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**ATTORNEYS FOR PLAINTIFF,
QUIXTAR INC.**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

QUIXTAR INC.

Plaintiff,

v.

MONA VIE, INC.,
MONAVIE LLC,
John Brigham and Lita HART,
Jason and Carrie LYONS,
Lou NILES,
Farid ZARIF,
John DOES 1-10,

Defendants.

COMPLAINT AND JURY DEMAND

Judge

Case No.:

COMPLAINT

Plaintiff Quixtar Inc. (“Quixtar”) files this Complaint against Defendants upon personal knowledge as to its own actions and upon information and belief as to all other matters.

NATURE OF THE ACTION

1. This action stems from the unfair competition of Mona Vie, Inc. and MonaVie LLC (collectively referred to as “MonaVie”) and its distributors. MonaVie conspired with existing and former Quixtar distributors to intentionally interfere with Quixtar’s existing contracts with its current and former IBOs by inducing them to breach their agreements with Quixtar. In their effort to raid Quixtar’s distributor force and to obtain product sales, MonaVie and its distributors, among other things, falsely advertise the health benefits of its products that compete with Quixtar products. For example, MonaVie distributors falsely advertise that the MonaVie products cure cancer.

JURISDICTION AND VENUE

2. Jurisdiction is based upon federal question and diversity jurisdiction pursuant to 28 U.S.C. §§ 1331, 1332 and 1338 and the doctrine of supplemental jurisdiction pursuant to 28 U.S.C. § 1367. The matter in controversy significantly exceeds the sum of \$75,000, exclusive of interest and costs. Venue is proper in this district under 28 U.S.C. § 1391 based on Defendants’ following activities: regularly transacting business within this district; regularly soliciting business in this district; regularly recruiting potential business associates in this district; operating interactive web sites which are accessible and accessed by individuals residing in this district, including www.monavie.com, www.brighart.com, www.R3Global.com, www.monavieforum.net, www.mymonaviemiracle.com, www.mymonavie.com, www.thepurplecure.com,

www.monahealth.com, www.upyourantioxidants.com, www.clubmonavie.name, www.income101.com/training, and disseminating video material to individuals residing in this district through www.youtube.com.

3. Defendants have engaged and continue to engage in the transaction of business and the commission of tortious acts in Utah and in interstate commerce, and Defendants are within the jurisdiction of this Court.

PARTIES

4. Quixtar is a Virginia corporation having its principal place of business at 5101 Spaulding Plaza, Ada, MI 49355.

5. Defendant Mona Vie, Inc. is a Utah Corporation having its principal place of business at 10855 South Riverfront Parkway, Suite 100, Salt Lake City, UT 84095. Mona Vie, Inc. is registered to transact business in Utah and, upon information and belief, regularly transacts such business.

6. Defendant MonaVie LLC is a limited liability company organized under the laws of the State of Delaware having its principal place of business at 10855 South Riverfront Parkway, Suite 100, Salt Lake City, UT 84095. MonaVie LLC is registered to transact business in Utah and, upon information and belief, regularly transacts such business. Furthermore, in MonaVie LLC's Application for Authority to Transact Business in the State of Utah, MonaVie LLC lists Mona Vie, Inc. as a manager of the company.

7. Defendants John Brigham (“Brig”) and Lita Hart (collectively “the Harts”) are individuals who reside in the State of Florida. The Harts currently hold the rank of Imperial Black Diamond Executives within MonaVie’s distributor ranking system and

are MonaVie's highest ranking distributors. The Harts are also the owners of R3Global Support System, a company that provides and sells motivational tools and sales techniques for MonaVie distributors. Upon information and belief, the Harts regularly travel to this district in their capacity as distributors of MonaVie products and in their capacity as owners of R3Global Support System. The Harts also sell MonaVie-related products in this district through the R3Global Support System website, www.R3Global.com.

8. Defendants Jason and Carrie Lyons (collectively "the Lyons") are individuals who reside in the State of Florida. The Lyons currently hold the rank of Black Diamond Executives within MonaVie's distributor ranking system, an elite level. The Lyons solicit business and recruit business associates for MonaVie by disseminating to individuals residing in this district video material of themselves through the websites www.monavie.com and www.mymonavie.com/lyonsjason and videos of Jason Lyons through the website www.youtube.com.

9. Defendant Lou Niles is an individual who resides in the State of Florida. Lou Niles is currently a MonaVie distributor. Lou Niles advertises and sells MonaVie-related products in this district through the websites www.naturehealsitsown.com and www.mymonavie.com/liferenewal. Lou Niles also solicits business and recruits business associates for MonaVie by disseminating to individuals residing in this district video material of himself through the website www.youtube.com.

10. Defendant Farid Zarif is an individual who resides in the State of California. Farid Zarif is currently a MonaVie distributor. Farid Zarif advertises and

sells MonaVie-related products in this district through the websites

www.mymonavie.com/drzarif/ and www.income101.com/training/drzarif/.

11. Defendants John Does 1-10, whose complete identities and addresses are unknown at this time, upon information and belief, are individuals or businesses associated with the sale and distribution of MonaVie products and/or the soliciting and recruiting of business associates.

FACTS

The Quixtar Business

12. Quixtar began operations September 1, 1999 and is a successor in interest to certain assets of Amway Corporation (“Amway”) that operated a multilevel marketing Sales and Marketing Plan in the United States beginning in 1959. Today, Quixtar sells a wide variety of products, including nutritional products, such as vitamins, energy drinks and protein bars. Quixtar offers a unique business opportunity combining the efficiency of the Worldwide Web with personal contact. Quixtar generates sales of approximately \$1 billion each year, making it one of the largest online retailers among e-commerce sites.

13. Quixtar attributes its success not only to its outstanding product lines, but also to its unique network of Independent Business Owners (“IBOs”). Each IBO is an owner of an independent business (“IB”). IBOs are independent business persons, whose individual success depends in part on their own selling effort and the selling efforts of the persons they sponsor and support. These sponsored IBOs are known as an IBO’s “downline.” Anyone over 16 years of age may become a Quixtar IBO if “sponsored” by an existing IBO who introduces them to the Quixtar business.

