

IN THE CIRCUIT COURT OF GREENE COUNTY, MISSOURI
DIVISION NO. 2

NITRO DISTRIBUTING, INC.,)
WEST PALM CONVENTION SERVICES, INC.)
)
Plaintiffs,)

vs.)

Case No. 101CC4530

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

JIMMY V. DUNN & ASSOCIATES, INC.)
2446 South Sheridan Blvd.)
Springfield, MO 65804)
(registered agent – Jimmy V. Dunn)
4078 East Forrest Ridge Lane)
Rogersville, MO 65742);)

SECOND-AMENDED PETITION

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

WILLIAM ("BILL") CHILDERS)
1518 Providence Road)
Charlotte, NC 28226;)

)
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;)
)
THOMAS D. ("TIM") FOLEY)
11541 Lane Park Road)
Tavares, FL 32778;)
)
T&C FOLEY, INC.)
11541 Lane Park Road)
Tavares, FL 32778)
(registered agent – Thomas D. Foley)
11541 Lane Park Road)
Tavares, FL 32778);)
)
STEVEN S. WOODS)
3316 NE Sugarhill Avenue)
Jensen Beach, FL 34957;)
)
G.F.I. INTERNATIONAL, INC.)
3316 NE Sugarhill Avenue)
Jensen Beach, FL 34957)
(registered agent – Steven S. Woods)
3332 NE Sugarhill Ave.)
Jensen Beach, FL 34957);)
)
PARKER E. GRABILL)
0-1622 Lake Michigan Drive NW)
Grand Rapids, MI 49544;)
)
GRABILL ENTERPRISES, INC.)
0-1622 Lake Michigan Drive NW)
Grand Rapids, MI 49544)
(registered agent – Parker E. Grabill)
0-1622 Lake Michigan Drive NW)
Grand Rapids, MI 49544);)
)
PRONET GLOBAL ASSOCIATION, INC.)
Suite K, 5075 Cascade Road S.E.)
Grand Rapids, MI 49546)
(registered agent – Corporation Service Co.)
1013 Centre Road)
Wilmington, DE 19805);)

GLOBAL SUPPORT SERVICES, INC.)
6851 Distribution Avenue South)
Jacksonville, FL 32256)
(registered agent – Corporation Service Co.)
1201 Hays Street)
Tallahassee, FL 32301-2525);)
PRONET GLOBAL I, INC.)
6851 Distribution Avenue South)
Jacksonville, FL 32256)
(registered agent – Corporation Service Co.)
1013 Centre Road)
Wilmington, DE 19805);)
ROBERT A. BLANCHARD)
932 Lakeside Drive S.E.)
East Grand Rapids, MI 49506;)
JOHN DOE; RICHARD ROE; and other unknown)
conspirators,)
Defendants.)

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

Type of Action

1. This cause arises out of business relationships between Plaintiffs and Defendants tangential 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. The parties hereto are engage(d) in the Amway-related "tool" and "function" business. The causes of action hereinafter set forth, arising out of the same series of transactions and occurrences, are based upon the Defendants, while acting as co-conspirators, fostering an unlawful pyramid scheme, unlawfully fixing prices of products and/or services within this State, tortious interference with Plaintiffs' contracts and business relationships and expectancies, breach of implied in fact contracts, and breach of attendant duties of good faith and fair dealing. The Defendants, acting in concert and conspiring among themselves and with others, have/are systematically, intentionally and willfully eliminating Plaintiffs, or have eliminated Plaintiffs, from the Amway-related "tool" and "function" business, in violation of law.

Jurisdiction and Venue

2. Jurisdiction is 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. The 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, such that the acts of one Defendant constitute the acts of all other Defendants. The price fixing hereinafter alleged involved products delivered into Missouri and, at least in part, used or consumed by Missouri residents. The amount in controversy substantially exceeds the minimum jurisdictional limit for matters to be brought before this Court.

3. 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.

4. Defendants Dunn base their business operations in Missouri. The out-of-state Defendants all do business in Missouri, and most, if not all, do business with the Dunn Defendants. 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; Defendant Foley attended a meeting in Kansas City, Missouri, in March 1998, as did Defendant Woods; and Defendant Grabill attended meetings in Columbia, Missouri, in January 1992 and in St. Louis, Missouri, in July 1995, April 1996 and April 1997. These meetings involved discussions pertaining to and business with direct application to the Amway-related 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

5. Plaintiff Nitro Distributing, Inc. ("**Nitro**") is a Missouri corporation with offices located at 5133 South Campbell, Suite 102, in Springfield, Missouri. Nitro's principal is Ken Stewart. Nitro was incorporated on October 18, 1988. Nitro facilitates the Amway-related "tool" business for Stewart & Associates International, Inc. ("**Stewart Associates**"), an Amway

distributorship owned by Ken Stewart, and operates in tandem with Plaintiff West Palm Convention Services, Inc. ("**West Palm**"), to build, support and enhance the Amway business. Nitro is not an Amway distributorship/independent business. Nitro and West Palm have the benefit of Stewart Associates' downline distributors, as hereinafter explained, such that Nitro's and West Palm's "downline" are those downline distributors of Stewart Associates. Plaintiffs Nitro, West Palm and non-party Stewart Associates are collectively referred to herein at times as the "**Stewart Organization.**"

6. Plaintiff West Palm Convention Services, Inc. ("**West Palm**"), is a Florida corporation with offices located at 177 U.S. Highway 1, Suite 313, in Tequesta, Florida. West Palm's principal is Ken Stewart. West Palm was incorporated in Florida on December 13, 1996. Prior to incorporating in Florida, West Palm was a Missouri corporation incorporated on February 5, 1992. West Palm facilitated the Amway-related rally, convention and function business for Stewart Associates and Ken Stewart, and operated in tandem with Nitro to build, support and enhance the Amway business. West Palm is not an Amway distributorship/independent business.

7. Defendant **Jimmy Dunn** is a citizen of the State of Missouri, residing at 4078 East Forrest Ridge Lane, Rogersville, Greene County, Missouri. Upon knowledge and belief, Dunn operates an Amway distributorship through a nonparty corporation, but he is not an Amway distributorship/independent business. Dunn also conducts business through Defendant Jimmy V. Dunn & Associates, Inc. ("**Dunn Associates**"). Dunn Associates is organized and existing under the laws of the State of Missouri, with its principal place of business at 2446 South Sheridan Blvd., Springfield, Greene County, Missouri. Dunn Associates' principal is Jimmy Dunn. Upon knowledge and belief, 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. Jimmy Dunn and Dunn Associates reside in Greene County, 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 who are/were co-conspirators in the conspiracy hereinafter described.

8. Defendant **Harold [Hal] Gooch, Jr.** is a citizen of the State of North Carolina, residing at Six Curtis Court, Thomasville, North Carolina. Upon knowledge and belief, Gooch operates an Amway distributorship through a nonparty corporation, but he is not an Amway distributorship/independent business. Gooch also conducts business through Defendants Gooch Support Systems, Inc. ("**Gooch Systems**") and Gooch Enterprises, Inc. ("**Gooch Enterprises**"), and is president and co-owner of each; he is the principal of each company. Gooch Systems and Gooch Enterprises are organized and existing under the laws of the State of North Carolina, with their principal place of business at Six Curtis Court, Thomasville, North Carolina. On knowledge and belief, Gooch Systems is in the business of purchasing and reselling business support materials for use by Amway distributors, and Gooch Enterprises is in the business of organizing seminars, rallies and major functions attended by Amway distributors. Neither Gooch Systems nor Gooch Enterprises are Amway distributorships/independent businesses. 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.

9. Defendant **William [Bill] Childers** is a citizen of the State of North Carolina. 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 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. Childers and TNT conduct business in the State of Missouri, and are subject to suit in Missouri. The acts and/or omissions of William Childers, as herein described, are those of TNT. Unless otherwise noted, reference to "**Defendant Childers**" herein shall refer to all Childers Defendants, including TNT, who are/were co-conspirators in the conspiracy hereinafter described.

10. Defendant **Thomas D. [Tim] Foley** is a citizen of the State of Florida, residing at 11541 Lane Park Road, Tavares, FL 32778. Upon knowledge and belief, Foley operates an Amway distributorship through a nonparty corporation, but he is not himself an Amway distributorship/independent business. Foley also conducts business through Defendant T&C Foley, Inc. of Tavares, Florida ("**T&C**"). T&C's principal is Defendant Foley. On knowledge and belief, T&C is organized and existing under the laws of the State of Florida, with its principal place of business at 11541 Lane Park Road, Tavares, FL 32778. T&C is in the business of purchasing and reselling business support materials for use by Amway distributors, and of organizing seminars, rallies and major functions attended by Amway distributors. T&C is not an Amway distributorship/independent business. On knowledge and belief, the act and/or

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

11. Defendant **Steven S. Woods** is a citizen of the State of Florida, residing at 3316 NE Sugarhill Avenue, Jensen Beach, Florida 34957. Upon knowledge and belief, Woods operates an Amway distributorship through a nonparty corporation, but he is not himself an Amway distributorship/independent business. Woods also conducts business through Defendant G.F.I. International, Inc. of Jensen Beach, Florida ("**GFI**"). GFI's principal is Defendant Woods. On knowledge and belief, GFI is organized and existing under the laws of the State of Florida, with its principal place of business at 3316 NE Sugarhill Avenue, Jensen Beach, Florida 34957. GFI is in the business of purchasing and reselling business support materials for use by Amway distributors, and of organizing seminars, rallies and major functions attended by Amway distributors. GFI is not an Amway distributorship/independent business. On knowledge and belief, the act and/or omissions of the co-conspirators and Defendant Woods are/were the acts and/or omissions of GFI. Woods and GFI conduct business in the State of Missouri, and are subject to suit in Missouri. Unless otherwise noted, reference to "**Defendant Woods**" herein shall refer to all Woods Defendants, including GFI, who are/were co-conspirators in the conspiracy hereinafter described.

