT IV

Violation of Florida Deceptive and Unfair Trade Practices Act,

Florida Statutes § 501.201, et seq.

For Count IV of its Complaint against all Defendants, Plaintiff further states and alleges as follows:

250. Defendants' actions as described above constitute unfair methods of competition, unconscionable acts and practices, and unfair and deceptive acts and practices in the conduct of trade or commerce (to-wit, the BSMs industry in Florida and beyond), in violation of Florida Statutes, § 501.201 et seq.

251. As a direct and proximate result of Defendants' deceptive and unfair trade practices, Plaintiff has sustained damages, including but not limited to, lost profits from tools and functions, which amount substantially exceeds the minimum jurisdictional amount for matters to be brought before this Court. In addition, Plaintiff has retained the undersigned law firms and is obligated to pay a reasonable fee for their services in this action. Pursuant to Florida Statutes § 501.201, *et seq.*, Plaintiff, as a prevailing party, is entitled to its damages to be proven at the trial of this matter, plus costs, interest and reasonable attorneys' fees from the Defendants for their deceptive and unfair trade practices.

COUNT V

Breach of Implied Contract Concerning the Tool Business

For Count V of its Complaint against all Defendants, Plaintiff further states and alleges as follows:

252. Plaintiff entered into an implied-in-fact and/or implied-in-law contract with the Defendants, as well as other distributors, concerning the purchase and sale of tools within the BSMs industry.

253. The implied contract, brought about by instruction from Plaintiff's upline and by a course of dealing and business practices over years, provided that the tools be purchased from a distributor's immediate upline distributor of the same or higher pin level than the purchasing distributor, at prices universally applicable to all distributors at the same level, and with the line of sponsorship being recognized and followed or making sure that each distributor is properly compensated within the line of sponsorship.

254. Plaintiff performed in accordance with the contract.

255. Defendants, and each of them, breached the contract by failing to follow the line of sponsorship, boycotting Plaintiff, failing to properly compensate Plaintiff, and manipulating prices for the tools such that not all distributors on the same level received the same price for the same tools.

256. As a direct result of Defendants' breach of this contract, Plaintiff has incurred damages, including but not limited to, lost profits from tools and functions, which damages substantially exceed the minimum jurisdictional amount for matters to be brought before this Court.

257. Defendants' aforesaid breach of the contract, under the circumstances and events described, was intentional and willful, and one calculated to injure and damage the Plaintiff. As such, Defendants' conduct rose to the level of an independent, intentional tort. Defendants' conduct is and was outrageous, and/or clearly demonstrates an evil motive or reckless indifference to the rights of others. Plaintiff will seek leave, pursuant to § 768.72, Florida Statutes, to recover punitive damages.

COUNT VI
Breach of Duty of Good Faith and Fair Dealing
Concerning the Contract Governing the Tool Business

For Count VI of its Complaint against all Defendants, Plaintiff further states and alleges as follows:

258. In contracting and dealing with the Plaintiff in respect to the implied-in-fact and/or implied-in-law contract concerning the tool business, Defendants owed the Plaintiff a duty of good faith and fair dealing in both the performance and enforcement of the contract.

259. Defendants have heretofore breached, and continue to breach, their duty of good faith and fair dealing in respect to the implied contract concerning the tool business by all of Defendants' aforesaid acts and omissions, including but not limited to, the solicitation and taking of Plaintiff's downline for tools and functions, and the engineering of boycotts of the Plaintiff.

260. As a direct of Defendants' breach of their duty of good faith and fair dealing, Plaintiff has sustained damages, including, but not limited to, lost profits from tools and functions, which substantially exceed the minimum jurisdictional amount for matters to be brought before this Court.

261. Defendants' aforesaid breach of the covenant of good faith and fair dealing, under the circumstances and events as described, was intentional and willful, and one calculated to injure and damage the Plaintiff. As such, Defendants' conduct rose to the level of an independent, intentional tort. Defendants' conduct is and was outrageous, and/or clearly demonstrates an evil motive or reckless indifference to the rights of others. Plaintiff will seek leave, pursuant to § 768.72, Florida Statutes, to recover punitive damages.

COUNT VII
Breach of Implied Contract Concerning the Function Business

For Count VII of its Complaint against all Defendants, Plaintiff further states and alleges as follows:

262. Plaintiff entered into an implied-in-fact and/or implied-in-law contract with the Defendants, as well as other Amway distributors, concerning the major functions within the BSMs industry.

263. This contract, brought about by the instruction of Plaintiff's upline, as well as a course of dealing and business practices over years, provided that only Diamond distributors were permitted to sponsor major functions, at which Diamond distributors were featured speakers, and Diamond and Emerald distributors received compensation from the sponsor for those within their downline network who attended these major functions.

264. Plaintiff performed in accordance with the contract.

265. Defendants breached their contract by violating the essential line of sponsorship; by "blackballing" and/or "suspending" the Plaintiff/Harts from participating in major functions, and from being able to successfully sponsor their own; and by refusing or failing to secure Plaintiff's consent to their actions and refusing to reasonably compensate Plaintiff for its downline network of distributors who attended major functions sponsored or supported by the Defendants.

266. As a direct result of Defendants' breach of this contract, Plaintiff has incurred damages, including but not limited to, lost profits from tools and functions, which damages substantially exceed the minimum jurisdictional amount for matters to be brought before this Court.

267. Defendants' aforesaid breach of the contract, under the circumstances and events as described, was intentional and willful, and one calculated to injure and damage the Plaintiff. As such, Defendants' conduct rose to the level of an independent, intentional tort. Defendants' conduct is and

was outrageous, and/or clearly demonstrates an evil motive or reckless indifference to the rights of others. Plaintiff will seek leave, pursuant to § 768.72, Florida Statutes, to recover punitive damages.

