

DR. JOE AND DAWN MORRISON,
KELLY ROBBINS, RANDY AND JANET
COUNCILL, DAN AND HELEN HIGGINS,
RON & KAREN GREEN, VICTOR & CATHY
BROOK, DR. MARION & JEAN MCMURTREY,
DAN & HELEN HIGGINS, DR. T. M. &
CYNTHIA HUGHES, RICHMOND EAGLE
CORP., DAVE & ROSE ROBERTS, DR.
RICHARD & LINDA WERNER, TONY &
MARYANN CUTAIA, WARREN & DONNA
BIRD, TOM & KYE YEAMAN, and WADE &
DEBBIE MCKAY

VS.

AMWAY CORPORATION, RICH DeVOS,
JAY VAN ANDEL, DICK DeVOS, STEVE VAN
ANDEL, DOUG DeVOS, BOB KERKSTRA,
JA-RI CORPORATION, DEXTER YAGER,
INDIVIDUALLY AND D/B/A YAGER
ENTERPRISES AND INTERNET SERVICES
CORPORATION, JEFF YAGER, DONALD R.
WILSON, INDIVIDUALLY AND D/B/A WOW
INTERNATIONAL AND WILSON
ENTERPRISES, INC., RANDY & VALORIE
HAUGEN, INDIVIDUALLY AND D/B/A
FREEDOM ASSOCIATES, INC., FREEDOM
TOOLS, INC. AND ALL STAR PRODUCTION
COMPANY, JOHN SIMS, INDIVIDUALLY AND
D/B/A SIMS ENTERPRISES, RANDY & SUSAN
WALKER, INDIVIDUALLY AND D/B/A
WALKER, INTERNATIONAL, MARK &
MARTHA HUGHES, BILL & ALYSSA
BERGFELD, INDIVIDUALLY AND D/B/A AS
BERGFELD INTERNATIONAL, INC., JODY
VICTOR, INDIVIDUALLY AND D/B/A JEVI
CORPORATION, MARK CORDNER, BILLY
ZEOLI, INDIVIDUALLY AND D/B/A GOSPEL
FILMS, DENNIS JAMES

IN THE DISTRICT COURT OF,

HARRIS COUNTY, TEXAS

164TH JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, DR. JOE and DAWN MORRISON, KELLY ROBBINS, RANDY and JANET COUNCILL, DAN and HELEN HIGGINS, RON & KAREN GREEN, VICTOR & CATHY BROOK, DR. MARION & JEAN MCMURTRY, DAN & HELEN HIGGINS, DR. T. M. & CYNTHIA HUGHES, RICHMOND EAGLE CORP., DAVE & ROSE ROBERTS, DR. RICHARD & LINDA WERNER, TONY & MARYANN CUTAIA, WARREN & DONNA BIRD, TOM & KYE YEAMAN, and WADE & DEBBIE MCKAY, Plaintiffs in the above-entitled and numbered cause and files this, their Original Petition complaining of AMWAY CORPORATION, RICH DEVOS, JAY VAN ANDEL, DICK DEVOS, STEVE VAN ANDEL, DOUG DEVOS, BOB KERKSTRA, JA-RI CORPORATION, DEXTER YAGER, INDIVIDUALLY AND D/B/A YAGER ENTERPRISES AND INTERNET SERVICES CORP., JEFF YAGER, DONALD R. WILSON, INDIVIDUALLY AND D/B/A WOW INTERNATIONAL AND WILSON ENTERPRISES, INC., RANDY & VALORIE HAUGEN, INDIVIDUALLY AND D/B/A FREEDOM ASSOCIATES, INC. AND FREEDOM TOOLS, INC. AND ALL STAR PRODUCTION COMPANY, JOHN SIMS, INDIVIDUALLY AND D/B/A SIMS ENTERPRISES, RANDY & SUSAN WALKER, INDIVIDUALLY AND D/B/A WALKER INTERNATIONAL, MARK & MARTHA HUGHES, BILL & ALYSSA BERGFELD, INDIVIDUALLY AND D/B/A BERGFELD INTERNATIONAL, INC., JODY VICTOR, INDIVIDUALLY AND D/B/A JEVI CORPORATION, MARK CORDNER, BILLY ZEOLI, INDIVIDUALLY AND D/B/A GOSPEL FILMS, DENNIS JAMES, Defendants and in support thereof would show unto this Court the following:

I. Venue

Venue is proper in Harris County as Plaintiffs are residents of Harris County, Texas and all are part of the acts complained of took place in Harris County, Texas.

