

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; )

**THIRD-AMENDED PETITION**

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); )

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 )  
30<sup>th</sup> Floor )  
Charlotte, NC 28202); )

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

BILLY S. ("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); )  
 )  
 PRO NET 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); )  
 )  
 DON BRINDLEY )  
 24700 Deer Trace )  
 Ponte Vedra, FL; )  
 )  
 GLOBAL SUPPORT SERVICES, INC. )  
 6851 Distribution Avenue South )  
 Jacksonville, FL 32256 )  
 (registered agent – Corporation Service Co. )  
 1201 Hays Street )  
 Tallahassee, FL 32301-2525); )  
 )  
 PRO NET 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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96           **Request for Relief**

### THIRD-AMENDED PETITION

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

#### Introduction

1. This cause arises out of business relationships between Plaintiffs and Defendants complementary to what may be commonly referred to as the "Amway business." This dispute does not directly involve the purchase or sale of Amway products. Instead, it pertains to what may be referred to as the Amway-related "**tool and function**" business more particularly described below. The "tool and function" business is not a part of Amway itself, but pertains to the promotion of Amway through the independent efforts of Amway distributors or their "tool and/or function" companies. The parties hereto are or were engaged in the "tool and function" business which Defendants sought to monopolize.

2. Ken Stewart is the principal of a heretofore tremendously successful Amway distributorship, a nonparty hereto. Plaintiff corporation, **Nitro Distributing, Inc.**, is owned by Stewart and is engaged in the "tool" business. Plaintiff corporation, **West Palm Convention Services, Inc.**, is owned by Stewart and is engaged in the "function" business. None of the Defendants are believed to be Amway distributorships (IBs or independent businesses), but regardless, the claims herein are not brought against any Defendant in his/its capacity as an Amway independent business owner (IBO) or Amway independent business (IB). **The claims are brought respecting the "tool and function" business.** Over a period of 20 years, Stewart built a network of approximately 70,000 independent distributors (the "**Stewart Network**"), achieving the coveted "Crown" status in Amway. The Stewart Network represented one of the very largest networks or

“legs” within the Amway multi-level marketing network. The Stewart Network is extremely valuable to Stewart as a means of selling Amway products. And, equally important, it serves as a huge ready market for the Plaintiffs’ participation within the tool and function business. This, too, was recognized by the Defendants.

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

#### **Jurisdiction and Venue**

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

hereinafter alleged involved products delivered into Missouri and, at least in part, used or consumed by Missouri residents. The conduct hereinafter alleged of Defendants gave rise to antitrust violations and injuries within the State of Missouri. The amount in controversy substantially exceeds the minimum jurisdictional limit for matters to be brought before this Court.

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

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

### **Parties**

7. 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 "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 Stewart Associates' Amway business. Nitro is not an Amway

distributorship/independent business/independent business owner. 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 (or their related "tool" and/or "function" businesses), of Stewart Associates. Plaintiffs Nitro, West Palm and non-party Stewart Associates are collectively referred to herein at times as the "**Stewart Organization.**"

8. 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 rally, convention and function business for Stewart Associates and Ken Stewart, and operated in tandem with Nitro to build, support and enhance Stewart Associates' Amway business. West Palm is not an Amway distributorship/independent business/independent business owner.

9. Defendant Jimmy Dunn ("**Dunn**") is a resident of the State of Missouri, residing at 4078 East Forrest Ridge Lane, Rogersville, Missouri 65742. Upon information and belief, Dunn operates an Amway distributorship through a nonparty corporation, but he is not himself an Amway distributorship/independent business. Dunn also conducts business through Defendant Jimmy V. Dunn & Associates, Inc. ("**Dunn Associates**"). Dunn Associates' principal is Defendant Dunn. On knowledge and belief, Dunn Associates is organized and existing under the laws of the State of Missouri, with its principal place of business at 2281 West Nottingham, Springfield, Missouri 65810. Dunn Associates is in the business of purchasing and reselling business support materials for use by Amway distributors, and of organizing seminars, rallies and major functions attended by Amway distributors. Dunn Associates is not an Amway distributorship/independent business/independent

business owner. Jimmy Dunn and Dunn Associates reside in Missouri, conduct business in this State, and are subject to suit in Missouri. The acts and/or omissions of Jimmy Dunn, as herein described, are those of Dunn Associates. Unless otherwise noted, reference to "**Defendant Dunn**" herein shall refer to all Dunn Defendants, including Dunn Associates, who are/were co-conspirators in the conspiracy hereinafter described.

10. Defendant Harold [Hal] Gooch, Jr. ("**Gooch**"), is a resident of the State of North Carolina, residing at Six Curtis Court, Thomasville, North Carolina 27760. Upon information and belief Gooch operates an Amway distributorship through a nonparty corporation, but he is not an Amway distributorship/independent business. Gooch also conducts business through Defendants Gooch Support Systems, Inc. ("**Gooch Systems**") and Gooch Enterprises, Inc. ("**Gooch Enterprises**"), and is the president and co-owner of each; he is the principal of each company. Gooch Systems is organized and existing under the laws of the State of North Carolina, with its principal place of business at Six Curtis Court, Thomasville, North Carolina 27360. Gooch Enterprises is a Florida profit corporation with its principal place of business at 2182 NW 91<sup>st</sup> Street, Miami, Miami-Dade County, Florida. On knowledge and belief, Gooch Systems is in the business of purchasing and reselling business support materials or "tools" for use by Amway distributors, and Gooch Enterprises is in the business of organizing seminars, rallies and major functions attended by Amway distributors. Neither Gooch Systems nor Gooch Enterprises is an Amway distributorship/independent business/independent business owner. Hal Gooch, Gooch Systems and Gooch Enterprises conduct, and have conducted, business in the State of Missouri, and are subject to suit in Missouri. The acts and/or omissions of Harold Gooch, Jr., as herein described, are those of Gooch Systems and Gooch Enterprises. Unless otherwise noted, reference to "**Defendant Gooch**"

herein shall refer to all Gooch Defendants who are/were co-conspirators in the conspiracy hereinafter described.

11. Defendant Billy S. [Bill] Childers (“**Childers**”), is a resident of the State of Florida. Upon knowledge and belief, Childers operates an Amway distributorship through a nonparty corporation, but he is not himself an Amway distributorship/independent business. Childers also conducts business through Defendant TNT, Inc. of Charlotte, North Carolina (“**TNT**”). TNT’s principal is Defendant Childers. On knowledge and belief, TNT is organized and existing under the laws of the State of North Carolina, with its principal place of business at 1518 Providence Road, Charlotte, North Carolina. TNT is in the business of purchasing and reselling business support materials or “tools” for use by Amway distributors, and of organizing seminars, rallies and major functions attended by Amway distributors. TNT is not an Amway distributorship/independent business/independent business owner. Childers and TNT conduct business in the State of Missouri, and are subject to suit in Missouri. The acts and/or omissions of Billy S. Childers, as herein described, are those of TNT. Unless otherwise noted, reference to “**Defendant Childers**” herein shall refer to all Childers Defendants, including TNT, who are/were co-conspirators in the conspiracy hereinafter described.

12. Defendant Thomas D. [Tim] Foley (“**Foley**”), is a resident of the State of Florida, residing at 11541 Lane Park Road, Tavares, Florida 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, Florida 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/independent business owner. On knowledge and belief, the acts and/or omissions of the co-conspirators and Defendant Foley are/were the acts and/or omissions of T&C. Foley and T&C conduct business in the State of 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.

13. Defendant Steven S. Woods ("**Woods**"), is a resident 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/independent business owner. On knowledge and belief, the acts and/or omissions of the co-conspirators and Defendant Woods are/were the acts and/or omissions of GFI. Woods and GFI conduct business in the State of 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.

14. Defendant Parker E. Grabill (“**Grabill**”), is a resident of the State of Michigan, residing at 0-1622 Lake Michigan Drive NW, Grand Rapids, Michigan 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, Michigan (“**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, Michigan 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/independent business owner. On knowledge and belief, the acts 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.