COUNT VIII
Breach of Duty of Good Faith and Fair Dealing
Concerning the Contract Governing the Function Business

For Count VIII of its Contract against all Defendants, Plaintiff further states and alleges as follows:

268. In contracting and dealing with the Plaintiff in respect to the implied-in-fact and/or implied-in-law contract concerning the major function business, Defendants owed the Plaintiff a duty of good faith and fair dealing in both the performance and enforcement of the contract.

269. Defendants have heretofore breached, and continue to breach, their duty of good faith and fair dealing in respect to the implied contract concerning the major function business by all of Defendants' aforesaid actions and omissions, including but not limited to, the violation of the essential line of sponsorship; the solicitation and taking of Plaintiff's downline for functions without consent and reasonable compensation; and the "blackballing" and/or "suspending" of the Plaintiff from participating in major functions.

270. As a direct result of Defendants' breach of their duty of good faith and fair dealing, Plaintiff has sustained damages, including but not limited to, lost profits from tools and functions, which damages substantially exceed the minimum jurisdictional amount for matters to be brought before this Court.

271. Defendants' aforesaid breach of their covenant of good faith and fair dealing, under the circumstances and events as described, was intentional and willful, and one calculated to injure and damage the Plaintiff. As such, Defendants' conduct rose to the level of an independent, intentional

tort. Defendants' conduct is and was outrageous, and/or clearly demonstrates an evil motive or reckless indifference to the rights of others. Plaintiff will seek leave, pursuant to § 768.72, Florida Statutes, to recover punitive damages.

COUNT IX
Civil Conspiracy

For Count IX of its Complaint against all Defendants, Plaintiff further states and alleges as follows:

272. Plaintiff further incorporates herein by reference, as though fully set forth, each of the foregoing allegations contained in ¶¶ 236 through 271 above, and ¶¶ 278 through 304 below.

273. The Defendants' above-described concerted conduct constitutes a conspiracy to violate Florida Statutes § 501.201 et seq., to tortiously interfere with Plaintiff's contracts and advantageous business expectancies, and to commit trade libel.

274. The Defendants' conspiracy enterprise was intent upon intentionally, tortiously, willfully, maliciously, and unlawfully seizing Plaintiff's rights and benefits in and to the tool and function business afforded by the immense Hart Network.

275. Defendants' overt acts in furtherance of the conspiracy included misrepresentations by Defendants herein to the Plaintiff and others; misleading the Plaintiff's downline by blatant misrepresentations of fact, including those set forth in ¶ 256 below, so as to alienate them from the Plaintiff and its principals, the Harts; engineering boycotts of the Plaintiff/Harts; and manipulating pay scales and other divisions of profit arising out of the tool and function business, to the inherent detriment of Plaintiff and the ultimate benefit of the Defendants/conspirators.

276. As a direct and proximate result of the acts committed by Defendants in furtherance of the conspiracy, Plaintiff has incurred damages, including but not limited to, lost profits from tools and functions, which damages substantially exceed the minimum amount for matters to be brought before this Court.

277. Plaintiff will seek leave, pursuant to § 768.72, Florida Statutes, to recover punitive damages.

COUNT X
Promissory Estoppel

For Count X of its Complaint against all Defendants, Plaintiff further states and alleges as follows:

278. Defendants, while instructing the Plaintiff on the rules and/or agreements governing the tool and function business, promised Plaintiff that the line of sponsorship with regard to tools and functions would be respected, along with the attendant BSMs rules pertaining to same. This meant that the line of sponsorship would not be violated, and that tool and function income in accordance with the BSMs rules would not be pulled away from the Plaintiff without Plaintiff's consent and without reasonable and equitable compensation being given therefor.

279. Defendants intended and reasonably expected Plaintiff to rely upon the Defendants' promises, and Defendants used these promises in late 1997 and 1998 to try to convince the Harts that Pro Net would be in their best interest.

280. Defendants knew, at the time they made such representations, that they did not intend to ultimately respect and/or honor the BSMs rules, including the critical line of sponsorship with regard to the tool and function business.

281. Plaintiff did not know, and did not have the means to discover, that the representations were false or otherwise blatantly misleading and intended only to give the Plaintiff a false sense of security.

282. Plaintiff relied in good faith on Defendants' representations.

283. As a result of Defendants' representations, Plaintiff dismissed its previous lawsuit, continued to participate in the tool and function business with the Upline Defendants, all to its injury, detriment and/or prejudice.

284. Injustice to Plaintiff will be avoided only through enforcement by the Court of Defendants' promises.

285. As a direct result of Defendants' aforesaid conduct, Plaintiff has incurred damages, including but not limited to, lost profits from tools and functions, which damages substantially exceed the minimum jurisdictional amount for matters to be brought before this Court.

COUNT XI **Trade Libel**

For Count XI of its Complaint against all Defendants, Plaintiff further states and alleges as follows:

286. Defendants published to third parties false statements of fact that disparaged the quality of Plaintiff's services, including, but not limited to, the following:

(a) the Harts have taken themselves out of circulation (as the reason the Harts were not in attendance at Pro Net functions following their "suspension" by the Pro Net steering committee);

(b) the Harts may no longer be involved in Amway;

- (c) the Harts have decided to become inactive in the Amway business;
- (d) the Harts are focused on other agendas instead of focusing on the Amway business;
- (e) the Harts lack commitment to you and the Amway business;
- (f) the Harts are withholding tool monies from you that you should be getting;
- (g) the Harts cannot be trusted;
- (h) the Harts are out for themselves, and have no intention of helping you build your business or profit fairly from BSMs;
- (i) the problem with inadequate BSMs compensation is because the Harts are greedy, taking more than their share of the profits;
- (j) the Harts are incapable of supporting you in the business;
- (k) the Harts are incapable of providing you with the leadership you need and deserve in building your business; and
- (l) the Harts are selling their business to the Gooch/Childers/Foley organization.

