

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

NITRO DISTRIBUTING, INC.; WEST)
PALM CONVENTION SERVICES, INC.;)
NETCO, INC.; SCHMITZ & ASSOCIATES,)
INC.; and U-CAN-II, INC.,)

Plaintiffs,)

vs.)

Case No. 03-3290-CV-S-RED

ALTICOR, INC., a foreign corporation;)
AMWAY CORPORATION, a foreign)
corporation; and QUIXTAR, INC., a)
foreign corporation,)

Defendants.)

FIRST-AMENDED COMPLAINT

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

Type of Action

1. This cause, arising out of the same series of transactions and occurrences, entails Defendants' efforts to unlawfully influence, control, monopolize and manipulate a business enterprise operating in Missouri and engaged in interstate commerce. Defendants' unlawful conduct, as part of a wide-ranging conspiracy, occurred repeatedly and profusely throughout the State of Missouri, causing damages to the Plaintiffs.

Jurisdiction and Venue

2. Plaintiffs are businesses incorporated and existing under the laws of the States of Missouri and Florida. Defendant Alticor, Inc. is a Michigan corporation, with its principal place

of business in Michigan. Defendant Amway Corporation is a Delaware corporation registered to do business in Michigan, with its principal place of business in Michigan. Defendant Quixtar, Inc. is a Virginia corporation, with its principal place of business in Michigan. The matter in controversy significantly exceeds the sum of \$75,000, exclusive of interest and costs. Therefore, this Court has jurisdiction under 28 U.S.C. § 1332. In addition, this action is being predicated in part under 15 U.S.C. §§ 1, 2 and 15, and 18 U.S.C. § 1961, et seq. This Court also has jurisdiction under 28 U.S.C. § 1331. Defendants engage in business in the Western District of Missouri, and a substantial part of the events and omissions giving rise to the claim occurred in the Western District of Missouri. Therefore, venue is proper in the Western District of Missouri. *See* 28 U.S.C. § 1391.

Parties

3. Plaintiff Nitro Distributing, Inc. (“**Nitro**”) is a Missouri corporation with principal offices located in Springfield, Missouri. Nitro engaged in the “tool” business, as hereinafter described until subsequently boycotted out of that business.

4. Plaintiff West Palm Convention Services, Inc. (“**West Palm**”) is a Florida corporation with offices located in Springfield, Missouri. West Palm formerly participated in the “function” business, as hereinafter described until boycotted out of that business.

5. Plaintiff Netco, Inc. (“**Netco**”) is a Missouri corporation with principal offices located in St. Joseph, Missouri. Netco formerly participated in the “tool” business, as hereinafter described until boycotted out of that business.

6. Plaintiff Schmitz & Associates, Inc. (“**Schmitz Associates**”) is a Missouri corporation with principal offices located in St. Joseph, Missouri. Schmitz Associates formerly participated in the “function” business, as hereinafter described until boycotted out of that business.

7. Plaintiff U-Can-II, Inc. (“**U-Can-II**”) is a Florida corporation with principal offices located in Ponte Vedra Beach, Florida. U-Can-II formerly participated in the “tool and function” business, as hereinafter described until boycotted out of that business.

8. In April 1997, U-Can-II, together with Brig and Lita Hart (“the Harts”) and their Amway business, B&L Hart Enterprises, Inc., filed a lawsuit against 19 defendants, including Amway, in the United States District Court for the Middle District of Florida, styled *Brig Hart, et al. v. Amway Corporation, et al.*, Civil Action No. 97-349-CIV-J-20B (the “**Hart Action**”). Many of the claims in that suit were identical to the ones asserted in this suit, *e.g.*, antitrust claims, violation of RICO, and tortious interference with business relations and contractual relations. All of those claims arose from the same transactions and occurrences at issue in this lawsuit. The present case respecting Plaintiff U-Can-II is a refiling of the **Hart Action**.

9. On or about May 28, 1997, the parties to the **Hart Action** entered into a Conciliation and Mediation Agreement, as amended July 24, 1997, wherein the plaintiffs agreed to dismiss their lawsuit pending the parties’ efforts to settle the claims by conciliation and/or mediation. *See* Conciliation and Mediation Agreement, attached hereto as **Exhibit A** and incorporated herein by reference. The Conciliation and Mediation Agreement included a tolling provision which provided that if the parties’ settlement efforts failed, U-Can-II has “an express right to refile the Action at any time” **Exhibit A**, ¶¶ 3, 4. The agreement expressly tolled the statute of limitations with respect not only to the claims already asserted in the plaintiffs’ federal lawsuit, but also those that “*could have been asserted*” in the action. This agreement was signed by or on behalf of Amway. *Id.* ¶ 4.

10. In reliance on the Conciliation and Mediation Agreement, U-Can-II, the Harts, and B&L Hart Enterprises voluntarily dismissed their federal lawsuit with the stipulation by the defendants that the plaintiffs could refile their lawsuit if the parties’ efforts at conciliation and

mediation failed. In that regard, the Conciliation and Mediation Agreement provided that before refileing their claims, the plaintiffs must provide 30 days' written notice to the other parties of their intent to refile the action. *Id.* ¶ 8. On March 12, 2002, U-Can-II, the Harts, and B&L Hart Enterprises provided that notice to all parties to the Conciliation and Mediation Agreement. *See* March 12, 2002 letter from Mark Wells, a representative for U-Can-II, attached hereto as **Exhibit B** and incorporated herein by reference.

11. Amway executive Gary VanderVen confirmed the veracity of the allegations contained in ¶¶ 8 through 10 above in a deposition taken in this cause.

12. Defendant Alticor, Inc. (“**Alticor**”) is a Michigan corporation, having been originally incorporated as Ja-Ri Corporation in Michigan in 1949. In 1963, Ja-Ri Corporation changed its name to Amway Corporation. On October 23, 2000, Amway Corporation changed its name to Alticor, Inc. At that same time, “Amway Corporation” became an assumed or fictitious registered name of Alticor, Inc. Thus, Alticor is one and the same company as the company known for years as Amway Corporation (previously Ja-Ri Corporation), which entered into numerous distributorship contracts to pursue and conduct what was known for years as the “Amway business.” Since **Alticor is Amway**, reference to Amway herein is reference to Alticor. Amway – either directly or through its subsidiaries – engages, and has engaged for many years, in the multi-level marketing business. On knowledge and belief, the control of Alticor and its related entities, beginning in the 1990s, has shifted to the sons of the founders – Richard “Dick” DeVos, Jr. and Steve VanAndel. On knowledge and belief, Alticor is influenced heavily by a Policy Board that consists or consisted of Richard DeVos, Sr.; Steve VanAndel; Richard “Dick” DeVos, Jr.; Jay VanAndel (now deceased); Cheri DeVos Vander Weide; Dave VanAndel; Doug DeVos; Norm VanAndel; Dan DeVos; and Barb VanAndel Gaby.

13. Defendant Amway Corporation (“**Amway**”), as named herein, was incorporated in Delaware on July 9, 1980, by and/or with the consent of Amway (the Michigan company now known as Alticor). In 2001, Amway Corporation, the Delaware company, registered to do business in Michigan as “Amway Corp. (Delaware).” That company’s Michigan registration form indicates that it is engaged in the Amway business outside of North America. Alticor is the parent company of Amway Corp. (Delaware). For all practical intent and purpose, Amway Corp. (Delaware) is Amway.

14. Defendant Quixtar, Inc. (“**Quixtar**”) was incorporated in Michigan on July 21, 1999, and then merged on or about November 1, 2002, with an entity known as Quixtar, Inc., a Virginia corporation incorporated in 2001, to form the Defendant Quixtar. Quixtar (the Virginia corporation), registered to do business in Michigan on January 29, 2001. On knowledge and belief, Alticor is the parent company of Quixtar. Quixtar is the company used today by Amway to conduct its multi-level marketing business in North America. Amway still does business outside of North America as “Amway.”

15. Amway moved all of its distributors in North America with or without their consent to Quixtar effective January 1, 2003. Prior to that time, beginning in late 1999 or early 2000, Amway attempted to persuade Amway distributors to become Quixtar distributors. Publicly, Amway touted that Quixtar was a new “web-based” business alternative to Amway. In reality, on knowledge and belief, this effort was prompted by the adverse publicity and increasing negatives experienced by Amway as abuses within the tool and function business increased.

16. The business operated by Quixtar today is the Amway business. Use of the word “Amway” is discouraged in the Quixtar business. Alticor has simply repackaged Amway’s business into Quixtar. For all practical intent and purpose, **Quixtar is Amway**, and reference to Amway herein is reference to Quixtar, at least for that time after Quixtar was incorporated.

Former Amway distributors in North America are now Quixtar distributors. A former Amway distributor's respective position within the Amway pyramid is the same relative position within the Quixtar pyramid.

17. The Defendants are so closely related and intertwined that they each constitute the alter ego of the other two. The acts or omissions of one constitute the acts or omissions of all three. On knowledge and belief, the changes in corporate structure in or about 2000 were legal maneuvers by Alticor to cut off or prevent Amway's exposure, as well as its founders, the DeVos and VanAndel families, to anticipated claims as well as shirk adverse publicity related to Amway.

General Allegations

An Overview.

18. This action arises out of the "**BSMs business**" or the "**tool and function business**" a/k/a the "**motivational business**," as related to the Amway business and hereinafter explained. Plaintiffs' claims herein do not arise out of the Amway business as such. Plaintiffs once were active competitors in the market selling "tools" or "BSMs."

19. Amway became dependent on the extremely lucrative tool and function business to support, indeed subsidize, its Amway business. The wealth that Amway distributors have been led to believe can be achieved by hard work is not wealth in the Amway business, but instead in the tool and function business. Such unfortunately is not made clear to new distributors, and has served to ultimately disadvantage many, including these Plaintiffs, who have been wrongfully denied fair and equitable access and opportunity within the tool and function business. This suit seeks to address these wrongs.

The Tool and Function Business.

20. Amway enticed prospective distributors into the Amway business with the prospect of owning and operating an “independent business,” buying and selling Amway products, and thereafter becoming financially independent, if not fabulously wealthy. However, the wealth portrayed is not attainable in the Amway business.

21. Amway requires its Amway distributors to **train and motivate** the downline distributors that they sponsor and bring into Amway’s multi-level business (referred to herein at times as a “**pyramid**”). This requirement gave rise to what is commonly known today as the Amway “tool and function business,” or sometimes the “motivational business” (herein referred to collectively at times as “the **tool business**” or the “**BSMs business**”). This business, another multi-level business, is used to train and motivate Amway distributors respecting the Amway business, including the recruiting of new Amway distributors. The customers for BSMs in this business are Amway distributors or their related companies.

22. The **tool and function business** is related to and supportive of the Amway business, but a separate and distinct business in and of itself. Amway recognizes this, regardless of whether initially Amway ever intended or expected the BSMs business to be or become a business in and of itself. Amway “birthed” the tool and function business by and through its mandatory training and motivation requirement, and has tacitly approved and sanctioned same from the beginning.

23. In conjunction with this separate business, “**tools**” refer to instructional and motivational materials such as audio and video tapes, CDs, books, electronic literature, etc. “**Functions**” refer to instructional seminars, motivational rallies and conventions, some in the past attracting over 40,000 attendees. The sale of the tools and charging Amway distributors a fee to attend major functions generates profits for those participating distributors in the tool and

function business. “Tools” and “functions” are referred to collectively as “**business support materials**” or “**BSMs**.”

24. The tool and function business operates similarly to that of the Amway business in that it also involves a pyramid of participating distributors. What is referred to as the “**line of sponsorship**” in the Amway business is sometimes referred to as the “**line of affiliation**” in the tool and function business. But the “line of sponsorship” in the BSMs pyramid should mirror the respective locations of the related parties or companies in the Amway pyramid. The ultimate customers of the tool and function distributors are low-level or entry-level Amway distributors. There are no retail sales, or insignificant retail sales, outside of the tool pyramid. Each tool and function distributor is a separate competitor within this business industry. The tool and function business generates enormous profits. Simply put, **the money is not in the Amway business; it is in the hype of the Amway business.**

25. Amway is a competitor in the tool business. (*See Amway’s Antitrust Primer*, attached hereto as **Exhibit C** and made a part hereof by reference.)

26. At all pertinent times herein, Amway marketed and/or sold BSMs.

27. At all pertinent times herein, Amway engaged in competition for the sale of BSMs. Amway was a competitor of Plaintiffs.

Control of the Tool and Function Business.

28. Amway distributors situated at or near the top of the Amway pyramid of distributors (those entering the Amway business early on and attaining a high Amway “pin level” of Diamond or above, hereinafter the “**Amway kingpins**” or simply the “**kingpins**”), long ago seized the opportunity to profit by and from the training and motivation of their downline distributors by seizing control of the tool and function business. The kingpins promulgated their

own rules (the **BSMs “Rules”**) to govern the tool and function business which were ultimately ignored from time to time to benefit their own pecuniary needs and agendas. Like the Amway business, the “**line of sponsorship**” was deemed **essential in the Rules** governing the tool and function business. For example, an Amway rule provides in pertinent part as follows:

4.14. Other Selling Activities: No IBO who personally sells products other than the Corporation’s products, who personally sells literature or sales aids not produced by the Corporation, or who sells services (e.g., tax services, insurance, investments, etc.) will induce another IBO whom he has not personally registered to sell such products, literature, sales aids, or services, or shall he or she offer to sell such products, literature, sales aids, or services to any IBO except those personally registered by him or her. Induce means persuade (to suggest or attempt to persuade) another IBO whether or not this is done to obtain revenues or for any other reason.

IBOs may engage in other selling activities related to non-Corporation-approved or non-Corporation-produced products and services if they personally desire to do so, but they may not take advantage of any activity organized to promote the Corporation’s products or the Corporation, or any other IBO’s efforts or resources, or of their knowledge of, or association with, other IBOs, especially those not personally registered by them, to promote and expand their other selling activities. To do so constitutes an unwarranted and unreasonable interference in the business of other IBOs. This does not mean, however, that an IBO regularly engaged in the operation of a gasoline station, repair garage, retail establishment, barber or beauty shop, or a professional service (law, medicine, dentistry, or accounting) may not serve clients or customers who are IBOs and have sought them out, but it does mean that such IBOs may not actively solicit the patronage of other IBOs who are not personally registered by them.

4.14.1. This section also applies to privately developed Business Support Materials (“BSM”).

...

4.15 Enticement to Change Lines of Sponsorship: Under no circumstances shall an IBO solicit, interfere, or attempt to induce, suggest, directly or indirectly, another IBO to request a change to another Sponsor or Line of Sponsorship.