14. When a downline IBO sponsors other IBOs, these other IBOs become part of the “Line of Sponsorship,” and each “upline” IBO can earn bonus income based on the product sales of his or her downline group. “Lines of Sponsorship” can grow into very large “family trees” of hundreds or even thousands of IBOs.

Quixtar’s Contract With Its IBOs

15. To preserve the benefits of the Quixtar business to all Quixtar IBOs, Quixtar requires IBOs to agree to comply with “Rules of Conduct” promulgated by Quixtar. The Rules of Conduct are part of the contract that governs the relationship between Quixtar and its IBOs.

16. Quixtar has several Rules of Conduct that are designed to protect and enhance the Line of Sponsorship. For example, Rule 4.14 of the Rules of Conduct prohibits IBOs from “tak[ing] advantage of their knowledge of or association with other IBOs whom they did not personally register, including their knowledge resulting from or relating to their individual lines of sponsorship,” in order to promote and expand other business ventures, including other selling activities involving products, services, or business opportunities not offered or marketed by Quixtar. (*See* Ex. A, Quixtar Rules of Conduct at D-24, Rule 4.14.)

17. Rule 4.14.1 of the Rules of Conduct prohibits an IBO from soliciting, directly or indirectly, other IBOs whom the IBO did not personally register in order to sell, offer to sell, or promote other products, services, or business opportunities not offered or marketed by Quixtar. (*See* Ex. A at D-24, Rule 4.14.1.)

18. Rule 4.27 of the Rules of Conduct requires an IBO to comply with Quixtar’s Privacy Policy with regard to IBO and customer information, its

Confidentiality and Non-Disclosure Policy with regard to IBO and IB information, and its Data Management Rule with respect to LOS information. In addition, Rule 4.27 provides that all LOS information is considered and maintained as Proprietary Information of Quixtar, and that all IBOs, among other things, shall not disclose such Proprietary Information to any third party or use such Proprietary Information to compete either directly or indirectly with Quixtar. (*See* Ex. A at D-27 and D-28, Rule 4.27.)

19. Rule 6.5 of the Rules of Conduct prohibits an IBO from using the Line of Sponsorship to sell, distribute, or promote competing products, services, or other business ventures, or otherwise interfere in the business of Quixtar or other IBOs. (*See* Ex. A at D-36, Rule 6.5.)

20. Rule 6.5.3 of the Rules of Conduct prohibits an IBO from competing, either directly or indirectly, with the business of Quixtar while registered as an IBO. (*See* Ex. A at D-36, Rule 6.5.3.)

21. Under Rule 6.5.4 every IBO agrees not to compete, either directly or indirectly, with the business of Quixtar during the six-month period following (a) the voluntary or involuntary resignation, non-renewal, or termination of that IBO's business, or (b) any violation by the IBO of Rule 6.5.4, whichever is later. (*See* Ex. A at D-37, Rule 6.5.4.)

22. The Rules of Conduct also prohibit an IBO from encouraging, soliciting, or otherwise attempting to recruit or persuade any other IBO to compete with the business of Quixtar for a period of two calendar years following the termination of their registration as a Quixtar IBO. This obligation is stated in Rule 6.5.5. (*See* Ex. A at D-36, D-37, Rule 6.5.2 and 6.5.5.)

The MonaVie Business

23. MonaVie supplies nutritional products, such as MonaVie Original and MonaVie Active juice products and MonaVie Active Gel (collectively “MonaVie products”). The products are marketed as containing a variety of healthful ingredients including vitamins, anti-oxidants, anti-inflammatory agents, and phytonutrients.

24. MonaVie products combine the juice of the acai berry with the juices of 18 other fruits and berries, including pomegranates, grapes, pears, cranberries, blueberries. Products are priced beginning at \$39 for a bottle of the MonaVie Original juice product. The size of the bottle is approximately 25 ounces and has the shape commonly associated with a wine bottle.

25. Like Quixtar, MonaVie’s products are sold through a multilevel marketing distribution system (“MLM”), utilizing the efforts of its distributor force. MonaVie provides incentives to its distributors, in part, through its executive ranking program, containing the following awards (in ascending order of prestige): Star, Bronze, Silver, Gold, Ruby, Emerald, Diamond, Blue Diamond, Hawaiian Blue Diamond, Black Diamond, Royal Black Diamond, Presidential Black Diamond, Imperial Black Diamond, and Crown Black Diamond.

26. MonaVie authorizes its distributors to enter into contracts on its behalf. For example, distributors recruit people and are authorized to bind them to written contracts with MonaVie.

27. In addition to competing with Quixtar as another multilevel marketing company, MonaVie offers products that are similar in many respects to the nutritional products offered by Quixtar. For example, Quixtar sells antioxidant juices, which contain

the acai berry, under the brand Simply Nutrilite™. Therefore, MonaVie competes directly with Quixtar in the manufacture and sale of nutritional products and in the recruitment of persons to a multilevel marketing based opportunity.

28. MonaVie owns various trademark registrations for nutritional supplements, juice, and energy drinks such as U.S. Reg. No. 3,111,333 for MONA-VIE; U.S. Reg. No. 3,106,147 for MONA-VIE & Design; U.S. Reg. No. 3, 111, 332 for MONA-VIE ACTIVE; and U.S. Reg. No. 3,106,146 for its MONA-VIE design reproduced below:



MonaVie’s Policies And Procedures

29. MonaVie places contractual limitations on its distributors through, among other things, its Distributor Agreement, which incorporates by reference the MonaVie LLC Statement of Policies and Procedures (“Policies and Procedures”) setting forth in detail the rules and standards of conduct required of MonaVie distributors; violations of the provisions of the Policies and Procedures can result in the termination of the offender’s Distributor’s Agreement. (*See* Ex. B at 19, Section 12.1.)