15. Defendant Pro Net Global Association, Inc. (hereinafter “**Pro Net**”), is a purported not-for-profit, non-stock Delaware corporation engaged generally in the business of facilitating the sale of business support materials or “tools” for use by Amway distributors, and of organizing seminars, rallies and major functions attended by Amway distributors nationwide. Pro Net's main offices are now located at Suite K, 5075 Cascade Road S.E., Grand Rapids, Michigan, but were previously located at 6851 Distribution Avenue South, Jacksonville, Florida. Pro Net 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 Pro Net, and serve on the Pro Net board of directors and/or "steering committee." Pro Net is not an Amway distributorship/independent business/independent business owner. Pro Net is/was a co-conspirator in the conspiracy hereinafter described. The conspiracy controls Pro Net; it is the conspiracy's instrumentality. Pro Net is not an Amway distributorship/independent business/independent business owner.

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

17. Defendant Global Support Services, Inc. ("**Global**"), is a purported Delaware corporation engaged generally in the business of buying, manufacturing, supplying and/or selling business support materials or "tools" to Defendant Pro Net's members for resale to 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 Pro Net. Global is/was a co-conspirator in the conspiracy hereinafter described. Global's principal is Brindley. Brindley's acts and/or omissions are/were Global's. Global is not an Amway distributorship/independent business/independent business owner.

18. Defendant Pro Net Global I, Inc. ("**ProNet Profit**"), is a for-profit Delaware corporation. On knowledge and belief, Pro Net Profit works in tandem with Defendants Pro Net and Global, sells goods and/or services to Pro Net members, does business in many states including

Missouri, and is a co-conspirator in the conspiracy hereinafter described. Pro Net Profit's main offices are located at 6851 Distribution Avenue South, Jacksonville, Florida. Pro Net Profit is not an Amway distributorship/independent business. On information and belief, Pro Net Profit is controlled by Defendants Gooch, Childers, Foley and Woods, and owned by one or more of them and perhaps others.

19. Defendant Robert A. Blanchard (“**Blanchard**”), is a resident of the State of Michigan, residing at 932 Lakeside Drive S.E., East Grand Rapids, Michigan. Blanchard was for a period of time beginning July 15, 1999, the Chief Operating Officer of Defendant Pro Net. Upon Blanchard becoming the COO of Pro Net in 1999, Pro Net opened offices in Grand Rapids, Michigan. On knowledge and belief, Blanchard has also served in some managerial and/or officer capacity for Defendant Pro Net Profit since mid-1999. Blanchard is not an Amway distributorship/independent business/independent business owner. Blanchard is or was a co-conspirator in the conspiracy hereinafter described. The acts and/or omissions of Robert Blanchard, as herein described, are those of Defendants Pro Net and Pro Net Profit.

20. On knowledge and belief, the Defendants conspired among themselves and with other nonparty co-conspirators, as more particularly described below, to undermine and damage Plaintiffs. Accordingly, in the furtherance of this conspiracy or enterprise, the primary objectives being to monopolize, control and manipulate the tool and function business, ignore and circumvent the essential “lines of sponsorship” in the BSMs business, to boycott Plaintiffs, to impair the Plaintiffs' networks of downline distributors and to convert the Plaintiffs' tool and function business to their own pecuniary benefit and advantage, the act or omission of one Defendant co-conspirator while active in the concerted activity constitutes the act or omission of all other co-conspirators, and vice versa. The conspiracy has and had a nexus in Missouri, as integral participants reside in Missouri,

and acts of the conspiracy occurred in this State. As hereinafter more particularly detailed, on knowledge and belief, the Defendants conspired among themselves and with others to breach agreements affecting the Plaintiffs' businesses, to unjustifiably and illegally interfere with the Plaintiffs' contracts and business relationships and expectancies, to deal unfairly absent good faith, and to impair and damage Plaintiffs' businesses in Missouri to and for Defendants' own advantage and profit. Not all participants in the conspiracy are known to Plaintiffs. For that reason, Plaintiffs have designated Defendants John Doe and Richard Roe as representative of other persons, unknown to Plaintiffs, who conspired with the other Defendants and nonparty co-conspirators to accomplish the unlawful purpose of the enterprise as herein alleged.

### General Allegations

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

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

as within Quixtar's network. In other words, the networks are identical within those "legs" opting for Quixtar after having been Amway.

22. The Amway/Quixtar marketing program, in connection with this multi-level marketing business, is one where any purchase or sale of Amway/Quixtar products by a distributor financially benefits not only the Amway distributorship itself and Amway, but also those Amway/Quixtar distributorships that qualify and occupy levels within the Amway/Quixtar distributorship network between Amway/Quixtar and the selling distributorship. Those Amway/Quixtar distributorships that occupy positions in the Amway/Quixtar network below a given distributorship in each branch of the network are referred to as that distributorship's "**downline**." Conversely, those distributorships that occupy positions in the network above a given distributorship in each branch are called that distributorship's "**upline**." These respective positions are determined by the essential and important Amway/Quixtar concept of "**line of sponsorship**." As such, a distributorship's initial place in the Amway/Quixtar network is immediately below the distributorship that sponsors that distributorship into the network, subject to Amway's/Quixtar's approval, and immediately above those distributorships that the given distributorship sponsors as new Amway/Quixtar distributorships. New Amway/Quixtar distributors are instructed that respect and observance of the line of sponsorship is mandatory, that they should "edify" and "support" their upline distributors, and that their upline is there to teach and support them. In order to earn significant profits as an Amway/Quixtar distributorship, one must develop a sizable downline network by recruiting and sponsoring other distributors into the Amway/Quixtar business. By so doing, the upline distributorships stand to benefit. Accordingly, recognition and respect for the line of sponsorship in a multi-level marketing business like Amway/Quixtar is crucial to its success, if not survival.

23. 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, nonparty 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**”).

24. 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.

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

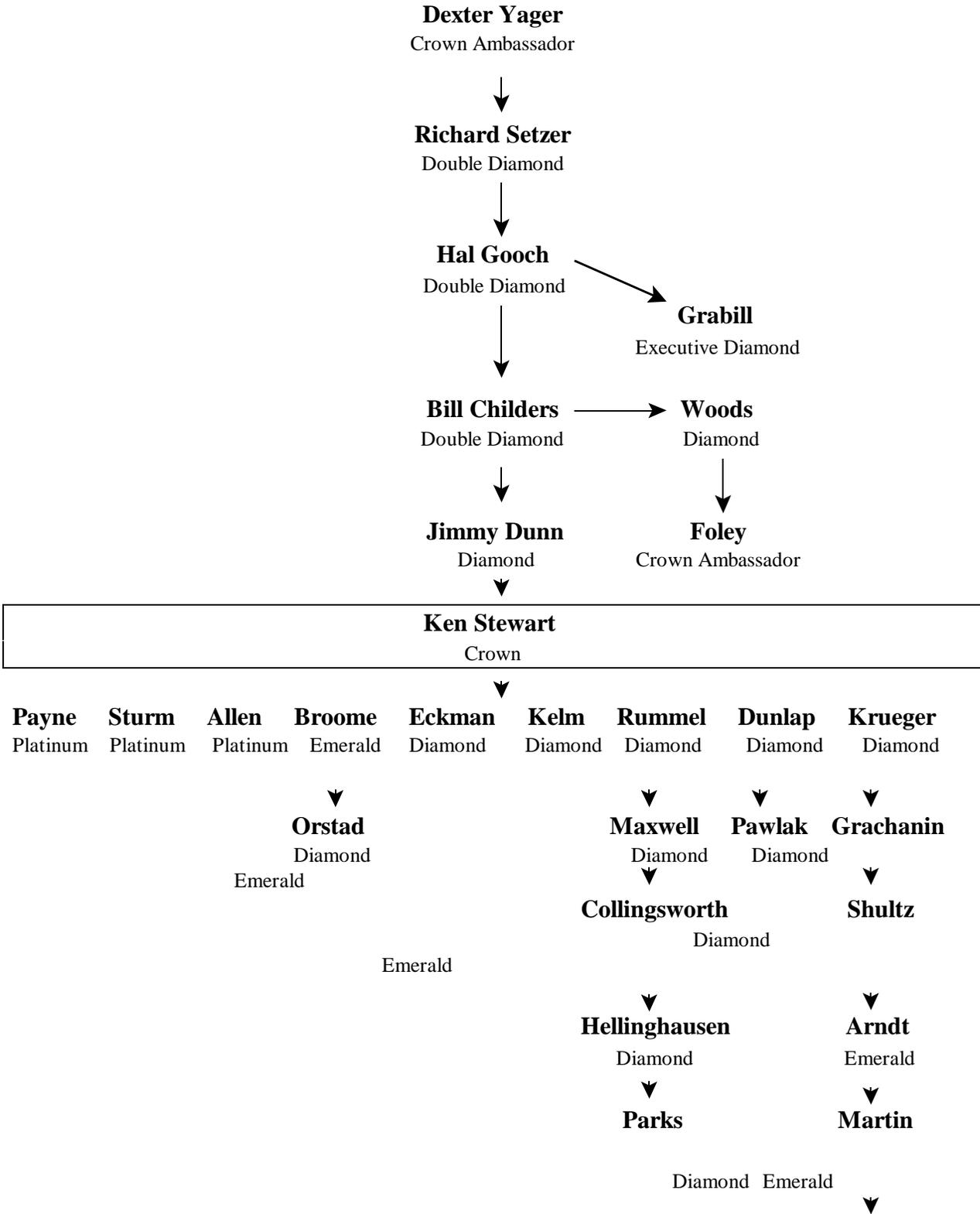
26. Stewart Associates is based in Tequesta, Florida, but was previously based in Springfield, Missouri, until December 1996. Stewart Associates acquired the status within the Amway distributor network as a highly-successful distributor, achieving the prestigious "Crown" status. Ken Stewart, the principal 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. Stewart Associates brings no claims in this suit and is a nonparty.