The BSMs Rules and the relationship of each Plaintiff with their related downline distributors gave rise to BSMs business expectancies and prospective business advantages for each Plaintiff.

29. These Rules reserved participation (**eligibility**) in the massive profits realized from the tool and function business to only those distributors within the Amway pyramid of distributors attaining a certain level of success or “pin level” (“Direct” or above for tools and “Emerald” or above for functions). Because of an Amway rule prohibiting Amway distributorships from engaging in any other business, the “eligible” Amway distributors were instructed by the kingpins to set up their own corporations which would engage in the tool and function business as independent distributors, separate and apart from the Amway business. This is the purported reason the “**line of sponsorship**” in the tool business “pyramid” is referred to as the “**line of affiliation**” because the participants are affiliated with their counterparts in the separate Amway “pyramid.”

30. Having assumed and exercised control over the tool and function business by the 1970s, the kingpins were in position to profit immensely aside from the Amway business and to use their enhanced lifestyle to entice further distributors into Amway. Every new Amway distributor was a potential customer for the kingpins in the tool and function business. **The tool and function business grew tremendously, and by the early 1980s had become the driving force behind Amway.**

31. Plaintiffs, who were downline from the kingpins in the tool “pyramid,” engaged in the tool and/or function business. With the exception of Plaintiff Netco, none of the Plaintiffs are or were ever Amway distributors engaging in the Amway business. Netco has not engaged in the Amway business for some time, and brings this action solely in its capacity as a former participant in the tool business; not as an Amway distributorship. Plaintiffs were competitors with Amway, the kingpins, and other eligible distributors within the tool and function business.

32. Eligible tool and function distributors/participants like the Plaintiffs, who came along after the **tool “systems”** were already rooted, were falsely led to believe that the Rules

would be applied fairly and uniformly, and that all eligible distributors for participation within the tool and function business would have fair, equitable and equal access and opportunity to participate in the tool business, just like the kingpins before them. This has not been the case. The kingpins instead have sought to unlawfully and unfairly damage many eligible distributors, including the Plaintiffs, with the knowledge, complicity and/or participation of Amway.

The Amway Kingpins and their Tool and Function Pyramids.

33. On knowledge and belief, there are approximately 10 major lines of sponsorship within the Amway business, one of which begins with Amway's co-founders Richard DeVos and Jay VanAndel. These lines of sponsorship give rise to **three large pyramids or "systems"** within the tool and function business. These lines of sponsorship also provide Amway with the substantial part of its annual sales, if not virtually all of such sales. The three large systems are led by **kingpins Dexter Yager, Bill Britt and Ronald Puryear**. These kingpins each figuratively sit on top of their pyramid of Amway distributors on the one hand, and their tool and function distributor pyramid on the other. The competitors in the tool pyramid are typically different companies, but related to their principal's Amway distributorships in the Amway pyramid, and occupy the same location or position in each pyramid to the other participants. These three kingpins have tremendous clout and influence with Amway.

34. Within each tool pyramid, there are other Amway kingpins who work with them to facilitate the activities of their tool system as they pursue the marketing and sale of BSMs.

35. Kingpin Dexter Yager engages in the tool business through InterNet Services, Inc. The Amway kingpins in Yager's pyramid include or at one time included, but are not necessarily limited to, Yager, Richard Setzer, Jody Victor, Billy Florence, Hal Gooch, Bill Childers, Tim Foley, Steve Woods, and Jimmy Dunn (the "**Yager kingpins**").

36. The Plaintiffs were until February 1998 within the **Yager pyramid**.

37. Kingpin Bill Britt engages in the tool business through his Britt World Wide system.

38. Kingpin Ronald Puryear engages in the tool business through his World Wide Dream Builders system.

39. In more recent years, other tool systems have been birthed by Amway kingpins giving rise to yet additional tool “pyramids” or tool “systems.” The **Gooch “Pro Net” pyramid**, hereinafter discussed is but one example.

40. All the while, Amway has competed for BSM sales with these large tool systems operated by the kingpins.

41. **Amway has desired to lessen the clout of the kingpins, and exercise more control and influence over the tool business.** The problem for Amway historically in doing so has been the control over the business exercised by the kingpins and the tremendous power of the kingpins. The kingpins have for years held control over Amway’s sales force. For Amway to “take on” the kingpins has meant to risk the loss of Amway’s distributor sales force. Hence, for years, Amway appeased the kingpins and even helped facilitate their efforts to maintain tight control over the tool business while biding time and looking for opportunity to diminish the control and power of the kingpins. Understanding this tenuous relationship is imperative to understanding Amway’s actions.

42. Each kingpin endeavors to keep the other kingpins and Amway from selling BSMs to the distributors/customers in his pyramid. In fact, the kingpins instruct that downline distributors are not to buy BSMs from Amway. The kingpins preach to all distributors within their respective pyramids that they are expected to “**edify and support**” their “upline” distributors, attend their functions only, and purchase tools only from their upline distributors.

Amway's own rules prohibit “**cross-lining**” (soliciting those who the distributor did not sponsor), and as such, Amway’s rules serve to foster non-competition and/or no solicitation between pyramids and, for that matter, between distributors in any given pyramid. The kingpins enacted a similar rule within the tool and function business. **The result is that competition is stifled, if not eliminated.** Amway publishes that Amway distributors are free to purchase tools from anyone (which means including Amway, the tool distributor), but Amway knows full-well that is simply not reality. Amway knows it is a “**closed system**” within each tool pyramid and has been for years. That is the intent; that is the reality.

Amway Challenges the Tool Systems of the Kingpins.

43. In the early 1980s, Amway recognized the inherent problems of the tool and function business as operated by these large pyramid distributor systems. At the same time Amway recognized that its own efforts to market tools had not met with anywhere close to the success of the kingpins who controlled the business.

44. By that time, the tool and function business had grown so big and profitable that Amway recognized it as constituting a threat to the Amway business (by taking substantial monies out of or away from Amway according to its co-founder), and for a period of time, Amway strived to either bring it “in-house” or substantially limit it.

45. In a January 1983 audiotaped speech entitled “**Directly Speaking**” (so named because the speaker was addressing Amway “Directs” and above, those eligible for participation in the tool business), Amway co-founder Rich DeVos stated:

Let me talk to you about the legal side, beyond price fixing, that deals with pyramids, that deals with the **illegal operation of a business** that does not have an end consumer, where the product is not retailed. That would include all books and tapes. The sad news, folks, is that when those things go out that way and they become **excessive**, beyond my **ten or twenty percent theoretical guideline**,

hopefully acceptable, to where it's a reasonable support system, but not beyond the reasonable element, then it becomes an out and out **illegal pyramid**.

. . . 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.

46. At that time, DeVos also addressed the necessity of honoring the “**line of sponsorship**” within the separate tool and function business. DeVos asked distributors involved in the sale of tools 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.**

Upon information and belief, this “Directly Speaking” address so angered the kingpins that it prompted a boycott by the Yager downline distributors of Amway's products at Yager's direction for a period of time; the message was clear – the kingpins neither approved nor appreciated DeVos' comments and intrusion into their business.

47. On knowledge and belief, at about the same time as the “Directly Speaking” address, in a January 10, 1983 memorandum written by the Amway Executive Vice President, Ed

Postma (the “**Postma memo**”), summarizing the Britt and Yager tool systems (attached hereto as **Exhibit D** and made a part hereof by reference), the following conclusions were reached:

- “There is a major economic force at work with the tool business. **Anything that is done by the corporation [Amway] that will cause conflict or competition with this business could cause a major split.** This business will crumble under its own weight . . .”
- “**Greed. A continuing promise to all Directs in this system is that they will do as well [financially] or better than Diamonds in the system today.** This may not always be possible.”
- “**It is not a free enterprise opportunity. A downline Direct is not to compete with an upline Diamond.**”
- “The motivation business is **getting larger than expected.** None of the major participants really wishes to deal with it in a detail sense. With proper prodding, this business will fail.”
- “**The tool business [motivation] is illegal.**”

48. On April 5, 1983, Amway permitted outside legal counsel, William Abraham from Columbus, Ohio, to talk with **Amway Diamonds** (high-level Amway distributors and participants in the tool and function business), in the Yager pyramid at a meeting in Miami, Florida. The session was taped. On knowledge and belief, Abraham told the participants at that time:

- “We know if we take away your tape income [tools], you’ll be bankrupt.”
- “**You don’t put the brakes on if you know it’s wrong.** You put the brakes on if you know the bureaucrats are going to cut your throat.”
- In order for the tool business to be legal, there is a “**rule of reason**” you need to follow, which is not a rule of law. This “rule of reason” is that **not more than 20% of your total income can be from tools.**

These comments reinforced Rich DeVos’ admonitions in “Directly Speaking.”

49. The battle for control of the tool business in the early ‘80s pitted the kingpins squarely at odds with Amway and its founders. In or about 1986, Amway kingpin Rick Setzer

and his wife, represented by attorney William Abraham (ironically, the same attorney mentioned in ¶ 48 above), sued Amway Corporation and its co-founders, Richard DeVos and Jay VanAndel, in the United States District Court for the District of South Carolina, Greenville Division, Case No. 6:86-1898-3 (the “**Setzer suit**”). In that litigation, plaintiffs alleged in part:

67. Defendants have now breached their contract with Plaintiffs by destroying Plaintiffs’ ability to produce and sell educational and motivational materials. Beginning in or about January 1983 and continuing to the present, Defendants have discouraged the distributors within Plaintiffs’ organizations from purchasing the educational and motivational materials produced by Plaintiffs, while encouraging said distributors instead to purchase such materials from the Defendants.

Plaintiffs claimed and sought damages of \$100,000,000 from the defendants.

50. On knowledge and belief, in sworn testimony given by co-founder and defendant Rich DeVos in the Setzer suit, it was revealed that Amway’s revenues dropped from \$1,500,000,000 in 1982 to \$1,130,000,000 in 1983 – a drop of \$370 million and Amway had not been successful in curbing the abuses in the tool and function business or bringing the tool business “in-house.” In other words, the cost of the confrontation with the kingpins over tools in the early ‘80s had been costly.

51. On knowledge and belief, Amway co-founder DeVos in the Setzer suit, provided the following sworn testimony:

Q. It is a position that you took in the early part of 1983. Have you deviated from that position in the Amway Corporation since then, with respect to your Ten Points and the subject matter contained therein?

A. (DeVos) Well, let’s just say that we dealt with it the way we did. **We did put some people under notice that they were doing things wrong.** We pursued, of course, re-education but we never pursued it to its ultimate goal of really nailing anything down. **In the meantime, the volume came down and we started to work at trying to hold the business together, but the problem persisted in any case.**

52. On knowledge and belief, Amway and its founders apparently gave up the fight to seize control over BSMs sometime after 1983, and embarked on a new strategy of enabling the

kingpins to continue to control and manipulate the tool business. Using DeVos' words, the problems within the tool business "persisted." As such, Amway became an active "enabler," standing by knowingly while abuses mounted while, on knowledge and belief, biding time to find the right opportunities to once again try to seize control of the tool business from the kingpins or limit their power and influence.

53. On knowledge and belief, the Amway kingpins' **tool and function income grew to** vastly exceed their income from the Amway business by **a ratio of nine-to-one or more**. And the profits they derived from tools and functions amounted to many, many millions. This, of course, violated DeVos' "rule of reason."

54. From 1988 on, well into the 1990s, the tool and function business grew, indeed flourished. And as it flourished, so did the Amway business. On knowledge and belief, Amway "closed its eyes" and ignored what it considered to be a business rampant with abuse because Amway had become inherently dependent on the tool and function business to sustain its growth and profitability. In substance, on knowledge and belief, greed overcame principles.

Amway's Complicity – the Conspiracy to Monopolize, Manipulate and Restrain Trade.

55. At some point in time, the exact point being unknown to Plaintiffs, Amway – acting by and through its authorized agents and representatives as herein detailed in part – became an active co-conspirator in a conspiracy or perhaps multiple conspiracies, acting separately or in concert at the same time, to control, fix the price of, allocate the business of, and to monopolize and manipulate the tool and function business to the detriment of Plaintiffs and others. The conspiracy, including these Defendants, endeavored to assist the kingpins in the monopolization, control and manipulation of the market for BSMs as herein defined and to restrain trade. On knowledge and belief, the participants in this conspiracy included at least some, if not all, of the Amway kingpins, their tool and function companies, their agents and

representatives, their suppliers or manufacturers of tools (including Global Support Systems, Inc.), the Amway Distributor's Association (later known as the Independent Business Owners Association International or "**IBOAI**"), and its directors, agents and representatives, and perhaps even JAMS/Endispute, Inc., the for-profit national dispute resolution company ("**JAMS**"). At a minimum, the conspirators used or manipulated JAMS such that it became an important instrumentality in the conspirators' efforts to exercise control. Not all of the co-conspirators are known to the Plaintiffs at this time. The acts and omissions of any one co-conspirator are and were the acts and omissions of all others, including each Defendant.

56. The Amway kingpins needed Amway as an "object" to promote their separate tool and function business, and further, the kingpins needed Amway's help in controlling their downline distributors and negating any emerging competition. Amway, in turn, needed the kingpins to sustain and build Amway. These two separate businesses were dependent upon one another in order to prosper. Although Amway apparently never expected the tool and function business to become what it had become by the early '80s, a business in and of itself, the tool and function business did just that.

Amway Becomes the "Gatekeeper," an Active Ally of the Kingpins.

57. Amway facilitated the kingpins' control of their tool systems by requiring all tool literature to be sent to Amway for prior approval before dissemination and use of that literature. On knowledge and belief, unless the submitter was a qualified Diamond pin level or above (to-wit: a high-ranking distributor working closely with an Amway kingpin), Amway would not even review the literature. This prompted a strong protest from large Amway Emerald distributors (the pin level next below the Diamonds), and Amway thereafter relented and advised that it would review, but not necessarily approve, literature submitted by Emerald pin level

distributors on up. On knowledge and belief, if a distributor disseminated tool literature that had not been prior approved, Amway would terminate or suspend the distributor. This Amway rule permitted Amway, itself a competitor in the tool business, to become the conspirators' **gatekeeper** for what could and could not be sold as BSMs in the tool business. As such, Amway could deter any new competing entrant to the business. On knowledge and belief, in that Amway was acting under the influence and/or control of the Amway kingpins, the kingpins were thus able to negate competition from any "maverick" distributor who might have the audacity to believe that he/she had a right to compete freely and fairly in the tool business. As Amway noted in the 1983 **Postma memo**, the Amway-related tool and function business was anything but free enterprise.