All other Defendants are subject to the jurisdiction of this Court under the Texas Long Arm Statute in that they are nonresidents of the State of Texas who have (a) transacted and continue to transact business, and have engaged in purposeful activity within the State of Texas; and that the claims of Plaintiffs arise out of said business and activity; (b) committed a tortuous act or acts or omissions within Texas against Plaintiffs, and/or (c) committed a tortuous injury or injuries in Texas against Plaintiffs caused by acts or omissions outside of Texas and have regularly done or solicited business in Texas, engaged in a persistent course of conduct within Texas and derived substantial revenue from goods used or consumed in Texas. Furthermore, certain of the actions of all Defendants here complained were transacted in Harris County, Texas and venue properly lies in this Court.

II. Service

Defendant, Amway Corporation is a Michigan Corporation whose principal place of business is located 7575 East Fulton St., Ada, Michigan 49355, and may be served with process through its registered agent for service, CT Corporation, at 350 North St. Paul Street, Dallas, Texas 75201.

Defendant, JA-RI Corporation is a Michigan corporation whose business address is the same as the Amway in Ada, Michigan. It may be served with process through its registered agent for service, Kim S. Mitchell, at 7575 East Fulton Street East, Ada, Michigan 49355.

Rich DeVos is an individual residing in Ada, Michigan and may be served at his business address of 7575 Fulton Street East, Ada, Michigan 49355.

Jay Van Andel is an individual residing in Ada, Michigan and may be served at his business address of 7575 Fulton Street East, Ada, Michigan 49355.

Dick DeVos is an individual residing in Ada, Michigan and may be served at his business address of 7575 Fulton Street East, Ada, Michigan 49355.

Steve Van Andel is an individual residing in Ada, Michigan and may be served at his business address of 7575 Fulton Street East, Ada, Michigan 49355.

Doug DeVos is an individual residing in Ada, Michigan and may be served at his business address of 7575 Fulton Street East, Ada, Michigan 49355.

Bob Kerkstra is an individual residing in Ada, Michigan and may be served at his business address of 7575 Fulton Street East, Ada, Michigan 49355.

DexterYager Individually and d/b/a Yager Enterprises and Internet Services Corporation, and Jeff Yager are individuals residing in Charlotte, North Carolina and may be served at their business address of 12201 Steele Creek Road, Charlotte, North Carolina 28273.

Donald R.Wilson, Individually and d/b/a Wow International and Wilson Enterprises, Inc. is an individual residing in Ogden, Utah and may be served at 6057 South 2950 East, Ogden, Utah 84403.

Randy & Valorie Haugen, Individually and d/b/a Freedom Associates, Inc., Freedom Tools, Inc. and All Star Production Company are individuals residing in Ogden, Utah and may be served at 2488 Bonneville Terrace, Ogden, Utah 84403.

John Sims, Individually and d/b/a Sims Enterprises is an individual residing in Kaysville, Utah and may be served at 1148 N. Highway 89, Kaysville, Utah 84037.

Randy & Susan Walker, Individually and d/b/a Walker International are individuals residing in Conroe, Texas and may be served at 1450 Interstate 45 South, #F-13, Conroe, Texas 77304.

Mark & Martha Hughes are individuals residing in Houston, Texas and may be served at 13315 Pantano, Houston, Texas 77065.

Bill & Alyssa Bergfeld, Individually and d/b/a Bergfeld International, Inc. are individuals residing in Conroe, Texas. Bill Bergfeld may be

served at The Feed Store, S. Main, Conroe, Texas 77304. Lisa Bergfeld may be served at 202 Old Country Club Road, Conroe, Texas 77304.

Jody Victor, Individually and d/b/a Jevi Corporation is an individual residing in Clinton, Ohio and may be served at 740 Yager Road, Clinton, Ohio 44216.

Mark Cordner is an individual residing in Utah and may be served c/o Freedom Associates or All Star Productions, 2488 Bonneville Terrace, Ogden, Utah 84403.

Billy Zeoli, Individually and d/b/a Gospel Films is an individual residing in Michigan and may be served at 7575 Fulton Street East, Ada, Michigan 49355.

Dennis James is an individual residing in Houston, Texas and may be served at 601 Cypress Station Drive, #203, Houston, Texas 77090.