287. As a direct and proximate result of Defendants' disparagement of the quality of Plaintiff's services, which constitutes a property interest of Plaintiff, Plaintiff's downline were deterred from purchasing Plaintiff's services.

288. As a direct and proximate result of Defendants' misconduct, Plaintiff has incurred damages, including but not limited to, lost profits from tools and functions, which damages substantially exceed the minimum jurisdictional amount for matters to be brought before this Court.

289. Defendants' conduct, under the circumstances and events as described, was intentional, malicious, and with willful and wanton disregard of the rights and property interest of Plaintiff, and was calculated to injure and damage the Plaintiff. As such, Defendants' conduct rose to the level of an independent, intentional tort. Defendants' conduct is and was outrageous, and/or clearly demonstrates malice, willfulness, evil motive or reckless indifference to the rights of others. Plaintiff will seek leave, pursuant to § 768.72, Florida Statutes, to recover punitive damages.

COUNT XII
Demand for Accounting

For Count XII of its Complaint against all Defendants, Plaintiff further states and alleges as follows:

290. By reason of the fiduciary duty that was owed to Plaintiff by Gooch, Childers, Foley and Woods, the concerted activity of all of the Defendants, together with the position of superior knowledge of directing and controlling the tool and function business within the Yager/Gooch/Childers line of sponsorship – both before the incorporation of Pro Net and thereafter – each of the Defendants owes this Plaintiff an accounting respecting the tool and function business.

291. The aforesaid boycotts of the Plaintiff have resulted in millions of tools being sold around the Plaintiff to the Hart Network, pursuant to the knowledge and/or direction of Defendants, in complete violation of the BSMs rules and the implied contracts. Plaintiff did not receive adequate or reasonable compensation for these tools which were sold around the Plaintiff, and in many instances, the Plaintiff received no compensation at all.

292. Likewise, the boycott of the Plaintiff respecting functions meant that Plaintiff received no compensation whatsoever for its downline distributors attending functions, both before the incorporation of Pro Net and thereafter.

293. Defendants are or should be in a position of trust and confidence and superior knowledge respecting the income derived from tools and functions flowing from the Hart Network since at least January 1, 1994.

294. Defendants have concealed from Plaintiff the volume of the tools sold to and purchased by the Hart Network, as well as the number of persons comprising the Hart Network who participated in major functions. Plaintiff has no way to determine the particulars in respect to this business activity, including the income flowing therefrom.

295. Defendants control the books and records reflecting the sale of BSMs (including tools and functions) made in violation of the parties' implied contracts and long-standing course of dealing, and without them being required to account, it would be difficult, if not impossible, for the Plaintiff to determine the amount of money that is owed to Plaintiff.

296. The accounts maintained by Defendants are of such complexity that a court of law, special master or jury would be unable to examine the accounts with accuracy and, therefore, Plaintiff has no adequate remedy at law. Specifically, the accounts kept by Defendants are extremely complicated in that they involve potentially thousands of distributors in the Hart Network who have either sold and/or purchased BSMs in violation of the parties' implied contracts and long-standing course of dealing, as well as the identity of those distributors in the Hart Network who participated in major functions for which the Plaintiff was not compensated. In addition, in light of the facts and circumstances alleged in this Petition, there is a strong likelihood that Defendants have engaged in fraudulent transfers or taken other fraudulent measures to conceal from Plaintiff the true volume of

sales made in violation of the parties' implied contracts and course of dealing. Further, the conspiratorial nature of the relationship between the Defendants, as well as the fact that the relationship between the parties is established by the parties' course of dealing rather than by express contract, renders it extremely difficult to obtain a just and true account in a court of law, and requires the Court to order a full accounting by Defendants to Plaintiff.

297. For the foregoing reasons, Plaintiff demands an accounting from Defendants, and each of them, for all income received by Defendants since January 1, 1994, attributable to tools purchased or functions attended by distributors within the Hart Network.

298. Separately, Plaintiff demands an accounting from Defendants Brindley and Foley for the disposition of the assets of Pro Net Brazil, including accounting for the transfer of all monies from Brazil to the United States.

COUNT XIII **Injunction**

For Count XIII of its Complaint against all Defendants, Plaintiff further states and alleges as follows:

299. This is an action for permanent injunctive relief. Unless permanently enjoined, Defendants will continue to circumvent the lines of sponsorship, falsely disparage Plaintiff, boycott Plaintiff, and fail to properly compensate Plaintiff for its BSMs business.

300. Plaintiff will, in the future, suffer extreme hardship and actual and impending irreparable harm unless Defendants are enjoined from circumventing the lines of sponsorship, falsely disparaging Plaintiff, boycotting Plaintiff, and failing to properly compensate Plaintiff.

301. Plaintiff has a clear legal right to the relief requested in this Complaint, and Plaintiff has a substantial likelihood of success on the merits.

