

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

Case No.

Division:

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

Plaintiff, )

vs. )

RICHARD SETZER, SETZER )

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

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

ENTERPRISES, INC., a Florida corporation; )  
WILLIAM CHILDERS; TNT, INC., a

North Carolina corporation; THOMAS D. )  
"TIM" FOLEY; T&C FOLEY, INC., a

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

corporation; PRONET GLOBAL )  
ASSOCIATION, INC., a Delaware

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

corporation; PRONET GLOBAL I, INC., )  
a Delaware corporation; JOHN DOE;

RICHARD ROE; and other unknown )  
conspirators,

Defendants. )

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**COMPLAINT**

Plaintiff U-Can-II, Inc. sues Defendants Richard Setzer; Setzer International, Inc.; Harold Gooch, Jr.; Gooch Support Systems, Inc.; Gooch Enterprises, Inc.; William Childers; TNT, Inc.; Thomas D. "Tim" Foley; T&C Foley, Inc.; Steven S. Woods; G.F.I. International, Inc.; ProNet

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

### **Introduction**

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

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

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

#### **Jurisdiction and Venue**

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

#### **Parties**

5. Non-parties **Brig and Lita Hart** are a married couple and citizens of the State of Florida. Plaintiff U-CAN-II, Inc. ("**U-CAN-II**") is a Florida corporation with principal offices located in Lakeland, Florida. The Harts are the owners and principals of U-CAN-II, which is the

operating entity for the tool and function business for the Harts and B&L Hart Enterprises, Inc. ("**Hart Enterprises**"), a Florida corporation owned by the Harts and an Amway distributorship located in Lakeland, Florida. Hart Enterprises is an Amway distributorship or independent business ("IB"), a non-party, and brings no claims herein. The Plaintiff, the Harts and Hart Enterprises are collectively referred to herein at times as the "**Hart Organization.**"

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

7. Defendant Harold [Hal] Gooch, Jr. ("**Gooch**"), is a citizen of the State of North Carolina, residing at Six Curtis Court, Thomasville, North Carolina. Upon knowledge and

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

8. Defendant William [Bill] Childers ("**Childers**"), is a citizen of the State of Florida. Upon knowledge and belief, Childers operates an Amway distributorship through a nonparty corporation, but he is not himself an Amway distributorship/independent business. Childers also conducts business through Defendant TNT, Inc. of Charlotte, North Carolina ("**TNT**"). TNT's principal is Defendant Childers. On knowledge and belief, TNT is organized and existing under the laws of the State of North Carolina, with its principal place of business at 1518 Providence

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

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

hereinafter described.

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

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

Distribution Avenue South, Jacksonville, Duval County, Florida. On knowledge and belief, Robert Blanchard, an executive and manager of ProNet, has conspired with the Defendants, and the acts and omissions of Blanchard are those of ProNet. ProNet does business throughout the United States. Defendants Gooch, Childers, Foley and Woods were/are "Founding Members" of ProNet, and serve on the ProNet Board of Directors and/or "Steering Committee." ProNet is not an Amway distributorship/independent business. ProNet is/was a co-conspirator in the conspiracy hereinafter described. The conspiracy controls ProNet; it is the conspiracy's instrumentality.

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

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

not an Amway distributorship/independent business.

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

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

## General Allegations

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

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

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

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

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

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

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

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

**The Hart Organization's Line of Sponsorship:**

21. Brig and Lita Hart and/or Hart Enterprises directly and personally sponsored approximately 60 Amway distributors, and through tireless efforts over many years, built a massive

downline organization numbering approximately 200,000 Amway distributors (the **Hart Network**). Included in the Hart Network are/were approximately 80 other Diamond (or higher) distributors, 240 Emerald distributors, and thousands of Direct/Platinum distributors.