III. BACKGROUND FACTS

The Amway Corporation manufactures a wide variety of consumer household products which it sells along with the products of other manufacturers nationwide through hundreds of thousands of distributors, many of them are in Texas. The Amway sales plan is a marketing scheme whereby any purchase or sale of Amway goods by a distributor financially benefits not only Amway, but also those Amway distributors who qualify and occupy levels of the Amway distributorship network higher than that of the selling distributor. In Amway parliaments, those persons who occupy positions below distributor in each branch of the network are called the distributor's "downline". Those persons who occupy positions above a distributor in each branch of the network are called the distributor's "upline". In order to earn significant profits as an Amway distributor, one must develop a sizeable downline organization by recruiting and sponsoring other distributors into the Amway sales organization.

Amway considers its distributors independent contractors and independent businessmen and women. Such distributors earn money by the mark up they make on Amway and other related products sold to customers who are not Amway distributors and other distributors, in a person's direct downline organization. Distributors also earn money through a complicated system of commissions, cross-commissions, bonuses, refunds, discounts, dividends and other considerations in the Amway program as a result of the sale of such goods or services to "downline" distributors and/or the recruitment of additional participant distributors. This income is derived in one way or another from either the sale of Amway products to customers who are not distributors or to other distributors; and, the recruitment of new Amway distributors to one's "downline". A downline distributor is expected and encouraged to purchase Amway products.

Once a distributor reaches a certain volume level of business generated by the sale of Amway products to either their "downline" Amway distributors

or to customers who are not Amway distributors, that distributor may qualify as a "direct distributor" and may begin buying their products directly from Amway without purchasing those products from their "upline" distributor as they formally had done before they reached the direct distributor level. A direct distributor may still qualify for certain monetary benefits, commissions and awards from his downline organization even if that organization contains other direct distributors. In short, a direct distributor does not share in the profits generated by the sale of products from other direct distributors in his/her downline; but, does obtain monetary awards directly from Amway because of the increased volume created by direct distributors in his downline organization. Therefore, because it is simply impossible for one person to generate a large amount of profit from the sale of individual products, the overwhelming incentive in the Amway organization and the Amway plan is to recruit more and more distributors into one's downline to increase the volume of products sold in the downline organization by other distributors, whether direct or not direct, and thereby maximize the bonus and reward potential to be paid to the person at the top of this downline organization by Amway.

Defendant Yeager occupies a position at the top of his own vast Amway distributorship network to which all the Plaintiffs and many of the Defendants belong. Plaintiffs are all direct distributors with Amway and have been so for some time. In fact, Plaintiffs are some of the most successful direct distributors in the entire Amway organization. They have qualified at the Emerald and in one case, Diamond level. The Diamond level is the highest level of achievement, and therefore, largest organization headed by a single distributor, in the Amway organizational and marketing program.

IV. PLAINTIFFS' BUSINESSES AND DEFENDANTS' CONDUCT

For several years, Plaintiffs have run their independent Amway businesses in accordance with the edicts and instructions of the Amway business and marketing plan. Plaintiffs developed very successful Amway distributorships each of which contained tens of thousands of downline distributors. These organizations were among the most successful in all of Amway. These distributorships generated significant revenue for the Plaintiffs and in most cases became the Plaintiffs' only source of revenue after they retired from their regular line of work to devote their full time and attention to their growing Amway businesses. Plaintiffs' distributorships would have continued to grow and generate even more revenue for Plaintiffs had it not been for the interference and tortuous acts of Defendants.

When Plaintiffs first became Amway distributors, and as they began to build their Amway distributorships upon the instruction and advice of Defendants, they were sold materials, tapes and other documents which indicated that if a person worked hard, there was no limit to the amount of financial reward that person could find as an Amway distributor. They were shown a book called the "Profiles of Success" which showed the lavish lifestyles of highly successful Diamond level distributors in the Amway

organization. They were told to attend seminars and rallies on a monthly and then a weekly basis, where diamond level and emerald level distributors were paraded across the stage and spoke about their tremendous financial success and lavish lifestyles they were able to lead because of their Amway distributorship business. At all times, Defendants stressed continually the "independent businessman" aspect of the Amway business and reiterated on many occasions that all Amway distributors are independent business people working for themselves.

Plaintiffs were told to purchase motivational tapes, as many as three per week, and to sell as many of these tapes as they could to their downline distributors without disclosing to Plaintiffs or other distributors the source of the tapes or whether or not anyone was making a profit from the tapes. These tapes contained motivational talks by many of the same Emerald direct distributors and Diamond level direct distributors who spoke at the functions. In fact, only Emerald direct distributors and Diamond direct distributors are allowed to speak at, organize or run functions and rallies. Defendants, conspiring with one another and working in conjunction with one another, have devised a system scheme or plan to take full control of all the distributors, including Plaintiffs, within Defendant Yager's downline Amway distributorship organization, by controlling the production and distribution of motivational tapes, seminars and rallies to which all distributors within the Yager organization must attend or subscribe or risk suffering tremendous financial consequences.

