

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI
DIVISION NO. 3

NETCO, INC.; and)
SCHMITZ & ASSOCIATES, INC.;)
)
Plaintiffs,)

vs.)

Case No. 101CC0075

JIMMY DUNN)
4078 East Forrest Ridge Lane)
Rogersville, MO 65742;)

FIRST-AMENDED PETITION

JIMMY V. DUNN & ASSOCIATES, INC.)
2281 West Nottingham)
Springfield, MO 65810)
(registered agent – Jimmy V. Dunn)
4078 East Forrest Ridge Lane)
Rogersville, MO 65742);)

HAROLD GOOCH, JR.)
Six Curtis Court)
Thomasville, NC 27760;)

GOOCH SUPPORT SYSTEMS, INC.)
Six Curtis Court)
Thomasville, NC 27760)
(registered agent – Tryon Business Services, Inc.)
207 N. Tryon Street)
30th Floor)
Charlotte, NC 28202);)

GOOCH ENTERPRISES, INC.)
2182 NW 91st Street)
Miami, Miami-Dade County, Florida)
(registered agent – John L. Gooch)
2182 NW 91st Street)
Miami, FL 33147);)

BILLY S. CHILDERS)
2352 N.W. 49th Lane)
Boca Raton, FL 33431;)

TNT, INC. of Charlotte, North Carolina)
7005 Shannon Willow Road)
Charlotte, NC 28266)
(registered agent – Billy S. Childers)
7005 Shannon Willow Road)
Charlotte, NC 28266);)
)
JIM EVANS)
5549 South Golden)
Springfield, MO 65810;)
)
J.L. EVANS & ASSOCIATES, INC.)
5595 S. Farm Road 135)
Springfield, MO 65810)
(registered agent – Jim L. Evans)
5595 S. Farm Road 135)
Springfield, MO 65810);)
)
PRO NET GLOBAL ASSOCIATION, INC.)
6851 Distribution Avenue South)
Jacksonville, FL)
(registered agent – Corporation Service Co.)
1201 Hays Street)
Tallahassee, FL 32301-2525);)
)
GLOBAL SUPPORT SERVICES, INC.)
6851 Distribution Avenue South)
Jacksonville, FL)
(registered agent – Corporation Service Co.)
1201 Hays Street)
Tallahassee, FL 32301-2525);)
)
JOHN DOE; RICHARD ROE; and other unknown)
conspirators,)
)
Defendants.)

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FIRST-AMENDED PETITION

COME NOW the Plaintiffs, by and through their attorneys, and for their causes of action against the Defendants, state and allege as follows:

Introduction

1. This cause arises out of business relationships between Plaintiffs and Defendants complementary to what may be commonly referred to as the "Amway business." 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. 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 or their "tool and/or function" companies. The parties hereto are or were engaged in the "tool and function" business which Defendants sought to monopolize.

2. Charlie and Kim Schmitz (the "**Schmitzes**") are the principals of **Plaintiff Netco, Inc.**, which until 1999 (when Netco was forced to sell its Amway distributorship due to the repercussions of Defendants' concerted acts as hereinafter described), operated a successful Amway distributorship. In addition, the Schmitzes operated their non-Amway "tool business" through Netco, Inc. This lawsuit relates to the tool business conducted by Netco, Inc.; not to the Amway business. None of the Defendants are believed to be Amway distributorships (IBs or independent businesses), but regardless, the claims herein are not brought against any Defendant in his/its capacity as an Amway independent business owner (IBO) or Amway independent business (IB). **The claims are brought respecting the "tool and function" business.** The Schmitzes are also the principals of **Plaintiff Schmitz & Associates, Inc.**, a corporation that facilitated the Schmitzes' "function" business. Over a period of 15 years, the Schmitzes built a

network of over 8,000 independent downline distributors (the “**Schmitz Network**”), achieving the coveted “Diamond” status in Amway. The Schmitz Network represented one of the very largest “legs” within the Amway multi-level marketing network based in Missouri. The Schmitz Network was extremely valuable to the Schmitzes as a means of selling Amway’s products. And, equally important, it served as a huge ready market for the Plaintiffs’ participation within the “tool and function business.” This, too, was recognized by Defendants.

3. The causes of action hereinafter set forth, arising out of the same series of transactions and occurrences, are based upon the Defendants and their co-conspirators conducting wrongful and illicit schemes to misappropriate the Plaintiffs’ tool and function business. The Defendants’ activities give rise to liability under various common law and statutory causes of action, including violations of the Missouri antitrust laws due to Defendants’ efforts to monopolize, control and manipulate the tool and function business. In substance, the Defendants’ ruthless pursuit of the Plaintiffs’ tool and function business, and the interference with the Plaintiffs’ business relationships and expectancies with their network of distributors, have deprived the Plaintiffs of millions of dollars of revenue within the tool and function business industry. This case seeks damages for these wrongful actions.

Jurisdiction and Venue

4. Jurisdiction and venue are proper in this Court in accordance with § 506.500 R.S.Mo., as all of the Defendants have transacted business, committed tortious acts, and made contracts within the State of Missouri, including Greene County. Many of the Defendants are residents of the State of Missouri. The various alleged breaches and tortious conduct occurred in part in Missouri, including Greene County. Some, if not all, Defendants do business over the Internet and, accordingly, are deemed as a matter of law to do business within Missouri, including Greene County. Plaintiffs’ causes of action arise from these acts. On knowledge and belief, the Defendants acted in

concert with one another in furtherance of a joint enterprise or conspiracy. The price-fixing hereinafter alleged involved products delivered into Missouri and, at least in part, used or consumed by Missouri residents. The conduct hereinafter alleged of Defendants gave rise to antitrust violations and injuries within the State of Missouri. The amount in controversy substantially exceeds the minimum jurisdictional limit for matters to be brought before this Court.

5. Venue is proper in this Court in accordance with the provisions of § 508.010(3) R.S.Mo., as there are resident and nonresident Defendants of this State, both individual and corporate, and several of the Defendants reside in Greene County, Missouri.

6. Defendants Dunn and Evans base their business operations in Missouri. The out-of-state Defendants all do business in Missouri and do business (or did business) with the Dunn and Evans Defendants in Missouri. For example, Defendant Gooch attended a business meeting in Kansas City, Missouri, in March 1998; Defendant Childers attended meetings in Huggins, Missouri, in September 1997, and in Kansas City, Missouri, in March 1998, April 1999, and May 2001. These meetings involved discussions pertaining to and business with direct application to the tool and function business, the focus of this action. Defendants transact such business with Missouri residents on a weekly basis and have done so for years.

Parties

7. Non-parties **Charlie and Kim Schmitz** are a married couple and citizens of the State of Missouri. Plaintiffs Netco, Inc. ("**Netco**"), and Schmitz & Associates, Inc. ("**Schmitz Associates**"), are Missouri corporations with principal offices in St. Joseph, Buchanan County, Missouri. Netco was incorporated on June 27, 1990. Schmitz Associates was incorporated on September 30, 1992. The Schmitzes are the owners and principals of Plaintiffs Netco, Inc. and Schmitz Associates, which were the operating entities for the Schmitzes' tool and function business

until August 1999. Charlie Schmitz became an Amway distributor in 1984, adding his wife, Kim, to the distributorship in 1988. Together, they operated the distributorship in their names until incorporating Netco and assigning their interests to Netco in 1990. **Netco, Inc. brings no claim relating to its Amway distributorship business.** Schmitz Associates facilitated Netco's rally, convention and function business for the Schmitzes, and operated in tandem with Netco to build, support and enhance the Amway business. Schmitz Associates is not an Amway distributorship/independent business or independent business owner. The Schmitzes and Plaintiffs are collectively referred to herein as the "**Schmitz Organization.**"

8. Defendant Jimmy Dunn ("**Dunn**") is a resident of the State of Missouri, residing at 4078 East Forrest Ridge Lane, Rogersville, Missouri 65742. Upon information and belief, Dunn operates an Amway distributorship through a nonparty corporation, but he is not himself an Amway distributorship/independent business. Dunn also conducts business through Defendant Jimmy V. Dunn & Associates, Inc. ("**Dunn Associates**"). Dunn Associates' principal is Defendant Dunn. On knowledge and belief, Dunn Associates is organized and existing under the laws of the State of Missouri, with its principal place of business at 2281 West Nottingham, Springfield, Missouri 65810. Dunn Associates 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. Dunn Associates is not an Amway distributorship/independent business/independent business owner. Jimmy Dunn and Dunn Associates reside in Missouri, conduct business in this State, and are subject to suit in Missouri. The acts and/or omissions of Jimmy Dunn, as herein described, are those of Dunn Associates. Unless otherwise noted, reference to "**Defendant Dunn**" herein shall refer to all Dunn Defendants, including Dunn Associates, who are/were co-conspirators in the conspiracy hereinafter described.