58. On knowledge and belief, Amway used the tool and function business to not only build its Amway business to new heights, but to effectively subsidize the Amway business; the huge profits pouring in for tools and functions to the Amway kingpins allowed Amway to artificially hold down what it paid out to its growing Amway distributorship network in commissions and bonuses. Stated differently, Amway didn't need to pay large commissions and bonuses to the Amway kingpins for sales of soap because those kingpins were raking in millions from the tool and function business, bringing in throngs of new Amway distributors, and training and motivating them to buy soap and bring in yet more distributors. The low-level distributors, who were buying the soap (not necessarily selling the soap), were in turn motivated by the representations being made to them by the kingpins and their widely proclaimed lavish lifestyles. These low-level distributors were often told not to focus on selling soap (or other Amway products), but to buy the Amway products themselves and instead focus on bringing in new Amway distributors who would do likewise. Of course, each new Amway distributor was a potential new tool customer for the kingpins. These low-level distributors were also told that

they could attain similar riches (like that of the kingpins) from the Amway business (as noted in the **Postma memo** by Amway), and all or many believed it. Amway contributed to the perception by publicizing the kingpins' lavish lifestyles in its publications, like the *Amagram* (now known as "*Achieve*"), and in Amway's own tools.

59. Accordingly, the essential "**ten person retail sales rule**" discussed in the Federal Trade Commission's 1979 ruling on the Amway business (*see* 93 F.T.C. 618), has been for years ignored. The reality is that BSMs have been the business focus, not soap. The reality is that retail sales outside the Amway business pyramid are minimal at best. Reality is that BSMs drive the Amway business.

60. Amway joined the kingpins in avidly touting the virtues and benefits of tools and functions to Amway distributors. The "**rule of reason**" advanced in 1983 was forgotten or ignored; BSMs income to the kingpins vastly exceeded their Amway income. It is and was common for Amway executives to attend functions. For example, Amway's Chief Executive Officer, Tom Eggleston, attended major Yager/InterNet functions in the 1990s like "Free Enterprise," and spoke to the distributors, touting the benefits of tools, tacitly approving and endorsing the tool system known by Amway to be in place – the same tool system as that in 1983, which co-founder DeVos said was so wrong.

61. The Amway Sales and Marketing Plan encourages distributors to purchase tools and to attend functions:

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 . . .**

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.

The Misrepresentation of the Business: The Two Myths.

62. Amway's expressed endorsement of the BSMs business is perhaps not as egregious as its tacit approval of the misrepresentations routinely made by the Amway kingpins or their downline Diamonds, acting upon the training and direction of the kingpins, at functions with Amway executives prominently in attendance, if not actively participating, which they did. Two myths were fostered by and through these misrepresentations.

63. **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 attained and proclaimed by the Amway kingpins. Very simply, one cannot attain comparable riches by selling Amway products. But, in fact, it is only through the participation in the tool and function business that one can attain the riches like those of the Amway kingpins. New distributors were not told this. Instead, they were led to believe that the riches were in the Amway business. Amway knew this. Amway permitted it and encouraged it. Amway did nothing to dispel it. More Amway distributors meant more revenue for Amway.

64. **The second myth**, related to Amway distributors once they became eligible for participation in the tool and/or function profits (Direct level or above), is that those distributors will be treated fairly under the Rules, including the line of sponsorship and the "Servicing Agreement Rule," being honored. This meant those who became "eligible" to participate, like Plaintiffs, were promised fair access and opportunity in the tool business (consistent with the "continuing promise to Directs," as discussed in the **Postma memo**). The reality is that the

Amway kingpins control the destiny of those below them, and they control and manipulate the tool and function business in such a way, with Amway's assistance, that a new or relatively new tool and function distributor cannot attain these riches unless the kingpins so elect. And few do attain these riches, regardless of the size of their downline distributor network.

65. Plaintiffs, the tool and/or function companies of "eligible" Amway distributors, relied in good faith on the representations (respecting the second myth above), made to them, when and after they became "eligible" tool and function distributors, by kingpins Yager, Gooch, Childers, Dunn and other upline distributors in the Yager pyramid in entering and pursuing the tool and function business, expending large sums of money to promote same, and thereafter instructing their downline distributors respecting same as they were trained and instructed to do by Yager, Gooch, Childers, Dunn and others. Plaintiffs relied on these representations to their detriment. Plaintiffs became participants in these established tool systems because they had no viable options, they believed Amway approved and expected their participation, they were unaware of illegalities, and they were following the instruction and direction of the upline kingpins they had been taught to "edify." Plaintiffs, by and through their principals, expected and intended for the Rules to be equitably applied, with fair and proper access and opportunity to all eligible distributors. Plaintiffs did not condone the kingpins' abuses. Plaintiffs did not knowingly and/or intentionally mislead their downline distributors.

66. **Amway knew full-well that these repeated representations were inherently false and misleading to distributors like Plaintiffs**, but as a co-conspirator motivated to perpetuate and grow the tool and function business run by the kingpins to and for Amway's own pecuniary benefit, Amway did nothing to stop them from being made.

67. When the Amway kingpins, with Amway executives present, made these inherently misleading or false representations or inferences, the Amway kingpins were

reasonably perceived by distributors, including Plaintiffs, to be acting with the tacit approval and apparent authority of Amway in making the misrepresentations. Amway ratified these egregious acts. Amway endorsed the kingpins' tool systems. Amway encouraged Plaintiffs to become a part of these BSMs systems.

68. The aforesaid misrepresentations made by the members of this conspiracy, many being made in Missouri, were and are the acts and misrepresentations of the Defendants and each of them.

The Conspiratorial Acts: The Unlawful Taking of the Plaintiffs' Businesses and the Injury to Competition in the Tool Business.

69. As the Amway business and the related BSMs business matured, more distributors, like these Plaintiffs, became eligible to participate in an ever-increasing way in the BSMs business. Plaintiffs built large distributor networks. Instead of following the Rules as promised and giving the Plaintiffs fair and proper access and opportunity to and within the tool business, the conspirators plotted and worked to disadvantage them, eventually taking their business by forcing them out altogether. Examples of the conspiratorial schemes, tactics and abuses follow.

• **The Allocation of the D'Amico Tool Business:**

70. In or about 1995, the conspiracy engineered the allocation of the D'Amico downline group of distributors from under U-Can-II to be placed under kingpin Setzer. Upon kingpin Setzer's return to the Yager tools pyramid in the '90s, Yager pressured Gooch and Childers to "cut" Setzer back in (to receive profits on BSMs sold within the Yager pyramid). To address this pressure from kingpin Yager without significantly reducing their own profits, kingpins Gooch and Childers entered into a **secret agreement** on or about September 19, 1995, to allocate the D'Amico tool business to Setzer, eliminating U-Can-II from participation, in

complete violation of the Rules. In substance, the conspirators took customers from U-Can-II and arbitrarily gave them to Setzer.

71. When U-Can-II learned that D'Amico was dealing or going to deal with Setzer for his tool business, U-Can-II protested to Amway and to kingpins Dexter Yager and Jody Victor, both members of the **Amway Distributor Association's** ("ADA" n/k/a "IBOAI") board. A meeting to address the situation followed in Jacksonville, Florida.

72. In attendance for this Jacksonville meeting were at least the following: Amway executive Bob Kerkstra; Jody Victor, as a representative of the ADA board; Dexter Yager, Doyle Yager, Childers, Setzer, Don Brindley and D'Amico, all tool competitors; and the Harts of U-Can-II. With Amway's and the ADA's direct participation and over U-Can-II's protest, the Harts were told that D'Amico's tool business was being pulled from them and given to Setzer. D'Amico's tool business moved to Setzer with Amway's direct participation and support.

73. The September 19, 1995 **secret agreement** (attached hereto as **Exhibit E** and made a part hereof by reference), on its face is a classic example of price-fixing and allocation of customers, in violation of the antitrust laws. And, apparently, the signatories to the agreement recognized this full-well, as they recited the following above their signatures:

We understand that this agreement needs to be reviewed by appropriate legal counsel for possible **illegal acts**. However, the **spirit of this agreement must be maintained** in the final revisions to this document.

The agreement was signed by Hal and Susan Gooch, and Bill and Hona Childers. This agreement was implemented. This **secret agreement** was sanctioned by Amway, who knew exactly what was coming down. Kerkstra was Amway's authorized representative.

74. This meant that the essential "line of sponsorship" was completely evaded and U-Can-II, contrary to the Rules, was boycotted respecting the tool and function business of the D'Amico organization. U-Can-II, per the Rules, should have sold all BSMs to D'Amico, or at a

minimum, been reasonably compensated for same. U-Can-II should have participated in the function revenue as well, in accord with the Rules. U-Can-II was eventually advised by Gooch, Childers and Yager that, in accord with the Rules, Setzer would equitably compensate U-Can-II for “going around” U-Can-II respecting the D’Amico organization’s tool business (to-wit: “the Servicing Agreement Rule” and/or tacit recognition of the line of sponsorship Rule). But Setzer refused to do so.

75. On knowledge and belief, Setzer paid Gooch, Childers and Yager for BSMs sold to the D’Amico organization because they fell within D’Amico’s line of sponsorship. But, again, Setzer paid the Plaintiff U-Can-II nothing despite the Plaintiff’s direct line of sponsorship to D’Amico. This tactic, as orchestrated by the conspirators, was instrumental in paving the way for the loss of other downline distributors within the U-Can-II downline respecting the tool and function business. U-Can-II was effectively undermined by the conspiracy, including Amway.

76. The importance of observation of the line of sponsorship was affirmed in a telephone message on **Amvox** (a telephone messaging system marketed and sold by Amway), by kingpin **Jody Victor** to Brig Hart of U-Can-II:

Hey Brig, it’s me, Jody. I’m now in Palm Springs, California, but thank goodness for Amvox. I want you to know that I agree 100% wholeheartedly with your Amvox message. And I won’t only sign it, I’ll help write it. I not only support the **line of sponsorship** and feel that it worked and built a business for 8½ years, under no circumstances would I want anyone to come in and solicit my groups. Upline, downline, crossline, whatever line. It’s certainly not right and it cannot be supported by anybody. You know it’s like anything else Brig, if one of my downline guys want to go work with someone else, Dexter, you or anyone, I would hope that they’d come to me and work out some type of a satisfactory agreement. I don’t see any other way.

• **The Gooch Pyramid – Pro Net Global Association:**

77. In or about 1997, Hal Gooch and Bill Childers, two Amway kingpins in the Yager pyramid, pursued a “breakaway” from Yager and InterNet Services respecting tools and

functions. On knowledge and belief, this contemplated breakaway was prompted out of concern by Gooch and Childers that kingpins Yager and Setzer were taking too great a “cut” on BSMs and were “raiding” their (Gooch’s and Childers’) downline distributors/customers, thus diminishing their profits and/or market share from the tool and function business. They sought to preclude such competition.

78. This led to the creation in February 1998 of a separate pyramid (the “Gooch pyramid”) out of the larger Yager pyramid, the same being all of the distributors in the Yager/Gooch line of sponsorship from Gooch down. Gooch, Childers, Tim Foley and Steve Woods, all powerful distributors in the Gooch line of sponsorship (hereinafter collectively “the **Gooch kingpins**”), facilitated the creation of this new BSMs pyramid with the help of others like kingpin Jimmy Dunn of Missouri.

79. The Gooch kingpins used **Pro Net Global Association (“Pro Net”)**, a purported not-for-profit trade association, to facilitate the tool and function business for the Gooch pyramid. They absolutely controlled Pro Net, were the only members with voting rights per the Pro Net bylaws (excepting Ken Stewart, whom they quickly booted in 1998), and operated Pro Net to serve and accomplish their own pecuniary interests. As discussed below, Amway was an active co-conspirator in bringing this system about.

80. **Pro Net was a price-fixing agreement, as well as an agreement to allocate customers.** Gooch, Childers, Foley, Woods and Dunn, in concert and combination, through Pro Net, with others fixed the prices of BSMs sold to Plaintiffs.

81. Kingpins Gooch and Childers directed that BSMs pricing information from kingpins – both inside and out of the Pro Net system – be gathered and considered in setting prices for BSMs within the Pro Net system. This was done. Paul Brown procured the pricing information at their direction.

82. **Amway was complicit in the price fixing.** Amway's John Parker provided Brown with the Amway confidential line of sponsorship information and the "qualified pin levels" of those Amway distributors with the knowledge that the information was going to be used to set prices. And, remember, Amway at this point anticipated being a supplier of tools for the Gooch kingpins.

83. The conspirators knew full well the import of their action. The following exchange took place in a Pro Net meeting between kingpins Jimmy Dunn and Tim Foley, with other Gooch kingpins present:

Dunn: Tim [Foley], one of the points in this, in some of these articles on this web report has to do with a word called **price fixing**, and I mean, **you can just see it throughout here, that anybody ever gets on top of this and really wants to make an issue out of these points you're just making, they'd sure have something to grab on.**

Foley: Yeah, I think so.

84. Plaintiffs, as direct purchasers from the conspirators, paid overcharges for BSMs and were directly injured thereby.

85. When Plaintiffs complained of being forced to pay higher than competitive prices, and further when Plaintiffs began to compete, or threatened to compete, in the production and distribution of BSMs, the co-conspirators, including Amway, forced Plaintiffs out of the BSMs business.

86. Integral to their **conspiratorial plan** and in an effort to consolidate their control and eliminate competition, the Gooch kingpins forced Ken Stewart of Nitro and West Palm into Pro Net to get Stewart to close his large tool distribution warehouse in Springfield, Missouri. Once this was done, **they forced him out.** They initially made Stewart, or his company, a "founding member" of Pro Net and made him a member of their initial steering committee. This

was necessary to ensure his participation. But Stewart sought and desired equity in the tool business. That desire was not shared by the Gooch kingpins who had other objectives.

87. Likewise, the Gooch kingpins literally forced Brig and Lita Hart of U-Can-II into Pro Net where the kingpins could exercise absolute control over them, and once that was done, the kingpins cut them out totally. The Harts had pressed the kingpins repeatedly for fairness in compensating their downline tool distributors. The Harts also had a huge downline distributor network. Gooch and Childers, in particular, took U-Can-II's distributor network for themselves. The Gooch kingpins used the Harts' publication of a brochure (a tool), without Pro Net authorization, **to kick them out**. The Harts had "competed" without permission, they said. This happened even though the kingpins sold their own tools without authorization in a much more lucrative way.