302. Plaintiff has no adequate remedy at law in that Defendants control the books of account with regard to the monies received from the sale of BSMs outside the line of sponsorship. Defendants have denied and continue to deny Plaintiff access to those records. By virtue of Defendants' exclusive control over the books of account, there is a likelihood that such books could be lost, destroyed or manipulated. As a result, it would be extremely difficult for Plaintiff to establish its damages. This request for a permanent injunction is Plaintiff's only means for securing the relief it seeks.

303. A permanent injunction would serve the interests of the public, or would not disserve or injure any public interest.

304. The threatened injury to Plaintiff if an injunction is not granted greatly outweighs any harm to Defendants that might result from the requested injunction.

COUNT XIV
Antitrust Violation – Conspiracy to Monopolize

For Count XIV of its Complaint against all Defendants, Plaintiff further states and alleges as follows:

305. Defendants are distributors (or principals of distributors) of BSMs to those downline distributors/customers within the Gooch line of sponsorship (the "**Gooch network**"), which includes Plaintiff. Each distributor of BSMs is a competitor or potential competitor with other distributors of BSMs. Hence, each Defendant is a competitor of the other Defendants respecting the distribution of BSMs, as well as a competitor of all other BSMs distributors throughout the BSMs industry.

306. BSMs constitute a separate and distinct product which is cognizable as a “**product market**” within the context of the antitrust laws.

307. The BSMs rules, in accordance with the instruction of the Upline Defendants and other upline distributors such as Dexter Yager, and like the required practice within the Amway business, required strict adherence to the line of sponsorship, meaning that all purchases of BSMs for resale by a distributor must be made from that purchaser/distributor’s upline BSMs distributor, in accordance with the long-standing BSMs rules. The BSMs rules themselves, as promulgated by the powerful BSMs distributors at the top of the BSMs pyramid, were intended to control distribution and ensure that purchases of BSMs always came through the distributor’s upline so that the upline profited. Hence, the rules themselves facilitated a monopoly.

308. The Gooch network constitutes a separate and discrete line of business within the Yager Group, which is a “**geographic market**,” regardless of the physical location of any particular distributor, in that a distributor is limited in that he can only purchase from an upline distributor; and can only sell to downline distributors. BSMs are intended to provide “training and motivation” for Amway distributors. Amway says this “training and motivation” should come from the distributor’s “sponsor or Direct Distributors” (*i.e.*, the distributor’s upline). In short, a BSMs distributor can reasonably and practicably only purchase BSMs from his upline distributors.

309. Defendants have conspired among themselves and with other powerful distributors who participate in the BSMs business to monopolize the sale and/or distribution of BSMs within the Yager Group and the Gooch network. Defendants’ concerted actions restrain trade within the State of Florida and elsewhere, and stifle or adversely affect competition within the marketplace.

310. Beginning as early as the late ‘80s, some of the Defendants, including Childers, Foley, Woods, Setzer and Gooch, conspired with others to undermine Plaintiff respecting its network of

over 200,000 distributors/customers for BSMs within the Yager Group. *See*, for example, ¶¶ 76-104 above. This resulted in the erosion of the Plaintiff's network and the loss of BSMs business. Those active within the conspiracy **allocated customers** within the market, including taking them away from Plaintiff and agreeing upon who would take them.

311. Defendants' plan eventually entailed the creation of Pro Net in 1998 as an instrumentality to monopolize, control and manipulate the distribution of BSMs within and throughout the Gooch network. Specifically, Pro Net served as the instrumentality to gain control over the BSMs distributors/competitors within the Gooch network for the benefit of Defendants.

312. Through Pro Net, within the relevant market, the Defendants conspired to eliminate competition and to place themselves in a position to control:

- (a) what tools would be distributed, including the content of same;
- (b) how tools would be distributed and priced at each level of the distributor network;
- (c) which BSMs distributors would be permitted to participate and profit on BSMs and how much;
- (d) what major functions would be approved and permitted; and
- (e) who would be permitted to speak at major functions.

313. Defendants' conspiratorial efforts to monopolize and control the distribution of BSMs and to eliminate competition within the Gooch network were facilitated by the following mandatory provisions in the Pro Net "Membership Application Terms and Conditions" for "regular" members:

- 4. Member grants authority to the Association to negotiate for the purchase of business support materials on behalf of the Member.

5. Member agrees to refrain from using business support materials unless they have been approved by the Association . . .
7. The Association will act to provide benefits to Members by, among other things: . . . Making business support materials, services, marketing materials and other print or electronic literature available for purchase by Members.
8. As it relates to any Amway Distributor Opens Business Building Seminars and/or Conventions (“Event”), the Member: . . .
 - b. Agrees that with respect to all previously created Works presented and/or audio or videotapes thereof used or produced by the Member or any principal, employee or independent contractor of the Member at any past Event, the Member **hereby assigns to the Association all of its worldwide right, title and interest in and to such past Works** and any works in any medium derived from them . . .
 - c. **Agrees that all Works to be created in the future** by the Member, or any of its principals, employees or independent contractors, including but not limited to presentations and related audio or videotapes and materials that the undersigned Member uses or produces in connection with them, shall constitute Works made for hire, in which authorship and **ownership rights vest in the Association** . . . with respect to any future Works not deemed to be works for hire, the undersigned Member hereby **assigns to the Association all of its worldwide rights, title and interest in and to such future Works** . . .
 - d. Agrees that the Association has permission to use the name, image, likeness, voice, photograph and/or biographical information of any individual Member and any principals and employees of a Member for the purposes of advertising or promoting any Event or any broadcast or transmission of such persons’ appearances at any past or future Event . . . (emphasis added)

314. The foregoing coercive terms (along with an arbitration provision), extracted from Pro Net “regular” members within the flawed two-tier Pro Net membership system (to-wit: the five “founding” members with voting rights and the only members eligible to serve as Pro Net officers and directors, and “regular” members without voting rights subject to the foregoing coercive terms and conditions of membership), served as a means to control the distributors of BSMs within the Gooch network, and the distributors had no economically feasible choice but to accept these coercive terms

and purchase their BSMs from Global at the prices and on the terms prescribed by the Defendants. Essentially, the Pro Net “regular” members surrendered control over their BSMs business and had no rights or “say.” Yet, in dealing with the “regular” members, Paul Brown was instructed by one or more of the Defendants to lead them to believe they had a vote and that they had a “say.”