**The Stewart Organization’s Line of Sponsorship:**

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

28. 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**



**Janer**

Emerald

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

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

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

31. Mirroring the Amway business, the attainment of a certain success level within the business entitled the distributor to participate in the profits within the tool and function business. Specifically, once a distributor attained the Direct pin level in Amway, the distributor's next upline Diamond would introduce him/her to the tool and function business, and benefits would thereafter be received by the new Direct distributor. Because the tool and function business was not part of

Amway, it was customary for the distributor to operate his/her tool and function business through one or more different corporations, separate from the operating entity for the distributor's Amway business. The Amway business and the tool and function business operated in tandem, but separately.

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

### **The Promulgation of Rules Governing the BSMs Industry.**

33. As might be expected, these powerful distributors at the top of Amway networks, having developed the BSMs industry, sought to control it. **First**, they secured control over the manufacture, sale and dissemination of the tools. Although Amway purportedly requires "content approval" of the tools, these items are/were non-Amway products. **Second**, they secured control of sponsoring and promoting major functions at which these very successful, high-profile distributors provided their own testimonials of success within Amway, all of which were calculated to motivate the distributors attending, fostering a sense of admiration and celebrity status for these powerful few. A "**major function**," as herein referenced, refers to the large, high-profile rallies or conventions normally held in large cities sponsored by a Diamond distributor. Pursuant to the course of dealing and business practices between the parties for years, only Diamonds were allowed to sponsor major functions. These major functions, typically attended by thousands of Amway distributors, became bigger and more elaborate the higher the Diamond distributor was within the Amway pyramid or the larger the Diamond downline network. It was/is customary for the larger major functions to include well-known celebrities and/or entertainers. The cost for an Amway distributor to attend these functions amounted to hundreds of dollars, if not more. Thus, these major functions generated huge profits for the Diamond sponsor, and served to enhance the Diamond's "success profile" within

Amway. Typically, each Diamond distributor would sponsor three major functions a year, and then a fourth where that Diamond would tie into a major function with his/her upline Diamonds. Further, video and audiotapes used as "tools" were made at these major functions, and reproduced and sold to hype the functions, as well as the Amway business. **Third**, these powerful distributors promulgated their own rules to govern this BSM industry since it involved non-Amway products. These rules (hereinafter at times referred to simply as the “**BSMs rules**”), were explained and then implemented in a course of dealing over years.

34. 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 a Direct, his/her entitlement to participate in the lucrative BSMs business reached fruition. Moreover, as the pin level thereafter increased, so did the prospective benefits from this business. Thus, the rules and course of dealing, along with a distributor’s development of his/her downline, gave rise to business expectancies.

35. 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 Direct pin level and above distributors. This course of dealing respecting the tool business, on knowledge and belief, began in the 1970s or before.

36. 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.

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

38. Essential to the BSMs industry rules, as in the Amway business, was **the necessity for recognizing and respecting the lines of sponsorship**. This meant, and the BSMs rules pro-

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

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

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

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

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

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

43. 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.

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

45. 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.

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

47. 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.

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

49. 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.

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

51. 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.

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

53. 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.

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

**The Promotion of the BSMs Industry.**

55. 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.

56. 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.

57. 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.

58. 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.**

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

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

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

60. 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.

61. Amway has recognized the applicability and necessity of the "lines of sponsorship" to the BSMs industry consistent with the course of business practices and dealings over years. Amway states that the failure to adhere to the line of sponsorship governing BSMs would constitute an "unwarranted and unreasonable interference in the business of other Amway distributors." However, Amway has not sought to enforce the rules governing BSMs; at least, not in any consistent or aggressive manner. Amway's more recent apparent ambivalence has made it easier for abuses within the BSMs industry to occur. The Defendants herein have taken Amway's ambivalence to manipulate the BSMs industry as hereinafter described to their own pecuniary benefit. **This action is not predicated upon the Amway Rules (since the BSMs industry is not a part of the Amway business), nor does it seek the enforcement of any such Rules.**

**The Myths Created and Fostered by the Upline Defendants.**

62. The Upline Defendants, as well as other upline distributors, by and through their conduct and purported “leadership” as distributors at or near the top of the Amway pyramid, have created and fostered myths among the many lower Amway distributors. The **first myth** is that by

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

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

64. 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.

65. On knowledge and belief, the Upline Defendants take such a disproportionately large share of the tool and function business profit that little is left for the participating downline distributors. For example, on knowledge and belief, Defendant Childers endeavors to secure a 25-30% profit margin on his “cut” or “break” on tools. On knowledge and belief, Defendant Gooch received a “cut” of 18 cents or more on each audiotape sold through his downline. On knowledge and belief, Defendants Gooch and Childers made millions of dollars off audiotapes alone which they preached were essential to building an effective business.

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

**Amway Co-Founder’s Early Concern for BSM Abuses.**

67. 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.’

68. 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.**

69. 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.**

70. Stewart Associates and its principal, Ken Stewart, enjoyed an exceptional level of achievement in Amway after joining the business in 1980. It represented one of the largest downline legs in the Yager Group. Beginning in 1982, Ken Stewart qualified at the prestigious "Diamond" pin level. 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.

71. 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.

72. 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 job, and relying on his Amway and BSMs income as his primary means of support.

73. 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.

74. 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.

75. 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*)

76. 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.

77. 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."

### **The Plaintiffs' Successful BSMs Business.**

78. 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.

79. 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.

80. 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.**

81. The exact date the conspiracy was formed is unknown to the Plaintiffs. By 1996, the conspiracy was very active and by 1998 included all of the Defendants acting in concert, conspiring among themselves. On knowledge and belief, Gooch and Childers led the efforts of the conspiracy. At one time or another, others joined in the concerted activity with one or more of the Defendants by engaging in conduct injurious to the Plaintiffs.

82. Prior to 1996, 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 them out of the BSMs business.

83. The **objectives of this conspiracy** were to monopolize, control and manipulate the BSMs business, ignore and/or circumvent the essential line of sponsorship respecting the Plaintiffs; to boycott/blackball Plaintiffs, Ken Stewart and other distributors who they viewed with disfavor; to impair the Stewart Network; and to convert the Plaintiffs' tool and function business to their own pecuniary benefit and advantage, all in violation of the BSMs rules, the representations made to the Plaintiffs, and Missouri law.

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

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

86. 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 and function 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.

87. 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.**

88. 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.

89. 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.

90. 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 Stewart Associates. To the contrary, Amway remained outwardly supportive of Ken Stewart and Stewart Associates.

91. 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.

92. 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.

### **The Conspiracy's Scheme to Monopolize the BSMs Business.**

93. 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.