9. Defendant Harold [Hal] Gooch, Jr. is a resident of the State of North Carolina, residing at Six Curtis Court, Thomasville, North Carolina 27760. Upon information 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 the 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 its principal place of business at Six Curtis Court, Thomasville, North Carolina 27360. 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 or “tools” 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 Missouri, and are subject to suit in Missouri. 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.

10. Defendant Billy S. [Bill] Childers (“**Childers**”), is a citizen 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 in the business of purchasing and reselling business support materials or “tools” 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 Missouri, and are subject to suit in Missouri. The acts and/or omissions of Billy S. 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.

11. Defendant Jim Evans (“**Evans**”) is a citizen of the State of Missouri, residing at 5549 South Golden, Springfield, Missouri 65810. Upon information and belief, Evans operates or operated an Amway distributorship through a nonparty corporation, but he is/was not himself an Amway distributorship/independent business. Upon information and belief, Evans is currently a participant in Team In Focus, a multi-level marketing business in competition with Amway. Evans also conducts business through Defendant J.L. Evans & Associates, Inc. (“**Evans Associates**”), a corporation organized and existing under the laws of the State of Missouri, with its principal place of business at 5595 S. Farm Road 135, Springfield, Missouri 65810. Evans Associates is and/or was in the business of purchasing and reselling business support materials or “tools” for use by Amway distributors and of organizing seminars, rallies and major functions attended by Amway distributors. Evans Associates is not and never was an Amway distributorship/independent business/independent business owner. Jim Evans and Evans Associates reside in Missouri, conduct business in this State, and are subject to suit in Missouri. The acts and/or omissions of Jim Evans, as herein described, are those of Evans Associates. Unless otherwise noted, reference to "**Defendant Evans**" herein shall refer to

all Evans Defendants, including Evans Associates, who are/were co-conspirators in the conspiracy hereinafter described.

12. Defendant Pro Net Global Association, Inc. (hereinafter "**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. Pro Net does business throughout the United States, including in the State of Missouri. Pro Net does business via the Internet. Pro Net does business in Greene County. Two or more of the Upline Defendants were/are "Founding Members" of Pro Net, and Defendants Bill Childers and Hal Gooch serve or served on the Pro Net board of directors and/or steering committee. Pro Net is not an Amway distributorship/independent business/independent business owner.

13. Defendant Global Support Services, Inc. (hereinafter "**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 resale to 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. Global does business throughout the United States, including the State of Missouri. Global works or worked in tandem with Pro Net. Global is/was a co-conspirator in the conspiracy hereinafter described. Global

conducts business via the Internet. Global does business in Greene County. Global is not an Amway distributorship/independent business/ independent business owner.

14. On knowledge and belief, the Defendants conspired among themselves and with other non-party co-conspirators, as more particularly described below, to undermine and damage the Plaintiffs. 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 "lines of sponsorship" in the BSMs business, to boycott Plaintiffs, to impair the Plaintiffs' networks of downline distributors and to convert the Plaintiffs' tool and function business to their own pecuniary benefit and advantage, the act or omission of one Defendant co-conspirator while active in the concerted activity constitutes the act or omission of all other co-conspirators, and vice versa. The conspiracy has and had a nexus in Missouri, as integral participants reside in Missouri, and acts of the conspiracy occurred in this State. As hereinafter more particularly detailed, on knowledge and belief, the Defendants conspired among themselves and with others to breach agreements affecting the Plaintiffs' businesses, to unjustifiably and illegally interfere with the Plaintiffs' contracts and business relationships and expectancies, to deal unfairly absent good faith, and to impair and damage Plaintiffs' businesses in Missouri to and for Defendants' own advantage and profit. Not all participants in the conspiracy are known to Plaintiffs. For that reason, Plaintiffs have designated Defendants John Doe and Richard Roe as representative of other persons, unknown to Plaintiffs, who conspired with the other Defendants and nonparty co-conspirators to accomplish the unlawful purpose of the enterprise as herein alleged.

General Allegations

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

15. Amway Corporation ("Amway") is a "multi-level marketing" business, selling consumer goods and products worldwide through a vast network of independent distributors, many of them based in Missouri. **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.

16. 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 distributor 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 that 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.

17. Defendants Hal Gooch, Bill Childers, Jimmy Dunn and Jim Evans are or were 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 were part of the upline for the Schmitzes (herein the "**Upline Defendants**").

18. 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 his/her independent business, that principal and his/her Amway 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 his/her distributorship to corresponding benefits and privileges which increase at each ascending level.

19. 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 Schmitz Organization’s Line of Sponsorship.

20. Charlie and Kim Schmitz and Netco directly and personally sponsored approximately 53 Amway distributors, and through tireless efforts over many years, built a large downline network numbering approximately 8,000 Amway distributors (the “**Schmitz Network**”). This network of distributors, based in Missouri, became one of the largest distributor networks in the Midwest.

21. The Schmitz Network within the Yager Group included in part the following principals in the line of sponsorship as shown and, on knowledge and belief, the following respective highest pin levels for each:

▼
SCHMITZ ORGANIZATION'S LINE OF SPONSORSHIP
WITHIN THE YAGER GROUP

Dexter Yager (Crown Ambassador)

▼
 Richard Setzer (Diamond)

▼
 Hal Gooch (Diamond)

▼
 Bill Childers (Diamond)

▼
 Jimmy and Sue Dunn (Emerald/Diamond/Emerald)

▼
 Larry and Betty Evans (Direct)

(UPLINE)

Jim and Cathy Evans (qualified Emerald once in the 1980s/Direct)

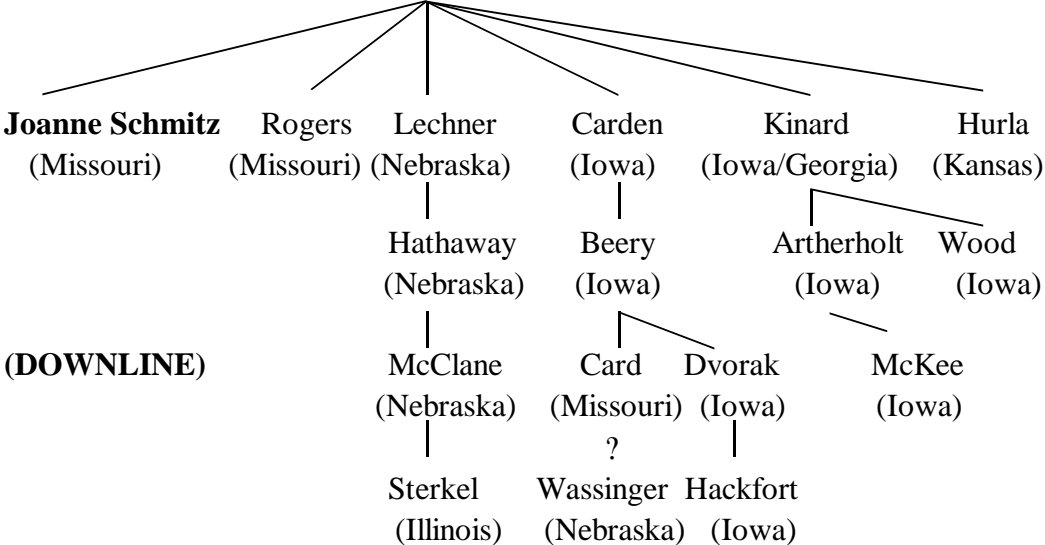
▼
 Dan and Janet Lohnes (Direct/Pearl)

▼
 Dale White (inactive)

▼
 Wakes (inactive)

▼
 Ken and Barb New (inactive)

▼
Netco (Charlie and Kim Schmitz) (Diamonds)
 53 Distributors Personally Sponsored, including:



(DOWNLINE)

Mathenia
(Illinois)

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

22. The Schmitz 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**.

23. For over 40 years, Amway has enticed 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 Plaintiffs were extremely successful in building their own distributor network and selling tools and promoting functions within that network.