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

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

**Dexter Yager**  
Crown Ambassador

↓  
**Richard Setzer**  
Triple Diamond

↓  
**Hal Gooch**  
Double Diamond

→ **Parker Grabill**  
Diamond

←  
**Jimmy Dunn**  
Diamond

↓  
**Bill Childers**  
Double Diamond

↓  
**Ken Stewart**  
Crown

↓  
**Charlie Schmitz**  
Diamond

↓  
**Paul Stanley**  
Emerald

↓  
**Ron Rummel**  
Diamond

**Brig and Lita Hart**  
Double Diamonds

↓  
**Woods** Diamond   **Morris** Pearl   **Chrischilles** Emerald   **Metcalf** Emerald   **Hill** Emerald   **Munson** Direct   **Bramlett** Emerald   **Pope** Direct   **Brindley** Ruby   **Brazil**   **England**   **Argentina**   **Greece**   **Mexico**

↓  
**Foley** Crown Ambass.   **D'Amico** Diamond   **Joye** Diamond   **Corbett** Emerald   **Murphy** Emerald   **Pastermack** Emerald   **Revel** Emerald

↓  
**Foley** Crown Ambass.   **Emerald** Leg   **Diamond** Leg   **Direct** Leg

↓  
**Marin** Diamond   **Nealis** Diamond   **Zecher** Diamond   **Burnsed** Emerald   **Sorenson** Emerald   **Ruffing** Emerald   **Aul** Emerald

↓  
**Rodriguez** Diamond   **Hayes** Diamond   **Short** Diamond   **Douglas** Diamond   **Schantz** Emerald

↓  
**Terhune** Diamond   **Lewis** Diamond

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

essential line of sponsorship, just as in the Amway business. Otherwise, abuses lead to impairment and disintegration of the integrity of the network of distributors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **The Promotion of the BSMs Industry.**

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

and maintain successful Amway distributorships. The Upline Defendants further represented or caused to be represented to the Harts that they should purchase only those tools produced and distributed by the Defendants.

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

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

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

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

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

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

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

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

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

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

sponsorship and the servicing agreement rule, honored. The reality is that the Upline Defendants, as well as Defendants Foley and Woods, with the "riches" at the top of the Amway pyramid control the destiny of those below them, and they control and manipulate the BSMs business in such a way that one cannot attain these "riches" unless they so elect. And few do attain these "riches," regardless of the size of their downline.

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

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

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

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

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

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

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

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

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

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

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

### **The Hart Organization's Successful Business Operations.**

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

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

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

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

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

66. Beginning in/about 1989, the Harts/U-CAN-II began conducting their own major functions with the consent of Hart Enterprises' upline, including Defendants Childers and Gooch. The Harts and U-CAN-II utilized Hart Enterprises' downline network in sponsoring, organizing

and holding these major functions, which regularly drew thousands of Amway distributors in attendance, and in the case of their "Free Enterprise" functions held in conjunction with their upline, often over 20,000 distributors.

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

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

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

70. All along, the line of sponsorship was recognized and honored by the Hart Organization respecting the BSMs rules, including servicing agreements, just as the Harts had been instructed and directed by their mentoring upline. For years, the Harts and/or U-CAN-II personally sold tools directly to the distributors whom they had personally sponsored, pursuant to the course of dealings between the parties. Similarly, they purchased their tools in accordance

with this course of dealing. Likewise during this time, the essential line of sponsorship and the rules pertaining to functions were recognized and honored by them in promoting and sponsoring functions.

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

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

### **The Conspiracy.**

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

74. The objectives of this ongoing and evolving conspiracy were to ignore and/or circumvent the essential line of sponsorship respecting the Harts, to boycott the Harts, to impair the Hart Network, and to convert the Hart Organization's tool and function business to their own pecuniary benefit and advantage, all in violation of the BSMs rules.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

87. In or about 1994, Defendant Setzer and perhaps others conspired with D'Amico for D'Amico to purchase his tools directly from Defendant Setzer, who, the Harts were told, was going to sell the tools for a lesser cost to D'Amico. Of course, Setzer and the other Upline Defendants and Yager were in a position to determine the cost of the tools sold to U-Can-II.