94. On knowledge and belief, also at this time as Gooch and Childers abused the long-standing BSMs rules, they became increasingly concerned about their upline distributors, Dexter Yager and Rick Setzer, seeking to take advantage of the acrimony within the Gooch and Childers

downline over these abuses by bringing these distributors under them for tools and functions – something completely unacceptable to Gooch, Childers, Foley and Woods. Gooch and Childers, in particular, did not want Yager and Setzer interfering or competing with them for the lucrative BSMs business of their downline.

95. So in 1997, Gooch, Childers, Foley, Woods and their co-conspirators embarked on a plan to monopolize, control and manipulate the sale and distribution of BSMs within the Gooch line of sponsorship (the “**Gooch network**”).

96. The conspirators’ plan included “breaking away” from Yager and Setzer respecting the BSMs business, and eliminating Yager and Setzer from competing for the BSMs business within the Gooch network. The conspirators, with Gooch and Childers in the lead, struck a deal with Yager and Setzer in 1997 for Yager and Setzer, in exchange for the payment of monies, to refrain from competing for BSMs within the Gooch network of BSMs distributors. Thus, Yager and Setzer were effectively eliminated as competitors.

97. The conspirators’ plan included the formation of a new company (Pro Net) to accomplish the necessary control over the BSMs business. This new company, to be set up as a not-for-profit Delaware trade association, would have two classes of members: “founding” members, who would have the right to vote and be the only members eligible to serve as officers and directors of the association; and “regular” members, who would not have voting rights nor be able to serve as officers or directors. Hence, the “founding” members of the association would direct and control the association.

98. The conspirators’ plan further included requiring each Diamond distributor to transfer their essential BSMs rights to the association so that the “founding” members could exercise the necessary degree of control over the BSMs to monopolize the business. The plan also included

ensuring that the Emerald and other participating BSMs distributors within the Gooch network dealt for BSMs by and through Pro Net.

99. The conspirators' plan further included "blackballing," boycotting or otherwise excluding from any meaningful participation in the BSMs business, those BSMs distributors who did not join the association or were otherwise viewed with disfavor by the "founding" members.

100. The conspirators' plan further entailed taking away from "regular" members their right to jury trial by forcing them, as association "regular" members, to agree to arbitration of disputes.

101. The conspirators' plan further entailed "fixing" the prices for BSMs throughout the Gooch network in a way that would permit the "founding" members in firm control of the association to profit inordinately.

102. Gooch, Childers, Foley and Woods (or their companies), became "founding" members of Pro Net, which was formally incorporated in February 1998. Gooch was the sole incorporator of Pro Net.

**The Conspiracy's Plan: Lure Stewart into Pro Net and Take the Plaintiffs' BSMs Business.**

103. On knowledge and belief, the conspirators knew that if Pro Net was to succeed as their instrumentality to control the BSMs business, Ken Stewart and his businesses had to be brought into Pro Net. Stewart was perceived to be close to Yager. Plaintiffs' BSMs operations were huge, including Nitro's large BSMs warehouse and distribution center located in Springfield. On knowledge and belief, the conspirators knew that for Pro Net to succeed, Nitro's Springfield warehouse had to be closed.

104. So the conspirators' plan necessitated the recruitment and "selling" of Ken Stewart respecting Pro Net. Gooch, Childers, Foley and Woods commenced their recruitment efforts of Stewart in 1997 and a series of meetings followed.

105. Stewart was a known proponent of the BSMs rules, including respect for the line of sponsorship. Stewart was concerned about the BSMs abuses. He believed he had a beneficial relationship with Dexter Yager. He had concerns about Gooch because he believed Gooch was behind the efforts to undermine him with his group.

106. In recruiting Stewart for Pro Net, Gooch, Childers, Foley and Woods represented and promised:

(a) the BSMs rules would be respected/followed, including the essential line of sponsorship. Gooch, in particular, assured Stewart that this would be done, as Stewart sought assurances about Gooch's intentions;

(b) a new and equitable compensation system would be implemented;

(c) adequate "checks and balances" to assure corporate and financial accountability would be implemented by the Pro Net board; and

(d) Stewart would be one of only five "founding" members, not a "regular" member, and would serve as an officer and director of Pro Net, as well as a member of the steering committee.

107. An "Organization Purpose Statement" for Pro Net was adopted by the group during these discussions and used by the conspirators to convince Stewart that their aims and purposes were honorable and/or legitimate when, in fact, they were not. In substance, on knowledge and belief, the

conspirators' plan was to say and do whatever they needed to induce Stewart's cooperation and willingness to join Pro Net.

108. Stewart's desire at the time of these discussions was to end the BSMs abuses taking place and restore order to the BSMs industry. Stewart, relying in good faith on the conspirators' aforesaid representations, naively believed that this could be accomplished through Pro Net. But Stewart at that time was unaware of the conspiracy, as well as its objectives.

109. Ken Stewart consented to this overture by Gooch, Childers, Foley and Woods, and became a member of the Pro Net board of directors and Secretary of Pro Net. When Gooch incorporated Pro Net, 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 Pro Net's original board of directors, as well as what was referred to as the Pro Net "steering committee."

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

**Nitro's Consignment of BSMs to Pro Net and Global.**

111. Contemporaneously with the formation of Pro Net, Defendant Global was created to supply BSMs to Pro Net for sale to its members and, ultimately, their downline distributors. Global entered into a “Service Agreement” with Pro Net to provide the Pro Net administrative and operational functions. Defendant Don Brindley and nonparty Paul Brown served as officers and/or directors of Global, until Paul Brown was ousted in 2001.

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

113. The inventory contributed in good faith on consignment to Pro Net/Global constituted BSMs purchased by Nitro from Childers as supplied by Yager's Internet company, meaning that Childers and Gooch had already profited on Nitro’s acquisition of these BSMs. Nitro had paid Childers \$1.80 for each audiotape, and the audiotapes constituted the vast predominance of the warehouse inventory. To Stewart’s surprise, Global supposedly sold these audiotapes on consignment for \$1.40 each, which meant that Nitro lost 40 cents on each sale. Regardless, few tapes were sold. What Stewart didn’t know was that Gooch and Childers soon pressured Global (Brown and Brindley), to start pushing new tapes so they (Gooch and Childers), could start profiting again on tape sales. Global complied. Because Gooch and Childers had already taken their “cut” on the consignment tapes, when Global sold those tapes, the proceeds went to Nitro – there was no additional profit for Gooch or Childers, who manifested their bad faith by pressuring Global to ditch the consignment tapes, thrusting a huge loss onto Nitro.

114. Following the shipment of Nitro's tapes and other tools to the Pro Net warehouse in Florida, Nitro closed its Missouri BSMs warehouse in or about August 1998. At this point in time in 1998, with Nitro agreeing to join Pro Net as a "founding" member, the Defendants and co-conspirators had what they wanted respecting Stewart – 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 Pro Net, used to silence Stewart and resume BSMs rules abuses.

**Pro Net and Global Used to Further the Objectives of the Conspiracy: The Destruction of the Plaintiffs' BSMs Business.**

115. Instead of Pro Net becoming the vehicle, as Ken Stewart hoped and envisioned, to ensure compliance with the BSMs rules respecting the essential line of sponsorship, Pro Net, 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 Gooch network, abuses of the BSMs rules have become rampant and the result has become chaos. Many Diamond distributors and initial members of Pro Net have left Pro Net to set up their own BSMs business outside of the lines of sponsorship.

116. Pro Net has solicited and sold BSMs to any willing BSMs distributor, disregarding the essential line of sponsorship. Pro Net's website virtually invites 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—Pro Net 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.

117. The conspiracy, through Pro Net, finding a BSMs distributor in disfavor, was quick to point out to a downline distributor a “lack of commitment,” “distance,” or “inexperience” of the disfavored distributor, then drive the “wedge” and, within a short period of time, the line of sponsorship was averted and the long-standing BSMs rules, to assure fairness and order, contravened. And, of course, the BSMs rules being avoided, members of the conspiracy stood to profit. That was a part of the plan. That was one scheme.

118. Pro Net postured itself publicly to supposedly operate for the benefit of its “members.” Yet, Pro Net in reality seeks to promote and preserve, over the interest of its “regular members,” the interest of its “founding members,” the same being the aforementioned Defendants and co-conspirators who seek to control the BSMs industry within the Gooch network.