12. Defendant **Parker E. Grabill** is a citizen of the State of Michigan, residing at 0-1622 Lake Michigan Drive NW, Grand Rapids, MI 49544. Upon knowledge and belief, Grabill operates an Amway distributorship through a nonparty corporation, but he is not himself an Amway distributorship/independent business. Grabill also conducts business through Defendant

Grabill Enterprises, Inc. of Grand Rapids, MI ("**Grabill Enterprises**"). Grabill Enterprises' principal is Defendant Grabill. On knowledge and belief, Grabill Enterprises is organized and existing under the laws of the State of Michigan, with its principal place of business at 0-1622 Lake Michigan Drive NW, Grand Rapids, MI 49544. Grabill Enterprises 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. Grabill Enterprises is not an Amway distributorship/independent business. On knowledge and belief, the act and/or omissions of the co-conspirators and Defendant Grabill are/were the acts and/or omissions of Grabill Enterprises. Grabill and Grabill Enterprises conduct business in the State of Missouri, and are subject to suit in Missouri. Unless otherwise noted, reference to "**Defendant Grabill**" herein shall refer to all Grabill Defendants, including Grabill Enterprises, who, on information and belief, are/were co-conspirators in the conspiracy hereinafter described.

13. Defendant ProNet Global Association, Inc. (hereinafter "**ProNet**"), 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. ProNet'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. ProNet does business in Missouri and has "members" (including Defendant Dunn) in Greene County, Missouri. Defendants Gooch, Childers, Foley and Woods were/are "Founding Members" of ProNet, and serve on the ProNet Board of Directors and/or "steering committee." ProNet is not an Amway distributorship/independent business. ProNet is/was a co-conspirator in the conspiracy hereinafter described. The conspiracy controls ProNet; it is the conspiracy's instrumentality.

14. 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 ProNet's members for use by other Amway distributors. Global's main offices are located at 6851 Distribution Avenue South, Jacksonville, Florida. Global does business in Missouri, including Greene County. Global works in tandem with ProNet. Global is/was a co-conspirator in the conspiracy hereinafter described. Global's principal is Don Brindley, a nonparty co-conspirator herein. Brindley's acts and/or omissions are/were Global's. Global is not an Amway distributorship/independent business.

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

16. Defendant Robert A. Blanchard (hereinafter "**Blanchard**"), is a citizen of the State of Michigan, residing at 932 Lakeside Drive S.E., East Grand Rapids, Michigan. Blanchard is and has been since July 15, 1999, the Chief Operating Officer of Defendant ProNet. Upon Blanchard becoming the COO of ProNet in 1999, ProNet opened offices in Grand Rapids, Michigan. On knowledge and belief, Blanchard has also served in some managerial and/or officer capacity for Defendant ProNet Profit since mid-1999. Blanchard is not an Amway distributorship/independent business. Blanchard is a co-conspirator in the conspiracy hereinafter

described. The acts and/or omissions of Robert Blanchard, as herein described, are those of Defendants ProNet and ProNet Profit.

17. 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 Plaintiffs and the Stewart Organization, as well as certain other successful Amway distributors. Accordingly, in the furtherance of this conspiracy or enterprise, the primary purpose being to avoid "lines of sponsorship" and to impair the Plaintiffs' networks of downline distributors in order to profit unfairly from the Amway-related tool and function business, the act or omission of one Defendant or co-conspirator constituted the act or omission of the others. The conspiracy had and has 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 foster an unlawful pyramid scheme, to breach agreements affecting the Plaintiffs' businesses, to unjustifiably and illegally interfere with the Plaintiffs' contracts and business relationships and expectancies without legal justification, to deal unfairly absent good faith, and to impair and damage Plaintiffs' businesses to and for Defendants' own advantage and profit. Designated Defendants John Doe and Richard Roe are representative of other persons, unknown to Plaintiffs, who conspired with the other Defendants and co-conspirators to accomplish the unlawful purposes of the conspiracy enterprise as herein alleged, as not all of the co-conspirators are known by Plaintiffs.

General Allegations

The Amway Business and the Essential "Line of Sponsorship."

18. Amway Corporation ("Amway") is a "multi-level marketing" business, selling consumer goods and products worldwide through a vast network of independent distributorships,

many of them based in Missouri. **Quixtar** is Amway's internet-based business implemented within the last few years by Amway. Today, Amway is often referred to as Quixtar. The Amway "pyramid" marketing program, in connection with this business, is one where any purchase or sale of Amway products by a distributorship financially benefits not only Amway, but also those Amway distributorships that qualify and occupy levels within the Amway distributorship network higher than that of the selling distributorship. Those Amway distributorships that occupy positions 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 concept of "**line of sponsorship**." As such, a distributorship's initial place in the Amway network is immediately below the distributorship who sponsors and brings that distributorship into the network, subject to Amway's approval, and immediately above those distributorships that the given distributorship sponsors as new Amway distributorships. New Amway 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 distributorship, one must develop a sizable downline network by recruiting and sponsoring other distributors into the Amway business. By so doing, the upline distributorships stand to benefit.

19. Defendants Gooch, Childers and Dunn are principals of Amway distributorships located near the apex of the Amway pyramid in what may be referred to as the "**Yager Group**," and are part of the upline for Stewart Associates (herein the "**Upline Co-Conspirators and/or Defendants**"). On knowledge and belief, Defendants Tim Foley and T&C Foley, Inc.; Steve Woods and G.F.I. International, Inc.; Parker Grabill and Grabill Enterprises, Inc., are principals

of Amway distributorships and related tool businesses "crossline" to Stewart Associates in the Gooch line of sponsorship (herein the "**Crossline Co-Conspirators** and/or **Defendants**"). On knowledge and belief, non-party co-conspirators Ronald Rummel & Rummel Enterprises, Inc.; Chuck Orstad and K.C. & Associates; Howard Eckman and Eckman Enterprises, Inc.; Jack Pawlak and Diamond J. Enterprises, Inc.; Joe Broome and Broome & Associates; Kirk Arndt; Michael Martin; Nick Grachanin; and Mark Janer, are principals of Amway distributorships and related tool businesses downline to Stewart Associates in the Gooch line of sponsorship (herein the "**Downline Co-Conspirators**").

20. Amway 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. If the principal of an Amway distributorship is successful in developing their independent business, that principal (distributorship) can reach various "**pin levels**" of achievement. The ascending "pin levels" were, until September 1999, **Direct, Ruby, Pearl, Emerald, Diamond, Executive Diamond, Double Diamond, Triple Diamond, Crown** and **Crown Ambassador**, and thereafter **Platinum, Ruby, Sapphire, Emerald, Diamond, Executive Diamond, Double Diamond, Triple Diamond, Crown** and **Crown Ambassador**. Each pin level entitles the principal and/or distributor to corresponding benefits and privileges, which increase at each ascending level.

21. 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 distributor does not share in the profits generated by the sale of Amway products from other "pin level" distributors in his/her downline, but does obtain monetary and other bonuses directly from Amway because of the increased volume generated by these "pin level" distributors in that distributorship's downline network.