315. Defendants’ plan in 1997 to monopolize also entailed the creation of Global to facilitate the supply of BSMs within the Gooch network. By agreement among the Defendants, Global became the exclusive or predominant supplier of BSMs to the Gooch network. Defendants agreed upon standard prices and terms with Global. For example, on knowledge and belief, the purchase price for an audiotape from Global was 40 cents.

316. Defendants conspired to require those participants in the BSMs industry within the Gooch network to purchase all of their BSMs from the Defendants through Global, and to assign all rights respecting BSMs to Pro Net. The penalty for non-compliance with the Defendants’ edicts was to be ousted – boycotted from participation in the BSMs business.

317. On knowledge and belief, because of concerns of Gooch and Childers, in particular, that their upline distributors, Yager and Setzer, would seek to interfere with sales of BSMs within the Gooch network and/or that Yager and Setzer were taking too large of a cut of the profits on sales of BSMs to the Gooch network, the Defendants conspired to break away from these upline distributors and to eliminate their competition for BSMs within the Gooch network. Yager and Setzer and/or their “tool” companies were BSMs distributors and, therefore, potential competitors for the BSMs business within the Gooch network.

318. On knowledge and belief, Gooch and Childers secretly agreed to an arrangement with Dexter Yager and Rick Setzer in or about 1997 to pay them monies on BSMs sold within the Gooch network in exchange for them not competing for BSM sales with the distributors/ customers within

the Gooch network. This arrangement, or the particulars thereof, was/were never disclosed to “regular” Pro Net members.

319. Thereafter, on knowledge and belief, respecting BSMs sold to distributors within the Gooch network, competitors Yager and Setzer received a “cut,” even though they were not part of Pro Net. For example, on knowledge and belief, for each audiotape sold, Yager was paid 14 cents, Setzer was paid 2 cents, and Ronald Gooch (Hal Gooch’s brother and an upline distributor to Gooch), was paid ½ cent. On knowledge and belief, these secret payments or kickbacks were intended to eliminate competition for BSMs within the Gooch network and to **allocate customers** (for the benefit of Defendants), such that the Defendants could control the relevant market and dictate the supply, distribution and pricing of the BSMs without fear of competition or criticism from Yager and/or Setzer.

320. Once the Gooch upline (Yager and Setzer) were dealt with and taken out of competition, the Pro Net requirement that distributors shall not purchase any BSMs without the approval of the “Association” (meaning the Defendants and their co-conspirators who controlled the Association), made distributors captive to the BSMs distributed by Defendants. Very simply, the Defendants would not give approval to other BSMs. A distributor within the Gooch network either purchased his BSMs from Defendants or he was done. Any distributor who balked at joining Pro Net or left Pro Net or refused to deal with Pro Net was “blackballed.”

321. For example, Team In Focus is a group of Amway/Quixtar distributors or former distributors who pulled out of Pro Net in 2000 because of concerns over profuse BSMs abuses. On knowledge and belief, after these distributors pulled out of Pro Net, Gooch instructed Paul Brown, one of the owners of Global, that Global not supply BSMs to Team In Focus distributors, and if Global did supply them, Pro Net and E-Alliance (another group of BSMs distributors of which Pro

Net was a part), would stop purchasing BSMs from Global. Global complied. Those distributors were cut off by Global.

322. At least by the early '90s, Defendants Gooch, Childers and perhaps others, and then later all Defendants acting in concert with one another, conspired to fix the prices that each distributor within the Gooch network would pay for BSMs, such as audiotapes. The Upline Defendants fixed the prices to benefit themselves, taking an inordinate share of the profits. For example, on knowledge and belief, Defendant Childers endeavored to secure a 25-30% profit on audiotapes, while Defendant Gooch in 1998 was being paid 18 cents or more for every audiotape sold throughout the Gooch network. The prices were fixed by Defendants from top to bottom, vertically and horizontally, throughout the Gooch network. For example, in 1997, the requisite price that a bottom-tier distributor/customer would pay to purchase an audiotape from his upline distributor was \$6. On knowledge and belief, Gooch was continuously pressing to increase that price.

323. On knowledge and belief, in 1997, Hal Gooch and Bill Childers (and perhaps others), conspired to secure tool pricing information from as many Diamonds as possible in the Yager Group with a view toward developing/fixing a BSMs pricing structure for Pro Net among competitors. Numerous pricing schedules were secured, reviewed and compared. Prior to 1997, on knowledge and belief, Gooch and Childers conspired with other BSMs distributors within the Yager Group to fix prices throughout – vertically and horizontally – and to make sure that BSMs distributors in the Yager Group purchased BSMs only from their upline.

324. The conspiratorial efforts to fix prices continued (and for that matter, on knowledge and belief, continues today), and included a meeting at Myrtle Beach, South Carolina, in May 1998, attended by Diamond level distributors whose organizations were deemed eligible for membership in Pro Net and who were being solicited for Pro Net membership by Defendants. At that meeting

prompted by Defendants, discussions took place on the prices to be set for the sale and resale of BSMs to every level of the distributor network, including the ultimate purchaser of the BSMs. Gooch pressed for an increase in the \$6 tape price, but encountered resistance.