119. Although asked to serve on the initial board of directors of Pro Net and as Secretary of Pro Net, Ken Stewart was never given proper notice of any Pro Net board meeting, as prescribed in the Bylaws, never attended a Pro Net board meeting properly convened, never was present at any meeting involving Pro Net where minutes were taken, and has never been provided at any time with copies of any purported minutes of a Pro Net board meeting, despite numerous requests. The “regular” members of Pro Net have never elected an officer and director of Pro Net. Gooch, Childers, Foley and Woods controlled Pro Net, and perpetuated themselves as officers and directors.

In substance, the corporate entity known as **Pro Net 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, Pro Net 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.

120. In December 1998, a purported “informational meeting” was held in Vail, Colorado, for all Pro Net Diamond members or prospective Pro Net 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. Stewart was assured that no formal Pro Net meeting (including no board meeting), would take place and that no votes would be taken. During the time of this informational meeting of the Pro Net Diamond members in Vail, Childers and Dunn called Ken Stewart, advising that the Pro Net 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. This also meant that board meetings had been held, contrary to what had been represented to Stewart. Stewart protested to no avail. Stewart was never provided with any notice of any Pro Net board meeting to be held during this meeting of Pro Net Diamond members in Vail in December 1998. To the contrary, he was told that no such meeting would occur. Further, he was never provided with any minutes of any such meeting, and he remained a Pro Net director at that very time. Following this purported meeting of the Pro Net board, despite the long-standing BSMs rules to the contrary, this significant part of the Plaintiffs’ downline began working directly under Gooch for the purposes of their BSMs business. On knowledge and belief, Gooch, Childers, Woods and Foley had effectively

“blackballed” Stewart’s and the Plaintiffs’ participation in the BSMs business in the fall of 1998. From that point forward, West Palm’s function business was negated.

121. In June 1999, Ken Stewart met with Bill Childers in Florida in hope of resolving the differences with his upline and restoring the Plaintiffs’ downline that had moved to Gooch. Stewart realized by this time that he had no control over his group as before. During this meeting, Childers told Stewart for the first time that the Pro Net 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 Pro Net of the suspension, nor did he ever receive any minutes from the Pro Net 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 that after the Vail meeting, 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. He had been unfavorably portrayed by the conspirators to his downline as an outcast and otherwise unfit to lead them.

122. By 1999, it also became apparent that the BSMs inventory transported from Nitro’s warehouse in Missouri to the Pro Net warehouse in Florida on consignment was not being promoted or moved by Pro Net or Global. Having secured possession of Nitro’s BSMs inventory in 1998, on knowledge and belief, the conspiracy had no reasonable intention of moving that inventory and reimbursing Nitro. On knowledge and belief, since Global did not receive a “cut” for the sale of Nitro’s inventory, Global and Brindley decided not to market same; and the Upline Defendants did not want Stewart’s tapes sold because they wanted Stewart’s perceived leadership diminished or destroyed. Nitro lost the value of its inventory, 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 Plaintiffs were effectively out of the tool business, except as permitted by Pro Net. Control was essential to the objectives of the conspiracy. Stewart had been fraudulently duped into surrendering control of his BSMs business to the Upline Defendants and their co-conspirators.

123. Also, by 1999, it was apparent that Pro Net's tool prices were higher than what Nitro had previously charged for tools from its Springfield warehouse, and that Pro Net's service was inferior to what Nitro's had been. Thus, the Plaintiffs' downline was getting less for more, and Stewart was receiving complaints. Stewart was held accountable, even though the pricing was outside of his control. The higher prices and lesser service was a result of the conspiracy, eliminating Stewart, Yager and Setzer as potential competitors for tools.

124. 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 excluded. 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.

125. 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 Pro Net steering committee and/or board meeting for which no notice was given Stewart. 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 Pro Net board meeting, nor was he ever provided with any minutes of any Pro Net meeting where such action was taken.

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

127. The purported "suspension" actions taken by the Pro Net board were not in compliance with the Pro Net Bylaws, were unauthorized, void and constitute ultra vires acts in every respect. Yet, the acts served to effectively damage Stewart and the Plaintiffs.

128. 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 Pro Net at the time. Stewart was not told the intended purpose of the next day's conference call. Subsequently, Ken Stewart called in to the Pro Net offices in Grand Rapids and was advised that Bob Blanchard, Pro Net 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 Pro Net, and Stewart was not one of them. Upon supposedly voting him out, Stewart's participation in the call was terminated.

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

130. The initial registration report for Pro Net 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.

131. In a Pro Net filing with the Florida Secretary of State's office on March 28, 2000, signed by Defendant Hal Gooch, the officers and directors of Pro Net 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 Pro Net. And, again, he was not supposedly voted out of Pro Net 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 Pro Net officer and/or director. This March 2000 filing by Gooch for Pro Net is but one more clear indication of the conspirators' intent to ignore the law and manipulate Pro Net to their own personal objectives.

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

133. After Ken Stewart's removal from the Pro Net steering committee, Ronald Rummel was added as a committee member. Rummel was 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.

134. On knowledge and belief, legal counsel for Pro Net advised members of Plaintiffs' downline how to move their BSMs business away from Plaintiffs, causing significant injury to Plaintiffs.

135. On knowledge and belief, the Defendants and co-conspirators knew and realized that their control and manipulation of the BSMs industry within the Gooch line of sponsorship could and would be substantially enhanced by effectively eliminating Stewart's Missouri-based BSMs warehouse, bringing Stewart into the fold of Pro Net, 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 Pro Net was conceived in 1997, and the Plaintiffs' downline has been decimated to the ultimate inherent and substantial detriment of the Plaintiffs. The actions taken by Pro Net at the behest of the conspiracy, besides being contrary to law, are also in contravention of Pro Net's own Bylaws, particularly concerning the removal of an officer/director.

**Pro Net's More Recent Efforts to Direct-Ship Tools to Distributors.**

136. Defendants in their continuing efforts to misappropriate the entire Stewart Organization and that of other downline distributors currently require Pro Net 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.

137. Pro Net 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 Pro Net and Global claim that they will not sell BSMs directly to any downline distributor of a Diamond without that Diamond's prior consent. However, Pro Net 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.

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

139. 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.

140. On information and belief, the Pro Net practice of “direct ship” was but one more effort to circumvent the BSMs rules, and in particular, the essential line of sponsorship.

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

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

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

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

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

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

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

146. 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.

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

148. In 1999, Pro Net Profit began offering a competing system to distributors within the Gooch line of sponsorship.

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

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

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

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

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

153. 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.

154. 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.

155. On knowledge and belief, Pacific Telcom, Inc. ("**Pac Tel**"), the manufacturer of "Genie," gave Defendant Gooch (Pro Net's President and Director), 600,000 shares of stock in exchange for Pro Net and/or Pro Net Profit's agreement to market "Genie" actively to Pro Net members; and Defendant Gooch, on stage at a Pro Net function, represented that these shares would be divided among Pro Net Diamond members, 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.

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

**The Pro Net Profit Website.**

157. On knowledge and belief, Pro Net Profit purchased a website from Defendant Foley for \$400,000.

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

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

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

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

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

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

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

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

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

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

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

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

### **“Secret Pots.”**

170. Defendant Don Brindley represented to Ken Stewart, assumingly to lure him into Pro Net, that there was a “secret pot” containing funds from the sale of literature (tools).

171. Defendant Bill Childers represented to Ken Stewart, assumingly to lure him into Pro Net, that there was a “secret pot” containing funds from the sale of videotapes (tools).

172. 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 Pro Net members and/or distributors.

173. 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 Pro Net Charity Fund.**

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

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

176. On knowledge and belief, the charity fund disappeared in late 1999, after Pro Net 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.

177. 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.**

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

179. 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.

180. 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.

181. 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.

182. 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.

### **The Conspiracy's Destruction of Plaintiffs' Business.**

183. The Upline Defendants successfully obtained 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 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 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 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 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 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 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 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 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 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.