24. Mirroring the Amway business, the attainment of a certain success level within the business entitled the distributor to participate in the profits within 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. The Amway business and the tool and function business operated in tandem, but separately.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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 of 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.

30. 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.

31. 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 BSMs rules provided, that

a distributor was not to solicit the BSMs business of another distributor or sell BSMs to another distributor unless he/she had sponsored that distributor in joining the Amway network.

32. 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.

33. These **rules governing the tool and function business** became known and understood by participants within the BSMs industry 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 contract** between them.

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

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

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

36. Hal Gooch represented and espoused to others, including Plaintiffs, the servicing agreement rule.

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

38. Bill Childers represented and espoused to others, including Plaintiffs, the servicing agreement rule.

39. Jimmy Dunn has hereto represented to Emerald and Diamond distributors, including Plaintiffs, that respecting the line of sponsorship is essential. Jimmy Dunn agreed to honor the line of sponsorship respecting the sale and distribution of BSMs.

40. Jimmy Dunn represented and espoused to others, including Plaintiffs, the servicing agreement rule.

41. Jim Evans has hereto represented to Emerald and Diamond distributors, including Plaintiffs, that respecting the line of sponsorship is essential. Jim Evans agreed to honor the line of sponsorship respecting the sale and distribution of BSMs.

42. Jim Evans represented and espoused to others, including Plaintiffs, the servicing agreement rule.

The Promotion of the BSMs Industry.

43. 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 Schmitzes 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 Schmitzes would be unable to build and maintain a successful Amway distributorship. The Upline Defendants further represented or caused to be represented to the Schmitzes that they should purchase only those tools produced and distributed by their upline, including the Upline Defendants.

44. The BSMs industry grew so large and powerful that it became 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.

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

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

46. 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.

This separation of the BSMs business from the Amway business is/was confirmed by Amway in August 2000: “BSMs are not part of the Independent Business Owners’ Plan.”

47. 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.

48. 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. **This action is not predicated upon the Amway Rules (since the BSMs industry is not a part of the Amway business), nor does it seek the enforcement of any such Rules.**

The Myths Created and Fostered by the Upline Defendants.

49. The Upline Defendants, as well as other upline distributors, 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, 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.

50. 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 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.

51. The Upline 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.

52. On knowledge and belief, the Upline 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. On knowledge and belief, Defendant Gooch received a “cut” of 18 cents or more on each audiotape sold through his downline. On knowledge and belief, Defendants Gooch and Childers made millions of dollars off audiotapes alone which they preached were essential to building an effective business.

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

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

54. 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.'

55. 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.**

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

The Schmitz Organization's Successful Business Operations.

57. Plaintiff Netco and its principals, Charlie and Kim Schmitz, enjoyed an exceptional level of achievement in Amway. From 1990 to 1998, Netco qualified at the prestigious Diamond pin level each year. The Schmitzes became well-known and popular within the Amway network of distributors and, at one time, before the objectives of the conspiracy came to fruition, were in great demand as motivational speakers at rallies, major functions and conventions. Amway featured Charlie and Kim Schmitz of Netco in the *Amagram* magazine (Amway's official magazine published for Amway distributors), as achieving the prestigious Diamond level at the young ages of 28 and 25, respectively. Attached hereto as **Exhibit A** is a copy of an article on Charlie and Kim Schmitz contained in the November 1990 issue of *Amagram*, "Diamond Achievement" section.

58. From 1984 to 1999, Charlie and Kim Schmitz expended substantial time, resources and effort into building Netco and Schmitz Associates, making Amway and their tool and functions businesses their full-time jobs and relying on their Amway and BSMs incomes as their primary means of support.

59. Charlie and Kim Schmitz and/or Netco over the course of 18 years built a network of 8,000 distributors. They achieved a higher pin level than many of their upline distributors.

60. Amway statistics confirm the unique status held by Plaintiff Netco and its principals, Charlie and Kim Schmitz. "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*)

61. 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*)

62. Based upon Amway's statistics, Charlie and Kim Schmitz and/or Netco occupied the top six-tenths of one percentile (.6%) of all direct sellers in the United States.

63. Amway featured Charlie and Kim Schmitz' success story in Amway promotional videotapes and magazines, including but not limited to:

- (a) Amway Videotape, *Professionals in Amway . . . Welcoming the Challenges*, (AL-1237).
- (b) Amway Videotape, *Amway Report, Volume 29, 1988*, "Business Success Story: Charlie Schmitz, Missouri Ruby."
- (c) Amway Videotape, *Opportunity 2000*.
- (d) *Amagram Magazine*, February 1987.
- (e) *Amagram Magazine*, January 1989.
- (f) *Amagram Magazine*, January 1990.
- (g) *Amagram Magazine*, November 1990.
- (h) *Amagram Magazine*, October 1991.
- (j) *Amagram Magazine*, August 1993.
- (k) *Amagram Magazine*, January 1996.

The Plaintiffs' Successful BSMs Business.

64. By 1990, if not before, the Schmitzes had established a highly-profitable BSMs business.

65. Beginning in 1993, Netco and Schmitz Associates began conducting their own major functions with the consent of Netco's upline, Defendants Gooch, Childers, Dunn and Evans. Schmitz Associates utilized Netco's downline network in sponsoring, organizing and holding these major functions, which regularly drew over 2,000 Amway distributors in attendance.

66. Netco and Schmitz Associates continued to build the Schmitzes' highly-successful BSMs businesses, which included buying and selling BSMs and promoting major functions. These Plaintiffs purchased and resold independently-produced BSMs and sponsored events in accordance

with the implied contract of the parties formed by instruction from the Upline Defendants and confirmed by nearly ten years of business dealings with their upline.

67. This implied contract regarding the sale of BSMs existed not only in Plaintiffs' lines of sponsorship, but also with respect to distributors in other lines of sponsorship who also engaged in the sale of BSMs.. For over ten years, Plaintiffs and the Schmitzes before them, personally sold BSMs directly to the distributors whom they personally sponsored, pursuant to the course of dealings between the parties. Similarly, Plaintiffs purchased their BSMs in accordance with this course of dealing.

68. Plaintiffs Netco and Schmitz Associates also supplied BSMs to additional downline distributors within their lines of sponsorship, whom they did not personally sponsor, pursuant to the consent of those affected.

69. Thus, by 1995, the Plaintiffs had thriving and highly-profitable tool and function businesses with a trend toward growth, if not prolific growth.

70. At that time and for a while thereafter, Charlie and Kim Schmitz enjoyed good and beneficial reputations within the business, and were "on stage" and highly visible at functions, including major functions. Their downline was motivated and receptive to their "leadership," which they were committed to provide.

71. The Schmitzes were proponents of respecting the essential line of sponsorship and the rules governing the BSMs industry. The Schmitzes in good faith believed that the BSMs rules would apply equitably and uniformly to them, and continued (through the Plaintiffs) to build their BSMs distributor organization.

72. On knowledge and belief, the Plaintiffs' huge success ultimately led to the Upline Defendants' envy, greed and decision to seize Plaintiffs' growing tool and function business.

The Conspiracy.

73. The exact date the conspiracy was formed is unknown to the Schmitzes. By 1996, the conspiracy was very active and ultimately (by 1998) included all of the Defendants acting in concert, conspiring among themselves. On knowledge and belief, Childers, Gooch and Dunn led the efforts of the conspiracy. At one time or another, others (including, on knowledge and belief, Tim Foley, Steve Woods and Don Brindley), joined in the concerted activity with one or more of the Defendants by engaging in conduct injurious to the Plaintiffs.

74. The **objectives of this conspiracy** were to monopolize, control and manipulate the BSMs business, ignore and/or circumvent the essential line of sponsorship respecting the Plaintiffs, to boycott the Schmitzes, to impair the Schmitz Network, and to convert the Plaintiffs' tool and function business to their own pecuniary benefit and advantage, all in violation of the BSMs rules, the representations made to the Plaintiffs, and Missouri 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.