325. Defendants conspired and intended to fix the prices for BSMs in the market in a manner to harm competition and disadvantage the Plaintiff. And because Defendants controlled the distribution of BSMs within the Gooch network, Plaintiff could not secure or bargain for competitive pricing elsewhere for the BSMs being purchased. Plaintiff sought better pricing (more profit), including better “cuts” for its downline, to no avail. Plaintiff was captive to the foregoing anti-competitive practices and resulting restricted market designed and brought about by the Defendants’ conspiratorial acts. Consequently, Plaintiff (and other distributors) paid a higher price for BSMs than it would or should have within a market free from monopolization.

326. The foregoing heavy-handed and anti-competitive tactics stand in stark contrast to a free and competitive market, as well as Amway’s public statements that distributors should be free to procure BSMs from anyone they want. In reality, within the Yager Group and the Gooch network, such was not possible unless a distributor wanted to forfeit his tool and function business income.

327. Yet, on knowledge and belief, Defendants enjoy the support and tacit approval of Amway respecting their efforts. For example, Amway attorneys assisted Gooch and Childers in their “break away” from Yager and Setzer in 1997. Members of the Amway staff met with the Pro Net founders on January 12, 1998, and likewise provided assistance and input. As another example, at a “town meeting” sponsored by “Pro Net/Quixtar” held in Overland Park, Kansas, on November 3, 2002, Randy Epema of Quixtar stated to the group of distributors in attendance, “Your leadership will come from the Pro Net line of affiliation.”

328. Further, at the insistence of Defendants and their co-conspirators, Amway has brought pressure on BSMs distributors to take their BSMs disputes to arbitration, despite the fact that the Amway arbitration provision was never intended to apply to BSMs disputes and despite the unenforceability of any purported arbitration provision, with a threat of sanctions by Amway against their Amway distributorship, including the loss of the distributorship. These actions by Amway have served to coerce litigants unfairly into capitulation and in so doing, enhance the control over the BSMs business desired by Defendants and their co-conspirators. One such example is Joanne Schmitz, an Amway/Quixtar IBO. Amway/Quixtar threatened Ms. Schmitz with sanctions if she did not dismiss her lawsuit and pursue Amway arbitration. Ms. Schmitz, who could not afford the onerous arbitration expense, believed she had no choice but to dismiss her suit.

329. Control of the BSMs business within the Gooch network equated to power. The Defendants and their co-conspirators consist of principals or representatives of Amway distributorships (“IBs” who are not Defendant parties hereto), that are located near the apex of the multi-level distributor network (pyramid) that comprises the Amway business, separate and apart from the BSMs business. Consequently, these highly-situated distributors exercise considerable clout in their business relationship with Amway/Quixtar. Very simply, Dexter Yager, Bill Britt, Rick Setzer, Hal Gooch, Bill Childers, Tim Foley and Steve Woods are in a position to influence and/or bring considerable pressure upon Amway/Quixtar should they choose to do so, particularly if they do so as a group. On knowledge and belief, these powerful distributors have acted in concert to influence Amway/Quixtar respecting how Amway/Quixtar should deal with the “disfavored” distributors and/or the activities occurring in the BSMs business within the Gooch network.

330. Independent Business Owners Association International, Inc. (hereinafter the “**IBOA**”), is an association located in Grand Rapids, Michigan, comprised of Amway/Quixtar distributors or

independent businesses. The IBOA is directed by a board of directors currently consisting of 30 members who are independent business owners or the principals of Amway/ Quixtar IBs. Only Diamond or higher pin level IBOs are eligible to serve as directors. The IBOA works in conjunction with Amway/Quixtar respecting the Amway/Quixtar business. The IBOA Board is in a position to exercise influence with Amway/Quixtar.

331. The aforesaid highly-situated IBOs (Dexter Yager, Bill Britt, Rick Setzer, Hal Gooch, Bill Childers, Tim Foley and Steve Woods), serve and/or have served as members of the IBOA Board. Consequently, these individuals while serving on the Board are in a position to exercise influence over decisions and/or recommendations made by the IBOA.

332. On knowledge and belief, the Defendants and their co-conspirators, by and through the influence they wield on the IBOA Board, have sought to influence the Board respecting those independent business owners, like the Harts, that they view with disfavor due to the disfavored distributors taking exception to the tactics of the Defendants respecting the BSMs business within the Gooch network. On knowledge and belief, this influence has directly led to arbitrary and capricious decisions and/or recommendations by the IBOA and/or its agents or representatives, and in turn, decisions and/or rulings by Amway/Quixtar which may also have been influenced in part by the inherently flawed and biased positions taken by the IBOA respecting the disfavored distributors.

333. Accordingly, the Defendants and their co-conspirators have sought to perpetuate their control and monopolization of the BSMs business within the Gooch network by and through exercising undue influence and control over the IBOA, the IBOA Board and Amway/Quixtar. In the same manner, they seek to exercise control and influence over the Amway and Pro Net conciliation and arbitration proceedings, which are inherently biased and flawed as a result of their control and influence.

334. Ultimately, following the April 1998 meeting in Orlando (*see* ¶¶ 144-150 above), the Defendants conspired to eliminate the Plaintiff altogether as an active and successful distributor within the relevant market in order to obtain for themselves the remaining profits which the Plaintiff was earning from the sale of BSMs to its downline distributor network.