184. The damage to the Plaintiffs may be further illustrated, in part, by the profound decline and then end of attendance at West Palm's functions:

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



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

• **The Pro Net Arbitration Provision.**

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

191. Pro Net, the Pro Net founders and board (excluding Ken Stewart and his company), **endeavored to fraudulently induce prospective Pro Net “regular” members into accepting an arbitration clause** by promising (1) a new and equitable compensation plan as proposed by the Hay Group; and (2) respect for the essential line of sponsorship, when there was never an intent to honor those promises, and such promises were ultimately not honored. There is and was a **complete failure of any legal consideration** to support any purported arbitration agreement.

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

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

194. The purported Pro Net arbitration provision applies to disputes between regular members of Pro Net, as well as disputes between Pro Net and any of its regular members. **Plaintiffs are/were not “regular” Pro Net members.** “Founding” members were not subject to the purported arbitration provision.

195. **West Palm is not and was not a Pro Net member**, “regular” or “founding.” Plaintiff West Palm was never solicited to Pro Net membership, never submitted an application for membership in Pro Net, has **never been a member of Pro Net**, and never signed any writing agreeing to abide by the purported Pro Net arbitration provision or any other arbitration provision.

196. According to the Terms and Conditions of Pro Net “regular” membership, the “Membership Application will not be deemed accepted unless and until accepted by the Association in writing.” There is **no “writing”** accepting any application of Nitro or West Palm, or of any Defendant. Accordingly, the condition precedent to membership in Pro Net was never satisfied.

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

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

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

200. Interestingly, Pro Net's Bylaws provide that **only "companies or businesses" that engage in the sale of Amway products are eligible for membership in Pro Net**. Under the express eligibility requirements of Pro Net, Plaintiffs Nitro and West Palm are not "companies or businesses that engage in the sale of Amway products" and, therefore, are ineligible for membership in Pro Net. Further, Defendants Jimmy Dunn, Hal Gooch, Bill Childers, Tim Foley, Steve Woods, Parker Grabill and Robert Blanchard are not "companies or businesses" that engage in the sale of Amway products and are, therefore, ineligible for membership in Pro Net. As a result, they have **no standing** to enforce the Pro Net arbitration provision, and claims against them are not within the scope of the provision. Still further, Defendants Jimmy V. Dunn & Associates, Inc.; Gooch Support Systems, Inc.; Gooch Enterprises, Inc.; TNT, Inc. of Charlotte, NC; T&C Foley, Inc.; G.F.I. International, Inc.; Grabill Enterprises, Inc.; Pro Net Profit and Global do not engage in the sale of Amway products and are, therefore, ineligible for membership in Pro Net. Still further, those Defendants who are or were "founding" members of Pro Net, if any, were **not** subject or partners to

any purported Pro Net arbitration provision. On knowledge and belief, *none* of the Defendants are parties to any purported Pro Net arbitration provision. As a result, Defendants have **no standing to enforce** the purported Pro Net arbitration provision, and claims against them are not within the scope of the arbitration provision.

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

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

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

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

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

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

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

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

205. Nitro and West Palm have never been Amway distributors, IBs or IBOs, never signed any writing agreeing to abide by Amway’s Rules of Conduct, and had no notice of the same. **Plaintiffs never assented to any purported arbitration clause.**

206. Neither Defendants Jimmy V. Dunn & Associates, Inc.; Gooch Support Systems, Inc.; Gooch Enterprises, Inc.; TNT, Inc. of Charlotte, NC; T&C Foley, Inc.; G.F.I. International, Inc.; Grabill Enterprises, Inc.; Pro Net Profit nor Global sell Amway or Quixtar produced products or services. Accordingly, they are not entities operated as an Amway or Quixtar business, nor are they individuals operating an IB. As a result, they have **no standing** to enforce Amway’s Rules of Conduct, nor are disputes against these non-IBOs within the scope of the Amway distributors’ purported arbitration provision.

207. Amway’s Rules of Conduct apply only to Amway distributors/distributorships, *i.e.*, persons engaged in the sale of Amway products and services. **Amway’s Rules of Conduct do not apply to the sale of non-Amway produced products and services, such as BSMs.** *See* Amway Rules of Conduct, Rule 1 (which provides that the Rules of Conduct are designed to govern the “development and maintenance of an Independent Business (“IB”) . . . .” Plaintiffs’ allegations in this lawsuit, which relate to the sale of non-Amway produced products and services, are **not within the**

**scope of the Amway distributors' purported arbitration provision.** Amway/Quixtar has specifically advised its distributors: "BSMs are not part of the Independent Business Owners Plan."

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

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

209. Contemporaneously with the amendment of its Rules of Conduct to include mandatory purported arbitration effective January 1, 1998, Amway and the IBOAI Board promulgated the Business Support Materials Arbitration Agreement ("BSMAA") which expressly governs disputes concerning the sale of BSMs and which is purely voluntary. The BSMAA was promulgated because Amway and the IBOAI Board recognized that Amway's Rules of Conduct did not govern the sale of non-Amway produced BSMs. In fact, Amway has recognized that if it were to regulate the sale

of such BSMs, it would constitute an antitrust violation. **Neither of the Plaintiffs assented to or ever signed a BSMAA.**

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

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

*. . . Final decision-making authority with respect to these matters rests with the Corporation.* Upon final notification by the corporation with respect to those changes presented to the IBOAI Board, such changes will be communicated to all IBOs in a timely manner in official Corporation literature and shall become effective upon publication. In order to preserve the goals and purposes of the IBO Plan, *the Corporation reserves to itself the sole right to adopt, amend, modify, supplement or rescind any or all of these Rules*, as necessary with respect to cases of Rules enforcement. In the event the Corporation deprives an IBO of a substantial and material property right through such adoption, amendment, modification, supplementation or rescission, such IBO shall have the right to bring such matter to the attention of the IBOAI Board for further discussion, evaluation and recommendation.

Rule 1 (emphasis added).

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

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

(a) The Amway distributors' purported arbitration provision is a **contract of adhesion**. Amway *unilaterally* amended its Rules of Conduct to attempt to require mandatory arbitration – the distributor having no choice whatsoever. Amway did not give reasonable or due notice to distributors of this change in its Rules. Amway distributors had **no opportunity to negotiate**, had **no opportunity to opt out** of the arbitration provision, and were **given no option but to accept** the arbitration provision or immediately terminate their Amway businesses, which in many cases, had taken years to build. This tactic by Amway constituted **extortion** and/or the negating of any voluntary assent by the distributor, as the Amway distributor was placed under **economic coercion/ duress** (*i.e.*, agree to arbitration or forfeit your distributorship without compensation, no matter how valuable). This tactic also constituted an **illegal tying arrangement**. Further, Amway required distributors to renew their distributorships before it provided them with a copy of the actual arbitration rules. When the rules were circulated, they were hidden in the voluminous Business Compendium.

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

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

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

(e) The Amway distributors' purported arbitration provision imposes **exorbitant fees** that effectively prevent Amway distributors from seeking relief in an arbitrable forum. The fees include \$2,900 for the first day of the hearing (up to 8 hours, plus 3 hours of pre- or post-hearing time – including time to prepare the award). Rule 11.5.56. After that, time is billed in half-day increments (4 hours plus 1.5 of pre- or post-hearing time) at \$1,450 per increment. *Id.* Additional pre- or post-hearing time is billed in 1 hour increments at \$300 per hour. *Id.* Given the number of parties and the complexity of this case, the fees alone in this case will be exorbitant. In addition, Plaintiffs may be liable for the arbitrator's and case administrator's travel expenses, as well as Plaintiffs' own expenses or it and its counsel to

travel to Washington, DC (the situs of the arbitration), for the arbitration hearing. Accordingly, the provision is **onerous**, as well as **prohibitively expensive**.

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

215. Nitro and West Palm are not bound by any arbitration agreement purportedly entered into by Stewart & Associates International, Inc. ("Stewart Associates") or Ken Stewart:

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

(b) Nitro and West Palm are **not the agents of Stewart Associates or Ken Stewart**, particularly with respect to the Amway Distributor Agreement. Stewart Associates has no actual or apparent authority to act on behalf of Nitro or West Palm, or to bind Nitro and West Palm to any contract, and vice versa.

(c) Nitro and West Palm are **not seeking to enforce the Amway Rules of Conduct or Amway Distributor Agreement** and, therefore, are not bound to the Amway distributors' purported arbitration provision as **third-party** beneficiaries and are **not estopped** from denying arbitration.