30. Under Section 5.1 of the Policies and Procedures, MonaVie places contractual limitations on its distributors over the use of its intellectual property:

MonaVie will not allow the use of its trade names, trademarks, designs, or symbols outside of corporate-produced and -approved sales aids by any person, including MonaVie Distributors, without prior written authorization from MonaVie

(Ex. B at 7, Section 5.1.)

31. Under Section 5.2 of the Policies and Procedures, MonaVie places contractual limitations on its distributors over the creation and publication of marketing materials relating to MonaVie:

Only Distributors who have achieved the rank of Black Diamond or higher may create and publish their own marketing materials, advertising materials, and/or other sales aids. All items must be submitted and reviewed by MonaVie and must bear the appropriate review seal before being disseminated or displayed.

(Ex. B at 7, Section 5.2.)

32. Under Section 5.3 of the Policies and Procedures, MonaVie places contractual limitations on its distributors over the use of MonaVie distributors' websites:

If a Distributor desires to utilize an Internet web page to promote their business, they may do so through MonaVie's official website or through MonaVie approved replicating websites after entering into the Website License Agreement. . . . Alternatively, a Distributor with the ranking of Black Diamond or above may develop their own webpages . . . [but] must use only text found on the Company's official website . . . and must obtain written permission from MonaVie before making the website available for public viewing.

(Ex. B at 7, Section 5.3.)

33. Under Section 5.4 of the Policies and Procedures, MonaVie places contractual limitations on its distributors over MonaVie distributors' use of additional online resources:

With the exception of the websites allowed by Section 5.3, Distributors shall not use any other website, including but not limited to, online blogs, chat rooms, social network, online auction sides, video websites, or any other online forum to market, sell, advertise, promote, or discuss MonaVie's products or services, or the MonaVie opportunity.

(Ex. B at 7, Section 5.4.)

34. In addition to the aforementioned limitations, MonaVie sets forth requirements about the types of representations MonaVie distributors can and cannot make to potential MonaVie customers and recruits. For example, under the Code of Ethics contained within the Policies and Procedures, a distributor agrees to the following statement:

I will be truthful in my representation of MonaVie products by making no diagnostic, therapeutic, curative, or exaggerated claims.

(Ex. B at 4, Section 1.1.)

35. Section 5.12.2 further proscribes misrepresentation of the qualities of MonaVie products:

No claims (which include personal testimonials) as to therapeutic, curative, or beneficial properties of any products offered by MonaVie may be made except those contained in Official MonaVie Literature.

(Ex. B at 9, Section 5.12.2.)

Brig And Lita Harts' Misconduct

36. Brig and Lita Hart are the highest ranking distributors in the MonaVie system. The Harts are prominently featured on MonaVie's Internet website, where they are promoted as a "MonaVie Success Story" and as having achieved the rank of "Imperial Black Diamond Executive." The MonaVie website also features the Harts in two documentary videos.

37. In addition, the Harts own and operate a website at www.brighart.com dedicated to the MonaVie product and opportunity. The Harts use their website to promote MonaVie as well as their related business, R3Global Support System. The Harts' website utilizes MonaVie's registered trademarks and contains tutorials explaining

the MonaVie opportunity and the MonaVie compensation plan. At least two videos on the Harts' website feature MonaVie's CEO Dallin Larsen.

38. In order to recruit new distributors and sell MonaVie products, MonaVie distributors such as the Harts hold sales and recruitment meetings across the country. These meetings can have hundreds of attendees at venues such as hotel conference rooms. During these meetings, distributors extol the virtue of MonaVie products and the MonaVie sales opportunity, thereby acquiring new recruits.

39. Upon knowledge and belief, the Harts utilize these sales and recruitment meetings to deliberately circulate and publish, or promote the circulation and publication of, false and misleading factual statements regarding MonaVie products and the health benefits thereof.

40. Videos of these meetings have been posted to Internet websites, such as www.youtube.com, where they are freely accessible to the general public, including individuals within this district. These videos serve to promote MonaVie products and business opportunity.

41. One such video features Brig Hart interviewing individuals that purport to be MonaVie customers. Hart interviews a man who identifies himself as Chris Sanders from Melrose and makes the following representations:

Hart: Okay, well, how long have you been on the product?

Sanders: Three weeks.

Hart: And, how much you drinking?

Sanders: Three ounces in the morning and three ounces in the afternoon.

Hart: Praise God. That always does my heart good. Okay, what's happened since you been on it?

Sanders: Dropped my blood pressure down to 135 over about 85. It was 190 over 120. Lost five pounds --

Hart: (whisper) Come on.

Sanders: And my sister-in-law just called me tonight. She has fibromyalgia. She had one bottle.

Hart: (whisper) This is good.

Sanders: And her neck and arm was stopped hurting, and she's been off it for two days, and now she's begging for another bottle.

(Ex. C, Transcript of B. Hart Interviews at 2:2-37.)

42. Through the Harts' sales meetings, potential MonaVie customers and distributors are told that MonaVie products reduce blood pressure and relieve the symptoms of fibromyalgia, notwithstanding the fact that such products are not approved by the FDA for medicinal use.

43. At the Harts' functions and via the Harts' Internet video, potential MonaVie customers and distributors are also told that MonaVie products can cure cancer.

Purvis: . . . the doctor found cancer cells, spots on my left - my right ovary and my right breast. And, Brenda had came to my house, did the first meeting in Claxton and she told me, she said, "Don't have the surgery yet. Drink the MonaVie -- Give it some time."

Hart: (whisper) My God. You told her that?

Purvis: Three-and-a-half weeks later, the doctor's office called. Wanted me to go in and set up the time for the surgery. I told them I felt so much better. That there were so many things my body could do that it wasn't allowing me to do before. And, so I went back and had some tests done. There is no cancer cells anywhere in my body.

(Ex. C at 3:39-62.)