88. When Charlie Schmitz of Netco balked at joining Pro Net, and wanted to procure and sell his own tools to his downline distributors, **the kingpins boycotted him out of the tool business** altogether after discussing the need for a "**little system**" to deal with tool distributors like Charlie Schmitz (and later, Stewart and Hart), who simply sought fair and equal opportunity within a free enterprise which, of course, the tool business was not. The following exchange took place between kingpins Bill Childers, Steve Woods and Jimmy Dunn:

Childers: Jimmy Dunn and myself talked the other day, and he's got a pretty critical situation going on out in the group with a guy named Charlie and Kim Schmitz. When we get together down there, eyeball to eyeball, sometimes I think this committee should hear what is going on with one of our leaders and one of the guys that's sitting on the board, and, uh, you know, **so we can all kind of pull together** and say, okay, **let's take care of this situation**. Let's take care of this thing that's going on. If Charlie Schmitz is doing something that's contrary to our philosophy what we're doing, then I think **we as a group need to send him a message**, saying, hey, you're not following Jim, so you're not really a friend of this organization. You know what I'm saying?

Woods: Look, if this is, you know, kind of acute, I, he's one of the guys we were just getting ready to call to come in and do a regional.

Childers: Now is not a good time to get him.

Woods: I need to know that. Alright?

Dunn: I just think to protect ourselves, we need to be, and **we've talked about this before**, but, you know, where we just run around inviting anybody and everybody in to speak at functions or do seminars and rallies, there may be some cases where we've already shot ourselves in the foot. And you'd be the one, Steve, you're getting ready to bring him in and you didn't know this, I think he's smart enough that he wouldn't come in and deliberately attack me or Bill or Hal or Dexter. But just the fact that he's a loaded gun, somehow out of all this, and I appreciate Bill bringing this up, we just need to get a **little system** here that lets us know, not that we're going to try to defame anybody or run anybody down, but when there's a problem, we all need to know about it. I don't want to bring him in. **I don't want to have anything to do with him as far as functions or seminars or rallies, that kind of thing.** So, somehow, we need to figure out some **little system** here that **we can do this with.**

Childers, Woods and Dunn were competitors in the tool business, as was Schmitz via Netco and Schmitz & Associates. These kingpins conspired to force Schmitz and his companies out, and they did so.

89. **Paul Brown was instructed by the Gooch kingpins to implement and carry out the boycotting of the Plaintiffs.** He has heretofore confirmed his actions in testimony under oath.

90. Attached hereto as **Exhibit F** is a schematic illustration of the respective locations of the Plaintiffs, the Gooch kingpins and other Yager kingpins, as mentioned herein.

91. The Gooch kingpins mandated tool and function distributors' participation in Pro Net so as to seize absolute control of the tool and function business within the Gooch pyramid. Equally important, they required each distributor to contribute all of his/her copyrights in tools he/she created to Pro Net. The kingpins determined who could sponsor a function and who could speak at same. The Gooch kingpins locked the system down tight so that no viable competition could arise. Lower downline Amway distributors were expected, if not required, to buy all tools

through Pro Net via its supplier, Global Support Services, Inc., and all functions were under the auspices of Pro Net. If a tool and function distributor refused to abide by the requirements of the Gooch kingpins, that distributor was cut off – boycotted. **Paul Brown, the agent of the Gooch kingpins, refers to the boycotts as a tool distributor being “blackballed.”** From a practical standpoint, that resulted in that distributor losing his tool and function income as there were no viable options. Amway was well-aware of the Pro Net mandate for participation, as well as the Pro Net membership mandatory terms which served to place absolute control in the hands of the Gooch kingpins, and Amway tacitly approved same by and through its conduct.

92. Through Pro Net, the Gooch kingpins and their co-conspirators conspired to eliminate competition and to place themselves in a position to control. They dictated:

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

93. The Plaintiffs were all tool and/or function distributors/participants first within the Yager pyramid and then the Gooch pyramid. The Plaintiffs all previously dealt with Yager’s InterNet Services for BSMs, and Yager exercised control and direction over same. The “breakaway,” with Amway’s assistance and promotion, meant that Plaintiffs were no longer to deal with Yager/InterNet or Yager/InterNet with them. Such left Plaintiffs at the mercy of the Gooch kingpins, who cut them out with Amway’s help.

• Amway's Complicity in the "Breakaway": Setting Up the Gooch Pyramid.

94. Amway helped facilitate the Gooch kingpins "break away" from Yager and InterNet. The assistance included several meetings with Amway lending guidance and direction to the Gooch kingpins and/or their agent, Paul Brown, in setting up this new tool pyramid.

95. In mid-1997, the Gooch kingpins met in Atlanta to discuss the breakaway from Yager. Amway executive, Bob Kerkstra, and Amway in-house legal counsel, Sharon Grider, participated. Amway was in on the "breakaway" from the inception.

96. The Atlanta meeting was followed by a meeting at the Paradise Hotel in the Bahamas in August or September 1997. At this meeting, the Gooch kingpins announced to the Gooch downline Diamonds their intention to break away from Yager. Amway executives in attendance at that meeting, for the purpose of demonstrating support for the breakaway and to ensure a smooth transition which would include averting retaliation from Yager, were: Doug DeVos, Billy Zeoli, Bob Kerkstra and Arla Harvey. Thus, the DeVos family was involved. Richard "Dick" DeVos, Jr., having served as Amway's President from 1993 until 2002, was "steering the Amway ship" when all of this was playing out.

97. On knowledge and belief, one major reason Amway wanted the "breakaway" to occur was to lessen the clout or power of Dexter Yager. By pulling the Gooch downline out of the Yager pyramid, the Yager pyramid would be diminished.

98. Amway executive Bob Kerkstra, in January 1998, provided the Gooch kingpins with **talking points** to help explain the "breakaway" to distributors. **Exhibit G** attached hereto is one example. Also, Amway had a "suggested script" for its own employees in responding to questions from distributors about the breakaway.

99. A principal concern of both Amway and the Gooch kingpins was the reaction of Yager and the need to avert a "war." To avert this end, **Billy Zeoli**, who was regarded as the

personal spokesman and advisor for the **DeVos and VanAndel families** and the agent for Amway, mediated the “breakaway.”

100. **Billy Zeoli** provided this report using Amway’s **Amvox** messaging system utilizing interstate wires:

Good morning, gentlemen, **this is Billy Zeoli talking** to Hal Gooch, Tim Foley, Steve Woods, Ken Stewart, Bill Childers, Paul Brown. I’d like to report to you on the responsibility assignment you’ve given me. Jeff Yager was here in Grand Rapids last night, this is Monday, this is Saturday morning. The discussion and decision was as follows:

Number one. If there is a possibility of a serious meeting, a discussion of working things out, of discussing finance, Rick Setzer and other situations, and you’re willing to discuss that openly and clearly, the men mentioned in this memo also willing to discuss it openly and clearly, not just another meeting. **Jeff Yager** said he is willing to have that meeting on that basis. I am pleased to hear that. Now, if that meeting does not happen, for some odd reason, or it does not go properly, there’ll be a third, another meeting which will be with **Mr. Kerkstra** as well. I will bring him to that meeting, and have him, cause he’s the authority on rules and regulations to discuss the possibility and the clarity of a change in venue, a transition of these gentlemen mentioned the Gooch, Foley, Woods, Stewart, Childers, to their own situation with a discussion of a **non-war, W-A-R**, meeting to try and work that out. That’s where we are and that’s what I follow through on. And that’s the position we are in.

Therefore, I would ask you to consider that, that meeting of putting things together with the openness considered on your part probably for the very first time of Jeff doing that. Also with the discussion, frankly, if you do leave, is a **consideration of giving Dexter a percentage of each tape**, which if the relationship went well during the transition, with each people’s groups not being identified and **raided**, there would be that possibility. So that’s where we are.

101. **The “deal” to avert the “war” struck by Zeoli on behalf of Amway** was tantamount to the unlawful allocation of customers, the unlawful allocation of territory, and in exchange therefor, **kickbacks** or illegal payoffs. On knowledge and belief, Gooch and Childers were paying Yager and Setzer, who were upline to them in the Yager tool pyramid, to stay out of the Gooch pyramid so as not to compete for tools.

102. This “deal” was confirmed in an August 24, 1998 letter (sent via the U.S. Mail) from Paul Brown to Jeff Yager of InterNet Services Corporation, copying, among others, Bob Kerkstra of Amway. Amway had knowledge of the “deal” and was complicit by its knowledge and participation.

103. The payoffs per tape to keep Yager and Setzer from “raiding” the Gooch line of affiliation, according to Paul Brown, were as follows: 14 cents to Yager; 2 cents to Setzer; and a half-cent to Ronald Gooch, Hal Gooch’s brother.

104. Another reason why Amway sought to assist Gooch and Childers with the “breakaway” from Yager was in order for Amway to sell tools to the Gooch downline via the Pro Net supplier, Global, which sales occurred in 1998, 1999 and 2000.

105. Amway’s complicity in facilitating the Gooch pyramid is further evidenced by the guidance and direction provided Paul Brown, then acting as the agent for the Gooch kingpins, by Amway’s in-house counsel, Sharon Grider, and Amway’s outside antitrust counsel, John Peirce.

106. Attached hereto as **Exhibit C** is an **Antitrust Primer** provided Paul Brown by Sharon Grider.

107. After sending Paul Brown the **Antitrust Primer (Exhibit A)** hereto, a telephone conference (using interstate wires) ensued between Paul Brown, Sharon Grider and John Peirce. Excerpts of this telephone conversation included the following:

Grider: I was just bringing John [Peirce] up to speed so that he understood where [sic] we were trying to accomplish today, and just basically what I told him was our conversation of last week whereby **you were looking for some overall assistance, and I’ll be pretty blunt here, breaking away and how you set up everything, and I said, we could help you with this part. And I faxed you a primer on antitrust** so you see the issues there.

Brown: Right.

Grider: Some of the common plain English explanation of the contracts and the three model contracts.

Brown: Yeah.

Grider: So, we're here to answer your questions on that stuff.

Brown: Okay . . .

Brown: I don't think unless I can talk with you freely, I don't think you can advise me freely, so I'm going to roll it all out to you and you know.

Peirce: **Bear in mind that you are talking to Amway here.**

Brown: Okay.

Peirce: You've got Sharon, who works for Amway, and I, who am counsel to Amway. **What I'm thinking we can do is talk in generalities.** You don't have to name names or dollar amounts, but just talk about concepts of how somebody would set up a business, and I think we can probably give you what you need.

Brown: Okay. Alright.

Brown: Okay, and **Sharon**, I mean, **you know**, I mean, obviously we, without touching on, **what a powder keg I'm sitting on here.**

Grider: **Yep, I do.**

Grider: Paul, let me, you know, I've been, we sit up here and we watch things go on from time to time. And when I have seen this kind of an event in other organizations, nobody has found a way, based on my observations, of totally avoiding disruption in the business when they want to do what you're talking about doing.

Brown: Really.

Grider: Correct.

Brown: And, I'm, in talking with you here, is there something, is there someone that I can, is there a suggestion you have for me or someone to talk with – i.e., at Amway – that can pretty well, that can sit there and, based on all the knowledge, as you say, you all sit up there and you have your hands and knowledge in a lot of

different areas, okay? Of consultation that I could be having with someone that could help me understand the process, we should, that I should be giving, you know, information that I should be giving to people I represent to **walk us through this mine field.**

Grider: Um, we can probably help a little bit more on that. On that issue, and what I would like o do when you're comfortable, is **I'd like you to work with [Amway executive] Rob Davidson.** You know Rob?

Brown: Yeah, uh-huh.

Grider: Rob's the one to work for, work with. **I advise him daily, on these issues,** and he just has gone through a couple of these deals, and so he is, you know, he's the right person to be with. And when you are ready, I will talk to him and let him know what's going on.

Amway's complicity is obvious. Amway, the admitted tool competitor, is having its legal counsel advise the representative of other competitors on how to deal with yet another competitor (Yager), to the potential inherent injury of this competitor (Yager), for the potential benefit of Amway. The end result is a new BSMs system (Pro Net) used to unlawfully injure these Plaintiffs and others, all with Amway's ongoing knowledge and participation.

• **Team In Focus: The Conspiracy's Destruction of New Competition:**

108. The involvement of Amway in BSMs with the kingpins as part of this ongoing conspiracy is further amply illustrated in dealings with **Team In Focus.** In mid-2000, a group of Amway Diamond distributors in the Yager/Gooch/Childers Amway line of sponsorship met in Chicago to address their common concern about the tool system and the abuses and inequities they had experienced as tool distributors in the Gooch Pro Net pyramid. These distributors ultimately decided to form what became known as **Team In Focus ("TIF")**, and essentially break away from Gooch. Thus, this breakaway would create yet another tool system or pyramid, and once again, Amway was involved.

109. By this time, the Plaintiffs had either been effectively boycotted out of the tool and function business or substantially curtailed. The Plaintiffs' principals were no longer in leadership positions due to the boycotts perpetuated by Amway. A substantial number of these TIF distributors' tool and function companies, as participants in the tool and function business, would or should have been situated in the line of affiliation below Plaintiffs Nitro, West Palm and U-Can-II. In other words, **the TIF distributors were downline to the aforesaid Plaintiffs and constituted, under the Rules, the tool and function customers of these Plaintiffs.** What ultimately transpired with TIF is a classic example of the conspiracy manipulating and controlling the marketplace while interfering with ongoing and/or prospective business relationships. The conspiracy ultimately forced the TIF distributors out altogether. The way it played out speaks volumes about Amway's complicity with the kingpins in negating competition.

110. On July 25, 2000, the TIF leadership, assumingly unbeknownst to the Gooch kingpins, met in Atlanta with top executives of Amway, including **Ken McDonald, President of Quixtar North America.**

111. On knowledge and belief, during this July 25, 2000 Amway/TIF meeting, the **Director of Amway's Global Business Conduct and Rules, Bob Kerkstra,** stated that "**the corporation had been looking for a solution to the BSM challenge for 35 years.**" This would date back to the **Postma memo (Exhibit D)** and beyond. On knowledge and belief, Kerkstra and the other Amway executives expressed to TIF a desire to help TIF pull out of the Gooch pyramid without fear of retaliation; in this respect, Kerkstra stated that Amway would eliminate the fear of financial retaliation from the IBOAI Board and the Amway kingpins.

112. In order for TIF to break away from the Gooch kingpins, TIF needed a supplier for their tools. Amway wanted to be that supplier. Hence, on knowledge and belief, Amway saw

this as an opportunity to seize more control over the tool business, and the “solution” alluded to by Kerkstra was Amway becoming a dominant supplier of tools, forcing out competition.