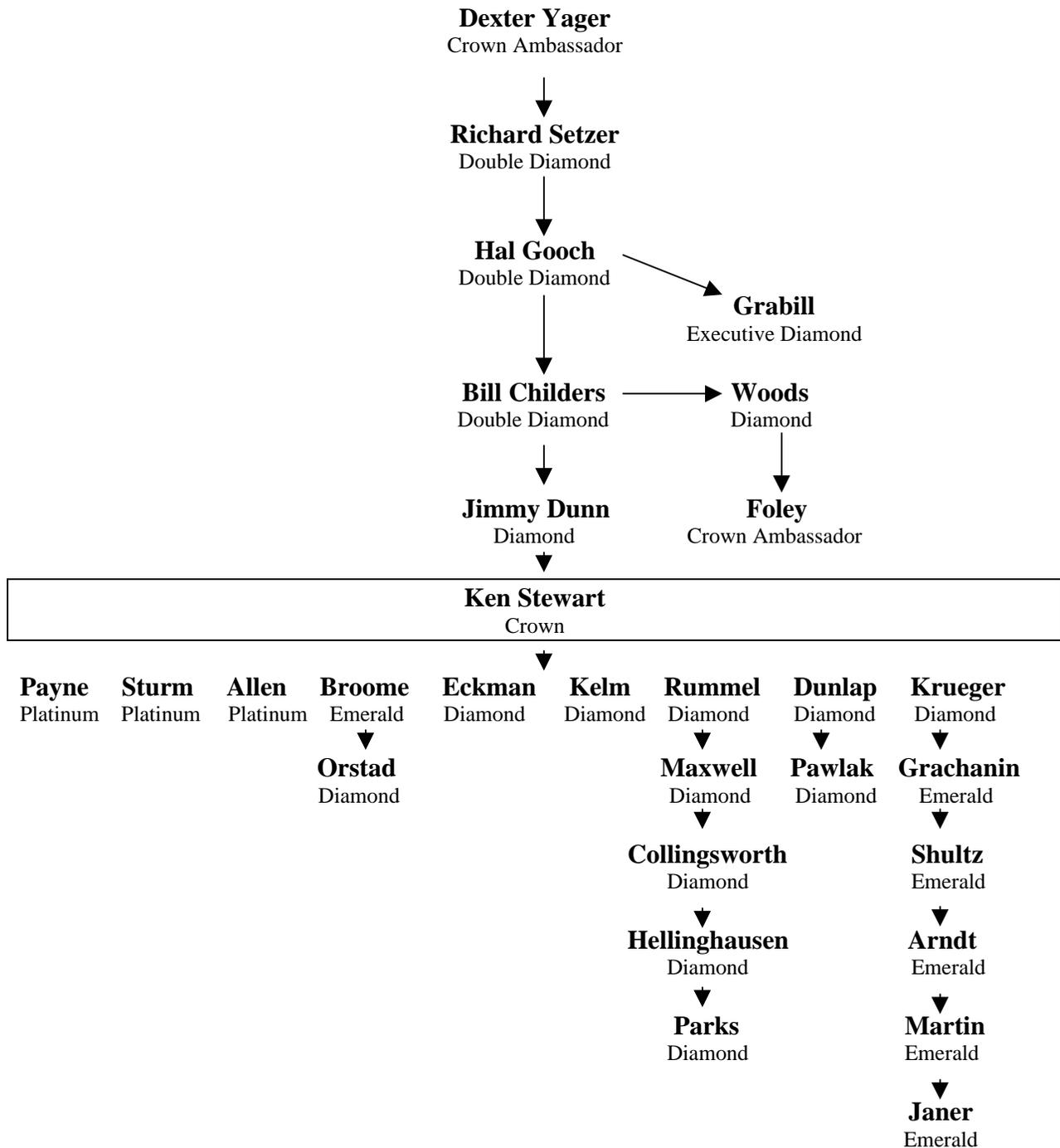
22. Ken Stewart owns and operates an Amway distributorship under the name Stewart & Associates International, Inc. (“**Stewart Associates**”), based in Tequesta, Florida, but was previously based in Springfield, Missouri, until December 1996. Stewart Associates acquired the status within the Amway distributor network as a highly successful distributor, achieving the prestigious "Crown" status. Ken Stewart, the principal of Stewart Associates, became well-known and popular within the Amway network of distributors and, at one time, before the objectives of the conspiracy came to fruition, was in great demand as a motivational speaker at rallies, major functions and conventions.

The Stewart Organization’s Line of Sponsorship:

23. Ken Stewart and Stewart Associates personally sponsored approximately 66 Amway distributors, building a massive downline organization numbering approximately 70,000 Amway distributors. Included in Stewart Associates’ downline group are 11 other Diamond distributors.

24. Stewart Associates’ line of sponsorship within the Yager Group included, in part, the following principals, and on knowledge and belief, the following respective highest pin levels for each:

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



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

25. The Stewart Organization's exclusive networks of downline distributors served as lucrative markets for the sale of Amway products and Amway-related 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 motivational seminars, rallies, conventions and functions (hereinafter collectively "**functions**"), which serve and have served as an integral part of the Amway business. **The tools and functions businesses together comprise what may be referred to as the BSMs industry.**

26. 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, if not acceptance, of the BSMs industry, has sanctioned the use of BSMs within and by the Amway distributorship network. Within this framework, Plaintiffs were successful in developing Stewart Associates' Amway distributorship, as well as promoting and selling tools and functions to its downline groups within its immediate line of sponsorship.

The Promulgation of Rules Governing the BSMs Industry.

27. As might be expected, these powerful distributors at the top of Amway, 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 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 unwritten rules to govern this BSM industry since it involved non-Amway products. These rules were explained and then implemented in a course of dealing over years.

28. These BSMs rules and course of dealing provided that only those distributors attaining an Amway pin level of 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 the functions. Thus, once an Amway distributor became "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.

29. In respect to the "**tools**," these high-placed powerful distributors promulgated **rules and implemented a course of dealing** over more than 30 years which **required** distributor/participants to purchase tools from their immediate upline distributor of the same, or higher, Amway pin level than themselves. Thus, for example, an Emerald distributor would buy his/her tools from the next upline Emerald or Diamond distributor, passing those lower-level distributors in between; a Diamond distributor would buy from the next upline Diamond, etc. The distributor acquiring the tools would then sell them to his/her immediate downline distributors who, in turn, would sell them to their 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 Emerald pin level and above distributors. This course of dealing respecting the tool business, on knowledge and belief, began in the 1970s or before.

30. The **rules and/or course of dealing pertaining to functions** also date back to the 1970s, if not earlier. Again, only Diamond distributors were allowed to sponsor major functions. All the while, the lower-level distributors were encouraged to support and attend these events. The rules and/or course of dealing governing major functions provided that such functions consist or be limited to the Amway distributors in the sponsoring Diamond's line of sponsorship. This meant there would be no "**cross-lining**," a concept of paramount importance within the Amway culture. As such, strict adherence to the lines of sponsorship was recognized within these rules and the course of dealings for BSMs. Accordingly, an Amway distributor wishing to attend a major function was expected and required to attend the function sponsored by his/her immediate upline Diamond. Diamond (or above) and Emerald distributors received a "cut" from the gate at these major functions for each person attending the function from their downline network. Such distributors had an incentive, separate and apart from Amway's requirement to train and motivate, to "build the gate." A Diamond (or above) and Emerald distributor's downline network had intrinsic value to that distributor as a participant within the BSMs industry. A Diamond distributor (or above), having the right to organize and run their own major function, had the opportunity to garner significant profits from these major functions. Moreover, Diamonds (or above) received compensation from a function sponsor for appearing on stage and/or speaking. It was customary for Diamonds to speak at major functions, providing their personal testimony of achieving success within Amway.

31. The rules and long-standing course of dealing for both the tool and major function business further provided that, for instance, if an upline Diamond sold tools to the downline of another Diamond and/or had another Diamond's downline distributors attend its upline function, that Diamond would enter into a "**servicing agreement**" with the other Diamond to compensate that Diamond reasonably and fairly for the participation of that Diamond's downline distributors.

Absent the consent of the downline Diamond and a servicing agreement, the upline Diamond would refrain from soliciting or involving the other Diamond's network. This provision for consent and servicing agreements (hereinafter the “**servicing agreement rule**”), was also favored and prescribed by Amway. The intent of such was to negate an upline Diamond from abusing or failing to honor the essential line of sponsorship by "going around" or "boycotting" a downline Diamond or Emerald distributor to profit unfairly. The rules and course of dealing for the tool and function business were intended from the beginning to recognize and honor the essential line of sponsorship, just as in the Amway business. Otherwise, abuses lead to impairment and disintegration of the integrity of the network of distributors.

32. Essential to the BSMs industry rules, as in the Amway business, was the necessity for recognizing and respecting the lines of sponsorship.

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

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

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

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

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

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

38. Jimmy Dunn represented and espoused to others the servicing agreement rule.

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

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

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

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

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

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

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

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

47. Parker Grabill has hereto represented to Emerald and Diamond distributors that respecting the line of sponsorship is essential. Parker Grabill agreed to honor the line of sponsorship respecting the sale and distribution of BSMs.

48. Parker Grabill represented and espoused to others the servicing agreement rule.

The Promotion of the BSMs Industry.

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

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

51. For example, on information and belief, Jimmy Dunn has represented to distributors that less than 10% of his income comes from the sale of Amway products through his organization, and over 90% comes from the BSMs business.

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

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

53. 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.

54. 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.

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

The Myths Created and Fostered by the Upline Defendants.

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

57. 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 most of the qualifying distributors.

58. 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.

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

59. 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.'

60. 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.**

61. DeVos' admonitions apparently had a positive effect upon the BSMs industry as it operated for years thereafter in accordance with the aforesaid rules, respecting the all-important "line of sponsorship." This was the system within which the Stewart Organization grew and thrived. On knowledge and belief, the more recent abuses within the BSMs industry began in the mid-'90s when the Upline Defendants ascended to take control of the BSMs industry and change things to their personal advantage. The Upline Defendants and their co-conspirators engaged in the very conduct to which DeVos had earlier warned.

The Stewart Organization's Successful Business Operations.

62. Stewart Associates and its principal, Ken Stewart, enjoyed an exceptional level of achievement in Amway. It represented one of the largest downline legs in the Yager Group. From 1982 until today, Ken Stewart qualified at the prestigious "Diamond" pin level each year. In 1989, Stewart/Stewart Associates attained "Executive Diamond" and "Double Diamond" status, and then "Triple Diamond" in 1990. Stewart further achieved the prominent "Crown" pin level in 1991. As a "Triple Diamond" and then a "Crown," he achieved a pin level higher than any of the Upline Defendants.