76. At a Diamond/Emerald function held in the mid-'90s in Sundance, Utah, Defendant Jimmy Dunn told a group of distributors "if someone does something that I don't like, I'll take their tool business away from them." Such statement is indicative of the attitude that permeated the conspiracy and led to profuse violations of the BSMs rules.

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

76. Like the Amway business, the tool and function business in which the Plaintiffs engaged was based upon a multi-level marketing network or pyramid. Essential to the success, and indeed survival, of such a business organization is recognition and preservation of the line of sponsorship, as well as the support and edification of the participants. Charlie and Kim Schmitz were instructed and taught from the very beginning of their experience in Amway by their upline, including the Upline Defendants, and then later within the tool and function business, that they must “edify” and “support” their upline, particularly in the eyes of their downline. Stated differently, the Upline Defendants stressed to the Schmitzes that in order to be successful, it was absolutely necessary for them to edify and support them (the Upline Defendants). The Schmitzes complied.

77. By 1995, the Schmitzes had built a very successful Amway business and tool and function businesses through the Plaintiffs. The Schmitzes had created or generated substantial good will for the Upline Defendants in the eyes of the Schmitz Network.

78. The Schmitzes had absolutely no idea that the Upline Defendants had reached a decision about that time to undermine and isolate the Schmitzes (and thus the Plaintiffs), from their downline distributors. So while the Schmitzes were adhering to the long-standing instruction from their upline to edify them (the upline), the Upline Defendants were busy tearing the Schmitzes down. One or more of the Upline Defendants made statements to Plaintiffs’ downline distributors which prejudiced or impaired Plaintiffs’ reputation and business. These false and/or misleading statements included, but were not limited to, the following:

- Charlie and Kim Schmitz were poor leaders who would not counsel and work out problems with their downline distributors;
- Charlie and Kim Schmitz were disloyal and did not edify their upline;
- Charlie and Kim Schmitz passed on improper BSMs prices to downline distributors;

- Charlie and Kim Schmitz disparaged downline distributors who chose to purchase BSMs from other suppliers;
- Charlie and Kim Schmitz “are an island” incapable of relating or supporting either their upline or downline; and
- Netco conducted improper Amway meetings for the purpose of promoting non-Amway products.

These representations were patently false. Moreover, they were coming from those upline distributors with perceived credibility because of the Schmitzes’ edification efforts. As the principals of the Plaintiffs, the castigation of the Schmitzes was the castigation of the Plaintiffs.

79. This concerted activity, targeted and intended to undermine and isolate the Schmitzes/Plaintiffs, took its toll over time. These efforts ultimately resulted in downline distributors leaving the Plaintiffs’ line of sponsorship, quitting Amway and/or turning to other sponsors. In the latter respect, the Upline Defendants directed and/or engineered the distributors to new sponsors. What had been a highly-motivated, coherent and effective sales force, the same being the Schmitz Network, became a distributor network that was splintered, disillusioned and seeking other alternatives to the Schmitzes’ impaired leadership.

80. The Schmitzes’ efforts to stop the erosion of their distributor network were futile due to a total lack of support of the Upline Defendants. Once the damage to the Schmitzes had been done (once their leadership abilities had been impaired in the eyes of their downline distributors), there was no reversal of the damage. The situation worsened with the loss of distributors within the tool and function business.

81. The Upline Defendants’ efforts to undermine the Plaintiffs, besides the disparagement of the Schmitzes’ leadership ability and commitment to the business, included intentionally misleading Netco’s downline as to the pricing of BSMs. The Upline Defendants led Netco’s downline to believe

that Netco was systematically over-charging them for their tools. When Netco's downline distributors complained to the Upline Defendants of this alleged over-pricing, the Upline Defendants concealed the fact that the BSMs prices came straight from the Upline Defendants' own price list supplied to Netco and Schmitz Associates. When the Upline Defendants then began selling BSMs to Netco's downline, they provided the downline distributors favorable tool prices (a lesser price than Netco had charged them), to make it appear as if Netco or Schmitz Associates had, in fact, over-charged them. This was a deliberate, tortious and cleverly-orchestrated scheme in the strictest sense to undermine the Plaintiffs by destroying their credibility with their downline distributors.

82. Defendant Gooch tacitly acknowledged the aforesaid pricing scheme in an Amvox message to Charlie and Kim Schmitz. Defendant Gooch stated: "If somebody jumps ship and goes somewhere else, you know, to buy tools – then they get a better price when they go there – then that is enticing for other people to do the same thing." Such a pricing practice was/is contrary to the long-standing course of dealing for pricing the tools.

83. Charlie and Kim Schmitz, as principals of a high-profile Diamond distributor (Netco), were regular speakers at the Upline Defendants' major functions until 1996. Thereafter, Charlie and Kim Schmitz were omitted and effectively "blackballed" from speaking by the Upline Defendants, who had the ability and opportunity to control such actions. By precluding the Schmitzes from appearing on stage at major functions, they were further undermined in the eyes of their downline. The Upline Defendants knew that perfectly well, and by banning the Schmitzes from appearing on stage, they knew their downline would begin seeking other leadership, which would ultimately bring Plaintiffs' tool and function business directly to the Upline Defendants. It was a well-orchestrated scheme that was well within the control and opportunity of the Upline Defendants to bring about.

84. As this orchestrated undermining process unfolded, Plaintiffs' tool and function business declined such that by 1998, there was no valid business purpose for Schmitz Associates continuing to sponsor functions. The damage to Plaintiffs' distributor network may be illustrated by the profound decline in attendance at Schmitz Associates functions beginning in 1996:

1993 Events

<u>June</u>	<u>December</u>
Chicago	Indianapolis
2,374	2,170

1994 Events

<u>March</u>	<u>August</u>	<u>December</u>
Dallas	Minneapolis	Kansas City
2,056	2,319	2,357

1995 Events

<u>March</u>	<u>August</u>	<u>December</u>
St. Louis	Grand Rapids	Indianapolis
2,363	2,337	2,007

1996 Events

<u>April</u>	<u>July</u>	<u>Nov./Dec.</u>
Kansas City	Denver	Orlando
2,217	1,952	981

1997 Events

<u>April</u>	<u>August</u>	<u>November</u>
Tan-Tar-A	St. Louis	Omaha
1,124	916	887

1998 Events

<u>July</u>
St. Louis
625

85. In early 1998, the Schmitzes learned that Hal Gooch was leading an effort to move the supply of tools away from Dexter Yager's organization which had been the supplier of tools up until that point in time. Charlie Schmitz learned that Pro Net had been founded by Gooch, Childers

and others, and that Pro Net would henceforth be supplying tools and directing functions on behalf of those participants in the tool and function business within the Gooch line of sponsorship. Schmitz attended a meeting of Diamond distributors in Myrtle Beach, South Carolina, in May 1998 during which he received information about Pro Net. At that meeting, Schmitz expressed serious reservations about Pro Net. He left that meeting with no intention of becoming a member of Pro Net.

86. When Netco did not sign up with Pro Net, Paul Brown solicited Netco's membership in Pro Net by calling Charlie Schmitz in late 1998 and making the following representations: Pro Net will provide distributors with a better alternative than Internet (Yager's previous organization), in that distributors will have more say, and a new compensation plan will be implemented providing better and more equitable compensation for distributors up and down the line of sponsorship.

87. Charlie Schmitz had continuing concerns about the Pro Net membership because of the problems he was already experiencing within the tool and function business, and he understood that if he joined Pro Net, everything would be run through Pro Net and that he would not have any alternatives to purchase tools elsewhere or provide his own tools. In that his tool and function business was already seriously eroded, he needed those options. Accordingly, in returning the application, he made revisions thereon which he deemed non-negotiable.

88. After returning the application form with his revisions noted thereon, he received a call from Paul Brown, who left an Amvox voice-mail message that Netco's Pro Net membership application had been **rejected**.

89. Accordingly, Netco never became a member of Pro Net. Likewise, Schmitz Associates never became a Pro Net member, as Schmitz Associates was not eligible and/or was never solicited for membership.

90. Pro Net solicited and sold BSMs to any willing Amway distributor, disregarding the long-standing course of dealing and the implied agreement for BSMs, and ignoring the essential lines 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. Pro Net postures itself publicly to supposedly operate for the benefit of its "members." Yet, Pro Net in reality seeks to promote and preserve, over the interests of its "Regular Members," the interests of its "Founding Members," the same being high-level Amway distributors who seek to control the BSMs industry, including Gooch and Childers.