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

89. In attendance for this Jacksonville meeting were the following: Bob Kerkstra of Amway, Jody Victor, Dexter Yager, Doyle Yager, Childers, Setzer, Brindley, D'Amico and the Harts. During the discussion which ensued, Kerkstra and Victor told the others that they could not participate in any discussion about "tools" since that is not Amway's business. However, Kerkstra and Victor reiterated the importance of adherence to the line of sponsorship. The Harts thereafter understood (from the discussion with Kerkstra and Victor present), that although D'Amico would be permitted to deal with Setzer on some matters, the tool revenue would be left as is, meaning the tools would remain under the Harts' line of sponsorship. Immediately thereafter, the Harts were told that D'Amico's tool business was being pulled from them and given to Setzer which, of course, they vigorously protested. Nevertheless, D'Amico's tool business moved to Setzer. Having lost the D'Amico function business earlier, this meant that U-Can-II had now lost all of the D'Amico organization's BSMs business.

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

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

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

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

· **Manipulation of Prices Through BSM "Pay Scales."**

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

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

· **By 1996, the Hart Network Outgrew the BSM "Pay Scales."**

95. By 1996, and for sometime prior thereto, the Hart Network had grown prolifically to the point where it went five Diamonds deep, something unprecedented within the Gooch/Childers line of sponsorship. The tool money being passed down to the Harts/Plaintiff by the Upline Defendants only went three Diamonds deep. In other words, per the "pay scales," there was only enough money actually flowing to the Plaintiff to pay (at the "pay scale" rates), three Diamonds – not five; the Hart Network had outgrown the "pay scales." This obviously created problems for the Harts with their downline Diamonds. The Harts sought more money from Childers so that the Harts could pay all of their Diamonds the pay scale rates, but were told that there was no more money to be passed down, which simply made no sense.

- **August 1996: Meeting at Yager's Internet Offices in Charlotte to Address the Inadequate "Pay Scales."**

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

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

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

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

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

100. In early 1997, Brig Hart was contacted by Barry Joye, a downline Diamond within the Hart Organization. Joye told Brig Hart that Setzer had sent D'Amico to speak to him [Joye] about tool pricing. Joye told Brig Hart that Setzer could offer him [Joye] a better price than the Harts. Joye also told Hart that Setzer himself had spoken with him, and Setzer wanted his tool business and could give him a better price break than the Harts. Joye then told Hart he wanted a larger "tool cut." Again, based upon the Upline Defendants' control of tool prices, they could set

the prices to ensure that the Harts could not offer their downline [Joye] the favorable tool prices that the Upline Defendants could. The Harts could not satisfy Joye. D'Amico's and Hayes' avoidance of the line of sponsorship, with the blessing of the Harts' upline, signaled that U-Can-II was vulnerable. Joye and others then went around U-Can-II to Childers, who should have deferred, but he didn't.

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

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

102. When the Harts realized the abuses were escalating and that unless something was done, their tool and function business would be gone, on April 8, 1997, the Harts, Plaintiff U-Can-II and B&L Hart Enterprises, Inc. filed an action in the United States District Court, Middle District Florida, Jacksonville Division, the same being Case No. 97-349-CIV-J-20B, against most of the Defendants herein, challenging the tool and function business abuses and violations taking place. The Upline Defendants, particularly Gooch, thereafter assured the Harts they would work to restore the BSMs rules and remedy the abuses if the Harts would dismiss their suit. The Harts once again relied on these representations and their suit was dismissed without prejudice.

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

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

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

**The New Approach: Defendants' Use of ProNet to Further the Objectives of the Conspiracy.**

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

· **September 1997 Meeting in Orlando.**

106. After the July 1997 Atlanta meeting, Brig Hart was invited to a meeting in Orlando. This meeting took place on September 30, 1997. Attending were Gooch, Childers, Foley,

Woods, Ken Stewart, Brindley, Paul Brown, Brig Hart and Mark Wells, who worked for the Harts.

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

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

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

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

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

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

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

· **February 1998: Gooch Incorporates ProNet.**

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

114. The Harts were not involved or consulted respecting the organization of ProNet despite the size of their network. Further, two members of their downline were founding members of ProNet, as well as members of the Board of Directors and Steering Committee. Clearly, the conspirators controlling ProNet sought to make the Harts "outsiders."