113. TIF negotiated with Amway for the breakaway from Gooch and for Amway’s commitment to supply TIF with tools through subsidiaries or affiliates of Amway, including **Access Logistics** and **Access Business Group**. On knowledge and belief, Amway made these commitments to TIF. TIF representatives had direct and ongoing discussions with top executives at Amway. They were assured Amway would support their move which carried obvious risk of retaliation by the kingpins.

114. Having been promised the protection of Amway, TIF subsequently advised the Gooch kingpins of their intention to break away, and they did. Thus, a direct challenge to one of the kingpins’ “systems” had been undertaken with TIF’s understanding that Amway would back them.

115. After TIF broke away from the Gooch system, Amway told TIF that they were going to advise the IBOAI Board about the arrangement. Of course, the IBOAI Board members were tool competitors and either kingpins or closely aligned with the kingpins. A copy of a written communication dated September 26, 2000, is attached hereto as **Exhibit H** and made a part hereof by reference. The “**BSM Taskforce**” mentioned in this communication was a task force created by Amway to deal with BSMS. All members of the task force, as well as Amway, were tool competitors. This communication was transmitted via the U.S. Mail. The BSM Taskforce continued its work at least into the summer of 2005 and may yet be functioning.

116. The IBOAI Board and the Gooch kingpins reacted harshly. On knowledge and belief, they viewed the situation as Amway trying to take control of the tool business, and if the arrangement with TIF worked successfully, other groups of tool distributors would do the same.

117. Kingpin Billy Florence advised Amway, who advised TIF, that TIF could not identify Amway as their supplier and thus be perceived as being Amway's "accredited group" for tools and placing other tool competitors (to-wit: the kingpins) at a competitive disadvantage.

118. Thereafter, on knowledge and belief, the Amway kingpins and the IBOAI Board applied pressure on Amway who recanted, withdrawing its support of TIF, including its commitment to supply tools.

119. On knowledge and belief, **Larry Harper, Amway Director of Business Relations**, told TIF, "**We left you out in the ocean without a life raft, didn't we?**"

120. On knowledge and belief, when the TIF leadership confronted Quixtar President McDonald, he told them, "**Guys, you never had anything in writing.**" When challenged to clean up the offenses of the kingpins in the tool business, McDonald responded, "**But what would happen to the business?**" McDonald's point was, at that point in time, to undermine the kingpins and their tool businesses would inevitably lead to problems for Amway, as Amway needed the kingpins and the tool business to support and subsidize the Amway business. On knowledge and belief, kingpin Jody Victor told a TIF representative: "**You can't trust the corporation [Amway].**"

121. TIF found itself without a supplier and without Amway's support. The Gooch kingpins instructed their representative, Paul Brown, to boycott TIF and ensure that TIF could not buy tools from any tool supplier without the supplier itself being subjected to financial reprisals. Thus, the conspiracy worked to freeze TIF out of the tool business.

122. Ultimately, on April 19, 2002, after TIF attempted to implement its own tool "system" for its downline distributors and compete directly with Amway and the kingpins for BSMs, Amway terminated the Amway distributorships of the TIF leadership principals for purported "antitrust violations" in setting up their tool system. Other TIF founders thereafter

resigned their distributorships with Amway in protest. Amway then forced the dispute into its arbitration process before JAMS, and that is where it ended, shrouded in secrecy. The TIF distributors were out of Amway and out of the Amway-related tool business. Because the TIF distributors should have been Nitro, West Palm, and U-Can-II's BSMs customers, those Plaintiffs were also harmed.

- **The Aftermath of the Team In Focus Boycott: Amway Facilitates the Continuing Boycott of Plaintiffs and the Control of the Kingpins.**

123. On knowledge and belief, Amway then conspired with the Gooch kingpins and others to help them continue to control, monopolize and manipulate the tool and function business within the Gooch pyramid. The old "system" remained secure. Amway was complicit in the demise of TIF and the trouncing of competition. If anything is clear, it is that Amway is and was complicit in injuring competition within the tool business as it related to Amway and Amway distributors.

124. Efforts were then undertaken by the Gooch kingpins, with the assistance of Amway, to recruit the former TIF Diamond distributors' downline tool and function customers, most of whom were also the downline tool customers of Plaintiffs Nitro, West Palm, and U-Can-II. This was pursued in a variety of ways, including "**town hall meetings**" jointly sponsored and/or held by Amway and Pro Net. Amway instructed these distributors that they should look to Pro Net for their tools and functions.

125. One such "town hall meeting" was held in Overland Park, Kansas, on November 3, 2002. Distributors in Missouri and Kansas were actively solicited by Amway, the Gooch kingpins, and their minions to attend using the U.S. Mail and the interstate wires. Pro Net had many tool distributors (Direct pin level or above), in Missouri. **Pro Net, via Global, sold hundreds of thousands, if not millions, of tools in Missouri.** Jimmy Dunn of Springfield,

Missouri, a Pro Net Diamond and Amway kingpin in the Gooch pyramid, represented Pro Net at this meeting. **Randy Epema of Amway/Quixtar** attended and responded to questions. The following exchanges occurred:

Q. Is the tool business part of the Quixtar business?

A. (Epema) **No.**

Q. How do we find our upline leader?

A. (Epema) Work with the Corporation (Quixtar) . . . **Your leadership will come from the Pro Net line of affiliation.**

126. During the Team In Focus fallout, the Diamond principals of Plaintiffs Nitro, West Palm and U-Can-II were kept out of the loop (not informed or consulted) by Amway, even though most TIF Diamonds (and their large downline distributors), were in Plaintiffs' downline. When downline distributors of the TIF distributors (the same being downline distributors to Plaintiffs), called Amway looking for "leadership," they were referred to Pro Net Diamond distributors – not the Plaintiffs or their principals who were in many instances the next rung in the line of sponsorship. Quixtar's Epema did just that at the town hall meeting, as provided above. This is so, even though the principals of Nitro, West Palm and U-Can-II remained in active, good standing with Amway.

127. As another example, when distributors of TIF distributor (and former Amway distributor) Ron Rummell, a downline distributor of Nitro and West Palm, called Quixtar for guidance, instead of referring these distributors to Ken Stewart of Nitro and West Palm, as would be the ordinary and proper course of action, **Amway executive Larry Harper** and other Amway executives referred them to Gooch kingpin Jimmy Dunn, stating that Stewart "was not in the picture" and "inactive," when Harper knew that was not the case. Similar treatment was given the Harts of U-Can-II. Amway was perpetuating the boycott of Plaintiffs Nitro, West Palm and

U-Can-II, instigated by the kingpins with Amway's knowledge and participation. Once again, Amway helped facilitate control for the kingpins.

128. About this same time (fall 2002), Quixtar responded to the requests of the principal Diamonds of Plaintiffs Nitro, West Palm (Stewart) and U-Can-II (Harts) to be permitted to resume leadership of their downlines in the Amway business (after being boycotted out of the tool and function business), so as to enable the Plaintiffs to attempt to resume their participation in functions and thus access tool sales as well. In letters of October 25, 2002, Quixtar stated:

“[we] have determined at this time, allowing you to service the downline would not be in the best interest of the involved IBOs, Quixtar or the Quixtar business . . . Furthermore, as a result of the current dispute between you and other IBOs, **it is difficult for us to imagine how you could be qualified to bring the requisite harmony, leadership and teamwork that these groups will require.** While no one disputes your right to seek redress for your concerns, the manner in which you have chosen to do so has resulted in a very public and acrimonious airing of this dispute.

The “dispute” refers to a dispute over BSMs. The “very public and acrimonious airing of this dispute” refers to the Plaintiffs’ refusal to submit to the inherently biased Amway arbitration process with JAMS, which this Court has now found to be unenforceable. Ironically, Ken Stewart of Nitro and West Palm remains an Amway “qualified Diamond,” yet Amway has made sure he is kept out of any meaningful involvement in the training and motivation of distributors via the BSMs business. By keeping them on the sidelines of the business, Amway could ensure that Stewart and the Harts could not re-engage and compete for BSMs through their BSMs companies – the Plaintiffs herein. Again, **Amway perpetuated the boycott** and facilitated control of the tool business.

129. Similarly, when the successor in interest to Plaintiff Netco's Amway business sought legal recourse against some of the Gooch kingpins and Pro Net for violation of the tool

Rules, Amway threatened retaliation if she did not dismiss her suit, despite her protests to Amway that her disputes did not arise out of the Amway business but out of the “separate and distinct” tool business. She complied out of fear of losing her Amway distributorship. Again, Amway facilitated control and negated competition.

130. And, consistent with their heavy-handed tactics, Amway suspended the Amway bonus income of Ken Stewart’s and Brig Hart’s Quixtar distributorships, withholding millions of dollars, **because Nitro, West Palm and U-Can-II filed this very lawsuit in 2003** [such is the subject of another lawsuit pending before this Court]. Amway has worked with the kingpins to damage these Plaintiffs for years now.

- **The Kingpins Become Increasingly Concerned about Amway:**

131. In the aftermath of Amway’s foray with TIF, as above described, the kingpins became increasingly concerned about Amway seizing control of the tool business.

132. On knowledge and belief, there are communications between kingpins in which the actions of Amway are discussed. However, such have been designated by the kingpins as “confidential” in connection with other litigation and, therefore, the content may not be disclosed herein at this time.

- **Tactics of the Conspiracy:**

133. Abuses of the Rules governing BSMs were rampant within the BSMs business. Prices were “fixed.” Competition was crushed. Control was paramount. Eligible participants were forced out.

134. Once a distributor was viewed by the conspirators in an unfavorable way, as were these Plaintiffs, usually following that distributor’s assertion of a position or right Amway or the kingpins did not like, an effort to compete for BSMs, or simply a desire to take their business, the following typically transpired:

- (a) They “trashed” the grievant distributor by spreading falsehoods, for example: “He is not committed to the business”; “he is not committed to his downline”; “he won’t pay you what you’re entitled”; “he is too religious”; “he is a rogue”; “he is inactive”; “he is not interested in providing you with leadership”; and “he doesn’t care about you or the business.” This was intended to drive a wedge between the distributor and his downline. This happened to the Plaintiffs and their principals who were the targets and victims of these falsehoods. Of course, those driving the wedge were the very ones the grievant had long “edified,” per the Amway culture, so when those who had been “edified” criticized the grievant, it carried credibility.
- (b) Having undermined the grievant, they took his business. The grievant was vulnerable because of the monopolization and control over the business exercised by the kingpins with the help of Amway.
- (c) When the grievant asked Amway, a co-conspirator, for help, the grievant was turned away. Most of the time, the grievant also became subject to sanctions by Amway in the Amway business as well. Nitro, West Palm, and U-Can-II’s principals are examples.
- (d) When the grievant sought legal recourse in the courts, Amway, the IBOAI, the kingpins, and even JAMS aligned against him to force him into Amway’s biased arbitration process where he could not prevail. And they sealed it all with secrecy. In essence, the conspiracy frustrated any notion of fairness or due process.
- (e) To combat the publicity of lawsuits by the grievant, Amway touted that the suits were without merit and simply attributable to “disgruntled former distributors” and Amway touted Amway as a free enterprise affording a great opportunity to own “your own independent business.”
- (f) On knowledge and belief, to further discredit or silence critics, Amway instituted a “**web reputation initiative**,” wherein Amway sought to manipulate the internet such that “hits” on favorable websites were displayed before negative “hits” during an internet search. On knowledge and belief, this tactic also involved the use of a website under the name of “**Qrush**,” whose professed mission is to defend Amway and to crush all critics.

The effect of all of this is that Amway has worked to crush any new emerging competition in the tool business, unless the competition (*e.g.*, Gooch’s Pro Net and TIF, albeit temporarily), had Amway’s blessing. Amway could use its inherent power to do so, including sanctioning distributors in the Amway business.

135. Nitro was viewed with disfavor by the conspirators and its participation in the tool business was curtailed substantially, contrary to the Rules, and all to Nitro's proximate and direct damage.

136. West Palm likewise was viewed with disfavor by the conspirators and was boycotted out of the function business, contrary to the Rules, and all to West Palm's proximate and direct damage.

137. Netco was viewed with disfavor by the conspirators, and was boycotted from the tool business, contrary to the Rules, and all to Netco's proximate and direct damage.

138. Schmitz Associates was viewed with disfavor by the conspirators, and was boycotted out of the function business, contrary to the Rules, and all to Schmitz Associates' proximate and direct damage.

139. U-Can-II was viewed with disfavor by the conspirators, and its participation in the tool and function business was precluded by and through an effective boycott, contrary to the Rules, and all to U-Can-II's proximate and direct damage.

140. All of the Plaintiffs lost millions of dollars as a direct result of being boycotted from the tool and function business, contrary to the Rules and the kingpins' representations, with Amway's knowledge and complicity, upon which they had relied in good faith. Plaintiffs were damaged and competition was damaged. The tactics of the conspiracy continue today.

- **The Amway "Flip-Flop" on Applying its Rules so as to Benefit the Objectives of the Conspiracy:**

141. Amway knew of many, if not all, of the ongoing abuses in the tool business, and tacitly sanctioned same. Amway did nothing to stop them, and in many cases, was an active participant and perpetrator. When the Plaintiffs sought Amway's assistance in addressing these abuses, Amway professed that the tool and function business was separate and apart from the

Amway business, that Amway's rules did not govern tool disputes, and that Amway could not/would not intercede. On knowledge and belief, these positions were taken, at least in part, to aid and abet the kingpins upon their lobbying of Amway in furtherance of the conspiracy.

142. Later, the Gooch kingpins, including Childers and Foley, via U.S. Mail and interstate wires, leaned on Amway to demand that Nitro and U-Can-II submit to the biased Amway dispute resolution process. By so doing, Amway did a "flip-flop" respecting the application of the Amway rules to tool disputes. Why? Because the kingpins wanted it. Amway took a position in the legal actions brought by the Plaintiffs against the kingpins that all tool disputes were subject to Amway's biased arbitration process under the Amway rules. As such, Amway, the tool competitor, avidly sought to impose its own dispute resolution rules on other competitors in the tool business, to their inherent disadvantage.

143. On knowledge and belief, there is extensive documentation in Amway files and IBOAI files constituting or referencing communications between the kingpins and Amway and/or the IBOAI respecting the Plaintiffs and/or the Yager and/or Gooch pyramid systems, and the efforts to control and manipulate same.