44. Upon knowledge and belief, the Harts sponsor these sales and recruitment meetings and deliberately elicit these testimonials. The Harts corroborate these customer testimonials and add false and misleading statements, for example:

Hart: You know, a lot of people say, “I’m not sure it’s [MonaVie], but --” And, I say, “Well, I can show you how to do it. Just give me all your product.” And, you know what happens? Pain’ll come back.

(Ex. C at 4:50-62.)

45. Upon information and belief, no scientific evidence exists as to the medicinal or curative properties of MonaVie products. Further, MonaVie’s Policies and Procedures expressly forbid distributors from making or publishing claims as to the medicinal or curative properties of MonaVie. (*See* Ex. B at 9-10, Section 5.12.2.)

46. Despite the falsity of these testimonials, Brig Hart deliberately made and elicited false outrageous representations to deceive consumers and gain a commercial advantage over his competitors, such as Quixtar.

47. Consumers of MonaVie products have reasonably relied on these material misrepresentations in deciding to purchase MonaVie products. Additionally, MonaVie distributors have reasonably relied on these material misrepresentations in deciding to become involved with the MonaVie business.

Jason And Carrie Lyons’s And Lou Niles’s Misconduct

48. Defendants Jason and Carrie Lyons, other top MonaVie distributors, also employ similar tactics when conducting MonaVie sales and recruitment meetings. In one such meeting, captured on video and widely available via the Internet, Jason Lyons introduces Dr. Lou Niles to promote MonaVie juice:

Lyons: Folks, also we have a doctor in the house. You wanna give them your best three minutes on MonaVie and come in here and share a little bit about it? Dr. Lou Niles.

....

Niles: I am the guy you don't want to really know because I am the doctor of "last resort" it seems, and I am usually dealing with end-stage cancers I very reluctantly got involved in MonaVie. I only got involved in it when I realized there that something else was going on in the combination of the juices that Dr. Carson put together. And it's more than just fruit juices – it's the combination that seems to be working. So, I have never lost a cancer patient yet

(Ex. D, Transcript of J. Lyons and L. Niles at 1:3-32.)

49. Dr. Niles continues to explain the "science" behind MonaVie's curative powers:

Niles: The reason is that MonaVie is so loaded with antioxidants and anti-inflammatories that it immediately scrubs all the smoke that is being produced by the body and it immediately stops and slows down oxidation. It can't [prevent oxidation] at 100%, but it slows it down, and if you drink MonaVie on a regular basis for the rest of your life and it becomes part of your menu, you will have put in your body enough antioxidants to keep from aging at a rapid pace.

What it also does is it also allows your T-killer cells, which are your immune cells, to arrest a virus, bacteria, fungus or loose cancer cells. This is why it is such a cool product. There is no other food on the planet that can do this.

(Ex. D at 3:21-44.)

50. In the same video, Niles answers questions from the audience and further misrepresents that the MonaVie product is a successful treatment for cancer and for improved vision:

Audience Member #3: When you treat for cancer what would be the dosage of MonaVie to take?

Niles: MonaVie is not a – MonaVie is a fruit juice, it is a simple as that. You drink it as much . . . you create your own dosage, based upon how you feel. I'm drinking three times a day, probably four to five ounces per serving. I am drinking juice like juice. And I'll tell you why – it's because the other day, about three weeks ago, I picked up my dollar store glasses, I buy ten at a time, and I lose them all the time. But I got this whole stack of dollar store glasses, and I put mine on to work on my computer after awakening, and I could not see very well. I thought I'd picked up a pair from months ago when my eyes were better, and I figured this was just a bad pair. But every pair I picked up, I couldn't see very well. Wow. So, off to the dollar store to buy another generation of glasses. But instead of going up, I had to go down. In other words, my eyes were improving. I went from 300 to 275 and now I am at 225. Well, that triggered me to increase my dosage of MonaVie because my eyes were actually getting better.

That dovetails into another story about macular degeneration of the eyes. MonaVie has had more of an impact on eye healing than any other illness. And the reason is this. The eyes are most sensitive to oxidated stress. All of us, usually around 40, end up having to get glasses. That should never happen.

. . . .

Audience Member #5: I have a friend who has terminal cancer. She just got out of the hospital, and they want to put her back in, and she won't go back in. If she starts taking MonaVie, a bottle a day or whatever, will it ease her pain any?

Niles: It will help her, it will add quality to her life. If she has more than 90 days of life left, there is a possibility of reversing it.

(Ex. D at 5:52-6:3, 7:11-22.)

51. Dr. Niles' outrageous misrepresentations of the healing effects of MonaVie products are also found on Club MonaVie Radio via the Internet at www.blogtalkradio.com/live2a120/2007/12/09/MONAVIE-FEATURING-OPTI-ACAI.

52. Upon information and belief, no scientific evidence exists as to the medicinal or curative properties of MonaVie products. Further, MonaVie's Policies and Procedures expressly forbid distributors from making or publishing claims as to the medicinal or curative properties of MonaVie. (*See* Ex. B at 9-10, Section 5.12.2.)

53. Despite the falsity of these claims, the Lyons and Dr. Niles deliberately elicited, made, and published false and misleading representations to deceive consumers and gain a commercial advantage above their competitors, such as Quixtar.

54. Consumers of MonaVie products have reasonably relied on these material misrepresentations in deciding to purchase MonaVie products. Additionally, MonaVie distributors have reasonably relied on these material misrepresentations in deciding to become involved with the MonaVie business.

Farid Zarif's Misconduct

55. Defendant Farid Zarif uses similar tactics when conducting MonaVie sales and recruitment meetings. In one such meeting, captured on video and widely accessible via the Internet, Dr. Farid Zarif misrepresents that the MonaVie product can help cure cancer and inflammatory diseases such as rheumatoid arthritis, Crohn's disease, and colitis:

Zarif: There are some diseases that you really have to be careful with and there are some things with the kidneys that the kidneys can not handle at different stages, but as far as cancer, and those inflammatory diseases, such as rheumatoid arthritis, even Crohn's disease, Crohn's disease is the inflammation of what? Your colon. All of these

things, colitis, anything with “-it is” on the end, MonaVie can help it immediately, ok.