63. Amway frequently featured Ken Stewart in its own literature and motivational products, as Stewart's claim to fame was that he achieved Diamond in only 29 months. In the early '80s, Stewart became one of the most popular speakers in all of Amway and the BSMs function circuit.

64. From 1980 until today, Stewart expended substantial time, resources and effort into building Stewart Associates, Nitro and West Palm, making Amway and/or the promotion of Amway his full-time job, and relying on his Amway and BSMs income as his primary means of support.

65. On knowledge and belief, the Stewart Organization's huge success ultimately led to the Upline Defendants' envy, greed and decision to seize it beginning in 1996. Ken Stewart was a proponent of respecting the line of sponsorship within the BSMs industry. On knowledge and belief, the Upline Defendants knew that and recognized that to circumvent the rule, Stewart would need to be silenced.

66. Beginning in/about 1986, Ken Stewart/Stewart Associates (subsequently, West Palm) began conducting their own major functions with the consent of Stewart Associates' upline, including Defendants Childers, Gooch and Dunn. Stewart, Stewart Associates, and then West Palm utilized Stewart Associates' downline network in sponsoring, organizing and holding these major functions, which regularly drew thousands of Amway distributors in attendance, and in the case of their "Free Enterprise" functions, often over 18,000 distributors.

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

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

69. Amway featured Ken Stewart's success story in its official magazine *Amagram* on several occasions, including but not limited to cover stories on:

- (a) October 1989, "Executive Diamond";
- (b) February 1990, "Double Diamond";

- (c) December 1991, "Triple Diamond"; and
- (d) March 1993, "Crown."

70. Stewart Associates, Nitro and West Palm, working in concert, participated in and were highly successful in developing their BSMs business. Nitro purchased and resold independently-produced BSMs in accordance with the implied contract of the parties formed by instruction from the Upline Defendants and confirmed by years of business dealings with its upline, while West Palm conducted functions in the same manner. Ken Stewart was usually featured at these functions, and his popularity as a speaker within Amway grew and grew.

71. To facilitate its BSMs business, prior to 1998, Nitro owned and operated a multi-million dollar warehouse in Springfield, Missouri, where tapes and other tools were stored for sale and dissemination to the Stewart Organization downline. The Nitro warehouse was the largest BSMs warehouse in the Yager Group and the only warehouse in the Midwest. Accordingly, the Stewart Organization was a major player within the BSMs industry in the Yager Group.

72. All along, the line of sponsorship was recognized and honored by the Stewart Organization respecting the BSMs rules, including servicing agreements, just as Stewart had been instructed and directed by his mentoring upline. For years, Ken Stewart and/or Nitro personally sold tools directly to the distributors whom [they] had personally sponsored, pursuant to the course of dealings between the parties. Similarly, they purchased their tools in accordance with this course of dealing. Likewise during this time, the essential line of sponsorship and the rules pertaining to functions were recognized and honored in promoting and sponsoring functions.

The Conspiracy to Violate the BSMs Rules and Long-Standing Course of Dealing and to Injure Stewart and the Stewart Organization.

73. Beginning sometime in the mid-'90s, a conspiracy was formed under the leadership and direction in substantial part of one or more of the Upline Defendants. The conspiracy ultimately included as participants the Defendants herein, the Downline Co-Conspirators, Don Brindley and others, some still unknown to Stewart and the Plaintiffs.

74. Prior to this time, Gooch and Childers did not at all times adhere to the long-standing BSM rules by and through their own conduct, but consistently espoused the aforesaid BSMs rules to their downlines, including Stewart. For example, Stewart/Nitro, as a Crown level distributor, should have been allowed to purchase tools directly from the next upline Crown or higher pin level, but Gooch and Childers would not so permit, instead requiring Stewart to buy through them, contrary to the long-standing BSMs rule. With Gooch and Childers, it was more of a "do as I say, not as I do" situation. Stated differently, Gooch and Childers expected their downlines to strictly adhere to the BSMs rules, yet they did not do so. In the mid-'90s, Gooch and Childers took the BSMs rules abuses to yet a higher level. Gooch, in particular, became much more aggressive. Regarding several successful downline distributors, including Stewart, with whom Gooch found fault, even though Amway did not, Gooch embarked on a course of conduct to force him out.

75. To the knowledge of Plaintiffs, the Defendants and their co-conspirators sought to undermine the Plaintiffs and their principal, Ken Stewart, in a myriad of ways, and have violated rules and agreements requiring the recognition and adherence to the well-established "line of sponsorship" within the Amway network in respect to the lucrative BSMs industry. The Defendants have conspired and endeavored to usurp Plaintiffs' downline network by "going around" Plaintiffs – boycotting Plaintiffs – without either their consent or a servicing agreement,

to take away Plaintiffs' participation in the tool business. Defendants have misled Plaintiffs' downline network by spreading falsehoods about Ken Stewart and/or Plaintiffs, with the intent and purpose of enticing, inducing or soliciting these downline distributors to boycott Plaintiffs' functions, attend Defendants' and/or co-conspirators' functions, and/or leave Plaintiffs' networks and/or abandon any allegiance or loyalty to Plaintiffs. Defendants have further sought to exclude Ken Stewart from Defendants' functions so as to demonstrate to Plaintiffs' downline network that Plaintiffs are no longer effective within the Amway business. Even further, they excluded his participation at functions involving his own downline distributors. The result has been the significant impairment or destruction of Plaintiffs' tool and function business, to their detriment and substantial damage. And, on knowledge and belief, these unsavory business tactics perpetrated upon Plaintiffs by the Defendants have been perpetrated by them and other co-conspirators on other successful Amway distributors, including Brig Hart, Charlie Schmitz, Nolan Dunlap, Tom Krueger and Pat Shultz.

76. The Upline Defendants and their co-conspirators have intentionally circumvented the implied contract for BSMs and undermined Nitro and West Palm by directly and/or indirectly selling BSMs in the following manner: (1) selling BSMs to downline distributors whom they did not personally sponsor; (2) cross-group selling BSMs to distributors in lines of sponsorship other than their own, without consent and reasonable compensation; and (3) recruiting and/or allowing Plaintiffs' downline distributors to attend their events without proper and reasonable compensation to West Palm.

1996: BSMs Rules Abuses Begin at the Behest of the Conspiracy.

77. In or about 1996, it came to Ken Stewart's attention that he and the Stewart Organization were being undermined respecting their downline distributors. Stewart was led to believe that the efforts to undermine him with his downline were being orchestrated by

Defendant Gooch. Ken Stewart and Hal Gooch had a strained personal relationship at this time that dated back to January 1995.

78. Also in 1996, Ken Stewart became aware of efforts by the Upline Defendants to undermine other Diamond distributors within the Yager Group. These efforts entailed abuses and/or violations of the BSMs rules and long-standing course of conduct. It was evident to Ken Stewart that the Upline Defendants were no longer honoring and/or respecting the essential line of sponsorship within the BSMs industry. Instead, the Upline Defendants were embarking on a pattern and course of conduct to turn the long-standing BSMs rules on end, violate the line of sponsorship, and endeavor to “blackball” those Amway distributors with whom they found disfavor for any number of reasons, including purely pretextual reasons. Ken Stewart became increasingly concerned with the reports he received that entailed abuses of the long-standing rules.

79. The tactics used by the conspiracy to further their objectives are now legend and began with criticism or attacks on the personal character of the targeted distributor – in this instance, Ken Stewart. The attacks often focused on the attackers’ (co-conspirators’) self-imposed judgment of Stewart’s moral turpitude. The attacks were malicious and wreaked with hypocrisy. Nevertheless, these attacks were calculated to undermine Stewart in the eyes of his downline, and they were effective. As the attacks grew to a crescendo, the conspirators “pulled the plug” – they took his downline for tools and suspended him from speaking at functions, ignoring the BSMs rules. All the while, the purported reasons for taking these actions within the BSMs industry were not sufficient for similar actions within Amway, as no actions were taken by Amway against Ken Stewart or the Stewart Organization. To the contrary, Amway remained outwardly supportive of Ken Stewart and Stewart Associates.

80. These false and/or misleading attacks/statements by one or more of the co-conspirators to the Stewart Organization's downline included, but were not limited to: Ken Stewart was not morally fit, or words to that effect; Ken Stewart was a poor leader who would not counsel and work out problems with his downline distributors; Ken Stewart was disloyal and did not edify his upline; Ken Stewart was involved in other non-Amway related businesses to the detriment of his Amway-related business; Nitro and West Palm passed on improper BSMs prices to downline distributors, and did not fairly share in the profits from major functions; Ken Stewart disparaged downline distributors who chose to purchase BSMs from other suppliers. These tactics are similar, if not identical, to those implemented by the Upline Defendants to isolate and eliminate other successful Amway distributors and Amway-related businesses.

81. The Upline Defendants' motive in making the aforesaid statements was to undermine and alienate Plaintiffs and their principal, Ken Stewart, from their downline and gain control of Plaintiffs' BSMs business, while damaging Stewart Associates' Amway business, ultimately resulting in downline BSM distributors leaving the Stewart Organization's respective line of sponsorship, quitting Amway, and/or turning to other BSM sponsors. In substance, the Upline Defendants sought to disrupt and erode Plaintiffs' downline network to their ultimate benefit.