Defendants derive the majority of their incomes from the sale of non-Amway motivational materials such as tapes to persons in their downlines and from the money earned through motivational rallies and seminars. Defendants regularly represented or caused to be represented to Plaintiffs and others that their success as Amway distributors and in fact the success of their entire distributorship organization was contingent upon the purchase of these tapes published and/or distributed by Defendants and attendance at meetings, seminars and rallies sponsored by them, and that without such materials and attendance at such meetings, seminars and rallies, Plaintiffs would be unable to build and maintain successful Amway distributorships. Defendants further represented or caused to be represented to Plaintiffs that they should purchase only those motivational materials produced and distributed by Defendants.

In fact, the Defendants took it one step further, because the sale of tapes and the revenue from ticket sales to downline distributors and prospective distributors to monthly or bi-monthly seminars and rallies had become such a vast majority of the revenue for Defendants, Defendants conspiring with one another and others concocted a scheme whereby all direct distributors in the Yager downline, including Plaintiffs, were forced to sell aggressively and literally "push" these tapes on their own downlines and Defendants coerced Plaintiffs through illegal means to require that as many of their downline distributors as possible bought tickets to the various rallies, seminars and functions operated by Defendants.

V. DEFENDANTS' ILLEGAL CONTROL OF PLAINTIFFS' BUSINESSES

Defendants, Yager, Wilson, Haugan, Walker, Hughes, Bergfeld and Sims, conspiring amongst themselves and with others, would select which Diamond direct distributors and Emerald direct distributors within the Yager organization would be allowed to hold functions, seminars or rallies in various places around the country on various dates throughout the year. These were the only "approved" functions. All other direct distributors in the particular geographic area where an "approved" event was being held were coerced into selling tickets to that "approved" event to as many of their downline distributors as possible. Only high level direct distributors who were "in the good graces", or "plugged in", of Defendants were allowed to participate in and profit from these events. Anyone trying to hold an event independent of one of the Defendants' events was essentially "blackballed" and not allowed to participate and profit from events authorized by Defendants.

Further, Defendants conspiring with one another and with others then made attempts to disrupt and tortuously interfere with the business relationships of the Plaintiffs and their respective downline organizations by contacting other distributors in Plaintiffs' downlines and disparaging and defaming Plaintiffs by telling those downline distributors that Plaintiffs were not "plugged in", were not "team players," and were such that any continued relationship with Plaintiffs threatened their businesses. This was done even though Defendants continually represented to Plaintiffs and others that each Amway distributor is an independent business person and not employed by or bound one to the other in any other relationship other than that of an independent arm's length business relationship. Finally, the control of Defendants' conspiracy and evil plan to reap hundreds of millions of dollars at the expense of thousands and possibly millions of other people, got to the point that Defendant Yager and the other Defendants conspiring among themselves and with others, would decide within the Yager organization which individual would next become an Emerald direct distributor or a Diamond level direct distributor regardless of any other individual's own achievement. They did this by manipulating the Amway point system and by transferring points from one distributor to another, realigning downline groups under a certain favored distributor and other such devices so that Defendants could maintain complete and total control over the development of Yager's downline organization. In doing so, Defendants have destroyed the personal independent businesses of Plaintiffs. Additionally, Defendants would personally direct and coerce Plaintiffs concerning the conduct of their businesses by telling Plaintiffs which functions to attend, which upline distributors to counsel with and the specific upline distributors with whom to form associations. To do otherwise, Defendants threatened, would mean total destruction of Plaintiffs and their businesses by Defendants.

Plaintiffs are the only direct distributors at a high enough level to stand up to Defendants and stop their evil scheme. When Plaintiffs began to question the business practices of Defendants, Defendants attempted to completely "cut off" Plaintiffs from the motivational tape, seminar and

rally system which is a major source of income for any Amway distributor above the level of direct distributor. Further, Defendants engaged in and continue to engage in tortuous interference by contacting downline distributors in each of the Plaintiff's respective downlines and disparaging and defaming Plaintiffs to these distributors without legal justification. Further, Defendants have tortuously interfered in Plaintiffs' attempts to hold independent seminars, rallies and functions and have defamed Plaintiffs to other distributors in an attempt to keep them away from Plaintiffs motivational events causing serious irreparable financial harm to Plaintiffs as well as a loss of reputation and development in their own business communities.