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

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

117. The conspiracy's plan was to move the tool and function business into ProNet, subject to their control and manipulation. If a distributor balked at joining ProNet, then the distributor risked the loss of their BSMs business which was significant and, in most cases, took

years to build. Hence, it was not practical for a distributor to fight this new plan; the distributor was under duress.

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

119. ProNet is not under the control of or part of Amway.

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

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

122. On knowledge and belief, ProNet was calculated by the Defendants and co-conspirators herein as a means and/or instrumentality to seize the remaining tool and function

business held by the Hart Organization. ProNet was intended to facilitate gaining direct access to the Hart Organization so that, contrary to the essential line of sponsorship rules, the conspirators could deal with Harts' downline directly for tools. In substance, ProNet facilitated the intended continuing boycott of the Plaintiff/Harts.

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

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

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

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

127. The Defendants' motive in making these unfounded attacks upon the Plaintiff, and in particular, the Harts, was to undermine and alienate the Harts from their downline and gain control of their BSMs business, while damaging the Harts' Amway business, ultimately resulting in downline BSMs distributors leaving the Hart Organization's respective line of sponsorship, quitting Amway and/or turning to other BSMs sponsors. In substance, the Defendants sought to disrupt and erode the Hart Network to their ultimate benefit.

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

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

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

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

131. ProNet has solicited and sold BSMs to any willing Amway distributor, disregarding the essential line of sponsorship. ProNet's website virtually invites Amway distributors to

circumvent their line of sponsorship for BSMs while giving purely pretextual observance to the importance of the lines of sponsorship:

**What are the Principals?** [sic]

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

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

The tools of teamwork are:

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

...

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

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

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

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

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

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

· **The ProNet Board's Conflicts of Interest, Self-Dealing and Breach of Fiduciary Duties.**

137. Each of the ProNet directors and members of the ProNet Steering Committee owed a fiduciary duty to each member of ProNet, as well as each distributor company purchasing BSMs through ProNet.

138. Gooch and his fellow Board co-conspirators formulated the ProNet compensation plan and, in so doing, directed and/or approved and/or acquiesced to the compensation each of them was to receive from tools and functions, when their participation in such decision

constituted a flagrant conflict of interest, inherent self-dealing, and a breach of their fiduciary duties to the membership.

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

140. In substance, these Defendants (that constituted the ProNet Board and Steering Committee), set their own compensation for tools and functions without input from ProNet "regular" members, and then conveniently didn't disclose that information to the ProNet membership.

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

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

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

## **The Final Boycotting of the Harts.**

- **April 1998 Hart Meeting with the ProNet Steering Committee in Orlando – the Loss of the Woods Organization Tool Business.**

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

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

146. Hart and Wells were told the following:

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

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

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

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

148. Whereupon, Gooch stopped the meeting, and he and Brindley took Hart into a separate room. Gooch told Hart, "You're either going to accept this or lose everything – either

way, Woods is gone." When they returned to the group meeting, Hart again said "no." The meeting terminated.

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

150. The Harts, having bucked the ProNet Steering Committee at the April 1998 Jacksonville meeting, soon found themselves in increasing disfavor.

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

151. In August 1999, at a ProNet Diamond meeting at Hal Gooch's home in Uwharrie Point, North Carolina, the Harts were summoned to a meeting at midnight by Defendant Brindley where they were confronted by members of the ProNet Steering Committee and others with unfounded charges calculated to undermine the Harts with their downline Diamonds. At this meeting, the Harts were accused of violating a rule of ProNet by printing a piece of literature (a tool) and selling it without ProNet's approval. The ProNet rule focused upon the conspiracy's attempt to control all tools and functions by requiring advance approval of the content of same through the ProNet Steering Committee, as well as Amway. Yet, one or more ProNet Steering Committee members openly and flagrantly violated that same rule without repercussion. The alleged violation by the Harts involved a small pamphlet put together by the Harts for their downline for which the Harts received \$1,300 in reimbursement. As a result of this purported "rule violation," the Harts were told by the ProNet Steering Committee that they were suspended from attending ProNet functions for one year. This suspension, a separate boycott in and by

itself, was calculated to deny the Harts any opportunity to refute the ongoing and concerted efforts of the conspiracy to discredit them and take their downline. With the suspension in effect, the stage was set for the final unfettered interference with the Hart Network by the conspirators.