82. On information and belief, 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 apparently permeated the conspiracy.

The Formation of Global and ProNet in February 1998.

83. In April 1997, Brig and Lita Hart, mammoth Amway distributors, and their distributorship organization, brought suit in Jacksonville, Florida, over alleged BSMs rule

abuses. The Harts were in the Childers “leg.” On knowledge and belief, that suit signaled to Gooch, Childers, Woods and Foley that efforts to avert the line of sponsorship for BSMs was not going to go unchallenged, and that their lucrative BSMs business was potentially in jeopardy.

84. At some point, and perhaps in 1997, if not before, Gooch and Childers, and perhaps others, struck a deal with Yager and Setzer respecting BSMs which paved the way for them to embark on a new plan to control and distribute BSMs within the Yager Group.

85. On knowledge and belief, Yager still receives compensation for BSMs.

86. On knowledge and belief, Setzer still receives compensation for BSMs.

87. In 1997, Defendants Gooch, Childers, Foley and Woods discussed with Ken Stewart the creation of a new entity for the control and dissemination of tools and the promotion of functions. Their discussions led to the incorporation of ProNet in February 1998. Defendant Gooch was the sole incorporator of ProNet.

88. On knowledge and belief, a motivating purpose for the formation of ProNet was to seize control of the BSMs business of certain large distributors, including the Plaintiffs herein.

89. On knowledge and belief, because Ken Stewart was a known proponent of the line of sponsorship and the Stewart Organization had a large BSMs warehouse and a huge downline, the Upline Defendants and Defendants Foley and Woods wanted Ken Stewart and the Stewart Organization brought into their new plans for controlling BSMs within the Yager Group. So, Childers, Foley and Woods approached Ken Stewart in 1997, and encouraged him to join with them and Gooch in bringing about what became known as ProNet.

90. Ken Stewart consented to this overture by Childers, Foley and Woods, and was asked by them to serve on the ProNet Board of Directors, as well as serve as Secretary of ProNet. When Gooch incorporated ProNet, he served as its Chief Executive Officer and, on knowledge and belief, continues to so serve in that capacity at this time. Defendant Childers serves(ed) as

President, Defendant Woods as Vice President, and Defendant Foley as Treasurer. These individuals, along with Ken Stewart, comprised ProNet's original Board of Directors, as well as what was referred to as the ProNet "Steering Committee."

91. It was Stewart's understanding, based upon the representations being made to him by the aforesaid Defendants and co-conspirators, that ProNet would strictly observe the long-standing BSMs rules, including recognizing and honoring the essential line of sponsorship. It was Ken Stewart's desire at that time to restore order to the BSMs industry and to eliminate the abuses that had taken place to his knowledge beginning in 1996. Stewart naively believed that this could be accomplished through ProNet. But Stewart at that time was unaware of the conspiracy, as well as its objectives.

92. ProNet purportedly functions as an association comprised of members who are distributors of Amway products at the Amway Diamond level or above. ProNet's purported purpose is to promote the common business interests of member companies and businesses engaged in distributing BSM products or services. ProNet purportedly provides information to its members which is helpful in developing the Amway businesses of its members. But, in reality, ProNet has not operated for the benefit of its members. ProNet has operated for the benefit of the Upline Defendants and other co-conspirators herein.

93. To join ProNet, the qualifying Amway pin level distributor or his/her/its designee company must pay \$25 and then a \$25 annual fee thereafter.

94. Contemporaneously with the formation of ProNet, Defendant Global was created to supply BSMs to ProNet for sale to its members and, ultimately, their downline distributors. On information and belief, Global does not supply BSMs to any other Amway-related organization other than ProNet. On information and belief, Global's contract for supplying tools to ProNet is or was with Defendants Gooch, Childers and Foley, and not with ProNet, and served to

foster control of the tool supply. Co-Conspirator Don Brindley and non-party Paul Brown served as officers and/or directors of Global, until Paul Brown was ousted in 2001. Global was created to serve solely at the direction and pleasure of ProNet, and thus acts as its alter ego. On information and belief, ProNet's current directors and officers profit from Defendant Global.

95. Because Global did not have any tapes and other tools to provide to ProNet in the inception, at the inducement of the aforesaid Defendants and co-conspirators, Nitro (Stewart) contributed to Global and/or ProNet on consignment approximately \$650,000 retail value of tapes and tools to stock the ProNet warehouse in Florida. No other member of ProNet contributed inventory or any significant cash to ProNet's startup.

96. Following the shipment of Nitro's tapes and other tools to the ProNet warehouse in Florida, Nitro closed its Missouri BSMs warehouse.

97. At this point in time in early 1998, with the Stewart Organization casting its lot with ProNet, the Defendants and co-conspirators had what they wanted respecting the Stewart Organization – closure of the Missouri BSMs warehouse, control over the Stewart Organization's BSMs business, including control over Ken Stewart. It is this control that the conspiracy, through ProNet, used to silence Stewart and resume BSMs rules abuses.

ProNet and Global Used to Further the Objectives of the Conspiracy.

98. Instead of ProNet becoming the vehicle, as Ken Stewart hoped and envisioned, to ensure compliance with the BSMs rules respecting the essential line of sponsorship, ProNet, under the leadership of Gooch and the support of the conspiracy, became the antithesis. Instead of order being restored to the BSMs industry within the Yager Group, abuses of the BSMs rules have become rampant and the result has become chaos. Many Diamond distributors and initial members of ProNet have left ProNet to set up their own BSMs business outside of the lines of sponsorship.

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

What are the Principals? [sic]

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

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

The tools of teamwork are:

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

...

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

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

101. ProNet postures itself publicly to supposedly operate for the benefit of its “members,” the same being Amway Diamond distributors. Yet, ProNet in reality seeks to promote and preserve, over the interest of its “regular members,” the interest of its “founding

members,” the same being the aforementioned Defendants and co-conspirators who seek to control the BSMs industry within the Yager Group.

102. Although asked to serve on the initial Board of Directors of ProNet and as Secretary of ProNet, Ken Stewart was never given proper notice of any ProNet Board meeting, as prescribed in the Bylaws, never attended a ProNet Board meeting properly convened, never was present at any meeting involving ProNet where minutes were taken, and has never been provided at any time with copies of any purported minutes of a ProNet Board meeting, despite numerous requests. In substance, the corporate entity known as **ProNet is and was a legal nullity** – a sham. From its inception, it has not operated as a viable corporate entity pursuant to its enabling Articles of Incorporation and/or Bylaws. Instead, ProNet has served as the able puppet or instrumentality of the Defendants and co-conspirators herein to further the objectives of the conspiracy for the personal gain and profit of the conspirators.

103. In December 1998, a meeting was held in Vail, Colorado, for all ProNet Diamond members. Because of ongoing friction between Hal Gooch and Ken Stewart, Stewart was asked if he would refrain from attending this meeting. Stewart reluctantly consented “for the sake of harmony.” During the time of this meeting of the ProNet Diamond members in Vail, Childers and Dunn called Ken Stewart, advising that the ProNet Board of Directors had voted that some of the Stewart Organization’s downline (the Broome/Orstad, Payne, Sturm and Allen legs), would henceforth do their own functions and would work under Gooch. This represented a significant part of the Stewart Organization’s downline. This meant the BSMs rules were being averted. Stewart protested to no avail. Stewart was never provided with any notice of any ProNet Board meeting to be held during this meeting of ProNet Diamond members in Vail in December 1998. Further, he was never provided with any minutes of any such meeting, and he supposedly remained a ProNet director at that very time. Following this purported meeting of

the ProNet Board, despite the long-standing BSMs rules to the contrary, this significant part of the Stewart Organization's downline began working directly under Gooch for the purposes of their BSMs business.

104. In June 1999, Ken Stewart met with Bill Childers in Florida in hope of resolving any differences with his upline and restoring the Stewart Organization's downline that had moved to Gooch. During this meeting, Childers told Stewart that the ProNet Board of Directors had "suspended" Stewart for one year during the meeting in Vail in December 1998 – a subject that Childers and Dunn, nor anyone else, had broached with Stewart in December 1998 or thereafter. Stewart never received any formal notification from ProNet of the suspension, nor did he ever receive any minutes from the ProNet Board of Directors confirming the purported meeting and action. It was unclear to Stewart in June 1999 and since, what exactly "suspended" meant, other than he learned later that he had been effectively "blackballed" from speaking at any functions, as well as sponsoring any functions. The conspiracy's objective of "silencing" Stewart had reached fruition.

105. By 1999, it also became apparent that the BSMs inventory transported from Nitro's warehouse in Missouri to the ProNet warehouse in Florida on consignment was not being promoted or moved by ProNet. Having secured possession of the Stewart Organization's BSMs inventory in 1998, on knowledge and belief, the conspiracy via ProNet had no reasonable intention of moving that inventory and reimbursing Nitro. Nitro lost the value of same, to its injury and damage. On knowledge and belief, the conspiracy simply wanted possession and control of that inventory, without any real intention of selling it, so the Stewart Organization was effectively out of the tool business, except as permitted by ProNet. Control was essential to the objectives of the conspiracy.