91. After Netco's Pro Net application was rejected, Defendants effectively blackballed and boycotted Netco and the Schmitzes from that point forward as to their remaining tool business. Tapes featuring Charlie Schmitz as a speaker were not put out or sold. In that Pro Net and Global were now the only suppliers of tapes within the Gooch line of sponsorship, this action meant that distributors in Netco's downline could no longer purchase tapes featuring instruction and/or motivation from Charlie Schmitz and/or Kim Schmitz. This action by the Defendants was the final death knell for Netco's tool business. Schmitz Associates' function business was terminated in July 1998; it had already been killed.

92. Between December 1998, when the Defendants put the final squelch on the Plaintiffs' tool business, until August 1999, when Netco sold its Amway distributorship, the Plaintiffs' tool business continued to dwindle to only a nominal amount. The Defendants had succeeded in taking the Plaintiffs' tool and function business from them. Defendants had effectively **banned, blackballed and boycotted** the Schmitzes and the Plaintiffs from or out of participation in the tool and function business within the Gooch line of sponsorship.

93. After one or more of the Upline Defendants, including Defendants Gooch and Dunn, successfully converted a significant portion of Plaintiffs' downline BSMs business, Plaintiffs Netco and Schmitz Associates requested servicing agreements from Defendants Gooch in 1997 and from Defendants Dunn in 1998-99, seeking reasonable compensation for the BSMs business that had been misappropriated. However, these Upline Defendants refused to reasonably compensate Plaintiffs in accordance with the well-established implied contracts for BSMs.

94. After seeking to finesse the situation by offering Plaintiffs a pittance for their downline BSMs business, Dunn became even more aggressive and decided to cut the Plaintiffs out entirely. Defendant Jimmy Dunn, in an Amvox message in July 1999, to Jim and Cathy Evans, stated: "so, as far as I'm concerned, we don't owe any function money, tool money, system money to Charlie's mother's cause, so we'll just let these guys, as they come across, **smuggle in under y'all** as far as getting tools to get Ernie set up so he can order direct . . . and we'll stop, **I'm not gonna pay Charlie any more money. So let's see what happens here.**" The reference to "Ernie" is to Ernie Lechner, a distributor personally sponsored by Netco.

95. The Upline Defendants solicited the BSMs patronage of the following distributorships in Plaintiff Netco's line of sponsorship, contrary to the aforesaid representations and implied contract prohibiting the same: Trick Distributorship, Card Distributorship, Day Distributorship, Wall Distributorship, Holyfield Distributorship, Walthers Distributorship, and Birkholz Distributorship. Each of these distributorships refused the Upline Defendants' solicitations and opted to follow the implied contract governing the sale of BSMs.

96. The Upline Defendants breached their promises and the implied contract of the parties in selling BSMs to many distributorships in Netco's and Schmitz Associates' line of sponsorship. Examples follow.

The Dvorak Distributorship.

97. One or more of the Defendants circumvented Netco's lines of sponsorship by soliciting and selling BSMs (including tickets to events), directly to the Dvorak distributorship, via the Lechner Distributorship, without a written servicing agreement, and in violation of the implied contract of the parties.

The Lechner Distributorship.

98. Netco personally sponsored the Lechner Distributorship in 1986. The Lechner Distributorship purchased its BSMs directly from Netco until 1999.

99. The Lechner Distributorship acknowledged in an Amvox message to Defendants Gooch, Childers and Dunn, and Plaintiff Netco in summer 1999, their decision to "plug into" their upline, Dunn and Jim and Cathy Evans, to purchase BSMs, thus going around Netco.

100. The Upline Defendants Childers, Gooch, Dunn and Evans funneled the sale of BSMs to Netco's downline either directly or via the Lechner Distributorship. In so doing, these Defendants circumvented Plaintiffs Netco's and Schmitz Associates' lines of sponsorship in violation of the implied contract of the parties.

101. One or more of the Defendants circumvented Plaintiffs' lines of sponsorship by soliciting and selling BSMs (including tickets to events), directly to the Lechner Distributorship without a written servicing agreement, in violation of the implied contract of the parties.

The Mathenia Distributorship.

102. In/about September 1996, the Mathenia Distributorship sent two letters to their upline (including Plaintiff Netco), stating that they wanted "the opportunity to function as the autonomous and independent business that the Amway Corporation recognizes us to be," and additionally wanted to turn to "counsel" from Defendants Evans, Childers and Dunn.

103. In these 1996 letters, the Mathenias admitted the improper relationship between certain Upline Defendants (Childers, Dunn and Jim Evans), and themselves regarding BSMs involving Charlie and Kim Schmitz (Netco): “We are well aware that you do not agree with the decisions we have made to (a) put our people in touch with upline above Charlie and Kim, such as Jimmy and Cathy Evans, Jimmy Dunn; (b) make our people aware of procedures and tools being used and promoted by Jimmy Dunn; (c) make our people aware of upline-promoted meetings in the Dunn Newsletter, and encourage them to make use of the meetings that would benefit them.”

104. One or more of the Defendants circumvented Plaintiff Netco’s lines of sponsorship by soliciting and selling BSMs (including tickets to event), directly to the Mathenia Distributorship without a servicing agreement, in violation of the implied contract of the parties.

The Wood Distributorship.

105. Netco supplied the Wood Distributorship BSMs from approximately 1990 to 1998, pursuant to a servicing agreement between Netco and the Kinard Distributorship.

106. Beginning in 1998, one or more of the Defendants began circumventing Netco’s lines of sponsorship by soliciting and selling BSMs (including tickets to events), directly to the Wood Distributorship without a written servicing agreement, in violation of the implied contract of the parties.

107. On March 22, 1999, Defendant Jimmy Dunn admitted in a letter to Netco that Defendants Dunn and Evans took over the sale of BSMs to the Wood Distributorship. Dunn stated, “we think the break paid to Netco on each of these tools is fair considering the circumstances of JVD & Associates (Dunn) and Evans & Associates assuming full responsibility for the distributors of McClane and Woods, and keeping them in the line of sponsorship.”

The McClane Distributorship.

108. On December 15, 1998, the McClane Distributorship wrote Netco, informing them that they would no longer be purchasing any BSMs from them, as they had “found another supplier.”

109. Defendant Jimmy Dunn admitted in a letter to Netco that Defendants Dunn and Evans were taking over the sale of BSMs to the McClane Distributorship. Dunn stated, “we think the break paid to Netco on each of these tools is fair considering the circumstances of JVD & Associates (Dunn) and Evans & Associates *assuming* full responsibility for the distributors of McClane and Woods, and keeping them in the line of sponsorship.”

110. One or more of the Defendants circumvented Netco’s lines of sponsorship by soliciting and selling BSMs (including selling tickets to events), directly to the McClane Distributorship without a written servicing agreement, in violation of the implied contract of the parties.

The Beery/Davies Distributorship.

111. One or more of the Defendants circumvented Netco’s lines of sponsorship by soliciting and selling BSMs (including tickets to events), directly to the Beery/Davies Distributorship without a written servicing agreement, in violation of the implied contract of the parties.

The Wassinger Distributorship.

112. One or more of the Defendants circumvented Netco’s lines of sponsorship by soliciting and selling BSMs (including tickets to events), directly to the Wassinger Distributorship without a written servicing agreement, in violation of the implied contract of the parties.

The McKee Distributorship.

113. On July 23, 1999, approximately seven days after Defendant Dunn's message to Defendant Evans acknowledging the "smuggling" of BSMs, Netco received an Amvox message from the McKee Distributorship. The McKees stated, “And, also with the tools, we’ve kind of made, what

we did is kind of for a long-term decision. You know, we're gonna go ahead and go through Ernie with those, and the reason being, you know, probably for the long term with our group and looking down the road a ways, and the connections and things that will come from that, you know, so, anyway, that's kind of what we're looking at." The McKee reference is to Ernie Lechner. The McKees' message was a result of Defendant Jimmy Dunn's orchestrated manipulation of Netco's network, circumvention of Netco's lines of sponsorship, and boycott of Netco for BSMs business.

114. This arrangement, orchestrated by Defendant Jimmy Dunn, also constituted "cross-group" buying and selling of BSMs, as the McKee Distributorship was not in the Lechner Distributorship's line of sponsorship.