VI. PARTICIPATION OF AMWAY

Defendants are attempting to control the entire Amway sales and marketing plan through illegal means by tying success in the Amway organization to complete obedience to the dictates of Defendants under the "Yager system" of motivational tapes, seminars and rallies. This is all being done with Amway's knowledge and consent; and in fact, with the active support and collusion of many of its top level employees and executives. Defendants continue to represent that a fortune may be made through the sale of Amway products and the recruitment of other Amway distributors when in fact Defendants know but do not disclose that the vast majority of their own revenue and income is derived from the "Yager system" of motivational tapes, seminars and rallies. Such income opportunities are not truly available to all to whom the "dream" is represented. This motivational system controlled by Yager and the other Defendants is an illegal pyramid scheme which has cooped and corrupted the very basics of what has been a phenomenally successful Amway sales and marketing plan over the last thirty years. Unfortunately, while Amway and its leaders and founders preach the concept of integrity, this scheme has been done with the knowledge and cooperation of Amway all in the name and the pursuit of greater and greater profits. Additionally, Amway and the other Defendants ironically continue to benefit and derive income from motivational materials produced and created by Plaintiffs which are in continuous use throughout the Yager organization without sharing any of those incomes or revenues with Plaintiffs. Plaintiffs bring this suit to put a stop to this fraud and the tortuous interference of Defendants.

VII. CONTROL BY YAGER

Defendants further represented to Plaintiffs that despite anything the Amway organization might say, the Amway rules and regulations were irrelevant and should be disregarded, and that Amway would not dare interfere with the way the Yager organization was run, because Yager could always pull his downline organization out of Amway, which would significantly harm Amway.

VIII. AMWAY AWARE OF WRONGFUL CONDUCT

At all time relevant hereto, Amway was aware that the aforesaid misrepresentations regarding Defendant Yager's motivational materials and motivational rallies were being made to Plaintiffs and other Amway distributors, and that in practice, sales of such materials within the Yager organization were consistently being conducted in violation of Amway's rules, including without limitation, Section B, Rule 4. It was in Amway's economic self-interest to permit such misrepresentations and rules violations to continue, and although Amway has been aware of such practices for years, Amway has never terminated the distributorship of Defendant Yager or made any credible effort to halt his practices in violation of Amway's rules.

IX. DEFENDANTS' INTERFERENCE

Defendants engaged in a regular practice of interfering with Plaintiffs' respective downlines; cutting out the Plaintiffs from the distributorship.

X. DEFENDANTS' INTERFERENCE WITH PLAINTIFFS' DOWNLINE

On various occasions, Defendants herein sold or caused the sale of Amway and non-Amway products directly to Plaintiffs' downline distributors without authorization from Plaintiffs, thereby interfering with Plaintiffs' distributorship relationships.

XI. DEFENDANTS' DISPARAGEMENT AND DEFAMATION

On numerous occasions, Defendants disparaged and defamed Plaintiffs to Plaintiffs' own downline distributors and Plaintiff upline distributors, in an effort to interfere with Plaintiffs' downline distributorship relationships, and to isolate Plaintiffs from upline support and assistance.

XII. RECO

The Defendants' scheme was, and is, violative of the Federal Racketeer Influenced to Corrupt Organizations Act (18 U.S.C. §1961 et. seq.) and the Sherman Anti Trust Act (15 U.S.C. §1). These Defendants' individual actions were, and are, violative of Texas Common Law and Tort Contract Principals. The Defendants' conduct and misrepresentations constitute violations of the Texas Deceptive Trade Practices Act.

XIII. PLAINTIFFS' INJURIES

Plaintiffs have been injured as a result of the Defendants' conduct and will continue to be injured unless it is stopped. In this action, Plaintiffs seek to recover the revenues actually lost in the past, and the future revenues that had been represented to them would surely be theirs

for the taking with the effort Plaintiffs' have generated.

XIV. VIOLATIONS OF TEXAS STATE BRIBERY ACT

The actions of Defendants alleged above constitutes illegal activity within the meaning of the Texas State Bribery Act and wire and mail fraud. Defendants' participation in the affairs of the enterprise consisted of their guiding, managing, directing or otherwise exercising some control of the affairs of the enterprise.

Through acts of mail and wire fraud, Defendants participated in the affairs of the illegal enterprise which was comprised of a large international corporation (Amway), Defendants, and their vast network of millions of individual distributors. The cloak of legitimacy provided to Defendants by this seemingly legitimate enterprise afforded said Defendants' acts as to an influence over huge numbers of Amway distributors, thus enabling Defendants to exercise their scheme to defraud Plaintiffs and others.