152. The Harts vigorously protested this suspension, and told the ProNet Steering Committee that such action made it virtually impossible for the Harts to provide leadership and direction for their remaining network.

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

· **February 2000 ProNet Function in Indianapolis.**

154. At the ProNet-sponsored Extravaganza 2000 Free Enterprise function held on February 4-6, 2000, in the RCA Dome in Indianapolis (when the Harts were "suspended" from attending), Defendant Gooch and co-conspirator Paul Stanley sought to undermine the Harts before numerous of their downline Emeralds, who were concerned that the Harts were absent from this high-profile function. Stanley sought out the Hart Emeralds for a meeting with Gooch. Gooch spoke to these Hart Emeralds and represented the following, in part:

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

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

· **February 2000 ProNet Function in New York.**

155. Gooch and Stanley didn't stop their solicitation, tortious interference, and undermining efforts after Indianapolis. They continued. For example, during a subsequent Emerald-Diamond function in New York on February 24-25, 2000, Paul Stanley again arranged a meeting between Hart Emeralds and Hal and Susan Gooch. This meeting took place between 2:30-4:00 a.m. one morning. Of course, the Harts were not present – they were under "suspension." Stanley introduced Gooch, who made the following comments:

- (a) that the Harts had decided to become inactive in the Amway business for a while;
- (b) that the Harts' future in Amway was uncertain;
- (c) that the Harts were focused on other agendas and, because of this, the Gooches were willing to help and do what they could to "fill that void in leadership";

- (d) that they (the Hart Emeralds) "should plug into the Gooch group"; and
- (e) that they (the Hart Emeralds) should not disseminate to their downline messages from the Harts because Paul Stanley would coordinate all messages from the Gooch group directly.

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

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

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

· **ProNet Accomplishes the Total Boycott of Plaintiff.**

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

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

and/or destroying U-Can-II's business and business expectancies regarding the tool and function business.

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

**The Role of Defendant ProNet Global I, Inc. (herein "ProNet Profit").**

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

· **The Secret Formation of ProNet Profit.**

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

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

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

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

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

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

· **The Amway "Amvox" Voice-Mail Messaging System.**

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

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

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

· **The ProNet Profit "EasyTel" System.**

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

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

174. On knowledge and belief, ProNet Profit has sold or offered to sell to ProNet members, in complete disregard of the lines of sponsorship, "**Genie**" or "**EasyTel**," a voice-mail messaging system, offered as a substitute for Amway's Amvox system. This new system is

actively marketed at ProNet functions. Further, on knowledge and belief, profits flow to ProNet Profit instead of ProNet members.

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

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

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

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

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

• **The ProNet Profit Website.**

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

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

182. On knowledge and belief, the website acquired by ProNet Profit from Foley became the "ProNet Global Website."

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

184. The "ProNet Global Website" is a BSM, a "tool," to which the BSMs rules apply.

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

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

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

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

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

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

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

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

· **"Secret Pots."**

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

**B&L Hart de Brazil & ProNet de Brazil.**

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

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

196. In an effort to help oversee the tremendous growth of ProNet Brazil, which was generating millions of dollars per year, the Harts and Defendant Foley engaged Defendant Brindley in/about 1993-1994 to assist them in its management. ProNet Brazil soon opened a

large business office and a distribution warehouse to facilitate the dissemination of BSMs to Hart Brazil's downline distributor network.

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

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

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

200. Thereafter, Defendant Foley began allowing Childers to speak at the Brazil functions, thus providing them the opportunity to exert their influence over the entire Hart Brazilian network. At the direction of Foley and Brindley, Childers was paid exorbitant fees to attend and speak at these functions. During this time, Foley and Childers hyped Childers as the "real" U.S. leader of the Hart Brazilian network.