115. One or more of the Defendants circumvented Netco's lines of sponsorship by soliciting and selling BSMs (including tickets to events), directly to the McKee Distributorship without a written servicing agreement, in violation of the implied contract of the parties.

The Hurla Distributorship.

116. One or more of the Defendants circumvented Netco's lines of sponsorship by soliciting and selling BSMs (including tickets to events), directly to the Hurla Distributorship without a written servicing agreement, in violation of the implied contract of the parties.

Amway's Refusal to Get Involved in "Tool Disputes."

117. Between 1995 and August 1999, as the damage was being done to the Plaintiffs' businesses and the Schmitz Network, Charlie Schmitz complained to Amway about the conduct, but was always told by Amway that the conduct and the disputes involved the tool and function business, that such was not a part of the Amway business, and that accordingly, Amway could not and would

not intercede. Ultimately, the Schmitzes ceased their efforts to seek intervention from or by Amway, viewing the same as futile.

Netco's Sale of its Amway Distributorship in August 1999.

118. In the wake of the Defendants' pirating of Plaintiffs' businesses, and after exhausting efforts to save and/or restore the business relationships and expectancies, Charlie and Kim Schmitz, on behalf of Netco and Schmitz Associates, offered to sell their entire BSMs business to Defendant Dunn during the summer of 1999. In reply to the Schmitzes' offer, Defendant Dunn told Don Brindley, a mediator between the Schmitzes and Dunn, "why should I pay Charlie for something that I already have?" Defendant Dunn, acting in concert with the other Defendants, had indeed succeeded in misappropriating the Plaintiffs' BSMs business.

119. The interference and destruction of the Plaintiffs' businesses were so severe that the Schmitzes finally decided to sell Netco's Amway distributorship to Joanne Schmitz, Charlie's mother and a distributor within Netco's downline. The decision to sell the distributorship was not Plaintiffs' preference, but the Schmitzes felt that they had no other viable alternative. By this time, the value of their tool and function business had been destroyed. Moreover, to continue within the Amway business (separate and apart from the tool business which had already been eliminated), the Schmitzes needed the support of their upline and, of course, they did not have it. To the contrary, it was clear to the Schmitzes that their upline wanted them out of the business altogether.

120. Plaintiffs seek no monetary damages herein for the damage done to Netco's Amway business. The only damages sought are those for the damage to the Plaintiffs' tool and function business. Plaintiffs' damages as a direct result of Defendants' acts and omissions are believed to well exceed \$10 million.

Inapplicability of Arbitration.

121. Plaintiffs did not knowingly, voluntarily and intelligently give their assent to any arbitration provision.

122. Plaintiffs have not knowingly, voluntarily and intelligently waived their constitutional right to a jury trial.

· **The Pro Net Arbitration Provision.**

123. 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.

124. 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 Hay 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.

125. 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*.

126. 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**.

127. 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.” **Plaintiffs are/were not Pro Net members**.

128. Plaintiff **Schmitz Associates** was never solicited for Pro Net membership, never submitted an application for membership in Pro Net, **never been a member of Pro Net**, and never signed any writing agreeing to abide by the purported Pro Net arbitration provision or any other arbitration provision.

129. On December 9, 1998, Netco submitted an application for membership to Pro Net. On that application form, Charlie Schmitz hand-wrote the following disclaimer:

I sign this with the understanding that I am not giving up my right to buy-sell or produce support materials from other suppliers or manufacturers. *As per phone conv with Paul Brown 12/8/98. CS

130. Pro Net rejected Netco’s application for membership. **Netco never became a member of Pro Net** and is not subject to any purported Pro Net arbitration provision.

131. 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 Netco or Schmitz Associates or of any Defendant.

132. Defendants Jim **Evans** and J.L. Evans & Associates, Inc. were **not eligible** to be and were not, in fact, members of Pro Net. Thus, disputes between Plaintiffs and Defendants Evans and J.L. Evans & Associates, Inc. are not within the scope of the purported Pro Net Arbitration Agreement, and the Evans Defendants have **no right to enforce the same**.

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

134. 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, Plaintiffs are not companies or business that engage in the sale of Amway products and, therefore, are ineligible for membership in Pro Net. As a result, Plaintiffs are not subject to arbitration under the Pro Net arbitration provision. Further, Defendants Jimmy Dunn, Hal Gooch, Bill Childers and Jim Evans 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 Jimmy V. Dunn & Associates, Inc.; Gooch Support Systems, Inc.; Gooch Enterprises, Inc.; TNT, Inc. of Charlotte, NC; J.L. Evans & Associates, Inc. and Global 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 them are not within the scope of any Pro Net arbitration provision.

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

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

136. 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.**

137. 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.

138. 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.

139. Schmitz Associates has never been an Amway distributor or IB, and never signed any writing agreeing to abide by Amway’s Rules of Conduct. **Schmitz Associates never assented to any purported arbitration clause.**

140. Netco never signed any writing agreeing to abide by Amway’s Rules of Conduct, as unilaterally amended by Amway effective January 1, 1998, to include a purported mandatory arbitration provision, and further had no notice of same. **Netco never assented to any purported arbitration clause.** Netco is not seeking to enforce the Amway Rules of Conduct or Amway Distributor Agreement.

141. Neither Defendants Jimmy V. Dunn & Associates, Inc.; Gooch Support Systems, Inc.; Gooch Enterprises, Inc.; TNT, Inc. of Charlotte, NC; J.L. Evans & Associates, Inc. nor Global 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.

142. 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”)” Plaintiffs’ 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."

143. 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. Defendant Jimmy Dunn and Randy Epema, a Quixtar representative, spoke among others. Mr. Epema 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 B** 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)

144. 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. **Neither of the Plaintiffs assented to or ever signed a BSMAA.**

145. 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).

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

147. 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 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**. 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, Plaintiffs may be liable for the arbitrator's and case administrator's travel expenses, as well as Plaintiffs' 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**.

148. 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.

149. **Schmitz Associates** is not bound by any arbitration agreement purportedly entered into by Netco:

(a) Schmitz Associates is **not the alter-ego of Netco**. Netco and Schmitz Associates have their own assets, maintain separate bank accounts and records, and pay their own expenses; are not inadequately capitalized; do business with corporations other than each other; and comply with corporate formalities. Further, Defendants make no allegations of fraud or bad faith as is required to pierce the corporate veil.

(b) Schmitz Associates is **not the agent of Netco**, particularly with respect to the Amway Distributor Agreement. Schmitz Associates has no actual or apparent authority to act on Netco's behalf or bind Netco to any contract.

(c) Schmitz Associates 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.

150. Each of the foregoing allegations contained in ¶¶ 1 through 149 above are incorporated in each count hereinafter set forth by reference.

Liability:

COUNT I
Tortious Interference

COME NOW Plaintiffs and, for their first cause of action, state and allege as follows:

151. Plaintiffs, along with other distributors who participated in the tool and function business, were parties to the implied contract(s) governing the BSMs industry, as further addressed in ¶¶ 180 and 191 below.

152. Plaintiffs also enjoyed and were the beneficiaries of a valid business relationship or expectancy with those downline distributors within their line of sponsorship. Plaintiffs, and each of them, reasonably expected that their downline distributors would be a source of business or serve as an exclusive customer base for their tool and function business.

153. Defendants, and each of them, had knowledge of the implied contract governing the BSMs industry, as well as the business relationships and expectancies enjoyed by each of the Plaintiffs with their downline distributors.

154. The Defendants intentionally interfered with this implied contract, as well as the well-established business relationships and expectancies of the Plaintiffs, causing the breach of the contract, relationships and expectancies.

155. Defendants were without justification in their aforesaid intentional interference, causing the breach of the aforesaid contract, relationships and business expectancies.

156. As a direct and proximate result of the Defendants' intentional interference, Plaintiffs and each of them sustained damages which exceed the minimum jurisdictional amount for this cause to be brought before this Court.

157. The conduct of the Defendants, as herein described, was outrageous because of their evil motive or reckless indifference to the rights of others.

COUNT II
Promissory Estoppel

COME NOW Plaintiffs and, for their second cause of action, state and allege as follows:

158. Defendants, while instructing the Plaintiffs on the rules and/or agreements governing the tool and function business, promised Plaintiffs 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 business income in accordance with the BSMs rules would not be pulled away from Plaintiffs without Plaintiffs' consent, and without reasonable and equitable compensation being given therefor.