Defendants' pattern of racketeering activity, was consisted of mail and wire fraud, was perpetuated through direct telephone communications, the Am Vox telephone voice mail system, and the mails, pursuant to and for the purpose of executing Defendants' scheme to defraud Plaintiffs and others by communicating false and fraudulent information as set out above.

Plaintiffs are persons injured by reason of Defendants' violations and are entitled to three times their actual damages sustained, as well as punitive damages and attorneys' fees.

XV. FRAUD

Defendants made or caused to be made knowingly and fraudulent misrepresentations to Plaintiffs and others as set out above when in fact, these Defendants were engaged in the systematic violation of the Amway rules and were operating an illegal scheme for their own profit through the sales of motivational materials and the conduct of seminars, rallies and other events. These representations were made or caused to be made by Defendants knowingly and continued to the present day. These misrepresentations and omissions were made or caused to be made by Defendants with the intent that they be relied upon and acted upon by Plaintiffs and others for the purpose of generating larger profits for these Defendants from their illegal selling scheme which was and is prohibited by the Amway rules and Texas law. But for the aforesaid fraudulent representations, upon which Plaintiffs and others justifiably relied to their detriment, and but for the aforesaid omissions and material facts, Plaintiffs would not have entered into or maintained their Amway distributorship businesses. Plaintiffs, in justifiable reliance upon Defendants' fraudulent misrepresentations, were damaged in an amount difficult to measure, but Plaintiffs believe in excess of Two Hundred

Million Dollars (\$200,000,000.00).

XVI. BREACH OF CONTRACT

As more particularly described above, Plaintiffs entered into and continued in the renewal of a distributorship agreement with Defendant, Amway, based in significant part upon representations made to them concerning the Amway marketing system, including the rules and regulations promulgated by Amway.

Amway's failure and refusal after notice of numerous violations to enforce the rules and regulations promulgated by it to govern its marketing system, and for colluding in improper actions against Plaintiffs by Plaintiffs' upline distributors including Defendants, which actions were in direct violation of Amway's rules and regulations, constitutes a breach by Amway of its contract with Plaintiffs, as a direct result of which Plaintiffs' suffered considerable economic loss and continue to suffer such loss for which Amway should be held liable.

XVII. TORTUOUS INTERFERENCE WITH CURRENT AND PROSPECTIVE BUSINESS RELATIONSHIPS

Defendants, individually and conspiring among themselves and others, tortuously interfered with Plaintiffs' contractual relationship with Amway by selling both Amway and non-Amway products directly without Plaintiffs' permission to Plaintiffs' downline distributors. Further, Defendants, acting individually and conspiring among themselves and with others, tortuously interfered with Plaintiffs' contractual relationship with Amway and Plaintiffs' respective own downline independent distributors by contacting certain of Plaintiffs' downline distributors for the purpose of making false defamatory and damaging statements to them about Plaintiffs and such interference with those relationships has resulted in actual damages suffered by Plaintiffs.

XVIII. IMPLIED BREACH OF IMPLIED CONTRACT AND EXPRESS AND IMPLIED WARRANTIES

Defendants engaged in devious and reprehensible conduct in perpetuating their fraud upon Plaintiffs and pursuing their course of action intended to gain control of Plaintiffs' businesses solely for the financial enrichment of themselves and to the financial, psychological and spiritual detriment of Plaintiffs. When Plaintiffs entered into their Amway businesses and as they developed these businesses, they were told by Defendants that it was very important to be "plugged in" and "associated with" their upline distributors, including Defendants, in order to achieve success in the Amway business. Defendants represented to Plaintiffs that they were not only Plaintiffs' upline distributors and business associates, but also Plaintiffs were encouraged by Defendants to believe that Defendants were financial and personal advisors, counselors, friends,

and even ministers. In fact, defendants instructed Plaintiffs that they should not make any financial or significant personal decision without consulting with Defendants first. Defendants encouraged and instructed Plaintiffs to immerse themselves in the Amway business to the exclusion of all other activities. Defendants instructed Plaintiffs that they should "give up" and "retire" from their respective jobs, successful professions and other businesses in order to demonstrate to Plaintiffs' downline how successful they were becoming in the Amway business.

In reality, Defendants' purpose in doing this was to increase Defendants' control over Plaintiffs in every aspect of Plaintiffs' lives. Defendants instructed Plaintiffs on the sale of their businesses, the borrowing of money, the entering into and dissolving of business relationships and transactions, persons with whom and not with whom to associate, and virtually every other aspect of Plaintiffs' lives in order to gain control of Plaintiffs and their businesses solely for the purpose of financially enriching Defendants at the expense and exclusion of Plaintiffs.