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

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

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

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

205. Each of the foregoing allegations contained in ¶¶ 1 through 204 above are incorporated in each count hereinafter set forth by reference.

**Liability**

**COUNT I**

**Tortious Interference with Contract**

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

206. Plaintiff, along with other distributors in Plaintiff's downline who participated in the tool and function business, were parties to the implied-in-fact or implied-in-law contract(s) governing the BSMs industry, including the recognition of the essential line of sponsorship, as above addressed and further addressed in ¶¶ 223 and 233 below.

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

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

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

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

**COUNT II**  
**Tortious Interference with Advantageous Business Relationships**

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

211. Plaintiff enjoyed and was the beneficiary of advantageous business relationships or expectancies with those downline distributors within the Hart Network. Plaintiff reasonably

expected that its downline distributors would be a source of business, or serve as an exclusive customer base, for Plaintiff's tool and function business.

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

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

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

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

**COUNT III**  
**Breach of Fiduciary Duty**

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

216. Defendants Gooch, Childers, Foley and Woods were at all times mentioned herein following the incorporation of ProNet, members of the ProNet Board of Directors and ProNet Steering Committee. Plaintiff reposed trust and confidence in Gooch, Childers, Foley and Woods, who accepted that trust and confidence. In such capacity, and because of their superior position and knowledge to that of Plaintiff and other participants within the BSMs industry, these

Defendants, and each of them, owed a fiduciary duty to every ProNet member, as well as every business or entity that engaged in the tool and function business through ProNet, as directed and controlled by these Defendants. These Defendants owed the Plaintiff, as a participant in the tool and function business within the Gooch/Childers line of sponsorship, a fiduciary duty of due care and with loyalty regarding the tool and function business as administered and controlled by ProNet, including the duties to deal with Plaintiff in good faith, to treat Plaintiff equitably and in good conscience, to make full disclosure to Plaintiff of all material facts concerning Plaintiff, to act honestly and in Plaintiff's best interest, and to refrain from self-dealing..

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

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

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

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

(d) These Defendants sought to perpetuate themselves in total control of ProNet by re-electing themselves to the ProNet Board of Directors (and indirectly to the ProNet Steering Committee), contrary to the specific provisions of Delaware law.

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

(f) Upon knowledge and belief, these Defendants have taken monies from tools and functions (including but not limited to, the aforesaid "secret pots"), that belong to other ProNet members and those distributors participating in the tool and function business through ProNet.

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

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

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

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

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

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

**COUNT IV**  
**Violation of Florida Deceptive and Unfair Trade Practices Act,**  
**Florida Statutes § 501.201, et seq.**

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

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

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

**COUNT V**  
**Breach of Implied Contract Concerning the Tool Business**

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

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

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

224. Plaintiff performed in accordance with the contract.

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

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

227. Defendants' aforesaid breach of the contract, under the circumstances and events described, was intentional and willful, and one calculated to injure and damage the Plaintiff. As such, Defendants' conduct rose to the level of an independent, intentional tort. Defendants' conduct is and was outrageous, and/or clearly demonstrates an evil motive or reckless indifference

to the rights of others. Plaintiff will seek leave, pursuant to § 768.72, Florida Statutes, to recover punitive damages.

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

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

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

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

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

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

**COUNT VII**  
**Breach of Implied Contract Concerning the Function Business**

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

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

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

234. Plaintiff performed in accordance with the contract.

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

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

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

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

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

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

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

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

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

**COUNT IX**  
**Civil Conspiracy**

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

242. Plaintiff further incorporates herein by reference, as though fully set forth, each of the foregoing allegations contained in ¶¶ 206 through 241 above, and ¶¶ 248 through 274 below.

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

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

245. Defendants' overt acts in furtherance of the conspiracy included misrepresentations by Defendants herein to the Plaintiff and others; misleading the Plaintiff's downline by blatant misrepresentations of fact, including those set forth in ¶ 256 below, so as to alienate them from the Plaintiff and its principals, the Harts; engineering boycotts of the Plaintiff/Harts; and

manipulating pay scales and other divisions of profit arising out of the tool and function business, to the inherent detriment of Plaintiff and the ultimate benefit of the Defendants/conspirators.