(Ex. E, Transcript of Dr. Zarif at 1:58-67).

56. In that same meeting, Dr. Zarif misrepresents that MonaVie is a successful treatment for diseases, such as Osteoporosis and spinal disorders:

Zarif: So here we have to have protein, but the only thing about this is if we get too much of it, and then it can cause calcaurisis, when women especially, urinate out the calcium, and end up with Malaysia diseases, like Osteoporosis, kyphotic -hump, you get those little kurdosas. Those different spinal disorders and the softening of bone. So with MonaVie, MonaVie helps with all of this because of the bio-availability in it, and it helps to build up brand new cells. It helps to strengthen the cells that you already have...

So the phenolics, polyphenics, isoflavons, and the bioflavonoids all of these are little technical names for the good stuff in Mona Vie. This is the stuff that is working, this is the stuff that protects you against disease, this is the stuff that protects you against cancer, and this is the stuff that protects you against any type of immune system disorders like your simple colds and the way through simple viruses. This stuff is really, really powerful.

(Ex. E, Transcript of Dr. Zarif at 1:91-92; 2:1-10, 67-76).

57. In response to an audience question at that same meeting, Dr. Zarif further misrepresents that MonaVie helps cure cancer by attacking cancer cells:

Audience Member #10: We are going to be sharing Mona Vie with a really good friend of ours on Wednesday and we are giving them a lot of literature and samples, and he is going through radiation chemotherapy. Would you recommend that it is safe to start this? And what would you say his dosage would be?

Dr. Zarif: Yes, I would say about 4 ounces per day. And yes, and why, because of cellular proliferation. Yes, definitely with cancer patients, because the radiation kills the cancer and the person, and the same thing with chemo,

but one thing that MonaVie has in it, remember we talked about the phyto-chemicals? Phyto-chemicals is the only substance that directly attacks cancer cells...It's really a super good product, and when it comes to cells, and helping him, oh my god, you will be very happy that you did, very happy. His, platelet levels, his killer cells, his white blood cell count, things will change incredibly.

(Ex. E, Transcript of Dr. Zarif at 7:58-73; 8:3-11).

58. Another question from the audience at this same meeting prompts Dr.

Zarif to again misrepresent the medicinal or curative properties of MonaVie:

Dr. Zarif:...you hand it to a person you start to help a person by giving them MonaVie, because MonaVie is the beginning of better health. For cancer patients, for people with digestive disorders, for people with all types of ailments as far as pain in the joints in your back, your spine, your muscles. Injuries, if you are a person that is athletic it reduces the inflammation your recovery time is faster and that means if you are working out hard and you are playing that hard ball, or for running long distances, or pushing the steel your body recovers faster.

Audience Member #12: I am listening to you know, and everything you have said helps so does that mean it would help someone that has Alzheimer's?

Dr. Zarif: Yes, Alzheimer's and Dementia. Yes, it will help them also...

(Ex. E, Transcript of Dr. Zarif at 8:59-75).

59. Upon information and belief, no scientific evidence exists as to the medicinal or curative properties of MonaVie products. Further, MonaVie's Policies and Procedures expressly forbid distributors from making or publishing claims as to the medicinal or curative properties of MonaVie. (*See* Ex. B at 9-10, Section 5.12.2.)

60. Despite the falsity of these claims, Dr. Zarif deliberately made, and published false and misleading representations to deceive consumers and gain a commercial advantage over their competitors, such as Quixtar.

61. Consumers of MonaVie products have reasonably relied on these material misrepresentations in deciding to purchase MonaVie products. Additionally, MonaVie distributors have reasonably relied on these material misrepresentations in deciding to become involved with the MonaVie business.

John Does' 1-10 Misconduct

62. Upon knowledge and belief, several currently unknown MonaVie distributors operate their own websites and publish false and misleading statements of facts regarding MonaVie. Although the identities and addresses of the operators of these websites (John Does 1-10) are unknown at this time, Quixtar will seek leave of the Court to amend its Complaint to state the true names of such defendants when they are ascertained through discovery or other means.

63. These distributor websites make liberal use of MonaVie's trademarks and symbols to promote the MonaVie business. These websites routinely feature "customer testimonials" extolling the supposed curative and medicinal benefits of MonaVie.

64. For example, the website at www.monavieforum.net features an online message posting board regarding the MonaVie opportunity. This message posting board includes testimonials claiming that MonaVie is able to alleviate the symptoms of multiple sclerosis, relieve pain caused by arthritis and spinal scoliosis, lower blood pressure, improve joint function, and prevent migraines and hangovers. (See Ex. F, Feb. 18, 2008 Archive of www.monavieforum.net.)

65. Another website, www.mymonaviemiracle.com, includes links to testimonials organized by their purported curative properties. For example, viewers of this website are able to click on a menu to read testimonials regarding MonaVie's beneficial effects on various disorders such as autism, autoimmune disorders, Lyme's disease, gout, multiple sclerosis, and Parkinson's disease. (*See* Ex. G, Feb. 18, 2008 Archive of www.mymonaviemiracle.com.)

66. A website at www.thepurplecure.com also utilizes the MonaVie trade name and trademark symbols and contains video content and photographs of MonaVie products. This website also allows customers to purchase the MonaVie product over the Internet. Additionally, the website features customer testimonials that attribute the following results to the use of MonaVie products: recovery from Graves disease, relief from chronic back pain, alleviation of an amputee's phantom pain, and relief from pain caused by plantar fasciitis, among other miracles. (*See* Ex. H, Feb. 18, 2008 Archive of www.thepurplecure.com.)

67. Another website at www.monahealth.com likewise utilizes the MonaVie trade name and trademark symbols, contains video content and photographs of MonaVie products, and also allows customers to purchase the MonaVie product over the Internet. This website features customer testimonials that attribute the following results to the use of MonaVie products: recovery from myasthenia gravis, improved hair growth, relief from chronic back pain, alleviation of an amputee's phantom pain, and relief from pain caused by plantar fasciitis, among other miracles. (*See* Ex. I, Feb. 18, 2008 Archive of www.monahealth.com.)