144. The inherent impropriety and illegality of Amway's active engagement in tool disputes is also revealed in Amway's Antitrust Primer, **Exhibit A** hereto, provided Paul Brown by Amway's Associate General Counsel, Sharon Grider, during Pro Net's formation:

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.**

145. Similarly, in a letter to U-Can-II's legal counsel of April 24, 2000, from Amway's Associate General Counsel (attached hereto as **Exhibit I** and made a part hereof by reference), Ms. Grider wrote:

As you know, Amway has attempted for years to facilitate a resolution of the dispute between your client Brig Hart and other IBOs with whom he has worked in the past arising from his participation in business support materials. **While we remain puzzled as to why you believe that Amway has the legal responsibility to resolve these private disputes, which do not appear to be covered by our Rules of Conduct** or by Mr. Hart's Amway distributorship contract, we have tried repeatedly to help your client to work out these issues.

146. Again, Amway repeatedly told the Plaintiffs early on that Amway rules did not apply to tool or BSMs disputes and, therefore, that Amway had no responsibility to intercede.

147. But Amway did intercede, again and again, when the intercession benefited the Amway kingpins and furthered the interests of the conspiracy which, in turn, benefited Amway. And, in this very matter, Amway took the position that its Rules of Conduct applied to this dispute. This Court has rightfully noted and commented about this inconsistent position.

- **Amway's New Plan – Post-TIF:**

148. After pulling the plug on TIF in 2002, Sharon Grider, Amway's in-house legal counsel, explained to the TIF leadership Amway's view of the tool business at that time was **that only a few high pin-level distributors should make money in the tool side of the business**. Of course, this is after the few high pin-level distributors (to-wit: the kingpins), leaned on Amway to reverse its course with TIF.

149. This "**legal fiction**" (so named by TIF because the concept has not been approved by any court), as explained by Amway's in-house counsel, confirms that Amway decided to once again ally itself with the Amway kingpins and assist them in weeding out disfavored but otherwise eligible distributors like Plaintiffs from participation in the lucrative tool and function business. It means that the promises by the kingpins, with Amway's knowledge, to "eligible"

distributors that they would have equal and fair access and opportunity within the tool business was nothing but bluster. It means that one cannot compete for BSM sales to Amway distributors without the blessing of the kingpins and Amway, who absolutely control that business.

150. On knowledge and belief, the inclination of Amway to pursue and implement this new plan was reiterated in a telephone conference with Amway outside legal counsel, John Peirce, and TIF counsel and representatives on March 25, 2002. Peirce reportedly stated:

98% of the IBOs (Amway Independent Business Owners), should not participate in the income (from tools) nor should they even be aware that there is an opportunity.

151. Despite Amway's Bob Kerkstra reportedly telling TIF representatives in July 2000 that Amway "had been looking for a solution to the BSM challenge for 35 years," the tool business remained in 2002 as it did in 1983 (at the time of Rich DeVos' "**Directly Speaking**" address and the **Postma memo**) – a business controlled by the kingpins **but** with the active support and assistance of Amway. **By 2002, Amway had decided once again, in appeasement of the kingpins, that the profits of the tool and function business should vest in just the kingpins.** And in so doing, the kingpins stay happy and avidly build the Amway business to Amway's financial benefit, while lower distributors like the Plaintiffs, are misled, disadvantaged and, in the case of Plaintiffs, forced out.

152. In or about September 2004, Quixtar unilaterally implemented [forced upon] its distributor network a **new non-compete rule** which serves to negate competition in the tool business, as well as competition to the Amway business. This rule furthers the objectives of the conspiracy in holding distributors in line and restraining competition which benefits both the kingpins and Amway. The non-compete rule is unconscionable and legally unenforceable. It is one subject of another action pending before this Court arising out of the Amway business.

153. Quixtar has also recently implemented an “**Accreditation Program**” for tools. This “program” provides that if certain tool systems meet Amway’s own “criteria,” they will receive “accreditation” from Quixtar. This is yet one more way for Amway and the kingpins to control the tool business and stifle competition. It is consistent with Amway’s objective to vest control of the tool business in a select few kingpins who Amway sees fit to favor.

The Role of the Independent Business Owner’s Association International (“IBOAI”) in this Conspiracy.

154. The IBOAI, formerly the **Amway Distributor’s Association** (“ADA”), is an association of Amway distributors. The IBOAI is purportedly controlled by a board of directors consisting of 24 directors. One-half of the **IBOAI Board** is elected by those IBOAI members eligible to vote (those being at the Direct Amway pin level or higher), and the other half is elected by the IBOAI Board members themselves. In order to be eligible to serve as a director of the IBOAI Board, the member must be a qualified Amway/Quixtar Diamond distributor.

155. **The IBOAI is not representative of the vast majority of Amway distributors,** as the substantial majority of distributors are not eligible to serve as a director or even to vote and, as might be expected, the election of directors is controlled or at least influenced heavily by the Amway kingpins.

156. Amway kingpins (including, on knowledge and belief, Yager, Britt, Puryear, Florence, Victor, Setzer, Gooch, Childers, Foley and Woods), serve and/or have served as IBOAI directors. Virtually all of the other IBOAI directors are Amway distributors situated in the line of sponsorship below these kingpins, and in accordance with the Amway culture and training, are required to support and edify the kingpins. Thus, on knowledge and belief, **the Amway kingpins control and direct the IBOAI for all practical purposes.**

157. One published purpose of the IBOAI Board is to provide input to Amway. The Amway kingpins exercise influence over Amway in the conduct of its business under the guise that such influence is being exercised on behalf of the vast number of Amway distributors, when the interests of the vast number of distributors are in actuality not being protected at all. On knowledge and belief, the IBOAI is but one more mechanism for the kingpins to attempt to get leverage on Amway. And, **respecting the conspiratorial acts of Amway and the kingpins, the IBOAI provides convenient “cover.”**

158. On knowledge and belief, the conspiracy to control, monopolize and manipulate the tool business involved at times Amway’s conspiring with the IBOAI or members of the IBOAI Board or their agents and representatives.

159. The IBOAI Board was involved to some extent in the recommendation for a dispute resolution procedure in late 1997 for disputes arising out of the Amway business which would involve the IBOAI Board directly and serve to cloak the airing of all such disputes with confidentiality. This process was designed to afford Amway and the IBOAI Board a means to exercise influence and control over the process without regard to any notion of fairness, independence and/or due process. Importantly, the IBOAI Board did not approve the arbitrator (**JAMS/Endispute, Inc.**), nor any draft of the specific provisions which would govern the dispute resolution process.

160. Once the dispute resolution process became effective January 1, 1998, Amway kingpins, individually and as members of the IBOAI Board, thereafter applied pressure on Amway to inject the dispute resolution process into BSMs disputes, despite the fact that (1) Amway itself is and was a BSMs competitor; and (2) the Amway dispute resolution process was never intended to govern or apply to BSMs disputes. Missouri federal and state courts have so ruled. This pressure followed and became necessary when the “voluntary” Business Support

Materials Arbitration Agreement (“**BSMAA**”) was not accepted or signed by distributors as the kingpins and Amway had hoped.

161. As but one example of this pressure, attached hereto as **Exhibit J** is a communication sent by kingpin Bill Childers to Larry Harper, Amway Director of Business Relations, on August 26, 2002. Mr. Childers states therein:

Larry, I just wanted to follow up on our conversation from Thursday, August 22, and reiterate how important it is that **Quixtar takes action to force Ken Stewart** (as well as Hart and Schmitz) to fulfill his obligation as a Quixtar IBO to conciliate his disputes with us. (emphasis added)

Ken Stewart is the principal of Plaintiffs Nitro and West Palm. Hart is a principal of Plaintiff U-Can-II. Schmitz is a principal of Plaintiffs Netco and Schmitz Associates. Childers is and was an Amway kingpin in the Yager/Gooch lines of sponsorship/pyramids. Childers is and was an Amway distributor upline to each of the Plaintiffs in the tool business. Childers, at the time that he sent this communication to Amway executive Larry Harper, was an active member of the IBOAI Board and chair of the **IBOAI Hearing and Disputes Committee**. He was and is also a defendant in these actions mentioned in his communication. The disputes alluded to were tool disputes and not disputes arising out of the separate Amway business. Childers is the principal of a company competing in the tool business. Amway is a tool competitor by admission. As such, one competitor (Childers) was leaning on another (Amway) to bring leverage on yet others in order to secure advantage. The conflicts here are obvious.

162. The Amway dispute resolution process, which was never intended to govern tool disputes, is inherently flawed and subject to the control, direction and bias of the Amway kingpins and their influence and control of Amway.

163. The IBOAI Board’s intervention into tool disputes is further illustrated by dealings with Brig Hart, a principal of Plaintiff U-Can-II. Brig Hart in 2000 served as a member

of the Board of Regents for Oral Roberts University. An offer was made through Marilyn Hickey, another member of the Oral Roberts University Board of Regents, from an IBOAI Board representative that if Brig Hart would sign a letter addressed to the President of the IBOAI in the form attached hereto as **Exhibit K**, the IBOAI would cause \$30 million to be paid to Oral Roberts University. Billy Florence, then President of the IBOAI, is a distributor under the Yager Amway line of sponsorship and participated at that time in the tool business within the Yager pyramid. The disputes of concern were tool disputes. On knowledge and belief, the letter to the IBOAI (**Exhibit K**), was drafted by kingpins Billy Florence and Jody Victor, another IBOAI Board member and an Amway Diamond in the Yager pyramid. Florence and Victor are and were kingpins under Yager.

164. The aforesaid overture to Marilyn Hickey, which was related to Brig Hart, was preceded on March 10, 1999, by a communication from Hal Gooch on behalf of the Amway Distributors' Association (later known as the IBOAI), a copy thereof being attached hereto as **Exhibit L**.

165. Previously, representatives of the ADA/IBOAI Board and Amway intervened in tool disputes involving U-Can-II when U-Can-II was in the Yager pyramid (e.g., D'Amico), and later when U-Can-II was forced into the Gooch pyramid. This active intervention amply demonstrates the IBOAI's active role in pursuing and/or addressing tool disputes, and seeking to control that process under the direction of the Amway kingpins and their agents. Keep in mind that **every IBOAI Board member is a separate tool competitor**.

The Role of JAMS/Endispute in the Conspiracy.

166. In furtherance of its conspiracy to control the tool business, Amway unilaterally adopted – and implemented without the express agreement of a vast majority of Amway/Quixtar

distributors – a **mandatory** arbitration procedure in its dispute resolution process. The Amway Arbitration Provision requires arbitration of all disputes that are not resolved through its conciliation and mediation process (the “Amway Arbitration Provision”). These mandatory arbitration rules were specifically designed to afford Amway and its co-conspirators a means to exercise influence and control over the process. Through its one-sided rules, Amway is able to influence the outcome of conciliations and arbitrations to reach its desired result. At the same time, by requiring confidentiality of disputes, and the results of arbitrations, Amway can conceal evidence unfavorable to it and its favored kingpins.

167. **JAMS/Endispute, Inc.** (“JAMS”), is a private, **for-profit** Delaware corporation, and national dispute resolution company. At least until approximately September 2005, JAMS was the sole entity authorized to be the administrator of all arbitrations under the Amway Arbitration Provision. In or about September 2005, Amway purportedly amended the Amway Arbitration Provision to permit arbitration before other dispute resolution companies, but only in the event JAMS is “unable or unwilling” to serve as the administrator. For all practical purposes, JAMS remains the sole administrator of all Amway-related arbitrations.

168. **JAMS is anything but a neutral third party.** It is under Amway’s thumb and is a participant, be it wittingly or unwittingly, in the conspiracy. The JAMS arbitrators, as found by this Court, were “screened” first and then subjected to at least “manipulation” by the kingpins and Amway, who “trained” them.

169. Under the Amway Arbitration Provision, the only persons eligible to serve as a decisionmaker are those JAMS arbitrators who have been trained by Amway and the IBOAI Board. Prior to the training, the arbitrator candidates were screened by Amway and the kingpins. JAMS was selected by Amway because it would allow Amway to screen and “train” its arbitrators. This process enabled the shocking situation where an IBOAI Board member and

kingpin participated in training and selecting the JAMS arbitrator in the very action in Texas where he and his business were named defendants. This was the arbitrator who ultimately decided the merits of that case and found against the complaining distributors, awarding \$6 million in attorneys' fees to Amway and other defendants, forcing some, if not all, of the distributors into bankruptcy.

170. As this Court stated in denying Amway's motion to compel arbitration, those training sessions passed beyond merely "basic education" on the Amway business, and extended into "**subtle manipulation**" on substantive legal issues. Those substantive legal issues included Amway's purported compliance with applicable antitrust and pyramid laws. Incredibly, Amway represented that it was in compliance with these laws despite the fact that it was, at that time, facing antitrust claims in litigation.

171. Amway and the IBOAI also manipulated the candidates to, in the words of this Court, "produce a very favorable view of Defendants," such as Amway's supposedly "benevolent" culture.

172. Amway's confidentiality provision in the process plays a key role in its conspiracy. The confidentiality provision both facilitates the conspiracy and evidences Amway's influence over JAMS. Parties involved in Amway arbitration are prohibited from disclosing the substance and basis of their claim, the evidence presented, and the terms and amounts of any arbitration award. As a result of this provision, parties are prevented from discovering facts that would demonstrate biased decision making under the Amway Arbitration Provision. And, despite the existence of this confidentiality provision, JAMS discloses to Amway information about arbitrations between IBOs, even when Amway is not a party to the arbitration proceedings, thus showing that Amway has JAMS under its thumb.

173. Amway's rule giving it the right to intervene in any arbitration further allows Amway to exert its influence over the arbitration process.

174. JAMS has a financial incentive to favor Amway. Unlike the **American Arbitration Association** ("AAA"), and its clientele, JAMS has a contractual relationship with Amway to administer the Amway arbitration program. Also unlike the AAA, which is a *not-for-profit* organization, JAMS is a for-profit corporation in which the neutrals' livelihood is dependent exclusively on JAMS and, by extension, Amway. Thus, they have a financial stake in pleasing its "national program" customer.

175. As further evidence of Amway's ability to unduly influence JAMS arbitrations, until late 2003, Amway and the IBOAI Board voted on whether to retain an arbitrator on its "roster of neutrals." This vote was required to be unanimous. This rule, in effect, gave Amway veto power over any arbitrator who does not decide a dispute in the company's favor – even if the IBOAI Board wishes to retain the arbitrator. Of course, it gave the kingpins the same opportunity through the IBOAI. As a result, the arbitrators, knowing that they can be stricken from Amway's "roster of neutrals" if they fail to toe the company line, necessarily have a financial incentive to rule in Amway's favor.