· **Transition to Pro Net Arbitration Agreement.**

216. Prior to the formation of Pro Net, distributors in the Gooch line of sponsorship purchased their BSMs through D&B Enterprises, Inc. and InterNet Services. When Pro Net was being formed, Jeff Yager, the principal of D&B Enterprises, Inc. and InterNet Services, requested the founding members of Pro Net to sign an arbitration agreement, the purpose of which was to protect D&B Enterprises, Inc. and InterNet Services from claims brought by third parties who formerly purchased BSMs from D&B Enterprises, Inc. and InterNet (hereinafter the “Transition to Pro Net” Arbitration Agreement).

217. Neither Nitro nor West Palm signed that agreement and, therefore, are not bound by it.

218. The Transition to Pro Net Arbitration Agreement provided, in pertinent part:

The Parties hereby agree to submit . . . to final and binding arbitration with J\*A\*M\*S/ENDISPUTE, in accordance with Rule 7 of the Amway/ADA Arbitration Rules and Procedures any and all issues arising out of the transition of the Foley, Gooch, Childers, Stewart and Woods organizations from working with D&B Enterprises, Inc. and InterNet Services to being responsible for the training and education of their distributor organizations.

219. This agreement was signed by D&B Enterprises, Inc., InterNet Services Corp., Ken Stewart (individually), Tim Foley (individually), Bill Childers (individually), Hal Gooch (individually), Steve Woods (individually) and Global Support Services, Inc.

220. The remaining Defendants in this lawsuit – Jimmy V. Dunn; Jimmy V. Dunn & Associates, Inc.; Parker Grabill; Grabill Enterprises, Inc.; Pro Net and Pro Net I – are not parties to

this arbitration agreement. As a result, the purported arbitration provision has no applicability to Plaintiffs' claims against those Defendants.

221. Plaintiffs' claims in this action do not relate to D&B Enterprises, Inc. nor to InterNet Services and, therefore, are not within the scope of the "Transition to Pro Net" arbitration agreement.

222. The Transition to Pro Net arbitration agreement is too ambiguous to be enforceable. It provides that any arbitration is to be conducted pursuant to the rules set forth in "Rule 7 of Amway/ADA Arbitration Rules and Procedures." Plaintiffs are unaware of any document entitled "Amway/ADA Arbitration Rules and Procedures." The Amway distributors' arbitration provision is found in Rule 11 of Amway's Rules of Conduct; not in Rule 7.

223. Each of the foregoing allegations contained in ¶¶ 1 through 222 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 against Defendants, state and allege as follows:

224. 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 Pro Net.

225. 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 Pro Net the contents thereof, and for the Stewart Organization to cease its efforts to sell and market BSMs except by and through Pro Net.

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

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

228. Based upon these representations and inducements by the conspirators, Plaintiff Nitro joined the Pro Net fold as a founding member and took its BSMs business to Pro Net, closing its Missouri warehouse.

229. Through time, Plaintiffs discovered that Pro Net 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 Pro Net 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 Pro Net members for gaining membership in Pro Net is not related in any way to their sales volume, entitling them to fair and equitable participation, such that Pro Net and its operation is clearly a "pyramid sales scheme," in violation of § 407.400(5) R.S.Mo.

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

231. 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 against Defendants, state and allege as follows:

232. Each of the Plaintiffs, along with other 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 ¶¶ 240 and 250 below.

233. 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.

234. 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.

235. 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.

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

237. 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.

238. 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 against Defendants, state and allege as follows:

239. 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.

240. 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.

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

242. 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.

243. 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.

244. 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 against Defendants, state and allege as follows:

245. In contracting and dealing with the Plaintiffs, and each of them, in respect to the implied-in-fact agreement concerning the tool business, as set forth in ¶ 240 above, 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.

246. 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.

247. 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.

248. 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 against Defendants, state and allege as follows:

249. 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.

250. 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.

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

252. 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.

253. 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.

254. 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 against Defendants, state and allege as follows:

255. In contracting and dealing with the Plaintiffs, and each of them, in respect to the implied-in-fact agreement concerning the major function business, as set forth in ¶ 250 above, 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.

256. 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.

257. 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.

258. 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 Pro Net**

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

259. In consigning the aforesaid BSMs inventory to Pro Net in 1998, Defendants, by and through their joint enterprise (conspiracy), of which Pro Net 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.

260. 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.

261. 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.

262. 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**  
**Promissory Estoppel**

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

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

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

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

266. Plaintiffs did not know, and did not have the means to discover, that the representations were false or otherwise blatantly misleading and intended only to give the Plaintiffs a false sense of security so that they would continue to build their businesses to the ultimate benefit of Defendants.

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

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

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

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

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

**COUNT IX**  
**Fraudulent Misrepresentation**

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

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

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

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

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

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

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

**COUNT X**  
**Negligent Misrepresentation**

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

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

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

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

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

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

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

**COUNT XI**  
**Antitrust Violation – Conspiracy to Monopolize**

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

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

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

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

287. The Gooch network constitutes a separate and discrete line of business, which is a “**geographic market**,” regardless of the physical location of any particular distributor, in that a distributor is limited in that he can only purchase from an upline distributor; and can only sell to downline distributors. BSMs are intended to provide “training and motivation” for Amway

distributors. Amways says this “training and motivation” should come from the distributor’s “sponsor or Direct Distributors” (*i.e.*, the distributor’s upline). In short, a BSMs distributor can reasonably and practicably only purchase BSMs from his upline distributors.

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

289. In approximately 1996, Defendants Gooch, Childers and Dunn conspired with others to undermine Plaintiffs’ respecting their network, which included approximately 70,000 distributors/customers for BSMs. This resulted in the erosion of the Plaintiffs’ network and the loss of BSMs business.

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

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

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

- (d) what major functions would be approved and permitted; and
- (e) who would be permitted to speak at major functions.

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

- 4. Member grants authority to the Association to negotiate for the purchase of business support materials on behalf of the Member.
- 5. Member agrees to refrain from using business support materials unless they have been approved by the Association . . .
- 7. The Association will act to provide benefits to Members by, among other things: . . . Making business support materials, services, marketing materials and other print or electronic literature available for purchase by Members.
- 8. As it relates to any Amway Distributor Opens Business Building Seminars and/or Conventions ("Event"), the Member: . . .

b. Agrees that with respect to all previously created Works presented and/or audio or videotapes thereof used or produced by the Member or any principal, employee or independent contractor of the Member at any past Event, the Member **hereby assigns to the Association all of its worldwide right, title and interest in and to such past Works** and any works in any medium derived from them . . .

c. **Agrees that all Works to be created in the future** by the Member, or any of its principals, employees or independent contractors, including but not limited to presentations and related audio or videotapes and materials that the undersigned Member uses or produces in connection with them, shall constitute Works made for hire, in which authorship and **ownership rights vest in the Association** . . . with respect to any future Works not deemed to be works for hire, the undersigned Member hereby **assigns to the Association all of its worldwide rights, title and interest in and to such future Works** . . .

d. Agrees that the Association has permission to use the name, image, likeness, voice, photograph and/or biographical information of any individual Member and any principals and employees of a Member for the purposes of advertising or promoting any Event or any broadcast or transmission of such persons' appearances at any past or future Event . . . (emphasis added)

293. The foregoing coercive terms (along with an arbitration provision), extracted from Pro Net “regular” members within the flawed two-tier Pro Net membership system (to-wit: the five “founding” members with voting rights and the only members eligible to serve as Pro Net officers and directors, and “regular” members without voting rights subject to the foregoing coercive terms and conditions of membership), served as a means to control the distributors of BSMs within the Gooch network, and the distributors had no economically feasible choice but to accept these coercive terms and purchase their BSMs from Global at the prices and on the terms prescribed by the Defendants. Essentially, the Pro Net “regular” members surrendered control over their BSMs business and had no rights or “say.” Yet, in dealing with the “regular” members, Paul Brown was instructed by one or more of the Defendants to lead them to believe they had a vote and that they had a “say.”