68. Yet another website at www.upyourantioxidants.com utilizes the MonaVie trade name and trademark symbols and contains video content and photographs of MonaVie products. This website also features customer testimonials that attribute the following results to the use of MonaVie products: recovery from degenerative arthritis, relief from chronic joint pain, and improved back pain. (*See* Ex. J, Feb. 18, 2008 Archive of www.upyourantioxidants.com.)

69. Another website at www.clubmonavie.name utilizes the MonaVie trade name and trademark symbols. It contains photographs of MonaVie products as well as video content stating that the MonaVie Active product controls and repairs damage of the body. The website also links to the video of Dr. Lou Niles, discussed above, in which Dr. Niles claims the MonaVie products have curative powers, such as curing cancer and improving vision. (*See* Ex. K, Feb. 19, 2008 Archive of www.clubmonavie.name.)

70. A website at www.income101.com/training contains photographs of MonaVie products and documents utilizing the MonaVie trade name and trademarks. This website contains the same video content of Dr. Lou Niles, discussed above, in which Dr. Niles misrepresents the curative powers of the MonaVie products. Further, it contains video content of Dr. Farid Zarif, also discussed above, where he asserts health claims regarding MonaVie products. For example, he claims that MonaVie products will help Alzheimer's patients and contain vital chemicals that attack cancer cells and help all of the body's systems. (*See* Ex. L, Feb. 19, 2008 Archive of www.income101.com/training.)

71. Use of the MonaVie trademarks demonstrates actual or implied sponsorship and approval of these websites, their content, and their representations by

MonaVie. Further MonaVie's Distributor Agreement limits distributors' ability to promote MonaVie's products online and purports to control the use of its trade name, trademarks designs and symbols without written authorization. (*See* Ex. B at 7, Section 5.1.)

72. Upon information and belief, no scientific evidence exists as to the medicinal or curative properties of MonaVie products. Further, MonaVie's Policies and Procedures expressly forbid distributors from making or publishing claims as to the medicinal or curative properties of MonaVie. (*See* Ex. B at 9-10, Section 5.12.2.)

73. Despite the falsity of these claims, John Does 1-10 deliberately elicited, made, and published false and misleading representations to deceive consumers and gain a commercial advantage over their competitors, such as Quixtar.

74. Consumers of MonaVie products have reasonably relied on these material misrepresentations in deciding to purchase MonaVie products. Additionally, MonaVie distributors have reasonably relied on these material misrepresentations in deciding to become involved with the MonaVie business.

MonaVie's Misconduct

75. MonaVie benefits financially from the contracts its authorized distributors enter into on its behalf. Upon information and belief, MonaVie has knowledge, and has had knowledge, of the above-described misrepresentations and unlawful conduct by the Harts, the Lyons, Dr. Niles, Dr. Zarif, and John Does 1-10. Such misrepresentations were foreseeable to MonaVie as demonstrated by its Policies and Procedures. Nevertheless, despite the foreseeability of these misrepresentations and the Policies and Procedures that prohibit them, MonaVie has permitted the misrepresentations to

proliferate. MonaVie's failure to prevent such misrepresentations, and permitting their distributors to use MonaVie's trademarks and symbols when making the misrepresentations, cloaks its distributors with apparent authority. MonaVie has given its distributors carte blanche to hold themselves out as MonaVie itself.

76. In addition to its tacit approval of other defendants' misconduct, MonaVie has also directly engaged in misconduct. On its own website at www.monavie.com, MonaVie features a profile of NASCAR driver, Geoff Bodine. The profile contains a video of Bodine, who describes at length various of his aches, pains, and sleeping disorders that MonaVie has alleviated:

I met a gentlemen in Jacksonville, Florida

. . . .

. . . and I said, "Well, I'm doing great. I'm still alive. Really blessed to be alive, but I got some sore joints, aches and pains. You know, just kind of a normal thing. I don't worry too much about it." He went back to his shop and a few minutes later showed up with two bottles of this stuff called, MonaVie.

. . . .

And things started to happen. Actually, I was waxing my motor coach and I noticed I didn't have any pains in my wrist and my ankles. My knees didn't hurt from going up and down the ladder. And, I thought it was pretty remarkable because I always had those pains.

But, one of the really neat things that started to happening was after I quit taking the sleep aids, I started sleeping better.

. . . .

. . . I kept waking up, waking, expecting to have a sore wrist or sore finger, waiting for a bad night of sleep or sore ankle, sore back when I got out of bed. But, you know, it

just didn't happen. I mean, I was almost hoping it would happen because then I could prove this MonaVie stuff didn't really work, but it wasn't that way. It was working. I didn't have a sore back. I did get a good night's sleep. Didn't have sore wrists or ankles.

(Ex. M, Transcript of Geoff Bodine Testimonial.)

77. By providing Mr. Bodine's testimonial on its website, MonaVie falsely represents that its product works as a sleep aid and pain reliever. Moreover, MonaVie provides an example to its distributors of how to use misrepresentations to recruit distributors and sell MonaVie products.

78. Upon information and belief, no scientific evidence exists as to the medicinal or curative properties of MonaVie products.

79. Upon information and belief, MonaVie products contain false and misleading label claims. For example, all of the MonaVie products claim to provide 25% of the recommended daily allowance of vitamin C per serving but do not. Similarly, MonaVie Active Gel claims that it provides 750 mg/serving of glucosamine but does not.

80. Upon information and belief, MonaVie makes additional false and misleading statements on its website at www.monavie.com. For example, MonaVie claims:

The MonaVie juice blend is a very powerful antioxidant against these additional free radicals [peroxynitrite (NORAC), hydroxyl (HORAC) and superoxide anion (SORAC)]; in fact, the SORAC assay score of 1,614 unit/g represents the highest value ever reported for superoxide scavenging activity in vitro of any food.