Because of these activities, Defendants established a fiduciary and special relationship with Plaintiffs which gave rise to an extraordinary duty on the part of Defendants to give Plaintiffs accurate and sound advice and instruction for the purpose of benefiting Plaintiffs and without regard to any affects such advice and instruction might have on Defendants. Defendants did not do so. Defendants were acting and instructed Plaintiffs that they be allowed to act in the role of Plaintiffs' attorneys, accountants, business advisors, financial consultants, personal psychologist and minister for the purpose of gaining control over Plaintiffs' personal lives and businesses for the sole purpose of financially enriching Defendants at the expense of Plaintiffs. All of the above gave rise to an implied contract and extraordinarily high duty of care on the part of Defendants toward Plaintiffs which Defendant have breached in every regard and such breach has caused Plaintiffs serious and irreparable injury and harm for which Plaintiffs now sue.

XIX. DEFENDANTS' WILLFUL CONDUCT

In committing the acts of which reference is made in this Original Petition, Defendants have acted willfully, maliciously, wantonly, oppressively, intentionally, knowingly, fraudulently, in bad faith, and with reckless disregard of the consequences and with such entire want of care as raises the presumption of conscious indifference and malice toward Plaintiffs such as to entitle Plaintiffs to punitive damages under Texas law; further, that Defendants acted with the specific intent to cause serious harm to Plaintiffs.

XX. ATTORNEYS' FEES

Plaintiffs seek recovery of their reasonable attorney fees and expenses in the prosecution of this litigation and any related litigation caused by

Defendants' wrongful conduct.

XXI. DEFAMATION

Defendants published or allowed to be published false, malicious and nonprivileged statements concerning Plaintiffs, their executives and employees. The foregoing false statements concerning Plaintiffs are slanderous, libelous and/or defamatory. The foregoing false statements concerning Plaintiffs are further, slanderous, libelous and/or defamatory per se. Defendants knowingly, intentionally and/or maliciously uttered or published such false and defamatory statements and/or allowed, permitted and/or acquiesced in the uttering or publication of such statements.

The false, malicious, nonprivileged statements proximately caused harm and damage to Plaintiffs' reputation, prestige and standing as well as Plaintiffs' respective businesses. As a proximate result of Defendants' conduct, Plaintiffs have suffered damages in an amount to be determined at trial.

Further, Defendants' conduct was undertaken in bad faith, was malicious and manifested a wanton disregard of and/or reckless indifference toward the rights of Plaintiffs thereby entitling Plaintiffs to punitive or exemplary damages.

XXII. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Defendants' conduct as set out above in this Original Petition was intentional and/or reckless and designed to cause severe damage to Plaintiffs. Further, Defendants' conduct was extreme and outrageous as those terms are defined in Texas law and without justifiable legal excuse. Plaintiffs have suffered severe emotional distress because of Defendants' actions and have been unable to maintain or develop their respective businesses.

XXIII. TEXAS DECEPTIVE TRADE PRACTICES ACT

Defendants' actions described more completely above constitute unfair methods of competition, unconscionable acts or practices, and unfair and deceptive acts and practices in the conduct of the Amway related business in violation of the Texas Deceptive Trade Practices Act. Plaintiffs have been damaged by the Defendants' deceptive and unfair trade practices in an amount exceeding Two Hundred Million Dollars (\$200,000,000.00). Plaintiffs are entitled to recover their actual damages, additional damages to be proven at the trial of this matter, post costs, interests, and reasonable attorney fees from the Defendants' further deceptive and unfair trade practices.

XXIV. BREACH OF FIDUCIARY DUTY

The relationship of Amway personal direct distributor and distributor, and the relationship between an Amway distributor and those who the distributor helps train and counsel in his or her downline network is a relationship of trust and confidence. In the network, the distributor-sponsor acquires influence over the distributors-recruits and is in a position of superior knowledge and information. These relationships of trust and confidence impose fiduciary obligations upon an Amway distributor.

At the time the Plaintiffs were recruited to become Amway distributors and throughout their time as active distributors, they made their decision to become and continue as distributors based in large part on their reliance on the representations made by their direct upline distributors including Defendants. Among the representations these Defendants made, are the following:

A. That Amway follows certain ethical guidelines and rules which are imposed by contract upon each distributor and which Defendants were committed to following.