335. The acts taken by the conspirators included: banning Brig and Lita Hart from appearing on stage and/or speaking at functions, realizing full-well that this action would further undermine and damage the Harts/Plaintiff in the eyes of their downline, and those other actions listed in ¶ 341 below. This action was undertaken at the specific instruction of the Pro Net steering committee. The members of the Pro Net steering committee, including Gooch and Childers, referred to these tactics as “**blackballing**.” Such “blackballing” was intended to adversely affect the price or supply of BSMs within the market.

336. As a direct result of the aforesaid actions of Defendants, competition within the relevant market has been harmed and Plaintiff has been damaged in that it was **boycotted** by the Defendants from actively engaging in the BSMs business, sustaining the loss of profits from those lost sales.

337. The conduct of Defendants, as aforesaid, constitutes violations of F.S.A. §§ 542.18 and 542.19.

338. Plaintiff is entitled to relief under F.S.A. § 542.22, including treble damages and reasonable attorneys’ fees incurred herein.

COUNT XV
Antitrust Violation – Group Boycott

For Count XV of its Complaint against all Defendants, Plaintiff further states and alleges as follows:

339. Plaintiff additionally repleads and incorporates herein as though fully set forth the allegations contained in ¶¶ 305 through 336 above.

340. The tactics described above utilized by Defendants constituted a “concerted refusal to deal” with Plaintiff, more commonly called a **group boycott**.

341. As such, the group boycott violated F.S.A. §§ 542.18 and 542.19 in that it was a **per se illegal agreement** among the Defendants to disadvantage the Plaintiff as a competitor of the conspirators in the distribution and sale of BSMs, by:

(a) “blackballing” or barring Brig and Lita Hart from appearing on stage and/or speaking at functions which was absolutely essential to demonstrate leadership to the Plaintiff’s downline;

(b) “suspending” the Harts from attending functions;

(c) on knowledge and belief, refusing to edit and/or sell and/or advertise any tapes featuring the Harts;

(d) isolating the Harts and Plaintiff from their downline distributors by and through the aforesaid actions calculated to undermine and/or disparage the Harts and Plaintiff;

(e) persuading or coercing customers of the Plaintiff to refuse to deal with or purchase BSMs from the Plaintiff, which BSMs were essential to maintain a viable network of distribution; and

(f) banning Plaintiff’s participation within the BSMs business.

342. As a direct result of the aforesaid tactics, Plaintiff has sustained damages.

343. Plaintiff is entitled to relief under F.S.A. § 542.22, including treble damages and reasonable attorneys’ fees incurred herein.

COUNT XVI
Antitrust Violation – Price Fixing and Allocation of Customers

For Count XVI of its Complaint against all Defendants, Plaintiff further states and alleges as follows:

344. Plaintiff repleads and incorporates herein as though fully set forth the allegations contained in ¶¶ 305 through 336 above.

345. The actions described above utilized by the Defendants constitute **price fixing** and the illegal **allocation of customers, per se violations** of F.S.A. §§ 542.18 and 542.19.

346. As a direct result of the aforesaid actions, Plaintiff has sustained damages.

347. Plaintiff is entitled to relief under F.S.A. § 542.22, including treble damages and reasonable attorneys' fees incurred herein.

COUNT XVII
Antitrust Violation – Illegal Tying Arrangement

For Count XVII of its Complaint against all Defendants, Plaintiff further states and alleges as follows:

348. Plaintiff repleads and incorporates herein as though fully set forth the allegations contained in ¶¶ 305 through 336 above.

349. The BSMs were a necessary and indispensable portion of the business of all of the BSMs distributors within the Gooch network.

350. The sales of BSMs by Global to the Gooch network constituted a substantial amount of commerce, representing sales annually in the tens of millions of dollars.

351. The BSMs sold by Global were unrelated to, and separate and distinct from, membership in Pro Net, the not-for-profit company formed by the conspirators, which all BSMs Diamond distributors in the Gooch network were required to join in order to have access to an essential product: the BSMs sold by Global.

352. The Defendants had market power over the market of BSMs sold through Global, which conspirators controlled.

353. Forcing downline distributors, including Plaintiff herein, to join Pro Net (a “tied product or service”), in order to obtain access to and the right to purchase BSMs (the “tying product”), from Global constituted an **illegal tying arrangement**, a **per se violation** of F.S.A. §§ 542.18 and 542.19.

354. As a direct result of this illegal tying arrangement, Plaintiff has sustained damages.

355. Plaintiff is entitled to relief under F.S.A. § 542.22, including treble damages and reasonable attorneys’ fees incurred herein.

Request for Relief:

WHEREFORE, Plaintiff prays judgment against Defendants, jointly and severally, as follows:

(a) for Plaintiff’s actual damages in a just and reasonable amount, and for such other damages recoverable according to law;

(b) for Plaintiff’s reasonable attorneys’ fees as provided in F.S.A. § 501.201, et seq., and Plaintiff’s costs herein incurred;

(c) for treble damages, cost of suit and reasonable attorneys’ fees respecting violations of F.S.A. §§ 542.18 and/or 542.19 in accordance with § 542.22;

(d) for an accounting from all Defendants as sought under Count XII for all tool and function monies derived from the Hart Network since January 1, 1994;

(e) for an accounting from Defendants Foley and Brindley for the assets of Pro Net Brazil, together with an accounting of all monies transferred out of Brazil to the United States or elsewhere;

(f) for an accounting from all Defendants respecting monies received by Pro Net Global and Pro Net Profit for tools sold to or on behalf of and functions attended by distributors, persons and/or participants in the Yager Group or line of sponsorship;

(g) for a permanent injunction respecting the Plaintiff enjoining the Defendants from:

(i) circumventing the lines of sponsorship;

(ii) falsely disparaging Plaintiff;

(iii) boycotting Plaintiff; and

(iv) failing to properly and fairly compensate the Plaintiff for tools and functions.