This statement falsely implies that the SORAC score is for the juice, which is not the case. The percentage of solids in the juice is too low for such a SORAC assay score.

81. Despite the falsity of these claims, MonaVie deliberately elicited, made, and published false and misleading representations to deceive consumers and gain a commercial advantage over its competitors, such as Quixtar.

82. Consumers of MonaVie products have reasonably relied on these material misrepresentations in deciding to purchase MonaVie products. Additionally, MonaVie distributors have relied on these material misrepresentations in deciding to become involved with the MonaVie business.

83. In addition to its actions and failures to take action for misrepresentations regarding its products and the effects thereof, MonaVie has also participated in interfering with Quixtar's contracts with several of its IBOs. MonaVie knows that several of its distributors recruit and solicit current and former Quixtar IBOs (who are obligated to comply with a covenant not to compete) to join MonaVie, and encourage others to do the same.

84. Upon information and belief, MonaVie knows and has known of the existence of Quixtar's contracts with Quixtar IBOs. Additionally, upon information and belief, MonaVie assisted and encouraged MonaVie distributors in inducing current and former Quixtar IBOs to breach their agreements with Quixtar and join the MonaVie business.

85. Upon information and belief, MonaVie had knowledge that the Harts were Quixtar IBOs when they associated with MonaVie. The Harts are currently the highest-achieving distributors within MonaVie. MonaVie knew that the Harts were in breach of their contract with Quixtar when they joined MonaVie and knew that they would be further breaching their contract with Quixtar by raiding their Quixtar LOS for the benefit

of MonaVie. Upon information and belief, MonaVie has similar knowledge with respect to other current high-achieving MonaVie distributors including Steve and Gina Merritt, Charlie and Debbie Kalb and Lynn and Renee Revell.

86. Upon information and belief, MonaVie is also targeting distributors of Quixtar's affiliates in international markets. For example, Amway of Australia has discovered several of its distributors participating in MonaVie in violation of their contracts.

87. Upon information and belief, in reasonable reliance on MonaVie's conduct, numerous Quixtar IBOs and their customers abandoned, terminated, or reduced their business relationships with Quixtar; former IBOs have breached their contractual obligations not to compete with Quixtar or to solicit Quixtar IBOs for a limited period of time; and numerous prospective IBOs were deterred from entering into a business relationship with Quixtar.

88. In press releases and videos available on its website, its President and CEO, Dallin Larsen, boasts of MonaVie's extraordinary growth since it started in January 2005. For example, he brags that the company doubled in 2007 and that each month since it started has been the biggest month ever for MonaVie. Unfortunately, its growth is the result of increasing sales by improper health claims about its products and by illegally raiding Quixtar of distributors.

The Origins of MonaVie

89. MonaVie's founder, Dallin Larsen, has a long history in the MLM business. Immediately prior to starting Monarch Health Sciences, a predecessor of MonaVie, Larsen was Vice President of Sales for Dynamic Essentials from December

2001 until February 2003. Larsen has bragged that during his tenure, he directed a 300% increase in sales revenue. Dynamic Essentials during that timeframe marketed a health drink product called Royal Tongan Limu. It contained a “superfood” derived from a sea plant reportedly consumed by the people of the Pacific island of Tonga. Royal Tongan Limu shares a number of striking similarities with MonaVie’s products.

- a. Just like MonaVie, Royal Tongan Limu was marketed as a health drink with anti-oxidant properties;
- b. Just like MonaVie, Royal Tongan Limu used a “superfood” discovered in a remote location as its active ingredient;
- c. Just like MonaVie, Royal Tongan Limu was marketed in what look like wine bottles at a similar price;
- d. Just like MonaVie, Royal Tongan Limu was marketed with polished videos promoting nature;
- e. Just like MonaVie, Royal Tongan Limu was marketed as a daily drink of 2-4 ounces per day;
- f. Just like MonaVie, Royal Tongan Limu was marketed through a MLM; and
- g. Just like MonaVie, Royal Tongan Limu was marketed with a variety of claimed health benefits for curing or preventing diseases and disorders such as cancer and diabetes.

90. The Food and Drug Administration issued a cyber letter to Dynamic Essentials in 2002 after it determined, based on an investigation of unsubstantiated therapeutic claims on the company's website, that Royal Tonga Limu was being

promoted for treatment and mitigation of various diseases. The letter informed them that the marketing of Royal Tonga Limu was a violation of the law.

91. Shortly after Larsen left Dynamic Essentials, it ceased operation, and stopped promoting or selling Royal Tongan Limu. The remaining inventory was destroyed at a landfill in Desoto, Illinois under FDA supervision. The FDA issued the following statement at the time:

"Getting rid of these bogus products, from a company that was giving false information about health benefits to consumers, underscores the message from FDA to those who would mislead consumers about their health," said FDA Commissioner Mark B. McClellan, M.D., Ph.D. "We will not tolerate companies that raise false hopes for preventing and treating illnesses, when there are more scientifically proven steps than ever before that consumers can take to improve their health."

(See Ex. N, FDA Press Release.)

COUNT I
(VIOLATION OF SECTION 43(a) of the LANHAM ACT)

92. Plaintiff hereby alleges against all Defendants unfair competition in violation of Section 43(a) of the Lanham Act. 15 U.S.C. § 1125(a). Plaintiff repeats and realleges the allegations of paragraphs 1 to 91 above, as though fully set forth therein.

93. Defendants, directly and by and through their distributors, have made and are making false or misleading representations of fact concerning the nature, characteristics, or qualities of MonaVie products in its advertising and promotion for MonaVie products.

94. Defendants, directly and by and through their distributors, have made and are making false or misleading representations of fact regarding MonaVie products in connection with the sale or offering for sale of MonaVie's products in interstate commerce.

95. MonaVie also contributed to the false or misleading representations of fact regarding its products made by its distributors when it continued to supply products to those distributors that it knew were making the false or misleading representations. Defendants' and their distributors' representations have deceived or have the capacity to deceive customers as to inherent qualities and characteristics of MonaVie products.