106. Also, by 1999, it was apparent that ProNet's tool prices were higher than what Nitro had previously charged for tools from its Springfield warehouse, and that ProNet's service was inferior to what Nitro's had been. Thus, the Stewart Organization's downline was getting less for more, and Stewart began receiving complaints. And the higher prices and lesser service was made possible by the conspiracy, eliminating Stewart as a potential competitor for tools.

107. In August 1999, Gooch hosted a "Diamond Retreat" at his home in North Carolina. Ken Stewart, although qualified to attend the event with his downline Diamonds, was not invited. On information and belief, Gooch seized the opportunity provided by Stewart's absence to criticize Stewart and undermine him in the eyes of those Diamonds in attendance, including the Stewart Organization's downline.

108. In October 1999, Gooch, Childers, Woods, Foley, Grabill and Ron Rummel called Ken Stewart from Grand Rapids, Michigan, where they were attending an Amway distributors' meeting and purportedly held yet another ProNet Board meeting. They advised Stewart during this conversation that he was going to be "suspended" for another six months. This meant that he would be effectively precluded from speaking at the important Free Enterprise meeting in February 2000. Once again, Stewart protested to no avail. Stewart received no notice of any ProNet Board meeting, nor was he ever provided with any minutes of any ProNet Board meeting where such action was taken.

109. The culminating effect of all of the aforesaid purported actions by the ProNet Board, acting at all times as active co-conspirators with the objective to take the Stewart Organization's BSMs business and blackball Ken Stewart as a speaker at functions, was to substantially damage the Stewart Organization in complete violation of the long-standing BSMs rules.

110. The purported “suspension” actions taken by the ProNet Board were not in compliance with the ProNet Bylaws, were unauthorized, void and constitute ultra vires acts in every respect. Yet, the acts served to effectively damage Stewart and the Plaintiffs.

111. In April 2001, Ken Stewart was advised in a telephone conference by Bob Blanchard’s secretary that there would be a conference call the following day, at which time his participation was requested. Blanchard was the purported Chief Operating Officer of ProNet at the time. Stewart was not told the intended purpose of the next day’s conference call. Subsequently, Ken Stewart called in to the ProNet offices in Grand Rapids and was advised that Bob Blanchard, ProNet attorney Gap Bono, Hal Gooch, Bill Childers, Steve Woods and Tim Foley were participating in the call. In the course of the next two to three minutes, those participating in the telephone conference purportedly elected a new slate of directors and officers for ProNet, and Stewart was not one of them. Upon supposedly voting him out, Stewart’s participation in the call was terminated.

112. From February 1998 until April 2001, Stewart had supposedly been an officer, steering committee member, and director of ProNet, yet he had never been afforded an opportunity to actively participate as such.

113. The initial registration report for ProNet filed with the Delaware Secretary of State’s office lists Ken Stewart as an officer and director. The annual reports filed in 1999 and thereafter do not.

114. In a ProNet filing with the Florida Secretary of State’s office on March 28, 2000, signed by Defendant Hal Gooch, the officers and directors of ProNet were represented to be Hal Gooch, Bill Childers, Tim Foley and Steve Woods. Interestingly enough, this filing was made during the time that Ken Stewart was also, pursuant to his understanding, supposed to be an officer and director of ProNet. And, again, he was not supposedly voted out of ProNet by the

conspirators until April 2001. While previously told that he was “suspended” from participating in functions, he was never advised prior to April 2001 that he had been removed as a ProNet officer and/or director. This March 2000 filing by Gooch for ProNet is but one more clear indication of the conspirators’ intent to ignore the law and manipulate ProNet to their own personal objectives.

115. On July 23, 2001, Hal Gooch filed another report with the Florida Secretary of State for ProNet representing that Hal Gooch, Bill Childers, Tim Foley and Steve Woods were the officers and directors of ProNet.

116. After Ken Stewart’s removal from the ProNet steering committee, co-conspirator Ronald Rummel was added as a committee member. Rummel is a Diamond downline to Stewart. On information and belief, the steering committee advised, instructed and/or suggested to Rummel that he contact Mike Martin, an Emerald within Stewart’s downline (but not downline to Rummel; *i.e.*, cross-line), to determine how Martin felt about Stewart and if Martin expressed concerns, to tell him that Stewart’s upline would find a “home” for Martin and his downline; and Rummel did just that. On knowledge and belief, this was but one more effort to undermine Stewart with his downline.

117. On knowledge and belief, the Defendants and co-conspirators knew and realized that their control and manipulation of the BSMs industry within the Yager Group could and would be substantially enhanced by effectively eliminating Stewart’s Missouri-based BSMs warehouse, bringing Stewart into the fold of ProNet, and then denying him any effective role or voice while embarking on a course to undermine and discredit Stewart, seizing control of his downline in the process. It is and has been a strategy that has played out effectively since the idea of ProNet was conceived in 1997, and the Stewart Organization’s downline has been decimated to the ultimate inherent and substantial detriment of the Stewart Organization and Ken

Stewart. The actions taken by ProNet at the behest of the conspiracy, besides being contrary to law, are also in contravention of ProNet's own Bylaws, particularly concerning the removal of an officer/director.

ProNet's More Recent Efforts to Direct-Ship Tools to Distributors.

118. Defendants in their continuing efforts to misappropriate the entire Stewart Organization and that of other downline distributors currently require ProNet members to disclose in writing their entire downline network. Upon knowledge and belief, the intent of this requirement is to discover the identities of those downline distributors not previously known to the Defendants and co-conspirators so that they may be directly solicited.

119. ProNet and Global have begun yet another "new" program whereby they will now ship BSMs directly to a Diamond's downline, thus further circumventing that Diamond from its line of sponsorship, despite the fact that ProNet and Global claim that they will not sell BSMs directly to any downline distributor of a Diamond without that Diamond's prior consent. However, ProNet and Global again only pretextually observe this rule, and have circumvented Nitro to sell directly to Nitro's downline distributors, over Nitro's objection and without its consent.

120. ProNet developed a consent form for members to sign permitting ProNet to ship tools directly to their downline, which Nitro has heretofore refused to sign.

121. On information and belief, Defendant Bill Childers confronted a distributor at a major function, who had declined to sign the consent form, and threatened him with loss of his tools business if he did not sign the consent form.

122. On information and belief, the ProNet practice of "direct ship" was but one more effort to circumvent the BSMs rules, and in particular, the essential line of sponsorship.

Invalidity or Inapplicability of any Purported Arbitration Clause.

123. Defendants and their co-conspirators further sought to protect themselves from liability for these illegal acts by incorporating a purported mandatory arbitration clause in the rules and regulations of the ProNet association. Such clause was calculated by the Defendants to inure to their particular and personal benefit if ever challenged. The ProNet members were inherently misled into any such agreement. The Upline and Crossline Defendants sought such protection because neither the generic Amway arbitration provision, nor that of Amway's Business Support Materials Arbitration Agreement ("BSMAA") was applicable to them, as ProNet did not involve the Amway business. Regardless, ProNet has never operated as a valid corporate entity, and the purported arbitration clause is but one more tactic of this active and ongoing conspiracy to shield itself from accountability, to shield itself from suit for its wrongful conduct, and to deny unknowing members their right to trial by jury. In so doing, this allowed the conspirators to continue their wrongful conduct without fear of suit and, therefore, at a perceived minimal risk. Accordingly, the purported ProNet arbitration clause is and should be unenforceable.

124. ProNet's aforesaid conduct, including its failure and/or refusal to respect the lines of sponsorship, is contrary to the BSMs rules and/or course of dealing pertaining to BSMs that have evolved and been recognized for years.

ProNet is an Illegal Pyramid in Violation of § 407.400 et seq. R.S.Mo.

125. ProNet has at all times herein since its purported incorporation done business in Missouri.

126. ProNet has held and/or conducted meetings in Missouri.

127. ProNet has members doing business in Missouri.

128. ProNet markets and offers to sell products into Missouri, which are then sold and shipped or delivered to Missouri residents by its alter-ego, Global, or ProNet Profit.

129. The conspiracy, using ProNet as its instrumentality, instigated a purported business scheme in Missouri that constitutes an illegal pyramid, in violation of § 407.400 et seq. R.S.Mo. This scheme, as manifested and perpetuated by the conspiracy through ProNet, entailed a plan and operation for the sale or distribution of goods and services wherein ProNet members for consideration, acquired the opportunity to receive a pecuniary benefit which is and was not primarily contingent on the volume or quantity of goods or services sold or distributed for the purposes of resale to consumers, but is/was based upon the inducement of additional persons, by the conspiracy and others, to participate in the plan or operation.

130. The plan and operation of ProNet, by and through the careful orchestration of the conspiracy, always has ensured that Defendants Gooch and Childers, at the apex of the pyramid, will profit more than those below, irrespective of the BSMs rules.

The Secret Formation of ProNet Profit.

131. On knowledge and belief, ProNet Profit was formed in October 1998 by Defendants Gooch, Childers, Woods and Foley to further the objectives of the conspiracy, and its existence was not publicized or otherwise made known to ProNet members, other than the co-conspirators, until late 2000.

132. On knowledge and belief, ProNet Profit is controlled and/or directed by Gooch, Childers, Woods and Foley.

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

134. Stewart, as a director, member of the steering committee, and officer of ProNet, had no knowledge of the incorporation and activities of ProNet Profit until late 2000.