176. After the Honorable J. Miles Sweeney, Circuit Court of Greene County, Missouri, declared the "retention vote" to be unconscionable, Amway eliminated this rule. However, even under the current rule, the hand-selected arbitrators serve a five-year term. There is little doubt that an arbitrator who does not rule in Amway's favor would not be appointed for a successive term. Thus, both JAMS and its arbitrators have a financial incentive not to "bite the hand that feeds" them. As Judge Sweeney adeptly pointed out, Amway claims the "right" in its rules to change the rules at any time. Amway could easily reinstate the previous rules. As such, the Amway rules are illusory.

177. JAMS' lack of neutrality is also apparent from the fact that it assisted Amway in drafting or suggesting substantive terms of the Amway arbitration rules, notwithstanding the fact that JAMS is the very entity that is responsible for administering those rules, and its neutrals will be called upon to construe those rules. This fact ensures that rules will be construed favorably to Amway.

178. JAMS also aided Amway and its co-conspirators in their efforts to compel these Plaintiffs to arbitrate. Contrary to JAMS' own ethical rules which prohibit it from being a witness in litigation, JAMS provided – **at Amway's request** – affidavits for use in the three state court actions brought by these Plaintiffs against Amway's co-conspirators, wherein JAMS attempted to persuade the courts that its arbitration program was fair and impartial. These affidavits were used to compel arbitration. It is difficult to imagine the AAA ever siding with one party over another in a court action to determine whether arbitration is appropriate. JAMS' conduct is evidence of its bias in favor of Amway.

179. Still further, JAMS has turned a blind eye to evidence that the Amway arbitration program is a sham. The incestuous relationship between Amway and the IBOAI Board was a topic of discussion at a July 2002 meeting between Amway and JAMS (the same currently being subject to a confidentiality designation by Defendants). Despite these serious doubts about the fairness of the Amway program, JAMS took no action.

180. Amway's influence over the JAMS arbitration process also extends to the actual arbitration proceedings themselves. Specifically, Amway and its outside litigation counsel routinely communicate with JAMS, **ex parte**, respecting pending arbitrations, including cases in which it is not even a party, violating Amway's own confidentiality provisions. Indeed, Amway and/or its attorneys engaged in over 45 telephone calls with JAMS respecting this lawsuit in late

2003 alone. Amway's **ex parte** communications included pressuring JAMS to change adverse decisions in pending arbitrations.

181. Perhaps the most telling admission that Amway has the power to control JAMS arbitration is a statement made by IBOAI Board President Bob Zeander at the March 1998 training session. Amway has heretofore designated the DVD containing the statement as "confidential," and such remains under seal at this time.

182. As designed and implemented, the Amway/Quixtar arbitration process does not and has not afforded any semblance of due process. Missouri courts – state and federal – have now conclusively determined that the Amway arbitration process is/was "unconscionable."

183. As implemented, JAMS' involvement in these disputes has well-served the unlawful purposes and agendas of Amway and the kingpins. JAMS has been used as an active instrumentality of this unlawful conspiracy. Hence, JAMS' role, and that of Defendants in interacting with JAMS, heretofore remains relevant and material to Plaintiffs' claims in this action.

The BSMs Marketplace.

184. Tools and functions, which support and relate solely to the Amway business (and not other businesses or industries), constitute a separate and distinct product which is cognizable as a "**product market**" within the context of the antitrust laws. In substance, a distributor in this product market can or could reasonably and practically only purchase tools and functions from its upline distributors. Generic motivational products available from other sources are not interchangeable with the tapes and other motivational materials produced or controlled by the kingpins, which primarily consist of tapes of the kingpins' speeches at functions. Because distributors are taught to edify their upline and not seek training or motivation except from their upline, generic tapes, or even tapes of kingpins in other pyramids are not valued. Defendants and

their co-conspirators have a dominant or monopoly position in the Amway-related BSMs market in that they control virtually 100% of the market.

185. The Yager pyramid (its multi-level network of tool and/or function distributors who support and promote the Amway business nationwide), constitutes or constituted 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 it can only purchase from an upline distributor and can only sell to downline distributors. In substance, a tool and/or function distributor can or could reasonably and practically only purchase tools and functions from its upline distributors. Distributors in the Yager pyramid could not obtain tapes of the speeches made by kingpins in their line of sponsorship from any source other than through the distributor’s upline.

186. The Gooch pyramid (its multi-level network of tool and/or function distributors who support and promote the Amway business), constitutes or constituted 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 it can only purchase from an upline distributor and can only sell to downline distributors. In substance, a tool and/or function distributor can or could reasonably and practically only purchase tools and functions from its upline distributors. Distributors in the Gooch pyramid could not obtain tapes of the speeches made by kingpins in their line of sponsorship from any source other than through the distributor’s upline.

187. Plaintiffs, by reason of direction, instruction and/or coercion of the kingpins in the Yager/Gooch line of sponsorship/affiliation, were situated or placed within the Yager pyramid until approximately February 1998, and thereafter within the Gooch pyramid until boycotted out or, in Nitro’s case, until its tool business was arbitrarily limited by the Gooch kingpins.

188. Without Amway's participation and support, the kingpins could not have attained the degree of control over the Plaintiffs and the marketplace that they ultimately did, all to the Plaintiffs' and many other distributors' substantial detriment. The marketplace and competition therein have been injured in a manner and extent prohibited by antitrust laws.

189. Plaintiffs incorporate in each and every count hereinafter set forth the allegations contained in ¶¶ 1 through 189 herein as though fully set forth below. The Amway-related BSMs business is either a free market system in which all of the participants should have been able to deal freely with anyone or, alternatively, it was a structured market system set up by the kingpins and Amway in which each participant had cognizable business expectancies which consisted of each participant dealing solely with his upline and downline without interference from others. Regardless, Plaintiffs had valid business relationships, business expectancies, and prospective business advantages with their respective downline distributors.

Liability

COUNT I **Antitrust Violation – Group Boycott**

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

190. Defendants and their co-conspirators had an agreement or mutual understanding to restrain trade in the Amway-related BSMs business, and/or created or attempted to create a monopoly in the Amway-related BSMs business in violation of 15 U.S.C. §§ 1 and 2, by refusing to deal with Plaintiffs.

191. Defendants and their co-conspirators are sellers of BSMs respecting the related Amway business, and together they have a dominant or monopoly position in that market. Because the products are unique, Plaintiffs must be able to purchase BSMs from Defendants and/or their co-conspirators and/or their suppliers in order to compete effectively in the Amway-related BSMs business.

192. Defendants and the kingpin co-conspirators were competitors of Plaintiffs in the Amway-related BSMs business. Plaintiffs endeavored to compete against the conspirators, including by acquiring BSMs through either alternative sources or by production of their own BSMs. By engaging in these pro-competitive actions, the Plaintiffs posed a threat to the conspirators' market share and profits. In order to protect their market share and prevent dilution of their profits, the conspirators acted in concert to exclude Plaintiffs.

193. The tactics described above utilized by Defendants and their co-conspirators constituted a "concerted refusal to deal" with Plaintiffs, more commonly called a **group boycott**, which is **per se illegal** under §§ 1 and 2 of the Sherman Act. These tactics, as discussed to some extent above (*e.g.*, ¶¶ 88, 126-128), included but were not necessarily limited to, the following:

- (a) "**blackballing**" the principals of Plaintiffs from speaking at and/or attending functions;
- (b) refusing to edit and/or sell and/or advertise any tapes featuring the principals of the Plaintiffs;
- (c) isolating the Plaintiffs from their downline distributors by undermining and/or disparaging the Plaintiffs and/or their principals;
- (d) falsely stating that each Plaintiff was "inactive," not interested in or willing to take an active leadership role in the training and motivation of their related downline distributors, and that Plaintiffs and/or their principals were not capable of providing effective leadership in training and motivating their downline;
- (e) persuading or coercing potential BSMs suppliers of Plaintiffs to refuse to sell BSMs to them; and

- (f) persuading or coercing customers of the Plaintiffs to refuse to deal with or purchase tools and functions from them, which tools and functions were essential to maintain a viable network of distribution.

The conspirators used these same tactics against other BSMs distributors, and the effect of all of this was to injure or eliminate competition in the Amway-related BSMs business.

194. Defendants' **group boycott** of Plaintiffs was designed to injure the Plaintiffs as competitors of the conspirators and was not the result of an independent business judgment.

195. The refusal to deal occurred in or affected interstate commerce.

196. As a direct result of the aforesaid tactics and refusal to deal, Plaintiffs and each of them have sustained damages in the millions of dollars to their business and property.

COUNT II
Antitrust Violation – Allocation of Customers

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

197. Defendants and their co-conspirators had an agreement or mutual understanding to restrain trade in the Amway-related BSMs business, and/or created or attempted to create a monopoly in the Amway-related BSMs business in violation of 15 U.S.C. § 1, by agreeing to allocate customers.

198. The tactics described above utilized by the Defendants constitute agreements for the illegal allocation of customers and a restraint of trade, a per se violation of 15 U.S.C. § 1. Such allocation of customers includes as examples, but is not limited to, what is discussed above as the D'Amico allocation of customers, the Gooch "breakaway" from Yager, the dealings of Pro Net, and elimination of Team In Focus. The effect of these tactics was to harm competition and Plaintiffs in the Amway-related BSMs business.

199. The agreements to allocate customers occurred in or affected interstate commerce.

200. As a direct result of the aforesaid actions, Plaintiffs and each of them have sustained damages in the millions of dollars to their business and property.

COUNT III
Antitrust Violation – Price-Fixing

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

201. Defendants and their co-conspirators had an agreement or mutual understanding to restrain trade, fix prices in the Amway-related BSMs business, and/or created or attempted to create a monopoly in the tool and function business in violation of 15 U.S.C. §§ 1 and 2, by refusing to deal with Plaintiffs, as direct purchasers from those sellers, were damaged in their business and property by paying overcharges on those purchases.

202. As a direct and proximate result of the price-fixing by the co-conspirators of Defendants, and Defendants' actions in furtherance of that price-fixing agreement, Plaintiffs and each of them have been injured in their business and property, within the meaning of 15 U.S.C. §§ 1 and 2.

COUNT IV
Antitrust Violation – Conspiracy to Monopolize

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

203. Plaintiffs replead and incorporate herein by reference ¶¶ 190 through 202 above.

204. Defendants and their co-conspirators had an agreement or mutual understanding to obtain or maintain monopoly power in the Amway-related BSMs business within the Yager pyramid, as well as the Gooch pyramid, in violation of 15 U.S.C. § 2.

205. Defendants knowingly, voluntarily and intentionally became a party to that agreement or mutual understanding.

206. Defendants and their co-conspirators specifically intended that the parties to the agreement would obtain or maintain monopoly power in the Amway-related BSMs business, the same being the systems within the Yager pyramid and then later in the Gooch pyramid.

207. Defendants committed overt acts in furtherance of the conspiracy, which included the elimination of Plaintiffs from the Amway-related BSMs business in response to, and retaliation for, Plaintiffs' attempts to compete with them and otherwise introduce competition into the system, including but not limited to the acts in ¶¶ 72, 76, 82, 95-96, 98-106, 125-130, as described above.

208. As a direct result of this conspiracy to monopolize, Plaintiffs and each of them have sustained damages in the millions of dollars to their business and property.

COUNT V
Tortious Interference

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

209. Plaintiffs replead and incorporate by reference ¶¶ 190 through 208, and 216 through 253 herein.

210. Each of the Plaintiffs enjoyed and were the beneficiaries of valid business relationships, business expectancies, and prospective business advantages with their respective downline distributors within their line of Amway-related sponsorship/affiliation. Plaintiffs and each of them reasonably expected that their related downline distributors would be a source of business or serve as an exclusive customer base for their Amway-related BSMs business.

211. Defendants had knowledge of these business relationships, expectancies, and advantages enjoyed by each of the Plaintiffs with their related downline distributors.

212. Defendants, as active participants in the aforesaid conspiracy, intentionally interfered with the well-established business relationships, expectancies and advantages of the Plaintiffs, using improper means, causing the breach or impairment of those relationships, advantages and expectancies. The improper means included: anti-competitive acts, including group boycott, allocation of customers, price-fixing and monopolization; racketeering; a biased and inherently unfair dispute resolution process that deprived Plaintiffs of any sense of fairness or due process; injurious falsehoods; misrepresentation; coercion, threats and intimidation; civil conspiracy; and unfair competition.

213. Defendants were without justification in their intentional interference causing the loss or impairment of the Plaintiffs' business relationships, advantages, and expectancies with their related downline distributors/BSMs customers.

214. As a direct and proximate result of the Defendants' intentional interference, Plaintiffs and each of them sustained damages in the millions of dollars to their business and property.

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

COUNT VI
Injurious Falsehood

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

216. In the course of the conspiracy, the Defendants represented to their related downline distributors that each Plaintiff was "inactive" and not interested or willing to take an

active leadership role in the training and motivation of their related downline distributors, which training and motivation, of course, was accomplished via tools and functions in the Amway-related BSMs business. Defendants further represented to others that the Plaintiffs and/or their principals were not capable of providing effective leadership in training and motivating their downline by reason of one or more falsehoods, as enumerated in ¶¶ 128 and 134 above.

217. Stated differently, having participated in forcing the Plaintiffs out of the BSMs business involuntarily, the Defendants then tried to “spin” their disengagement in the training and motivation process (the BSMs business) as the voluntary act or choice of each Plaintiff, and disparaged them again and again.

218. The absence of Plaintiffs’ leadership in the training and motivation process prompted inquiries to Amway by the Plaintiffs’ BSMs customers.

219. Defendants’ representations that Plaintiffs were “inactive,” as well as related statements that this was due to the Plaintiffs’ own volition, and that Plaintiffs were incapable of providing capable leadership in the Amway-related BSMs business, are and were patently false, defamatory and injurious, and Defendants knew them to be such at the time, or at the very least, made such falsehoods in reckless disregard to their truth or falsity. These injurious falsehoods were of and concerning each Plaintiff, its trade, and its inability to conduct trade within the Amway-related BSMs business.

220. Defendants were at fault in publishing these injurious falsehoods to others, and it was reasonably foreseeable that others would rely on the falsehoods and consider them injurious to Plaintiffs.

221. As a direct result of the Defendants’ acts and falsehoods in this respect, Plaintiffs and each of them have been damaged, suffering pecuniary loss, and their damages are millions of dollars.