96. Defendants' and their distributors' representations have had a material effect on the purchasing decisions of customers.

97. Defendants' conduct as described herein constitutes unfair competition in violation of Section 43(a) of the Lanham Act.

98. As a result, Defendants are causing or are likely to cause injury to Quixtar for which Quixtar has no adequate remedy at law. Unless enjoined, Defendants' activities will continue to cause injury to Plaintiff.

COUNT II
(UTAH TRUTH IN ADVERTISING ACT)

99. Plaintiff hereby alleges against all Defendants violation of the Utah Truth in Advertising Act, Utah Code Ann. §§ 13-11a-1 through 13-11a-5 (2008). Plaintiff repeats and realleges the allegations of paragraphs 1 to 98 above, as though fully set forth therein.

100. In the course of their business, Defendants, directly and by and through their distributors, have made and continue to make representations of material fact that their goods are of a particular standard or quality other than they actually are.

101. Such false representations of material fact have misled and deceived consumers and created a misunderstanding as to the nature of the goods.

102. Defendants' conduct as described herein constitutes deceptive trade

practices in the course of a person's business, vocation, or occupation under the Utah Truth in Advertising Act §§ 13-11a-1 through 13-11a-5.

103. As a result, Defendants and their distributors are causing or are likely to cause injury to Quixtar for which Quixtar has no adequate remedy at law. Unless enjoined, Defendants' activities will continue to cause injury to Plaintiff.

COUNT III
(TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIPS)

104. Plaintiff hereby alleges against MonaVie tortious interference with existing and potential contracts under the common laws of the State of Utah. Plaintiff repeats and realleges the allegations of paragraphs 1 to 103 above, as though fully set forth therein.

105. Quixtar has valid distributorship contracts with every current and former Quixtar IBO and a valid business expectancy with prospective Quixtar IBOs. Some obligations in its distributorship contracts, such as non-compete and confidentiality obligations (*see infra* ¶¶ 16-20) survive termination of a Quixtar distributorship.

106. Upon information and belief, MonaVie knew of the existence of these contracts and conspired with the Harts and others to intentionally interfere with Quixtar's existing contracts with its current and former IBOs by inducing them to breach their agreements with Quixtar in violation of the Rules of Conduct in the manner described above.

107. There is no legal justification for Defendant MonaVie's interference.

108. Defendant MonaVie's tortious conduct caused Quixtar IBOs and their customers to abandon, terminate or reduce their business relationships with Quixtar, and deterred prospective IBOs from entering into a business relationship with Quixtar.

109. As a result of Defendant MonaVie's wrongful interference, Quixtar has suffered and continues to suffer damages in an amount to be determined at trial.

110. Defendant MonaVie's actions under the circumstances and events described were intentional and willful and calculated to injure and damage Quixtar. Defendant MonaVie's conduct is and was outrageous, and/or clearly demonstrates an evil motive or reckless indifference to the rights of others, and entitles Quixtar to an award of exemplary damages.

111. As a result, Defendant MonaVie is causing or is likely to cause injury to Quixtar for which Quixtar has no adequate remedy at law. Unless enjoined, Defendant MonaVie's activities will continue to cause injury to Plaintiff.

COUNT IV
(CIVIL CONSPIRACY)

112. Plaintiff hereby alleges against Defendants MonaVie, the Harts, the Lyons, Dr. Niles, and Dr. Zarif civil conspiracy under the common laws of the State of Utah. Plaintiff repeats and realleges the allegations of paragraphs 1 to 111 above, as though fully set forth therein.

113. Defendants MonaVie, the Harts, the Lyons, Dr. Niles, and Dr. Zarif had an agreement or meeting of the minds to unfairly compete with Quixtar by making false and misleading representations regarding the nature, quality and characteristics of its products.

114. As a result, Defendants are causing or are likely to cause injury to Quixtar for which Quixtar has no adequate remedy at law. Unless enjoined, Defendants' activities will continue to cause injury to Plaintiff.

RELIEF SOUGHT

WHEREFORE, Plaintiff asks this Court to:

A. Grant a permanent injunction restraining and enjoining Defendants and all those in privity, concert, or participation with Defendants from:

(i) employing misleading descriptions or representations of fact in commercial advertising and promotion that misrepresent the nature, characteristic, or the qualities of Defendants' goods;

(ii) interfering with Quixtar's contracts and business relationships; and

(iii) unfairly competing with Plaintiff in any manner whatsoever.

B. Award Plaintiff a just monetary relief in an amount to be fixed by the Court, including:

(i) all damages sustained by Plaintiff as a result of Defendants' unlawful acts and that such damages be trebled;

(ii) disgorgement of the Defendants' profits; and

(ii) all damages, compensatory and punitive, arising from Defendants' deliberate unlawful and infringing actions as permitted under Utah law.

C. Order Defendants to compensate Plaintiff in an amount that would enable Plaintiff to conduct corrective advertising reasonably calculated to remedy any consumer deception created as a result of Defendants' unlawful actions.

D. Order that, pursuant to 15 U.S.C. § 1116, Defendants be directed to file with the Court and serve upon Plaintiff within thirty (30) days after issuance of an injunction, a report in writing and under oath setting forth in detail the manner and form in which Defendants have complied with the injunction.

E. Find that Defendants have unfairly competed with Quixtar by the acts complained of herein in violation of federal law.

F. Find that Defendants' conduct violates the Utah Truth in Advertising Act.

G. Find that Defendants are liable for tortious interference of business relationships under Utah common law.

H. Find that Defendants are liable for civil conspiracy under Utah common law.

I. Find that this case is exceptional resulting from Defendants' deliberate unlawful actions and award to Plaintiff all reasonable attorneys' fees, costs, and disbursements incurred by it as a result of this action, pursuant to 15 U.S.C. § 1117.

J. Grant that Plaintiff has such other and further relief as this Court may deem just.

DATED: March 18, 2008.

Respectfully submitted,

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