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

The Amway “Amvox” Voice-Mail Messaging System.

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

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

138. In 1999, ProNet Profit began offering a competing system to distributors within the Yager Group.

The ProNet Profit “EasyTel” System.

139. On knowledge and belief, ProNet Profit has sold goods and/or services to ProNet members.

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

141. On knowledge and belief, ProNet Profit has sold or offered to sell to ProNet members, in complete disregard of the lines of sponsorship, “**Genie**” or “**EasyTel**,” a voice-mail

messaging system, offered as a substitute for Amway's Amvox system. This new system is actively marketed at ProNet functions. Further, on knowledge and belief, profits flow to ProNet Profit instead of ProNet members.

142. On knowledge and belief, the EasyTel voice-mail system was first marketed to ProNet members from the stage during ProNet's Free Enterprise function in February 2001. Thereafter, such marketing could have commenced as early as the latter half of 1999.

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

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

145. On knowledge and belief, Pacific Telcom, Inc. ("**Pac Tel**"), the manufacturer of "Genie," gave Defendant Gooch (ProNet's President and Director), 600,000 shares of stock in exchange for ProNet and/or ProNet Profit's agreement to market "Genie" actively to ProNet members; and Defendant Gooch, on stage at a ProNet function, represented that these shares would be divided among ProNet Diamond members, including Stewart. To date, Stewart has not received any such shares of stock, Plaintiffs have no knowledge of the shares being distributed, and the shares have not hereto been accounted for.

146. On knowledge and belief, Defendant Blanchard was given 100,000 shares of stock as a result of ProNet agreeing to market EasyTel.

The ProNet Profit Website.

147. On knowledge and belief, ProNet Profit purchased a website from Defendant Foley for \$400,000.

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

149. On knowledge and belief, the website acquired by ProNet Profit from Foley became the “ProNet Global Website.”

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

151. The “ProNet Global Website” is a BSM, a “tool,” to which the BSMs rules apply.

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

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

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

155. On knowledge and belief, ProNet did not approve, or legally approve, ProNet Profit’s use and/or ownership of the website. If any such purported approval was given, such act was an ultra vires act by the conspirators herein acting by and out of their own pecuniary interests.

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

157. On knowledge and belief, ProNet Profit has profited on the sale of BSMs to ProNet members, and ProNet Profit has not passed on those profits to ProNet pin level members.

158. On knowledge and belief, aside from the co-conspirators, no ProNet pin level member, including Stewart, has ever received any share of profits/monies from ProNet.

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

"Secret Pots."

160. Defendant Don Brindley represented to Ken Stewart, assumingly to lure him into ProNet, that there was a "secret pot" containing funds from the sale of literature (tools).

161. Defendant Bill Childers represented to Ken Stewart, assumingly to lure him into ProNet, that there was a "secret pot" containing funds from the sale of videotapes (tools).

162. On knowledge and belief, Gooch, Childers, Woods and Foley established "secret pots" or accounts which contained funds and/or profits from the sale of literature and videotapes to ProNet members and/or distributors.

163. On knowledge and belief, these "pots" were supposed to be shared with Emerald and Diamond distributors in accord with the BSMs rules, but were not. Regardless, the Stewart Organization received no such monies.

The ProNet Charity Fund.

164. When ProNet was established, a charity fund was set up with the provision that five cents be placed in the fund by ProNet for every tape sold by ProNet. The ProNet Board was to periodically make gifts from the fund to appropriate charities.

165. When Ken Stewart last knew, the charity fund had about \$300,000 in it, and no distributions had been made out of it.

166. On knowledge and belief, the charity fund disappeared in late 1999, after ProNet Profit had been secretly formed. To Stewart's knowledge, the fund has not been accounted for and the disposition of those funds is unknown to him.

167. On knowledge and belief, one or more of the Defendants had control of the charity fund and knows of its disposition.

The Conspiracy's Tool Pricing Scheme.

168. Gooch, Childers and perhaps others conspired to fix tool prices for their downline network, including the Stewart Organization. These included tools sold and shipped into the State of Missouri for purchase, resale and/or use by Missouri residents.

169. The Upline Defendants' plan to drive Plaintiffs out of the BSMs industry also included intentionally misleading Nitro's downline as to the pricing of BSMs. The Upline Defendants led Stewart Associates' downline to believe that Nitro and West Palm were systematically overcharging them for their BSMs, and withholding profits from major functions. The Upline Defendants, and in particular Defendant Gooch, accomplished the misconception by unilaterally reducing the share of profits due to Nitro and West Palm, claiming a decrease in sales and/or attendance. Nitro and West Palm initially absorbed the purported reductions in profits, taking on the loss while passing on the usual profits to its downline distributors. Eventually, West Palm and Nitro were left with no option but to pass on a pro rata reduction in profits to their downline. The Upline Defendants, however, led and/or implied these downline distributors to believe that Nitro and West Palm were improperly withholding profits.

170. When the Plaintiffs' downline distributors complained to the Upline Defendants of this alleged overpricing and withholding of profits, the Upline Defendants concealed the fact that the BSMs prices and resulting profits were straight from the Upline Defendants themselves, and that they had reduced the profits due to Nitro and West Palm. The Upline Defendants led

Plaintiffs' downline to believe that if they sold to or dealt with them directly, eliminating Stewart, the price on tools and/or the profits on functions would be more favorable, making it appear as if the Plaintiffs had, in fact, overcharged them or withheld profits. This was a deliberate, tortious and cleverly orchestrated scheme in the strictest sense to undermine the entire Stewart Organization, including Nitro and West Palm, by destroying their credibility with their downline distributors.

171. In October 2001, in conversations Stewart had with Gooch and Childers, contrary to the BSMs rules, Gooch stated that he intended to go around Stewart and sell tools directly to Nitro's downline distributors.

172. Defendant Gooch tacitly acknowledged the aforesaid pricing scheme in an Amvox message to Charlie and Kim Schmitz, downline Diamond distributors in his line of sponsorship. 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. Further, such tactic constitutes a lack of good faith and fair dealing.

173. On knowledge and belief, Defendant Gooch buys cassette tapes for 79 cents apiece from Global.

174. On knowledge and belief, Defendant Childers makes, or at least did make, a profit margin of between 25-30% on the sale of cassette tapes.

The Conspiracy's Destruction of the Stewart Organization.

175. The Upline Defendants successfully solicited the BSMs patronage of most of the Emerald and Diamond distributorships in the Stewart Organization's line of sponsorship, contrary to the BSMs rules and implied contract prohibiting the same. For example:

(a) **Arndt Distributorship:** One or more of the Defendants circumvented Nitro and/or West Palm by soliciting and selling BSMs and/or tickets to events directly to the Arndt distributorship based in Michigan, without a written servicing agreement, and in violation of the implied contract of the parties.

(b) **Grachanin Distributorship:** One or more of the Defendants circumvented Nitro and/or West Palm by soliciting and selling BSMs and/or tickets to events directly to the Grachanin distributorship based in Idaho and/or Ohio, without a written servicing agreement, and in violation of the implied contract of the parties.

(c) **Broome Distributorship:** One or more of the Defendants circumvented Nitro and/or West Palm by soliciting and selling BSMs and/or tickets to events directly to the Broome distributorship based in Overland Park, Kansas, without a written servicing agreement, and in violation of the implied contract of the parties.

(d) **Orstad Distributorship:** One or more of the Defendants circumvented Nitro and/or West Palm by soliciting and selling BSMs and/or tickets to events directly to the Orstad distributorship based in Raymore, Missouri, without a written servicing agreement, and in violation of the implied contract of the parties.

(e) **Rummel Distributorship:** One or more of the Defendants circumvented Nitro and/or West Palm by soliciting and selling BSMs and/or tickets to events directly to the Rummel distributorship based in Florida and/or Texas, without a written servicing agreement, and in violation of the implied contract of the parties.

(f) **Eckman Distributorship:** One or more of the Defendants circumvented Nitro and/or West Palm by soliciting and selling BSMs and/or tickets to events directly to the Eckman distributorship based in Ozark, Missouri, without a written servicing agreement, and in violation of the implied contract of the parties.

(g) **Pawlak Distributorship:** One or more of the Defendants circumvented Nitro and/or West Palm by soliciting and selling BSMs and/or tickets to events directly to the Pawlack distributorship based in Springfield and/or Camdenton, Missouri, without a written servicing agreement, and in violation of the implied contract of the parties.

(h) **Martin Distributorship:** One or more of the Defendants circumvented Nitro and/or West Palm by soliciting and selling BSMs and/or tickets to events directly to the Martin distributorship based in Michigan, without a written servicing agreement, and in violation of the implied contract of the parties.

(i) **Janer Distributorship:** One or more of the Defendants circumvented Nitro and/or West Palm by soliciting and selling BSMs and/or tickets to events directly to the Janer distributorship based in Michigan, without a written servicing agreement, and in violation of the implied contract of the parties.