159. Defendants intended and reasonably expected Plaintiffs to rely upon the Defendants' promises, while Plaintiffs endeavored to promote and build their businesses which ultimately benefited the Defendants.

160. 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.

161. Plaintiffs 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 Plaintiffs a false sense of security so that they would continue to build their businesses to the ultimate benefit of Defendants.

162. Plaintiffs relied in good faith on Defendants' representations.

163. As a result of Defendants' representations, Plaintiffs continued to participate in the tool and function business with the Upline Defendants, all to their injury, detriment and/or prejudice.

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

165. As a direct result of Defendants' aforesaid conduct, Plaintiffs have 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.

166. Defendants' conduct is and was outrageous, and/or clearly demonstrates an evil motive or reckless indifference to the rights of others.

COUNT III
Fraudulent Misrepresentation

COME NOW Plaintiffs and, for their third cause of action, state and allege as follows:

167. Defendants represented to the Plaintiffs that the BSMs rules, including the crucial line of sponsorship, would be respected and observed. This meant that the line of sponsorship would not be violated, and that tool and function business income in accordance with the BSMs rules would not be pulled away from the Plaintiffs without the Plaintiffs' consent and without reasonable and equitable compensation being given therefor.

168. The Defendants' representations were false, and Defendants knew at the time the misrepresentations were being made they were false, in that Defendants intended to give only pretextual observance to the rules without any intent or purpose to respect and observe same.

169. The representations respecting the BSMs rules were material to the Plaintiffs' continued participation in the BSMs industry, which participation served to benefit the Defendants.

170. Plaintiffs, and each of them, relied upon the aforesaid representations and assurances of the Defendants in respect to the BSMs rules and the line of sponsorship, and in so relying, Plaintiffs used ordinary care. Further, Plaintiffs were justified on the basis of what they were being told in relying upon Defendants' representations.

171. As a direct result of the aforesaid representations of Defendants, Plaintiffs have been damaged, and such damages substantially exceed the minimum jurisdictional amount for matters to be brought before this Court.

172. Defendants' conduct is and was outrageous, and/or clearly demonstrates an evil motive or reckless indifference to the rights of others.

COUNT IV

Negligent Misrepresentation

COME NOW Plaintiffs, and for their fourth alternative cause of action, state and allege as follows:

173. Defendants represented to the Plaintiffs that the BSMs rules, including the crucial line of sponsorship, would be respected and observed. 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 Plaintiffs without the Plaintiffs' consent and without reasonable and equitable compensation being given therefor.

174. Because of Defendants' failure to exercise reasonable care or competence in obtaining and/or communicating the BSMs rules, the information was false.

175. The information respecting the BSMs rules was intentionally provided by the Defendants for the guidance of the Plaintiffs and other participants in the BSMs industry within the Gooch line of sponsorship.

176. The representations were material, Plaintiffs justifiably relied thereon to Plaintiffs' detriment in continuing to pursue and build their BSMs businesses.

177. As a direct result of Defendants' acts and omissions in this respect, Plaintiffs have been damaged, and their damages substantially exceed the minimum jurisdictional amount for matters to be brought before this Court.

178. Defendants' conduct is such that it rises to the level of an independent, willful tort, is and was outrageous, and/or clearly demonstrates an evil motive or reckless indifference to the rights of others.

COUNT V Breach of Implied-in-Fact Contract

Concerning the Tool Business

COME NOW Plaintiffs and, for their fifth cause of action, state and allege as follows:

179. Plaintiffs entered into an implied-in-fact agreement with the Defendants, as well as other Amway distributors, concerning the purchase and sale of tools within the BSMs industry.

180. This implied-in-fact agreement, brought about 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 lines of sponsorship being recognized and followed, or making sure that each distributor is properly and fairly compensated within the line of sponsorship.

181. Plaintiffs, and each of them, performed in accordance with the agreement.

182. Defendants, and each of them, breached the agreement by failing to follow the lines of sponsorship, boycotting Plaintiffs, failing to properly compensate Plaintiffs, and manipulating prices for the tools such that not all distributors on the same level received the same price for the tools.

183. As a direct result of Defendants' breach of this agreement, Plaintiffs were damaged, and the damages of each exceed the minimum jurisdictional amount for matters to be brought before this Court.

184. Defendants' aforesaid breach of the agreement, under the circumstances and events as described, was intentional and willful, and one calculated to injure and damage the Plaintiffs. 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.

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

COME NOW Plaintiffs and, for their sixth cause of action, state and allege as follows:

185. Plaintiffs replead and incorporate herein by reference ¶¶ 179 and 184 above.

186. In contracting and dealing with the Plaintiffs in respect to the implied-in-fact agreement concerning the tool business, Defendants owed the Plaintiffs, and each of them, a duty of good faith and fair dealing in both the performance and enforcement of the agreement.

187. Defendants have heretofore breached, and continue to breach, their duty of good faith and fair dealing in respect to the implied-in-fact agreement concerning the tool business by all of Defendants' aforesaid actions and omissions.

188. As a direct result of Defendants' breach of their duty of good faith and fair dealing, Plaintiffs have sustained damages which exceed the minimum jurisdictional amount for matters to be brought before this Court.

189. 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 Plaintiffs. As such, the 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.

COUNT VII
Breach of Implied-in-Fact Contract
Concerning the Function Business

COME NOW Plaintiffs and, for their seventh cause of action, state and allege as follows:

190. Plaintiffs entered into an implied-in-fact agreement with the Defendants, as well as other Amway distributors, concerning the major functions within the BSMs industry.

191. This agreement, brought about by 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.

192. Plaintiffs, and each of them, performed in accordance with the agreement.

193. Defendants, and each of them, breached their agreement by "blackballing" the Plaintiffs from participating in these major functions and being able to successfully sponsor their own, and refusing to reasonably compensate Plaintiffs for their downline network of distributors who attended major functions sponsored or supported by the Defendants.

194. As a direct result of Defendants' breach of this agreement, Plaintiffs were damaged, and the damages of each exceed the minimum jurisdictional amount for matters to be brought before this Court.

195. Defendants' aforesaid breach of the agreement, under the circumstances and events as described, was intentional and willful, and one calculated to injure and damage the Plaintiffs. 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.

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

COME NOW Plaintiffs and, for their eighth cause of action, state and allege as follows:

196. Plaintiffs replead and incorporate herein by reference ¶¶ 190-195 above.

197. In contracting and dealing with the Plaintiffs in respect to the implied-in-fact agreement concerning the major function business, Defendants owed the Plaintiffs, and each of them, a duty of good faith and fair dealing in both the performance and enforcement of the agreement.

198. Defendants have heretofore breached, and continue to breach, their duty of good faith and fair dealing in respect to the implied-in-fact agreement concerning the major function business by all of Defendants' aforesaid actions and omissions.

199. As a direct result of Defendants' breach of their duty of good faith and fair dealing, Plaintiffs have sustained damages which exceed the minimum jurisdictional amount for matters to be brought before this Court.

200. 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 damages the Plaintiffs. As such, the 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.

COUNT IX
Unlawful Pyramid Scheme

COME NOW Plaintiffs and, for their ninth cause of action, state and allege as follows:

201. The Defendants were in a position to control and manipulate the BSMs business within the Yager and/or Gooch line of sponsorship. The BSMs business within the Yager and/or Gooch line

of sponsorship involves a plan or operation fostered and promoted by Defendants for the sale or distribution of BSMs wherein the participants, in recognition of their position in the BSMs business within their line of sponsorship, acquire the opportunity to receive a pecuniary benefit which is not contingent on the volume or quantity of BSMs they sell or distribute. To the contrary, the pecuniary benefits within the BSMs business allocated and/or distributed within the Yager and/or Gooch line of sponsorship have no bearing whatsoever upon the individual efforts of the participants. Instead, the Defendants (and, on knowledge and belief, other powerful upline distributors), benefit from the efforts of the participants, such as the Plaintiffs, merely because they are situated at the top or near the top of the pyramid of BSMs distributors.