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

COUNT VII
Civil Conspiracy

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

223. Plaintiffs replead and additionally incorporate herein ¶¶ 190 through 222 herein.

224. Defendants had an agreement or meeting of the minds with the kingpins to commit unlawful acts, to-wit: (1) to monopolize and restrain trade within the BSMs business in violation of antitrust laws; (2) to fix prices in violation of the antitrust laws; (3) to refuse to deal with Plaintiffs or boycott Plaintiffs in violation of the antitrust laws; (4) to allocate customers in violation of the antitrust laws; (5) to misrepresent the opportunities, operation and dealings within the Amway-related BSMs business; (6) to make or spread injurious falsehoods; (7) to engage in racketeering; (8) to set up a “sham” dispute resolution process; and (9) to tortiously interfere with the Plaintiffs’ business relationships, expectancies, and prospective business advantages relating to their BSMs customers.

225. In furtherance of this conspiracy, Defendants’ co-conspirators, with the aid and/or active participation of Defendants, engaged in unlawful activities, including: anti-competitive acts, including price-fixing, group boycott, allocation of customers and monopolization; racketeering; promoting and implementing a biased and inherently unfair dispute resolution process that deprived Plaintiffs of any sense of fairness or due process; misrepresentation; injurious falsehoods; coercion, threats and intimidation; tortuous interference; civil conspiracy; and unfair competition.

226. As a direct result of the Defendants' acts and omissions in this respect, Plaintiffs have been damaged, and their damages are millions of dollars.

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

COUNT VIII
Violation of Title 18, U.S.C. § 1962

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

228. Plaintiffs replead and additionally incorporate herein by reference ¶¶ 190 through 227 above.

229. Amway is a racketeer.

230. As used in this Count VIII, and all pleadings precedent and subsequent hereto, the following terms shall have the following meanings:

- (a) "Act" or "RICO" shall mean the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961 through 1968, inclusive;
- (b) "Pattern of racketeering activity" shall have the meaning ascribed to that term in subsection 5 of § 1961, Title 18, United States Code;
- (c) "Person" shall have the meaning ascribed to that term in subsection 3 of § 1961, Title 18, United States Code;
- (d) "Racketeering activity" shall have the meaning ascribed to that term in subsection 1 of § 1961, Title 18, United States Code; and
- (e) "Enterprise" shall have the meaning ascribed to that term in subsection 4 of § 1961, Title 18, United States Code.

231. At all relevant times, Plaintiffs were "persons" within the meaning of RICO, 18 U.S.C. §§ 1961(3) and 1964(c).

232. At all relevant times, Defendants were “persons” within the meaning of RICO, 18 U.S.C. § 1961(3).

233. The “Enterprise,” as that term is defined in 18 U.S.C. § 1961(4), is an association in-fact enterprise comprised of Defendants Amway, Alticor and Quixtar; non-parties IBOAI; and all of those eligible BSMs distributors/participants in the Yager pyramid, as discussed, for example, in ¶¶ 24 through 35 of this First-Amended Complaint, and includes but it not limited to, Jody Victor; Billy Florence; Dexter Yager; InterNet Services; D&B Enterprises; Rick Setzer; Setzer International, Inc.; Harold Gooch, Jr.; Gooch Support Systems, Inc.; Gooch Enterprises, Inc.; Billy S. Childers; TNT, Inc.; B&B International, Inc.; Thomas D. (“Tim”) Foley; Foley & Company, Inc.; Steve Woods; G.F.I. International, Inc.; Parker E. Grabill; Grabill Enterprises, Inc.; Jimmy V. Dunn; Jimmy V. Dunn & Associates, Inc.; C&C Convention Services, LLC; Jim Evans; J.L. Evans & Associates; Pro Net Global Association; Don Brindley; Robert A. Blanchard; Global Support Services, Inc.; and Pro Net Global I, Inc.

234. The members of the **BSMs Enterprise** share a **common legitimate purpose** of fostering, promoting, maintaining and perpetuating a system of training and motivating Amway distributors through the sale of tools, as well as through the organization, marketing, sponsorship and presentation of seminars, rallies and major functions. This enterprise was promoted by the kingpins with the active participation of Defendants and the IBOAI. Defendants and the BSMs business have a symbiotic relationship. Specifically, the more people who are recruited to become Amway/Quixtar distributors, the greater the market becomes for the sale by the kingpins of motivational tools and seminars. Likewise, Defendants benefit from and are dependent upon the BSMs business for their own success and perpetuation. Defendants’ survival depends upon the millions of distributors recruited by the kingpins to sell Amway/Quixtar products and services.

235. Certain members of the BSMs Enterprise (*i.e.*, the kingpins, Defendants and certain members of the IBOAI), share a common illegitimate purpose of profiting financially from their illegal activities. Specifically, the kingpins and Defendants sought to ensure that the kingpins acquired and maintained control over the extremely profitable BSMs business in the Yager line of sponsorship, including Plaintiffs' BSMs businesses.

236. The BSMs Enterprise exhibits continuity of structure and personnel. It is designed to provide a system for the sale and resale of BSMs to distributors within the Yager line of affiliation and/or line of sponsorship. At the heart of the BSMs Enterprise is a pyramidal structure with Dexter Yager and his BSMs corporations (InterNet Services and D&B Enterprises) at the apex. In descending order, the pyramid includes the BSMs corporations owned and controlled, respectively, by Setzer,⁴ Gooch,⁵ and Childers,⁶ who are all "upline" to Plaintiffs. The Plaintiffs each have "downline" legs within the Yager line of affiliation and/or line of sponsorship, which include the BSMs corporations of non-party co-conspirators Thomas D. ("Tim") Foley (*i.e.*, Foley & Company, Inc.); Steve Woods (*i.e.*, G.F.I. International, Inc.); Parker E. Grabill (*i.e.*, Grabill Enterprises, Inc.); Jimmy V. Dunn (*i.e.*, Jimmy V. Dunn & Associates, Inc. and C&C Convention Services, LLC); and Jim Evans (*i.e.*, J.L. Evans & Associates).

237. Defendants Amway, Alticor and Quixtar are essential to the structure of the BSMs Enterprise. Defendants' role within the Enterprise is to give active aid and assistance to the kingpins in order to ensure the perpetuation of the Enterprise. By requiring Amway/Quixtar distributors to train and motivate their downline, Defendants ensure the continued vitality of the BSMs business in which distributors are strongly encouraged to purchase tools and attend

⁴ *i.e.*, Setzer International, Inc.

⁵ *i.e.*, Gooch Support Systems, Inc. and Gooch Enterprises, Inc.

⁶ *i.e.*, TNT, Inc. and B&B International, Inc.

functions. More importantly, Defendants actively aided the kingpins and participated in forming Pro Net and allocating customers. And, Defendants designed sham dispute resolution procedures to prevent discovery of the abuses of BSMs business.

238. The structure of the BSMs Enterprise also includes several corporate entities used by Defendants and the kingpins to facilitate their racketeering activities. Pro Net was formed in early 1998 by Gooch, Childers, Foley and Woods as a vehicle through which they could acquire and maintain control over the BSMs business of their downline distributors, including these Plaintiffs. Pro Net was formed as a trade association of Amway distributors within the Gooch line of sponsorship. Amway distributors were enticed or coerced into becoming members of Pro Net, thereby relinquishing their rights in their independently produced BSMs. Although Pro Net was a not-for-profit association, monies from the sale of BSMs flowed to Gooch, Childers, Foley and Woods, as well as to Dexter Yager – from whom distributors in the Gooch line of sponsorship previously obtained their BSMS – to ensure that Yager would not make sales of BSMs to distributors in Gooch’s line of sponsorship.

239. Global is another of the vehicles used by Gooch, Childers, Foley and Woods to facilitate their racketeering activities in the BSMs Enterprise. Among other things, Gooch, Childers, Foley and Woods directed Global’s President and Secretary, Paul Brown, to coerce any unwilling Amway distributors in the Gooch line of sponsorship into joining Pro Net under threats that their BSMs business would be cut off. The kingpins, in fact, cut off the BSMs business of Plaintiffs and others who refused to join Pro Net or who were viewed with disfavor by the kingpins.

240. Pro Net Global I, Inc. (“Pro Net Profit”) is another vehicle used by Gooch, Childers, Foley and Woods to facilitate their racketeering activities in the BSMs Enterprise. Gooch, Childers, Foley, and Woods have served as members of Pro Net Profit’s Board of

Directors and/or “steering committee.” Upon information and belief, monies unlawfully generated through Pro Net (a non-profit corporation) were funneled to Pro Net Profit, where they could be distributed to Gooch, Childers, Foley, Woods, Yager and others.

241. The IBOAI also plays a role within the BSMs Enterprise’s structure. The IBOAI is touted as representing the interests of all Amway/Quixtar distributors but is, in fact, designed to ensure that the most powerful and influential kingpins in the Amway/Quixtar and BSMs industries (or persons they control) sit on and maintain control of the Board. This is accomplished through a self-perpetuating Board. Half of the Board members are elected by the *existing* Board members – from a slate nominated by Defendants. The other half of the Board is elected by those distributors entitled to vote. Only “Platinum” (formerly known as “Direct”) are eligible to vote for members of the Board. But only a small percentage of all distributors ever attain Direct or Platinum pin level. In addition, kingpins Gooch, Childers, Foley and Woods currently serve or have served on the IBOAI Board of Directors. Most, if not all, of the current IBOAI Board members are within Dexter Yager’s downline.

242. The IBOAI plays a necessary role in the Enterprise. Certain members of the IBOAI, including Jody Victor and Billy Florence, control Amway/Quixtar’s sham dispute resolution procedure, including presiding over the conciliation and mediation processes, and training the arbitrators who may hear disputes. In addition, the IBOAI lends the impression of legitimacy to Defendants’ conduct. Defendants point to the IBOAI’s approval of the 1998 amendment to the Rules of Conduct to require mandatory arbitration as demonstrating that it had the approval of Amway/Quixtar distributors.

243. Since at least 1986, the members of the BSMs Enterprise have established and maintained a course of dealing in which they operate under rules promulgated by the kingpins that are similar to the Amway/Quixtar line of sponsorship rule with its attendant pyramidal

hierarchy. These BSMs rules provide a system that dictates the rights and obligations of each upline and downline distributor at each successive Amway/Quixtar pin level with respect to the sale of BSMs and distribution of profits therefrom. The BSMs Enterprises has a system of authority in which non-parties Yager, Setzer, Gooch and Childers, who are at the top of the pyramidal hierarchy, control the flow of tools to or around Plaintiffs and other downline distributors; dictate the price at which Plaintiffs and others sell tools to their downline; and dictate the amounts of monies that they would distribute to Plaintiffs and others for the sale of tools and for their share of the functions business. Gooch, Childers, Foley, Woods and Setzer, by virtue of their power within the Enterprises, dictate to Plaintiffs' downline the persons from whom Plaintiffs' downline could purchase tools, and which functions Plaintiffs' downline would attend. The BSMs distribution system also provides for payment of a "kickback" to Yager in exchange for his agreement not to interfere with Gooch, Childers, Foley and Woods' sale of BSMs to distributors in the Gooch line of affiliation and/or line of sponsorship.

244. The BSMs Enterprise has an ascertainable structure distinct from Defendants' pattern of racketeering activities in that the BSMs Enterprise engages in the legitimate sale of products and services, notwithstanding the unlawful activities of the kingpins and Defendants.

245. Defendants have engaged in racketeering activities in respect to the BSMs Enterprise consisting of the actions more particularly set forth hereinabove, including but not limited to, those set forth in ¶¶ 72, 73, 82, 95-96, 98-101, 105-107, 110-120, 122, 124-130, 134, 141, 143, 148-153, 166, 169-173 and 175-177, which said actions involve the use of the interstate telephone and the U.S. mails on a number of occasions, the exact frequency of which is unknown to the Plaintiffs, but which is known to have been made on more than two occasions for each the telephone and the mails, and the concurrent concealment of the Enterprise's activities, and which conduct constitutes: (a) mail fraud in violation of the provisions of § 1341,

Title 18, United States Code; and (b) wire fraud in violation of the provisions of § 1343, Title 18, United States Code.

246. Defendants have also conspired with the kingpins to establish a BSMs distribution system that enabled Gooch, Childers, Foley and Woods to obtain control over the independently produced BSMs businesses of Plaintiffs and other downline distributors through the kingpins' acts as set forth in detail throughout this First-Amended Complaint. The acts of the kingpins also involve the use of the interstate telephone and the U.S. Mails on a number of occasions, the exact frequency of which is unknown to the Plaintiffs, but which is known to have been made on more than two occasions for each the telephone and the mails, the concurrent concealment of the Enterprise's activities and which conduct constitutes: (a) mail fraud in violation of the provisions of § 1341, Title 18, United States Code; and (b) wire fraud in violation of the provisions of § 1343, Title 18, United States Code.

247. The Defendants' and the kingpins' activities constitute an ongoing pattern of racketeering involving numerous criminal acts, as alleged above, committed to further the scheme and to conceal it.

248. These activities, by their nature, project into the future, present a threat of repetition, and are continuing in nature.

249. The racketeering activities have had a direct impact on interstate commerce.

250. Defendants, by and through their representatives at all times acting within the scope and authority of their employment with Defendants, conducted and participated in the affairs of the Enterprise through a pattern of racketeering activities consisting of the racketeering activities more fully set forth hereinabove, all in violation of § 1962(c), Title 18, United States Code.

251. Defendants have also conspired with the kingpins to violate § 1962(a), (b) and (c), all in violation of § 1962(d), Title 18, United States Code.

252. By reason of the aforesaid racketeering activities, and of the violations of § 1962, Title 18, United States Code, Plaintiffs have been damaged in their business and property in an amount vastly exceeding \$75,000, and in an amount believed to be in the millions of dollars.

253. Plaintiffs are entitled to treble damages, costs and attorneys' fees pursuant to § 1964(c), Title 18, United States Code.

Prayer for Relief.

WHEREFORE, Plaintiffs and each of them pray judgment against Defendants, jointly and severally, as follows:

- (a) for their actual damages in a fair and reasonable amount, including pre-judgment interest thereon;
- (b) for the trebling of actual damages and attorneys' fees, as provided by law;
- (c) for exemplary damages under Counts V, VI and VII to deter Defendants and others from similar conduct;
- (d) for their costs herein expended; and
- (e) for such other and further relief as the Court shall deem just and proper.

Plaintiffs demand trial by jury.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing First-Amended Complaint was filed electronically with the Court this 5th day of September, 2006. A notice of case activity is to be generated and sent electronically by the Clerk of this Court to the following parties, each of whom is designated to receive electronic notice:

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