(h) Disgorgement of all profits Defendants have received since January 1, 1996, that are attributable to tools purchased or functions attended by distributors within the Hart Network; and

(i) for such other and further relief as the Court shall deem just and proper.

PLAINTIFF DEMANDS TRIAL BY JURY OF ALL ISSUES SO TRIABLE.

SHUGHART THOMSON & KILROY
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that I did on this _____ day of November, 2002, cause a copy of the above and foregoing First-Amended Complaint to be sent via U.S. Mail, postage prepaid, to:

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Glossary of Terms

Alticor: The parent company of Amway and Quixtar.

Amway: A multi-level marketing network of independent businesses, the internet-based arm of which is named “Quixtar.”

Amvox: The voice-mail messaging system marketed and sold by Amway/Quixtar to its distributors to promote and facilitate communications by a distributor with his downline, and which system was set up to recognize through implementation the essential lines of sponsorship.

Boycott: Refusing to do business with a person/entity, including bypassing a distributor in the line of sponsorship without consent, including a servicing agreement, and without fair and reasonable compensation.

Business Support Materials (BSMs): Typically being “tools” (audio cassette tapes and video tapes, books, pamphlets, electronic literature, etc.), but used herein in the broader sense as including both tools and functions.

BSMs Industry: As herein used, the tools and functions businesses. Not a part of the Amway/Quixtar business.

BSMs Rules: The rules and/or implied contract governing the tool and function business or BSMs industry, as instructed by high-ranking distributors near the apex of the multi-level marketing network, and as confirmed by and through a course of dealing for years.

Cross-Lining: Refers to a tactic where a distributor in a given line of sponsorship solicits and/or secures the BSMs business of a distributor in another line of sponsorship, thus going outside of or around the established lines of sponsorship, contrary to BSMs rules.

Downline: Refers to those distributors who are downline or below a given distributor in the line of sponsorship within the multi-level marketing network.

Downline Defendants: Defendants Steve Woods, Tim Foley and Don Brindley.

EasyTel: Also known as “Genie” and refers to the voice-mail messaging system manufactured by Pacific Telecom, Inc. and, on information and belief, marketed by ProNet Profit to Amway/Quixtar distributors.

Functions: Motivational seminars, rallies and conventions attended by Amway/Quixtar distributors.

Hart Network: The downline distributors of Plaintiff U-Can-II, Inc., as well as the downline distributors of B&L Hart Enterprises, Inc.

Hart Organization: Meaning Plaintiff U-Can-II, Inc., B&L Hart Enterprises, Inc.; and Brig and Lita Hart.

IB: An Amway/Quixtar term meaning “independent business.”

IBO: An Amway/Quixtar term meaning “independent business owner.”

Line of Sponsorship: Refers to a distributor’s position within a multi-level marketing network (such as the Amway/Quixtar network of distributors), which is immediately below the person/entity bringing the new distributor into the network and immediately above those persons/entities the new distributor ultimately sponsors or brings into the network. This is analogous to lineage within a “family tree.” For instance, the line of sponsorship from Dexter Yager to the Harts or any other distributor within the Yager Group can be traced. *See* chart on page 14 above.

Major Function: As herein used, refers to the large, high-profile rallies or conventions normally held in large cities sponsored by a Diamond distributor or higher which was typically attended by thousands of Amway/Quixtar distributors.

Pay Scales: Refers to those schedules which set price entitlements and compensation vertically within the line of sponsorship for tools and perhaps at times, functions.

Pin Level: An Amway/Quixtar term referring to the ascending levels of achievement or success, such as a “Diamond distributor.” *See* ¶ 19 on page 11 above.

Quixtar: Alticor’s internet-based business, like Amway, a multi-level marketing network.

Servicing Agreement: For example, an agreement entered into between two Diamond distributors where one of the Diamond distributors, with the consent of the other, sells tools to the downline of the other Diamond and/or has the other Diamond’s downline distributors attend his upline functions. These agreements provided reasonable and fair compensation for the Diamond distributor giving up his tool and function business to the other.

Servicing Agreement Rule: Refers to the BSMs rule that before one distributor would take the tool and/or function business of another (thus averting the line of sponsorship), he or she would secure the consent of that distributor through a servicing agreement under which the other distributor would be reasonably and fairly compensated for his/her tool and function business flowing from his/her downline. In essence, the servicing agreement rule precluded boycotts and/or violations of the line of sponsorship.

Tool: Also referred to as business support materials, or BSMs, which consist of audio cassette tapes, video tapes, books, pamphlets, electronic literature, etc. used to educate and motivate

distributors. The tools consisting of audio cassette tapes and video tapes are normally recorded speeches and/or presentations made at major functions. Tools are non-Amway/Quixtar products.

Tool and Function Business: The marketing and/or sale of tools and functions to assist in the training and motivation of Amway/Quixtar distributors.

Tool Cut: Refers to the price that a distributor would receive for his/her share of profits on a tool, such as an audio cassette tape.

Upline: Refers to those distributors who are upline or above a given distributor in the line of sponsorship within the multi-level marketing network.

Upline Defendants: Defendants Richard Setzer, Hal Gooch and Bill Childers.

Yager Group: Refers to the Amway/Quixtar distributor network below Dexter Yager in the line of sponsorship. *See* chart on page 14 above.