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

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

**COUNT X**  
**Promissory Estoppel**

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

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

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

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

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

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

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

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

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

**COUNT XI**  
**Trade Libel**

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

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

(a) the Harts have taken themselves out of circulation (as the reason the Harts were not in attendance at ProNet functions following their "suspension" by the ProNet Steering Committee);

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

(c) the Harts have decided to become inactive in the Amway business;

(d) the Harts are focused on other agendas instead of focusing on the Amway business;

(e) the Harts lack commitment to you and the Amway business;

(f) the Harts are withholding tool monies from you that you should be getting;

(g) the Harts cannot be trusted;

(h) the Harts are out for themselves, and have no intention of helping you build your business or profit fairly from BSMs;

(i) the problem with inadequate BSMs compensation is because the Harts are greedy, taking more than their share of the profits;

(j) the Harts are incapable of supporting you in the business;

(k) the Harts are incapable of providing you with the leadership you need and deserve in building your business; and

(l) the Harts are selling their business to the Gooch/Childers/Foley organization.

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

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

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

**COUNT XII**  
**Demand for Accounting**

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

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

261. The aforesaid boycotts of the Plaintiff have resulted in millions of tools being sold around the Plaintiff to the Hart Network, pursuant to the knowledge and/or direction of Defendants, in complete violation of the BSMs rules and the implied contracts. Plaintiff did not

receive adequate or reasonable compensation for these tools which were sold around the Plaintiff, and in many instances, the Plaintiff received no compensation at all.

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

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

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

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

266. The accounts maintained by Defendants are of such complexity that a court of law, special master or jury would be unable to examine the accounts with accuracy and, therefore, Plaintiff has no adequate remedy at law. Specifically, the accounts kept by Defendants are extremely complicated in that they involve potentially thousands of distributors in the Hart Network who have either sold and/or purchased BSMs in violation of the parties' implied contracts and long-standing course of dealing, as well as the identity of those distributors in the Hart Network who participated in major functions for which the Plaintiff was not compensated.

In addition, in light of the facts and circumstances alleged in this Petition, there is a strong likelihood that Defendants have engaged in fraudulent transfers or taken other fraudulent measures to conceal from Plaintiff the true volume of sales made in violation of the parties' implied contracts and course of dealing. Further, the conspiratorial nature of the relationship between the Defendants, as well as the fact that the relationship between the parties is established by the parties' course of dealing rather than by express contract, renders it extremely difficult to obtain a just and true account in a court of law, and requires the Court to order a full accounting by Defendants to Plaintiff.

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

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

**COUNT XIII**  
**Injunction**

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

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

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

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

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

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

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

**Request for Relief:**

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

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

(b) for Plaintiff's reasonable attorneys' fees as provided in Florida Statutes § 501.201, et seq., and Plaintiff's costs herein incurred;

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

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

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

(i) circumventing the lines of sponsorship;

(ii) falsely disparaging Plaintiff;

(iii) boycotting Plaintiff; and

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

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

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

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

**PLAINTIFF DEMANDS TRIAL BY JURY OF ALL ISSUES SO TRIABLE.**

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**ATTORNEYS FOR PLAINTIFF**

## Glossary of Terms

**Alticor**: The parent company of Amway and Quixtar.

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

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

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

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

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

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

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

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

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

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

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

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

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

**IB:** An Amway/Quixtar term meaning "independent business."

**IBO:** An Amway/Quixtar term meaning "independent business owner."

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

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

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

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

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

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

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

**Tool:** Also referred to as business support materials, or BSMs, which consist of audio cassette tapes, video tapes, books, pamphlets, electronic literature, etc. used to educate and motivate distributors. The tools consisting of audio cassette tapes and video tapes are normally recorded speeches and/or presentations made at major functions. Tools are non-Amway/Quixtar products.

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

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

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

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

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