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

295. Defendants conspired to require those participants in the BSMs industry within the Gooch network to purchase all of their BSMs from the Defendants through Global, and to assign all rights respecting BSMs to Pro Net. The penalty for non-compliance with the Defendants’ edicts was to be ousted – boycotted from participation in the BSMs business. Defendant Jimmy Dunn has stated: “If someone does something that I don’t like, I’ll take their tool business away from them.”

296. On knowledge and belief, because of concerns of Gooch and Childers, in particular, that their upline distributors, Yager and Setzer, would seek to interfere with sales of BSMs within the

Gooch network and/or that Yager and Setzer were taking too large of a cut of the profits on sales of BSMs to the Gooch network, the Defendants conspired to break away from these upline distributors and to eliminate their competition for BSMs within the Gooch network. Yager and Setzer and/or their “tool” companies were BSMs distributors and, therefore, potential competitors for the BSMs business within the Gooch network.

297. On knowledge and belief, Gooch and Childers secretly agreed to an arrangement with Dexter Yager and Rick Setzer in or about 1997 to pay them monies on BSMs sold within the Gooch network in exchange for them not competing for BSM sales with the distributors/ customers within the Gooch network. This arrangement, or the particulars thereof, was/were never disclosed to “regular” Pro Net members.

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

299. Once the Gooch upline (Yager and Setzer) were dealt with and taken out of competition, the Pro Net requirement that distributors shall not purchase any BSMs without the approval of the “Association” (meaning the Defendants and their co-conspirators who controlled the Association), made distributors captive to the BSMs distributed by Defendants. Very simply, the

Defendants would not give approval to other BSMs. A distributor within the Gooch network either purchased his BSMs from Defendants or he was done. Any distributor who balked at joining Pro Net or left Pro Net or refused to deal with Pro Net was “blackballed.”

300. For example, Team In Focus is a group of Amway/Quixtar distributors or former distributors who pulled out of Pro Net in 2000 because of concerns over profuse BSMs abuses. On knowledge and belief, after these distributors pulled out of Pro Net, Gooch instructed Paul Brown, one of the owners of Global, that Global not supply BSMs to Team In Focus distributors, and if Global did supply them, Pro Net and E-Alliance (another group of BSMs distributors of which Pro Net was a part), would stop purchasing BSMs from Global. Global complied. Those distributors were cut off by Global.

301. In 1996, Defendants Gooch, Childers and perhaps others, and then later all Defendants acting in concert with one another, conspired to fix the prices that each distributor within the Gooch network would pay for BSMs, such as audiotapes. The Upline Defendants fixed the prices to benefit themselves, taking an inordinate share of the profits. For example, on knowledge and belief, Defendant Childers endeavored to secure a 25-30% profit on audiotapes, while Defendant Gooch in 1998 was being paid 18 cents or more for every audiotape sold throughout the Gooch network. The prices were fixed by Defendants from top to bottom, vertically and horizontally, throughout the Gooch network. For example, in 1997, the requisite price that a bottom-tier distributor/customer would pay to purchase an audiotape from his upline distributor was \$6. On knowledge and belief, Gooch was continuously pressing to increase that price.

302. On knowledge and belief, in 1997, Hal Gooch and Bill Childers (and perhaps others), conspired to secure tool pricing information from as many Diamonds as possible in the Yager

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

303. The conspiratorial efforts to fix prices continued (and for that matter, on knowledge and belief, continues today), and included a meeting at Myrtle Beach, South Carolina, in May 1998, attended by Diamond level distributors whose organizations were deemed eligible for membership in Pro Net and who were being solicited for Pro Net membership by Defendants. At that meeting prompted by Defendants, discussions took place on the prices to be set for the sale and resale of BSMs to every level of the distributor network, including the ultimate purchaser of the BSMs. Gooch pressed for an increase in the \$6 tape price, but encountered resistance.

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

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

306. Yet, on knowledge and belief, Defendants enjoy the support and tacit approval of Amway respecting their efforts. For example, Amway attorneys assisted Gooch and Childers in their

“break away” from Yager and Setzer in 1997. Members of the Amway staff met with the Pro Net founders on January 12, 1998, and likewise provided assistance and input. As another example, at a “town meeting” sponsored by “Pro Net/Quixtar” held in Overland Park, Kansas, on November 3, 2002, Randy Epema of Quixtar stated to the group of distributors in attendance, “Your leadership will come from the Pro Net line of affiliation.” Defendant Jimmy Dunn attended on behalf of Pro Net and also spoke at this “town meeting.”

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

308. Control of the BSMs business within the Gooch network equated to power. The Defendants and their co-conspirators consist of principals or representatives of Amway distributorships (“IBs” who are not Defendant parties hereto), that are located near the apex of the multi-level distributor network (pyramid) that comprises the Amway business, separate and apart from the BSMs business. Consequently, these highly-situated distributors exercise considerable clout in their business relationship with Amway/Quixtar. Very simply, Dexter Yager, Bill Britt, Rick Setzer, Hal Gooch, Bill Childers, Tim Foley and Steve Woods are in a position to influence and/or bring considerable pressure

upon Amway/Quixtar should they choose to do so, particularly if they do so as a group. On knowledge and belief, these powerful distributors have acted in concert to influence Amway/Quixtar respecting how Amway/Quixtar should deal with the “disfavored” distributors and/or the activities occurring in the BSMs business within the Gooch network.

309. Independent Business Owners Association International, Inc. (hereinafter the “**IBOA**”), is an association located in Grand Rapids, Michigan, comprised of Amway/Quixtar distributors or independent businesses. The IBOA is directed by a board of directors currently consisting of 30 members who are independent business owners or the principals of Amway/ Quixtar IBs. Only Diamond or higher pin level IBOs are eligible to serve as directors. The IBOA works in conjunction with Amway/Quixtar respecting the Amway/Quixtar business. The IBOA Board is in a position to exercise influence with Amway/Quixtar.

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

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

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

313. Ultimately, in 1998, once Defendants had succeeded in getting Nitro's Springfield warehouse closed and control over Stewart, the Defendants conspired to eliminate the Plaintiffs as active and successful distributors within the relevant market in order to obtain for themselves the profits which the Plaintiffs were earning from the sale of BSMs to their downline distributor network.

314. The acts taken by the conspirators included: banning Ken Stewart from appearing on stage and/or speaking at functions, realizing full-well that this action would further undermine and damage Stewart in the eyes of his downline, and those other actions listed in ¶ 320 below. This action was undertaken at the specific instruction of the Pro Net steering committee. The members of the Pro Net steering committee, including Gooch and Childers, referred to these tactics as “**blackballing.**” Such “blackballing” was intended to adversely affect the price or supply of BSMs within the market.

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

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

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

**COUNT XII**  
**Antitrust Violation – Group Boycott**

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

318. Plaintiffs additionally replead and incorporate herein as though fully set forth the allegations contained in ¶¶ 284 through 315 above.

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

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

- (a) “blackballing” or barring Ken Stewart from appearing on stage and/or speaking at functions which was absolutely essential to demonstrate leadership to the Plaintiffs’ downline;
- (b) on knowledge and belief, refusing to edit and/or sell and/or advertise any tapes featuring Ken Stewart;
- (c) isolating Stewart and the Plaintiffs from their downline distributors by and through the aforesaid actions calculated to undermine and/or disparage Stewart and the Plaintiffs; and

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

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

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

### **COUNT XIII**

#### **Antitrust Violation – Price Fixing and Allocation of Customers**

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

323. Plaintiffs replead and incorporate herein as though fully set forth the allegations contained in ¶¶ 284 through 315 above.

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

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

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

### **COUNT XIV**

#### **Antitrust Violation – Illegal Tying Arrangement**

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

327. Plaintiffs replead and incorporate herein as thought fully set forth the allegations contained in ¶¶ 284 through 315 above.

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

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

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

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

332. Forcing downline distributors, including Plaintiff Nitro herein, to join Pro Net (a “tied product or service”), in order to obtain access to and the right to purchase BSMs (the “tying product”), from Global constituted an **illegal tying arrangement**, a **per se violation** of § 416.031.1 R.S.Mo.

333. As a direct result of this illegal tying arrangement, Plaintiffs have sustained damages.

334. 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.

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ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing **Third-Amended Petition** was mailed via first-class U.S. mail, postage prepaid, this \_\_\_\_ day of \_\_\_\_\_, 2002, to:

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