176. The damage to the Stewart Organization, including Nitro and West Palm, may be further illustrated, in part, by the profound decline and then end of attendance at West Palm's functions:

<u>YEAR</u>	<u>Dream Weekend</u>	<u>Family Reunion</u>	<u>Leadership</u>	<u>Go Diamond</u>
1995:	6165	4760		
1996:	4064	4222	4906	1417
1997:	2892	3032	3550	943
1998:	2402	2314	2347	277
1999-2002:	0	0	0	0

177. After July 1998, West Palm was forced to cease its efforts to sponsor major functions, as Ken Stewart had been banned and/or "blackballed" from speaking at or hosting the

same. By that time, Defendants' efforts had succeeded in destroying West Palm's major function business.

178. After the Upline Defendants and co-conspirators successfully converted a significant portion of the Plaintiffs' BSMs business, Plaintiffs requested 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.

Defendants Have Superior Knowledge About the BSMs Activity Involving Plaintiffs' Downline and Owe Plaintiffs an Accounting.

179. Defendants, by their high positions in the Amway pyramid of distributors (higher than Plaintiffs), and/or by virtue of their exercised control over the tool and function business, and/or supply of tools, were/are in a superior position to Plaintiffs respecting, among other aspects of the Amway-related business, knowledge of the BSMs industry, including the volume of sales, function attendees and other particulars. This superior position gives rise to certain duties arising as a matter of law, including fiduciary duties. Defendants are and should be in a position to account to Plaintiffs for the business transacted and profits generated within the BSMs industry by and through Plaintiffs' downlines.

180. Each of the foregoing allegations contained in ¶¶ 1 through 179 above are incorporated in each count hereinafter set forth by reference.

Liability

COUNT I

Unlawful Pyramid Scheme

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

181. Representatives of the conspiracy, including but not limited to Defendants Childers, Foley and Woods, beginning in 1997, repeatedly induced Plaintiffs and their principal, Ken Stewart, to support and become a member of ProNet.

182. This inducement included representations that the essential line of sponsorship for BSMs would be respected and that Plaintiffs would benefit, based upon the BSMs rules in a fair and equitable manner. The conspirators further induced Nitro to close its Missouri BSMs warehouse and transfer on consignment to ProNet the contents thereof, and for the Stewart Organization to cease its efforts to sell and market BSMs except by and through ProNet.

183. The inducement by the conspirators to Stewart further entailed that the Plaintiffs' downlines would become consumers of ProNet goods and services.

184. The conspirators' inducement and representations further included that if Plaintiffs and other Amway distributors at Diamond level or above would join together to foster and promote their BSMs business through ProNet, these distributors (being ProNet members), would benefit by sharing in the profits derived in accordance with the BSMs rules on a fair and equitable basis.

185. Based upon these representations and inducements by the conspirators, Plaintiffs and Stewart joined the ProNet fold and took their BSMs business to ProNet, closing their Missouri warehouse.

186. Through time, Plaintiffs discovered that ProNet is merely a sham and the puppet of the conspiracy to fraudulently take advantage of Plaintiffs and other similarly-situated Amway and/or BSMs distributors. Specifically, Plaintiffs discovered that ProNet and its business clearly involves "a plan or operation for the sale or distribution of goods, services or other property wherein a person, for a consideration, acquires the opportunity to receive a pecuniary benefit, which is not primarily contingent on the volume or quantity of goods, services or other property

sold or distributed," in that the initial contributions and consideration of the ProNet members for gaining membership in ProNet is not related in any way to their sales volume, entitling them to fair and equitable participation, such that ProNet and its operation is clearly a "pyramid sales scheme," in violation of § 407.400(5) R.S.Mo.

187. Plaintiffs have demanded that ProNet honor its initial representations in accordance with the conspirators' inducements, including abiding by the long-standing BSMs rules, and ProNet, by and through the conspiracy, has refused.

188. Defendants, as co-conspirators in this effort to create and foster an unlawful pyramid scheme, have violated § 407.400 et seq.

COUNT II **Tortious Interference**

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

189. Each of the Plaintiffs, along with other Amway distributors who participated in the tool and function business, were a party(ies) to the implied contract(s) governing the BSMs industry, as above addressed and further addressed in ¶¶ 197 and 207 below.

190. Each of the 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.

191. 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.

192. 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.

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

194. 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.

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

COUNT III
Breach of Implied in Fact Contract
Concerning the Tool Business

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

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

197. 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 compensated within the line of sponsorship.

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

199. 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.

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

201. 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, and each of them. 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 IV
Breach of Duty of Good Faith and Fair Dealing
Concerning the Contract Governing the Tool Business

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

202. In contracting and dealing with the Plaintiffs, and each of them, 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.

203. 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.

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

205. 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, and each of them. 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 V
Breach of Implied in Fact Contract
Concerning the Function Business

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

206. Plaintiffs, and each of them, entered into an implied in fact agreement with the Defendants, and each of them, as well as other Amway distributors, concerning the major functions within the BSMs industry.

207. 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.

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

209. Defendants, and each of them, breached their agreement by "blackballing" and/or "suspending" 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.

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

211. 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, and each of them. 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 Function Business

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

212. In contracting and dealing with the Plaintiffs, and each of them, 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.

213. 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.

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

215. 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, and each of them. 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 Duty of Good Faith and Fair Dealing
Concerning Nitro's Consignment of BSMs Inventory to ProNet

COMES NOW the Plaintiff Nitro, and for its seventh cause of action, states and alleges as follows:

216. In consigning the aforesaid BSMs inventory to ProNet in 1998, Defendants, by and through their joint enterprise (conspiracy), of which ProNet was an integral part and instrumentality thereof, owed Nitro a duty of good faith and fair dealing in both the performance and enforcement of the consignment agreement.

217. Defendants have heretofore breached, and continue to breach, their duty of good faith and fair dealing respecting the consignment agreement by all of the Defendants' aforesaid actions and omissions, including their absence of any reasonable effort and intent to market and sell the inventory.

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

219. Defendants' aforesaid breach of their covenant of good faith and fair dealing, under the circumstances and events as described, was intentional and willful, and one calculated to injure and damage the Plaintiff. As such, 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 VIII
Violation of R.S.Mo. § 416.031.1 – Vertical Price Fixing

COME NOW each of the Plaintiffs, and for their separate cause of action against Defendants Gooch and Childers, state and allege as follows:

220. Gooch and Childers are dealers or suppliers of BSMs to their downline, including Plaintiffs.

221. For many years, continuing to the present, Gooch and Childers conspired amongst themselves for the purpose of fixing the prices at which Plaintiffs would sell BSMs to Plaintiffs' downline in the distribution chain in order to squeeze Plaintiffs out and obtain monopoly power over the market for the sale of BSMs to Plaintiffs' downline.

222. In the alternative, Gooch, Childers and Plaintiffs formed a combination at the times that Plaintiffs unwillingly complied with Gooch and Childers' price directives.

223. Defendant Gooch, in the course of the conspiracy, coerced Plaintiffs into charging higher prices to their downline for BSMs by threatening to go around Plaintiffs and sell to Plaintiffs' downline if Plaintiffs did not sell BSMs at the prices fixed by the conspirators.

224. Gooch's threats prevent Plaintiffs from making independent decisions concerning the resale price of BSMs to their downline.

225. The effect of the agreement and conspiracy as aforesaid was to restrain trade or commerce, including but not limited to, within the State of Missouri.

226. The conspiracy caused Plaintiffs to suffer an antitrust injury. By setting the price at which they would sell to Plaintiffs, and then fixing the price at which Plaintiffs were required to sell BSMs, Plaintiffs' margin was minimized, thereby causing Plaintiffs to lose profits.

227. Further, the conspiracy had an anti-competitive effect that impacted consumers, including Plaintiffs (as purchasers of BSMs), in that Gooch and Childers, by their conduct, were attempting to obtain monopoly power over the market for the sale of BSMs to Plaintiffs' downline. By squeezing Plaintiffs out of the line of distribution, the Gooch-Childers conspiracy would gain control over the sale of BSMs to Plaintiffs' downline. Such monopoly power has the potential for abuse, in that Gooch and Childers could arbitrarily and artificially inflate the price of BSMs that Plaintiffs and their downline were required to pay. Given the requirement of strict adherence to the line of sponsorship rules, consumers of BSMs, including Plaintiffs, would be unable to obtain BSMs from other sources.

228. The aforesaid injuries are the types of injuries that Missouri's antitrust laws were designed to prevent, and Plaintiffs' injuries flow from that which makes Defendants' conduct wrongful.

229. The conduct of Gooch and Childers, as aforesaid, constitutes a violation of § 1 of R.S.Mo. § 416.031.

230. 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 damages and attorneys' fees, as provided for in § 407.400 et seq. for the unlawful pyramid scheme; for their actual damages in a fair and reasonable amount including treble damages and attorneys' fees, as provided for in § 416.121 et seq., for violation of the antitrust laws; for exemplary damages to deter Defendants and others from similar conduct; for their costs herein expended; and for such other and further relief as the Court shall deem just and proper.

WATKINS, BOULWARE, LUCAS, MINER,
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By _____

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that I did on this 14th day of January, 2002, cause a copy of the above and foregoing Second-Amended Petition to be sent via first-class, postage prepaid mail, to:

Mr. Gaspare J. Bono
LONG ALDRIDGE
& NORMAN
Suite 600
701 Pennsylvania Avenue, N.W.
Washington, DC 20004

ATTORNEYS FOR ALL DEFENDANTS

R. Dan Boulware