202. Stated differently, highly-situated upline distributors in this pyramid receive pecuniary benefits, regardless of their efforts, and many benefit without providing any effort whatsoever. BSMs profits belonging to the Plaintiffs are siphoned off to those who receive them because of their position in the unlawful pyramid.

203. Accordingly, the BSMs business within the Yager and/or Gooch line of sponsorship, operating and flourishing within the State of Missouri, constitutes a “pyramid sales scheme” in violation of § 407.400 et seq. R.S.Mo.

204. This unlawful pyramid sales scheme, promoted by Defendants, served to damage Plaintiffs.

COUNT X
Antitrust Violation – Conspiracy to Monopolize

COME NOW Plaintiffs, and for their tenth cause of action against the Defendants, state and allege as follows:

205. 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 Plaintiffs. 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.

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

207. 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.

208. The Gooch network constitutes a separate and discrete line of business, 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.

209. 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 Gooch network. Defendants' concerted actions restrain trade within the State of Missouri and elsewhere, and stifle or adversely affect competition within the marketplace.

210. In approximately 1996, Defendants Gooch, Childers, Dunn and Evans conspired to undermine Plaintiffs respecting their network, which included over 8,000 distributors/ customers for BSMs. This resulted in the erosion of the Schmitz network and the loss of BSMs business.

211. 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.

212. 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.

213. 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)

214. 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 right 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.”

215. Defendants’ plan 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.

216. 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. Defendant Jimmy Dunn has stated: “If someone does something that I don’t like, I’ll take their tool business away from them.” Dunn was the Plaintiffs’ immediate upline tool supplier. Dunn was active within the conspiracy in conspiring to “take away” the Plaintiffs’ BSMs business.

217. 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.

218. 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.

219. 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.

220. 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 Diamond distributor who balked at joining Pro Net or left Pro Net or refused to deal with Pro Net was “blackballed.”

221. 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.

222. In 1996, Defendants Gooch, Childers and Dunn, 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.

223. 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 organization with a view toward developing/fixing a BSMs pricing structure for Pro Net among competitors. Numerous pricing schedules were secured, reviewed and compared.

224. 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.

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

226. 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 Gooch network, such was not possible unless a distributor wanted to forfeit his tool and function business income.

227. 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.” Defendant Jimmy Dunn attended on behalf of Pro Net and also spoke at this “town meeting.”

228. 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 distributors’ 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 and a former Plaintiff in this case. 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.

229. 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.

230. 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.

231. 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.

232. 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 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.

233. 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.

234. Ultimately, in 1998, the Defendants conspired to eliminate the Plaintiffs as active and successful distributors within the relevant market in order to obtain for themselves the profits which the Plaintiffs were earning from the sale of BSMs to their downline distributor network.

235. The Defendants' 1998 retaliatory decision and acts to eliminate the Plaintiffs as successful distributors within the BSMs business followed or coincided with: (1) Charlie Schmitz' open criticism of the proposed Pro Net pricing structure, including the proposal to raise audiotape prices to the ultimate BSMs consumer, which took place at the meeting of Diamond distributors or prospective Pro Net distributors at Myrtle Beach, South Carolina, in May 1998; (2) Charlie Schmitz' expressed desire following the May 1998 meeting not to join Pro Net; and (3) the December 1998 rejection of Netco's Pro Net membership application following Charlie Schmitz' expressed written exceptions to the required Pro Net terms and conditions for regular membership.

236. The acts taken by the conspirators in retaliation for the aforesaid actions of Plaintiffs included: banning Charlie and Kim Schmitz from appearing on stage and/or speaking at any major functions; and refusing to edit, sell or advertise any tapes which featured the Schmitzes. On knowledge and belief, these actions were 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.

237. As a direct result of the aforesaid actions of Defendants, competition within the relevant market has been harmed, and Plaintiffs have been damaged in that they were precluded and/or substantially deterred by the Defendants from actively engaging in the BSMs business, sustaining the loss of profits from those lost sales.

238. The conduct of Defendants, as aforesaid, constitutes a violation of § 1 of R.S.Mo. § 416.031.

239. Plaintiffs are entitled to relief under R.S.Mo. § 416.120, including treble damages and reasonable attorneys' fees incurred herein.

COUNT XI
Antitrust Violation – Group Boycott

COME NOW the Plaintiffs, and for their eleventh cause of action against the Defendants, state and allege as follows:

240. Plaintiffs additionally replead and incorporate herein as though fully set forth the allegations contained in ¶¶ 205 through 237 above.

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

242. As such, the group boycott violated R.S.Mo. § 416.031.1 in that it was a **per se illegal agreement** among the Defendants to disadvantage the Plaintiffs as competitors of the conspirators in the distribution and sale of BSMs, by:

(a) “blackballing” or barring the Schmitzes from appearing on stage and/or speaking at major functions which was absolutely essential to demonstrate leadership to the Plaintiffs’ downline;

(b) refusing to edit and/or sell and/or advertise any tapes featuring the Schmitzes;

(c) isolating the Schmitzes and the Plaintiffs from their downline distributors by and through the aforesaid actions calculated to undermine and/or disparage the Schmitzes and the Plaintiffs; and

(d) persuading or coercing customers of the Plaintiffs to refuse to deal with or purchase BSMs from the Plaintiffs, which BSMs were essential to maintain a viable network of distribution.

243. As a direct result of the aforesaid tactics, Plaintiffs have sustained damages.

244. Plaintiffs are entitled to relief under R.S.Mo. § 416.121, including treble damages and reasonable attorneys' fees incurred herein.

COUNT XII

Antitrust Violation – Price Fixing and Allocation of Customers

COME NOW the Plaintiffs, and for their twelfth cause of action against the Defendants, state and allege as follows:

245. Plaintiffs replead and incorporate herein as though fully set forth the allegations contained in ¶¶ 205 through 237 above.

246. The actions described above utilized by the Defendants constitute **price fixing** and the illegal **allocation of customers, per se violations** of R.S.Mo. § 416.031.1.

247. As a direct result of the aforesaid actions, Plaintiffs have sustained damages.

248. Plaintiffs are entitled to relief under R.S.Mo. § 416.121, including treble damages and reasonable attorneys' fees incurred herein.

Request for Relief:

WHEREFORE, Plaintiffs pray judgment against Defendants, jointly and severally, for an accounting; for their actual damages in a fair and reasonable amount; for trebling of damages in accordance of law; for exemplary damages to deter Defendants and others from similar conduct; for their attorneys' fees; for their costs herein expended; and for such other and further relief as the Court shall deem just and proper, all as related to Plaintiffs' respective BSMs businesses.

SHUGHART THOMSON & KILROY
WATKINS BOULWARE, P.C.

By _____

R. Dan Boulware - #24289
R. Todd Ehlert - #51853
3101 Frederick Avenue
P.O. Box 6217
St. Joseph, MO 64506-0217
Telephone: (816) 364-2117
Facsimile: (816) 279-3977

SHUGHART, THOMSON & KILROY, P.C.
John C. Holstein
901 St. Louis Avenue, Suite 1200
Springfield, MO 65806
Telephone: (417) 869-3353
Facsimile: (417) 869-9943

PLACZEK & FRANCIS
Mathew W. Placzek
1722 South Glenstone, Suite J
Springfield, MO 65804
Telephone: (417) 883-4000
Facsimile (417) 887-1503

BLACKWELL SANDERS PEPER MARTIN LLP
Brian Malkmus
901 St. Louis Street, Suite 1900
Springfield, MO 65806

Telephone: (417) 268-4000

Facsimile: (417) 268-4040

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing **Plaintiffs' First-Amended Petition** was mailed via first class United States mail, postage prepaid, this ____ day of _____, 2002, to:

Gaspere J. Bono
McKenna Long & Aldridge LLP
1900 K Street, NW
Washington, DC 20006

John L. Watkins
McKenna Long & Aldridge LLP
303 Peachtree Street, N.E. Suite 5300
Atlanta, GA 30308

Larry K. Bratvold
1200 East Woodhurst Dr., Suite N-100
Springfield, MO 65804

ATTORNEYS FOR THE PRONET,
GLOBAL, GOOCH, CHILDERS
AND DUNN DEFENDANTS

Robert B. Hankins
1200 East Woodhurst Dr., Suite N-100
Springfield, MO 65804

ATTORNEYS FOR THE EVANS
DEFENDANTS

Attorney for Plaintiffs