B. That Defendants were committed to abiding by Rule 4 of §B of the Rules of Conduct of Amway Distributors - which prohibits an Amway distributor from selling non-Amway products to another Amway distributor whom he or she does not personally sponsor as applied on a Diamond to Diamond basis in accordance with the course of dealing and past business practices recognized by all distributors in the Amway network;

C. That Defendants would treat Plaintiffs fairly in the business support materials business by compensating Plaintiffs for all sales of business support materials due distributors in their downline network;

D. That Defendants are committed to Amway's partnership principal in that Plaintiffs can place their trust and confidence in these Defendants; and,

E. That Defendants are committed to Amway's principals of teamwork, commitment, and communication.

Defendants, individually and conspiring among themselves and others, have abused and betrayed Plaintiffs' trust and confidence by, among other things:

A. Seeking to acquire and take over Plaintiffs' Amway related business support materials business by violating Rule 4 of §B of the Rules of Conduct of Amway Distributors as applied on a Diamond to Diamond basis in accordance with the parties course of dealing and past business practices;

B. Fraudulently inducing Plaintiffs to allow these Defendants to continue to directly serve a certain distributor in their downline organizations with Internets business support materials;

C. On information and belief, misrepresenting the volume of business support materials distributed to distributors in the Plaintiffs' downline by Defendants; and,

D. Agreeing and/or conspiring with Defendants and others and their respective companies, to engage in an illegal group boycott of Plaintiffs in the market for Amway related business support materials, motivational seminars, rallies and other events and sponsorship of prospective Amway distributors.

E. Some of Defendants are members of the Amway Distributor's Association Board. This Board is the representative of all Amway Distributors before the Amway Corporation itself. It and its members have a duty to all Amway distributors to represent each individual independent Amway distributor's best interests in their dealings with the Amway Corporation and this includes Plaintiffs. Several of the Defendants by virtue of their membership on this Board have used their position on this Board to enrich themselves at the expense of Plaintiffs and other independent Amway distributors. This is a breach of the fiduciary duty these Board members and the Board itself owes to Plaintiffs and other independent Amway distributors and has caused serious irreparable financial harm to Plaintiffs for which they now sue.

Defendants' actions described above and throughout this Petition constitute breaches of their fiduciary duties to the Plaintiffs and are tortuous conduct separate and independent from their contractual breaches alleged above. Plaintiffs have been damaged and continue to be damaged by Defendants' breaches of their fiduciary duties to Plaintiffs in an amount exceeding Two Hundred Million Dollars (\$200,000,000.00). Plaintiffs are entitled to recover this sum, additional damages proven at the trial of this matter, sufficient punitive damages to deter Defendants from similar future conduct, plus costs, interest and reasonable attorney fees from these Defendants for their breaches of fiduciary duty.

XXV. ACCOUNTING

Plaintiffs demand that an accounting against Defendants be done to determine and recover monies owed Plaintiffs by Defendants. Plaintiffs' remedy at law for Defendants' actions is inadequate because without an accounting, Plaintiffs are unable to determine the precise amount of money that Defendants owe them.

XXVI. INJUNCTIVE RELIEF

Plaintiffs are also entitled to an order from the Court that compels Defendants to abide by their contractual commitments to Amway, and to Plaintiffs as third party intended beneficiaries to those contracts and as parties to the various implied agreements between the parties, which agreements provide that Rule 4 will be applied to the distribution network for business support materials on a Diamond to Diamond basis. If Amway

allows Defendants to violate Rule 4 of the Rules of Conduct, Plaintiffs will continue to suffer immediate and irreparable injury, loss and damage. While Plaintiffs bring this action to remedy past violations of the Rules of Conduct of Amway distributors, Plaintiffs have no adequate remedy of law to prohibit future violations by Defendants. If a preliminary injunction is granted, the injury, if any, to Amway and the other Defendants, by simply forcing them to comply with contractual obligations they promulgated themselves and bargained for with Plaintiffs and others, will be minimal.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs demand a trial by jury that on the evidence shown before this Court may show the Plaintiffs recover damages:

- A. Actual damages of at least Two Hundred Million Dollars (\$200,000,000.00);
- B. Exemplary damages in an amount to be determined by the jury;
- C. Attorneys' fees and costs of Court;
- D. Pre-judgment and post-judgment interest as provided by law; and,
- E. An accounting as described in this Petition;
- F. Injunctive relief as described above;
- G. For such other equitable and legal relief to which Plaintiffs may justly entitled.

Respectfully submitted,
PHILLIPS & AKERS

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